



# Public Protection Service Enforcement & Compliance Policy

*March 2023*

**TORFAEN COUNTY BOROUGH COUNCIL**

**Public Protection  
Economy and Environment**

## FOREWORD

Torfaen County Borough Council is responsible for the delivery of Public Protection services, comprising Environmental Health, Trading Standards and Licensing.

This document sets out what businesses and others being regulated can expect from the Public Protection service.

What follows demonstrates the Council's commitment to protecting the health, safety, environment and amenities of the people who live, work and visit Torfaen, whilst ensuring the enforcement we carry out is fair, accountable, consistent, proportionate and transparent.

We recognise that prevention is better than cure, but where it becomes necessary to take enforcement action against a business or member of the public, we will do so.

This is a service for which I am proud to be responsible.



**Councillor Amanda Owen  
Executive Member for Environment,  
Torfaen County Borough Council**

## Amendments

Date	Page	Amendments
16/09/2022	1 – 15	Removal of references to the collaboration with Blaenau Gwent Weblinks updated Chief Officer replaced with Strategic Director
	2	Executive Member updated
	3	Contents page renumbered
	5	List of legislation updated on point 1.4
	7	Addition of point 4.3 in relation to anonymous service requests, complaints and allegations.
	12	Inclusion of Penalty Charge Notices
	13	Inclusion of other Prohibition Procedures

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# 1 INTRODUCTION

- 1.1 The Council is responsible for the delivery of Public Protection services, including Environmental Health, Trading Standards and Licensing.
- 1.2 This policy has been developed to ensure that the Council complies with the legislative framework within which we operate. It also explains our enforcement practices, so that residents and businesses can understand what enforcement action we take, and how we decide what enforcement action is appropriate in each case.
- 1.3 This policy has been prepared with regard to a range of principal legislation and statutory guidance, including the:
- [Regulatory Enforcement and Sanctions Act 2008](#) (the RES Act).
  - [Legislative and Regulatory Reform Act 2006](#) (LRRRA).
  - [Enterprise and Regulatory Reform Act 2013](#)
  - [RES Guidance to the Act](#)
  - Food Law Code of Practice (Wales)

A full list of the legislation and guidance under the RES Act can be found [here](#).

- 1.4 As well as the above, our enforcement activities are conducted in compliance with the:
- [Human Rights Act 1988](#);
  - [Protection of Freedoms Act 2012](#) and the [Code of Practice on Powers of Entry](#)
  - [Police and Criminal Evidence Act 1984](#) and [PACE Code B guidance](#)
  - [Regulation of Investigatory Powers Act 2000](#)
  - [Proceeds of Crime Act 2002](#)
  - [Anti-social Behaviour, Crime and Policing Act 2014](#)
  - [Simple Cautions for Offenders](#)
  - [Criminal Justice and Police Act 2001](#)
  - [The Co-ordination of Regulatory Enforcement \(Enforcement Action\) Order 2009](#)
  - [Code for Crown Prosecutors](#)
  - [Regulators' Code](#)
  - [The Data Protection Act 1998](#)

- 1.5 Not all the provisions covered within this policy are legally binding on all aspects of our enforcement. However, a commitment to good enforcement practice informs all the enforcement decisions made by our enforcement officers.

## **2 LEGAL STATUS OF THIS ENFORCEMENT POLICY**

- 2.1 This Enforcement and Compliance Policy has been presented for Member approval as appropriate and details of the Member approval processes are available on request.
- 2.2 This document does not replace or supersede legislation or statutory guidance.
- 2.3 All officers, when making enforcement decisions, will abide by this policy. Departures from this policy will be exceptional, capable of justification and be approved by an appropriate manager, Head of Service, Strategic Director, or Member Committee, prior to implementation.
- 2.6 The Council is a public authority for the purposes of the Human Rights Act 1998. We will, therefore, apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In particular, the right to a fair trial and the right to respect for private and family life, home, and correspondence.
- 2.7 In exceptional instances we may conclude that the provisions in this policy, and the legislation and guidance on which it is based, are not relevant or are outweighed by another provision. We will ensure that any decision to depart from this policy will be properly reasoned, based on material evidence and documented.

