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1. Summary

- 1.1. This policy sets out how the Council's Public Protection, Neighbourhoods and Environmental Enforcement services use law and enforcement activities to protect the interests of residents, visitors and businesses in Middlesbrough, using a broad range of legislative powers, national standards, statutory and non-statutory guidance and established legal practice, which includes but not limited to:
 - The Code for Crown Prosecutors
 - The Regulators' Code, introduced under the Legislative and Regulatory Reform Act 2006
 - The Regulatory Enforcement and Sanctions Act 2008
 - Human Rights Act 1998
 - Regulation of Investigatory Powers Act 2000
 - Guidance issued by central government including by the Ministry of Housing, Communities and Local Government, the Home Office, the Office for Product Safety and Standards, the Food Standards Agency, the Health and Safety Executive, the Department for Environment, Food and Rural Affairs, the Gambling Commission, and the Ministry of Justice.
- 1.2. Underlying this policy are the five principles of good regulation, as defined in Section 21 of the Legislative and Regulatory Reform Act 2006, which are:
 - proportionality in the application of law and in securing compliance
 - accountability for the enforcement action taken
 - consistency of approach
 - transparency about how the Council operates and what those who are regulated can expect from the Council
 - targeting of enforcement action
- 1.3. When considering the most appropriate course of action to ensure compliance, we aim to follow the Macrory penalty principles, which state that enforcement and sanctions should:
 - aim to change the behaviour of the offender
 - aim to eliminate any financial gain or benefit from non-compliance
 - be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma
 - that should be associated with a criminal conviction
 - be proportionate to the nature of the offence and the harm caused
 - aim to restore the harm caused by regulatory non-compliance, where appropriate
 - aim to deter future non-compliance

- 1.4. This policy does not apply to enforcement decisions leading to the issuing of civil financial penalties under the provisions of Section 126 and Schedule 9 of the Housing and Planning Act 2016 and Section 249A of the Housing Act 2004. The use of civil financial penalties with regard to relevant offences under these Acts is subject to the Private Sector Housing Enforcement Policy, which stands on its own.

2. Context

- 2.1 This policy is designed to ensure that regulatory services with the Council are delivered in an impartial, open and consistent manner, achieved through education, mediation, advice, inspections and monitoring, and by regulating the activities of individuals and business as necessary. Compliance with legislative standards will be achieved through informal and formal action including written information and warnings, good conduct agreements, a range of enforcement notices and orders, fixed financial penalties and civil financial penalties and where necessary and appropriate the prosecution of offences.
- 2.2 The Council seeks to ensure compliance with the law by:
- Helping and encouraging businesses and individuals to understand their duties and responsibilities under relevant laws and standards by providing information, education, advice and guidance.
 - Responding proportionately and fairly to suspected contraventions or breaches of law.
 - Using service planning processes to ensure that resources and regulatory activities are appropriately targeted, based on risk and impact.
- 2.3 All officers whose duty it is to undertake regulatory functions must have regard to the principles of good enforcement set out in this policy.

3. Purpose

- 3.1 This policy sets out what can be expected of officers when carrying out their regulatory functions involving enforcement decisions.
- 3.2 The policy aims to ensure that enforcement activities are focused towards matters with the greatest risk to public health, safety, economic and environmental wellbeing of the community; to ensure that enforcement decisions are applied consistently, fairly and transparently; and, to help businesses and individuals understand our regulatory actions and to reduce the regulatory burden on businesses.

4. Definitions

- 4.1 The terms 'regulatory services' and 'regulatory or enforcement activities' refers to the whole range of regulatory options and interventions available to the Council.
- 4.2 The terms 'business or businesses' is used throughout this document to refer to businesses, organisations, individuals and other regulated entities.
- 4.3 A 'person' may be an individual, a company or other legal entity.

5. Scope

5.1 This policy applies to all persons who are authorised by the Council to deliver statutory duties and functions and non-statutory regulatory services and who determine and use the range of enforcement measures relevant to their role. This includes officers and other members of staff within the following service areas.