## **3 SCOPE AND MEANING OF ‘ENFORCEMENT’**

- 3.1 This policy applies to all legislation enforced by the Public Protection and Civil Enforcement services, to any temporary and agency staff and to any person or organisation delivering enforcement on behalf of the services to which this policy relates.
- 3.2 The service will have regard to the definition of ‘enforcement action’ as defined under the Regulatory Enforcement Sanctions Act 2008 (RES Act).
- 3.3 A full list of the actions covered by the RES Act is listed in the [CRE Order 2009](#). This legislation also applies to any other enforcement action taken, such as an informal letter, where it is stated that the listed actions may be taken.

## 4. GENERAL PRINCIPLES

- 4.1 Our enforcement aims will be as laid down in the [Regulators' Code](#), and will focus on changing the behaviour of the offender, changing attitudes in society to become less accepting of offences, eliminating any financial gain or benefit from non-compliance, and deterring future non-compliance.
- 4.2 Our enforcement will seek to be responsive and to consider what is appropriate for the offender and regulatory issue, and be proportionate to the nature of the offence and the harm caused.
- 4.3 We may not be able to deal with anonymous service requests, complaints, allegations, but this depends on the nature of the concern and the source of the problem. In all cases, residents giving their name, address, or any other details can be assured that this information will be held in the strictest confidence so far as legislation permits. Where appropriate, it will be necessary to treat information received as "intelligence" and handled in accordance with official guidance and may be shared with other agencies as appropriate.
- 4.4 Where we consider that enforcement action is appropriate, each case will be considered on its own merits. However, there are general principles that apply to the way each case must be approached. These are set out in this policy and in the Regulators' Code.
- 4.5 All enforcement decisions will be fair, independent and objective. They will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.
- 4.6 Our primary function is to protect the public, legitimate businesses, the environment, and groups such as consumers and workers. We do this by ensuring compliance with legislation. However, we reserve the right to take enforcement action, after compliance has been achieved, if it is in the public interest to do so, and particularly where compliance was only achieved as a result of our intervention.
- 4.7 When considering enforcement action, we will take into account the views of any victims, injured parties or relevant persons or communities to establish the nature and extent of any harm or loss, and its significance, in making the decision.
- 4.8 Where a business is in a registered Primary Authority Partnership under the RES Act we will, where required to do so, notify the Primary Authority of any enforcement action we propose to take (unless action is being taken in an emergency, in which case notification will be after the fact). We may also, under that Act, refer the matter to the Office for Product Safety and Standards (OPSS), if appropriate. The Primary Authority has the right to object to proposed

enforcement action, in which circumstances either they or we may refer the matter to OPSS.

- 4.9 A potential conflict of interest may occur where the Public Protection service is the relevant enforcing authority in relation to premises in which the Council or its officers also have an ownership or management interest. The Council is committed to ensuring arrangements are in place to enable the Public Protection service to undertake its role without fear or favour and without any conflict, actual or perceived. Any identified conflicts will be determined on a case-by-case basis, having regard to the nature of the Council involvement in the business, the duty-holders responsible for business, and the person most likely to be primarily in breach should an offence occur.
- 4.10 Breaches of legislation found in respect of businesses or contractors operating at Council owned premises will be dealt with, and the timescales for carrying out such works specified, in the same way as any other business proprietor.
- 4.11 Advice given to or in respect of Council owned premises will be the same as for any other business proprietor and will not be permitted to conflict with its enforcement.
- 4.12 Where the Public Protection service has a regulatory role, but cannot take formal enforcement action in respect of Council owned premises, non-compliance with the law will be reported to the appropriate Strategic Director. In addition, the Chief Executive and Monitoring Officer will be informed of non-compliances that remain unresolved after an appropriate timescale, and of any matters that would have led to formal enforcement action and/or prosecution in a non-Council owned premises.
- 4.13 Enforcement will be undertaken by appropriately authorised officers, and authorisation will be based on qualifications, knowledge and experience. The authorisation for each officer will go through the relevant authorisation procedure and be recorded.
- 4.14 In most instances, the decision to take enforcement action will rest with the authorised officer. Decisions other than informal enforcement action may be subject to additional scrutiny as appropriate. In particular, any decision to prosecute will be taken by the Head of Service or others with authority to do so, in accordance with the Council's Scheme of Delegations, in discussion with Legal Services.
- 4.15 Training will be used to ensure that authorised officers achieve and maintain the appropriate level of competency and professionalism, and this training will be recorded as necessary.

- 4.16 Where we use contractors or outside agencies, their qualifications and experience will be examined to ensure that they meet the required competency standards for any work carried out on behalf of the Council.
- 4.17 All enforcement decisions by authorised officers are subject to overview by line managers, and monitoring procedures are in place where required in law.
- 4.18 Any procedures in place to ensure consistency and uniformity of enforcement by officers employed by the Council, will also be applied to temporary and contract staff. Any such staff will be monitored to ensure that their work complies with the requirements of this policy and any other procedures in place.
- 4.19 We will have regard to the confidentiality of any information obtained as part of enforcement action, and to the need for confidentiality in respect of any action taken. Equally, the service recognises the provisions and principles of the Data Protection Act and Freedom of Information Act in respect of the rights of individuals to access certain data.
- 4.20 We recognise that giving advice is an important part of our work, but we must also ensure that the giving of advice to businesses and residents does not conflict with any statutory enforcement function.
- 4.21 We will not generally offer consultancy services, other than via a Primary Authority Partnership that we may enter. In this context, consultancy work will be taken to mean the giving of detailed assistance and advice or acting on behalf of a client, regardless of financial gain, but would not include the giving of general advice as part of an inspection, application etc.
- 4.22 Should we decide to offer consultancy services (subject to funding being available), these will not be marketed or advertised as part of an inspection or other enforcement action without reference to the fact that other service providers exist.
- 4.23 Where permitted in law, we may choose to make a charge for enforcement actions. In the case of prosecutions, we will apply for costs on a full recovery basis, unless there are extenuating circumstances that make this inappropriate.
- 4.24 Where a person or business has an issue with or wishes to complain about enforcement taken against them under this policy, they should have regard to any appeal or other judicial process in place and follow this where appropriate. Where there is no appeal or other judicial process in place, the person against whom the action has been taken may;
- a) Speak to the officer dealing with their case, where appropriate, so that the enforcement action being taken can be discussed and any issues resolved by agreement wherever possible.



- b) Speak to the line manager of the officer concerned where agreement cannot be reached, or
- c) Make a complaint to the Head of Public Protection as follows  
Head of Public Protection, Economy and Environment, Civic Centre,  
Pontypool, NP4 6YB.
- d) Use the formal complaints procedure, which can be accessed through  
<https://www.torfaen.gov.uk/en/AboutTheCouncil/Complaints/Corporate-Complaints.aspx>

All queries and complaints will be dealt with in accordance with the Council's Corporate Guidelines.

## **5. ENFORCEMENT ACTION**

### **5.1 General enforcement considerations**

5.1.1 The general presumption will be that we take a graduated approach to enforcement to ensure compliance with the law. However, this does not preclude taking action, such as prosecution as a first enforcement step where it is in the public interest to do so.

5.1.2 In assessing what enforcement action is necessary and proportionate, consideration will be given to, amongst other things:

- a) The seriousness of the compliance failure.
- b) The past and current performance of any business and/or individual concerned.
- c) Any obstruction on the part of the offender.
- d) The risks being controlled.
- e) Statutory guidance.
- f) Codes of Practice.
- g) Any legal advice.
- h) Any priorities laid down by Government or adopted by the Council
- i) Whether the defendant is aged under 18 (termed 'juveniles'). We will not enforce against juveniles unless there are specific powers within the appropriate legislation and/or we have adopted such powers.

- j) The existence of any Primary Authority agreement via which compliance can be achieved.

5.1.3 Officers will also ensure that any proposed enforcement action is reasonable, proportionate, risk-based and consistent with good practice and guidance. In selecting the most appropriate action, the officer will utilise an appropriate enforcement decision making approach relating to the regulatory activity (e.g., referrals to Licensing Committees). Where such specific arrangements do not exist, then prior to taking any action, we will have regard to the Code for Crown Prosecutors and such internal procedures deemed appropriate in each case.