- Environmental Health
- Environmental Protection
- Trading Standards
- Private Sector Housing
- Selective Landlord Licensing
- Licensing
- Neighbourhoods
- Environmental Enforcement

5.2 This policy is a five-year policy and will be reviewed periodically and whenever there are significant changes in legislation and national guidance. Compliance with the policy will be monitored through service delivery processes.

6. Legislative and regulatory framework

6.1 Regulatory services incorporate a broad and substantial range of legislation including Acts of Parliament, Regulations and Orders. This includes laws on:

- the manufacturing, importation, marketing, sale and supply of food and other goods
- the health, safety and wellbeing of persons at work and those who may be affected by workplace activities
- the protection of the environment, including air, land and watercourses
- the prevention of nuisance
- the protection of public health
- the protection of tenants' rights
- the protection of lawful business and consumer interests
- the development and use of land
- the protection of buildings
- the licensing of regulated activities
- the prevention of anti-social behaviour
- the detection and prevention of crime

6.2 This policy supports the Council to meet its statutory obligations and to succeed on its ambitions for a successful and ambitious town, to ensure communities are safe and resilient, and to help residents live longer, healthier lives.

7. Policy Detail

7.1 It is the aim of this policy to

- ensure that enforcement activities are focused towards matters with the greatest risk to public health, safety, economic and environmental wellbeing of the community
- ensure that enforcement decisions are applied consistently, fairly and transparently
- help businesses and individuals understand our regulatory actions and to reduce the regulatory burden on businesses.

7.2 The Regulators Code, laid before Parliament in accordance with the Legislative and Regulatory Reform Act 2006, underpins the enforcement decisions made in line with this policy. The Council services to which this policy applies will:

1. Carry out enforcement activities in such a way that supports those we regulate to comply and grow.

- Businesses and residents are encouraged to proactively seek advice and support without fear of triggering enforcement action
- Where appropriate, we will consult businesses and residents on the guidance we provide on regulation to make sure it meets their needs.
- Where more than one regulator is involved, we will work collaboratively to make sure the advice we give is consistent, avoids duplication and over-burdening businesses
- We will avoid imposing unnecessary regulatory burdens and will consider whether similar outcomes could be achieved by less burdensome means.
- Our services will support economic growth for businesses that are complying with the law by:
 - understanding and minimising negative economic impacts of regulatory activities
 - minimising the costs for compliance for those we regulate
 - improving confidence in compliance for those we regulate
 - encouraging and promoting compliance.
- We will ensure our officers have the knowledge and skills needed to support businesses and apply fair, proportionate and effective measures.
- The performance and competency of our officers will be monitored through nationally recognised schemes in relation to their area of work, and/or through internal performance monitoring processes.

2. Provide simple and straightforward ways to engage with those we regulate.

- We will publish information on the services we provide and what businesses and the public should expect from us. The Council's compliments and complaints process will be brought to the attention of anyone who wishes to raise a concern regarding the service they have received.

- We will consider the impact on businesses of our policies, practices or delivery of service and seek feedback from those we regulate.
- Information, guidance and advice will be made available using a range of media including Middlesbrough Council's website and linked websites, leaflets, letters, social media and press information.
- Where an immediate enforcement action is needed to address non-compliance, or where providing an opportunity to respond to advice would likely defeat the purpose of enforcement action, we will, where appropriate, provide those subject to such action with information on the reasons for the action at the earliest opportunity after the action has been taken.
- Information on statutory appeals to enforcement action will be provided with enforcement forms, notices or other relevant documents and correspondence.
- Where there is no appeal process within the law, or the complaint relates to issues outside of the legal appeal process, e.g. an officer's conduct, the business or citizen will be directed to the Head of Service or the Corporate Complaint Process.