5.1.4 Where we require action to be taken by the recipient to remedy or prevent an offence, we will

- a) Clearly differentiate between offences and any recommendations and advice being given
- b) Explain how any offence should be remedied, where appropriate (this may be simply to cease an activity)
- c) Give reasonable timescales for remedying any offence (this may be immediate in certain circumstances)
- d) Provide contact details in case information or advice on the enforcement action is required.
- e) Provide written information on any appeal processes where relevant

5.1.5 Any action we take in respect of any offence will be recorded and may be used to inform later enforcement decisions.

## **5.2 Range of Enforcement Approaches**

- i. No Action
- ii. Compliance Advice, Guidance and Support
- iii. Fixed Penalty Notices (FPNs), Penalty Charge Notices (PCNs) and Penalty Notices for Disorders (PNDs)
- iv. Voluntary Undertakings
- v. Statutory Notices, Orders, other Prohibition Procedures and Works in Default
- vi. Detention, Seizure and Forfeiture Proceedings
- vii. Injunctive Actions and other Civil Sanctions
- viii. Licence Modification, Suspension or Revocation
- ix. Simple Caution
- x. Prosecution
- xi. Proceeds of Crime Applications

## 5.3 No Action

5.3.1 In certain circumstances, contraventions of the law may not warrant any action, for example, where: -

- Enforcement is inappropriate in the circumstances, e.g., where the defendant would not be able to understand and/or it would seriously affect their health or well-being.
- The offence is very minor, and the cost of compliance or enforcement significantly outweighs the detrimental impact of the contravention.

Such circumstances would be considered very unusual, and in most cases where a contravention of the law has been found, some form of enforcement action will be deemed appropriate.

## 5.4 Compliance Advice, Guidance and Support

5.4.1 Informal advice and support will be the service's first response in the case of many breaches of legislation that are identified. Advice can be provided verbally or in the form of a warning letter to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in Court as a previous conviction, but it may be presented in evidence. Where advice is given, we will clearly identify any contraventions of the law and give advice on how to put them right.

5.4.2 Where there is a Primary Authority Partnership, we will have regard to the requirements of the Primary Authority regarding our advisory role and advise the lead authority where any advice has relevance beyond a local level.

## 5.5 Fixed Penalty Notices (FPNs), Penalty Charge Notices (PCNs) and Penalty Notices for Disorders (PNDs)

5.5.1 Where legislation permits an offence to be dealt with by way of a [FPN](#) or a [PND](#), we may choose to administer these for a first and/or minor offence. There is no requirement to issue a warning prior to taking this action, as these remedies were introduced by Government as a warning mechanism that allow prosecution to be avoided.

5.5.1 FPNs and PNDs are an offer to discharge liability for an offence instead of facing prosecution, and non-payment will therefore generally lead to prosecution unless there is evidence to show extenuating circumstances. PCNs are served for civil offences with non-payment pursued by way of debt recovery.

## **5.6 Voluntary Undertakings**

5.6.1 The Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. Any failure to honour voluntary undertakings is taken very seriously and will result in appropriate enforcement action.

## **5.7 Statutory Notices, Orders, other Prohibition Procedures and Works in Default**

5.7.1 Certain legislation allows or requires statutory notices to be served or Orders to be made at Court requiring offenders to take specific actions or cease certain activities. These types of enforcement action may require activities to cease or be carried out immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed will be reasonable, considering the seriousness of the contravention, the implications of the non-compliance and the appeal period for that notice. Under certain legislation, we may charge for the service of a statutory notice.

5.7.2 Certain types of notice allow works to be carried out in default, and if a notice is not complied with [a breach of the notice] we may carry out any necessary works to satisfy the requirements of the notice ourselves. Where the law allows, we may then charge the person/business served with the notice for any cost we reasonably incur in carrying out the work. If necessary, costs may also be laid as local land charges

## **5.8 Detention, Seizure and Forfeiture Proceedings**

5.8.1 Certain legislation enables authorised officers to detain goods pending further investigations, and/or seize goods, equipment or documents, for example, where goods are unsafe or where they may be required as evidence for possible future Court proceedings. When we seize goods, we will give the person from whom the goods are taken an appropriate receipt.

5.8.2 Forfeiture may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the marketplace or from being used to cause a further problem.

## **5.9 Injunctive Actions and other Civil Sanctions**

5.9.1 In certain circumstances injunctive actions may be used, for example to deal with repeat offenders; dangerous circumstances; or consumer / environmental / public health detriment.