3. Base our regulatory activities on risk

Enforcement action will be proportionate to the risks and circumstances involved. Factors that will be taken into consideration include but are not limited to: -

- the risk non-compliance poses to the health, safety or welfare of the public, the economic impact on individuals and other businesses, and any adverse impact on the amenity or broader environment.
- pre-meditation, intent or reckless disregard in the commission of an offence.
- failure to comply with the requirements of a statutory notice or order.
- history of non-compliance and previous warnings for the same or similar offence(s) and the general record and approach of the offender including intent or attitude
- aggravated circumstances, such as obstruction or aggressive behaviour
- the offence is widespread in the area where it is committed or, has been identified as being a priority to local people or the subject of political direction.
- death or serious injury resulted from a breach of law
- the gravity of an offence taken together with the seriousness of actual or potential harm
- false or misleading information has been knowingly or recklessly provided, or there has been intent to deceive - including deliberate concealment of an unlawful activity
- the size and capacity of the business
- the extent of financial gain because of the breach

We aim to use national risk assessment frameworks by default. However, where the delivery of our regulatory services diverges from national frameworks, the reasons for this will be clearly explained.

4. Share information about compliance and risk

- Information gathering will follow a 'collect once, use many times' basis whenever possible.
- Secure mechanisms will be used to share information about businesses and individuals subject to regulation.
- The sharing of information with other regulators about businesses and individuals will follow data protection principles, and the sharing of information will seek to help target resources, to detect and prevent crime, remove or reduce risks to the public or businesses and to minimise duplication of enforcement actions.

5. Provide clear information, guidance and advice will be available to help those we regulate to meet their responsibilities to comply

- We will provide information and advice to businesses and individuals in a way that will enable them to clearly understand what the law requires. We will differentiate between legal requirements, recommendations, advice or good practice, to avoid unnecessary burdens on business.
- We will engage with businesses and individuals to seek their views on our policies and service standards in relation to our regulatory role.
- We will ensure that decisions are not influenced by the gender, disability, religion or political belief, language, ethnicity or sexual preferences of offenders, victims or witnesses.
- When dealing with juveniles or vulnerable individuals we will consider any current Codes of Practice or guidance to ensure that juveniles and vulnerable people are treated fairly.
- Where advice may be given by more than one regulator, or where our opinion may differ from another regulator, we will follow published guidance to resolve any issues and reach agreement.

6. Ensure that our approach to our regulatory activity is transparent

- We will take a clear and balanced approach to enforcement. We will take robust action against irresponsible businesses and individuals and any others considered to be responsible, but we will assist and minimise the regulatory burden on those who are conscientious and generally compliant.
- Enforcement action will always be undertaken by suitably qualified/experienced officers. We will ensure that our officers have the necessary skills and knowledge to support those they regulate and to choose proportionate and effective approaches.

- 7.3 Where evidence is found of a flagrant disregard for the law or deliberate or persistent failure to follow advice or comply with requests made by the Council, it may be deemed that informal action is not appropriate. Under these circumstances enforcement action may be escalated directly to prosecution or other lawful sanction.
- 7.4 Decisions to prosecute or issue financial penalties or charges, to take injunctive action, to seek revocation, review or suspension of a licence, to seek closure orders or restricted premises or sales orders, will be taken by senior managers and not by the officer directly involved in the investigation.
- 7.5 A Scheme of Delegation exists that identifies the posts that have authority to make enforcement decisions.

Enforcement Decisions

- 7.6 It is the Council's responsibility to take the most appropriate course of action to address breaches of law. When determining the action to take and the specific charges to apply, the Council will carefully consider the nature and seriousness of any alleged criminal conduct, the evidence gathered to prove a case beyond all reasonable doubt and whether enforcement action is in the public interest to pursue.
- 7.7 To prosecute, the Council must produce a case that enables the Court to have adequate sentencing powers and cases must be presented in a clear and straightforward manner.
- 7.8 Charges may be brought against directors or other employees of a company where their actions or omissions led to the commission of the offence or where it can be shown that the offence was committed with their consent or connivance or was due to their neglect. This decision will only apply where the relevant statutory provision enables it.
- 7.9 Where a director, employee or other person of a company is charged, there must be sufficient evidence of their involvement and culpability. A Court may impose a sentence against a company and a separate sentence against any individual found guilty through their involvement in the offence. This may include a fine, a custodial sentence and/or a community sentence, and may impose orders ancillary to the prosecution such as disqualification as a director, confiscation of assets under proceeds of crime, a criminal behaviour order, forfeiture of equipment or vehicles used to commit the offence, compensation orders and remediation orders.
- 7.10 Taking legal action, such as a prosecution, is usually a last resort. A range of options will be considered when determining the most appropriate course of action. The following summarises the action that may be taken in line with the wide range of legislation enforced by regulatory services. This list is not exhaustive; the action may not be undertaken by some service areas and there may be other more specific enforcement options available in legislation that are not described below but may still be used.