5.9.2 Under the Enterprise Act 2002, action will be considered where there have been persistent breaches or there is significant collective consumer detriment, and these can include informal undertakings through to Court Orders and Contempt Proceedings.

## **5.10 Licence Modification, Suspension or Revocation**

5.10.1 A range of actions are available in respect of licenses, depending on the legislation under which the licence was issued, and any specific policies providing different approaches and laying down licensing conditions to which the licence holder is obliged to have regard.

5.10.2 The actions that may be taken include, but are not limited to, suspension or revocation of a licence, modification of the conditions of the licence, exclusion of a licensable activity from the scope of the licence, removal of a Designated Premises Supervisor, or the issue of a statutory notice where this is permitted under the specific licensing legislation.

5.10.3 Where required in law or under the Licensing Policy of the authority, the above actions go through the appropriate Licensing Committee or the Courts.

## **5.11 Simple Caution**

5.11.1 Where appropriate, and where a prosecution would otherwise be justified, a Simple Caution may be administered with the consent of the offender.

5.11.2 In determining whether a Simple Caution is appropriate, we will have regard to the [Ministry of Justice Guidance 2013](#). Guidance on applying the public interest test in determining if a Simple Caution is appropriate is set out in the Code for Crown Prosecutors, which can be found on the [CPS website](#)

5.11.3 The refusal of an offender to be cautioned will be a material consideration when deciding whether they should then be prosecuted for that offence.

## **5.12 Prosecution**

5.12.1 When deciding whether prosecution is appropriate, we will have regard to the [Code for Crown Prosecutors](#), and in particular

- (i) When deciding whether the case meets the evidential test, and
- (ii) When deciding whether prosecution is in the public interest

5.12.2 Where appropriate, and particularly in the case of prosecutions following the non-payment of a FPN, we will consider the use of a Single Justice Procedure Notice where this option is available.

5.12.3 We will raise awareness by publicising any prosecution that we have taken, unless there is an overriding issue why this would be inappropriate. This is because prosecution is seen as an important deterrent for other non-compliant businesses.

### **5.13 Proceeds of Crime Applications**

5.13.1 We may, either through our own officers or in cooperation with independent investigators, other regional or national teams such as other local authorities, Police, Regional Investigations or Food Fraud teams, make an application under the [Proceeds of Crime Act 2002](#) to restrain and/or confiscate the assets of an offender.

5.13.2 The purpose of any such proceedings is to recover the financial benefit that the offender has obtained from their criminal conduct. Proceedings are conducted according to the civil standard of proof.

## **6. LIAISON WITH OTHER AGENCIES**

6.1 In addition to the duties imposed by the RES Act, we will, where appropriate, cooperate and coordinate with any relevant regulatory body and/or enforcement agency to maximise the effectiveness of any enforcement.

6.2 Where an enforcement matter affects a wide geographical area or involves enforcement by one or more other local authorities or organisations, all relevant authorities and organisations will be informed of the matter as soon as possible, and enforcement activity coordinated with them as appropriate.

6.3 We will share intelligence relating to individual and wider regulatory matters with other regulatory bodies and enforcement agencies, where the information concerned has a direct bearing on their enforcement functions and responsibilities, and in accordance with any data protection legislation.

## **7. KEEPING PEOPLE AND BUSINESSES INFORMED**

7.1 We are committed to keeping alleged offenders and witnesses informed of the progress of investigations, unless this would impede an investigation or pose a safety risk to investigating officers, witnesses or the general public.

## **8. REVIEW AND PUBLICATION OF THE ENFORCEMENT POLICY**

8.1 This policy will be reviewed at least every five years, or whenever legislative changes to the way in which we enforce are introduced.

8.2 This policy is available in a number of ways, including

- a. On the Council's website at [www.torfaen.gov.uk](http://www.torfaen.gov.uk)
- b. By e-mailing us at [publicprotectionadminteam@torfaen.gov.uk](mailto:publicprotectionadminteam@torfaen.gov.uk)

This policy can be made available on tape, in Braille or large type on request.  
This document is available in Welsh.

8.3 Comments on this policy are welcome, and can be made by emailing us at [publicprotectionadminteam@torfaen.gov.uk](mailto:publicprotectionadminteam@torfaen.gov.uk)

**END**