- *Advice and education*

Whenever it is possible and appropriate, officers will give advice, guidance and support so that legal requirements are communicated well to promote compliance and best practice.

- *Informal action*

Less serious breaches or contraventions of law will usually involve the provision of a letter,

notice or action plan, setting out a required course of action or providing advice, information or warning to prevent a further breach or contravention. A clear distinction between breaches or contraventions of law and recommendations, guidance and advice will be made.

- *Enforcement notices / orders*

Enforcement notices / orders may be issued for more serious matters or for repeated contraventions. There are numerous types of notice / order, including Community Protection, Compliance, Prohibition, Improvement and Remedial Action, Suspension, Withdrawal or Stop Notice. The notice / order will set out clearly the nature of the breach or contravention, any restriction imposed, or remedial action required, and any timescales in which action must be taken.

Failure to comply with certain notices or orders enables the Council to carry out works in default of compliance to address the breach and recover all reasonable costs incurred. All notices / orders will be approved, signed and served by appropriately authorised officers. Information about how and where to appeal against a notice / order or the recovery of costs will be included with the notice or other accompanying documentation.

- *Fixed penalty notices and financial penalties*

Some offences may be discharged by payment of a fixed penalty notice and some breaches of law may be subject to a financial penalty.

Fixed penalty notices give the offender an opportunity to avoid prosecution by paying a fine. It is not an offence to fail to pay a fixed penalty, but non-payment would, under normal circumstances, result in a prosecution for the original breaches.

A financial penalty can be issued for breaching certain laws and must be paid. Non-payment of a financial penalty would result in court proceedings to recover the debt. This may include a Warrant of Control, a Third-Party Debt Order, A Charging Order, bankruptcy or insolvency.

- *Revocation, review and suspension of licences*

The Council has the power to refuse, suspend, revoke, vary or review a range of licences, including licences for operating taxis, selling alcohol, houses in multiple occupation and selective landlord licensing, selling or storage fireworks, and animal related activities (eg pet shops and boarding kennels). Some of these powers rest with officers but in other cases the law demands that decisions are made by a committee or elected councillor(s).

For reviews or revocations, licence holders have the right to attend hearings and have a right to appeal against decisions.

Application for some licences may include a determination of the “fitness” of the applicant to engage in a particular area of business. In making this assessment we will consider several factors, including but not limited to any history of non-compliance, evidence of honesty and integrity, prior convictions and relevant warnings, and to any investigations or complaints received regarding their conduct.

- *Injunctive actions*

In certain instances, such as repeat offending, dangerous circumstances or significant consumer detriment, we can seek orders from the Civil Courts that apply a restriction or prohibition. In certain circumstances we will first seek agreement from the business / individual concerned to cease a particular action and sign a written undertaking to this effect.

If an injunction is granted and subsequently ignored by a business or individual concerned, this represents contempt of court that can carry a penalty of imprisonment.

- *Seizure of items*

In some instances, officers have the power to seize goods, equipment or documents. This may include equipment used to cause nuisance, counterfeit and/or unsafe goods, unsafe foodstuffs, products or materials with false or misleading claims, short-weight products or incorrect weighing or measuring instruments.

- *Forfeiture of items*

At the conclusion of an investigation items may need to be disposed of to prevent them re-entering the supply chain or being used to create further problems. Where this is needed, we will make an application to the Court to grant forfeiture, unless a voluntary agreement has been reached with the person who owns the items to surrender them.

- *Confiscation of assets*

We believe that people should not profit from their criminal behaviour. As a result, when people have been convicted of offences and it can be shown that they have profited financially, we may seek Confiscation Orders under the Proceeds of Crime Act 2002.

- *Closure orders*

Where the behaviour of an individual or business is shown to be anti-social, including links to criminality, we may seek a Court Order to close any premises (private dwelling or commercial unit) that is linked to the commission of an offence, anti-social behaviour or nuisance. Extensions to Closure Orders may be sought where there is a likelihood of the behaviour recurring, leading to further anti-social behaviour.

- *Restricted premises orders / restricted sales orders*

Where an individual or business is shown to make persistent sales of age restricted products, we may seek a restricted premises order or restricted sales order to prevent that individual / business from being able to sell such products.

- *Enforced sale*

Where a financial penalty has been issued, or where the Council has incurred costs in undertaking its enforcement functions and has levied a charge(s), the Council may seek to exercise a power of sale to recover moneys owned.

- *Works carried out in default of legal notices.*

Where legislation permits, the Council may carry out any works that are specified in an enforcement notice, where there has been a failure to comply with the requirements of the notice. Works in default will predominantly be carried out to protect the safety and wellbeing of persons affected and to protect environment and community interests.

- *Prosecution*

Prosecution is usually a last resort and is reserved for more serious offences or where there is disregard for law or a pattern of behaviour of repeated breaches of law. In determining whether to prosecute, the provisions of the Code for Crown Prosecutors are carefully considered. To instigate a prosecution there must be sufficient evidence of the offence and it must be in the public interest to pursue.

A prosecution will not be commenced or continued unless there is sufficient, admissible and reliable evidence that a criminal offence has been committed by an identifiable party and that there is a realistic prospect of conviction. The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction.

A decision to prosecute will be based on the following: -

- nature and severity of the offence
- foreseeability of the offence or the circumstances leading to it
- intent of the offender
- history of offending
- attitude of the offender
- deterrent effect of the prosecution on the offender and others
- personal circumstances of the offender

Prosecution will usually be considered the most appropriate course of action where:

- there has been a blatant disregard of the law
- there is a refusal to achieve minimum legal requirements
- the offence involves a risk to public health, safety or wellbeing, significant financial detriment to consumers, harm to the environment, an adverse effect on the trading environment including where an unacceptable business advantage is gained
- the offender has been given a reasonable opportunity to comply with a statutory requirement and has failed to do so
- the offence involves failure to comply with an enforcement order or notice
- evidence suggests that the offence was premeditated
- there is a history of similar offences
- an officer was intentionally obstructed or deceived in the course of their duties or attempts had been made to conceal the unlawful activity

In the case of a work-related death, where it is within the Council's health and safety enforcement remit and an investigation reveals that the death was a direct result of a breach of the legislation, this will normally lead to prosecution. However, there may be occasions where the public interest does not require a prosecution, depending on the nature of the breach and the surrounding circumstances of the death.

- *Criminal Behaviour Orders*

Upon conviction for any criminal offence under anti-social behaviour laws, we may seek a Criminal Behaviour Order prohibiting an offender from engaging in further criminal or anti-social behaviour specified in the Order.

8. Roles and responsibilities

- 8.1 All officers duly authorised to carry out enforcement activities will apply this policy when carrying out investigations and when determining the most appropriate course of action to address a breach(es) of law. The content and application of the policy will be brought to the attention of all officers involved in the enforcement of laws relevant to the service and will be referenced when making enforcement decisions.
- 8.2 Lead / Principal Officers and Managers shall ensure that the policy is adhered to and shall report to their Head of Service any breach or variation from the policy.

9. Supporting policies, procedures and standards

- 9.1 This policy forms part of a framework of policies and documents that establish the processes and decision making involved in the delivery of regulatory services.

Included within the framework are the following

- Statement of Licensing Policy (under the Licensing Act 2003) 2025-2030
- Statement of Gambling Policy 2026-2029
- Private Hire and Hackney Carriage Licensing Policy 2022
- Civil Penalties under the Renters' Rights Act 2025 and other housing legislation
- Civil Penalties under the Tenant Fees Act 2019
- Private Sector Housing Enforcement Policy

10. Monitoring and review

Heads of Service shall have responsibility for the formal review of the policy, the monitoring of its application and of the enforcement decisions made in line with the policy and will ensure the policy is applied in accordance with Council and Directorate delegated powers / scheme of delegation.

11. Evaluation

This policy will be reviewed and evaluated annually to ensure it remains applicable and appropriate to current laws, government guidance and other relevant legislative provisions