



Colchester  
Borough Council

**COLCHESTER BOROUGH COUNCIL**

**ENFORCEMENT POLICY**

**LICENSING, FOOD AND SAFETY TEAM**

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## **1.0 Introduction**

- 1.1 This Enforcement Policy covers the work of Licensing, Food and Health and Safety. It is a new policy covering the delivery of enforcement and having regards to the Better Regulation Delivery Office – Regulators Code 2014 and the Enforcement concordat.
- 1.2 The Safety and Protection Service, where Licensing Food and Safety is situated play a vital role in protecting and supporting the public, the environment and groups such as residents, workers and businesses in the Borough of Colchester. It is important that these enforcement functions are carried out in an equitable, practical and consistent manner, and that both those subject to and beneficiaries of regulation and those on whose behalf enforcement is carried out can understand the approach we as a Council take.
- 1.3 The Council has a duty to enforce a range of statutory instruments adopting a variety of formal and informal sanctions. This can include anything from advising food businesses about what they need to do to comply with the law, to prosecuting a householder for animal welfare issues. This places the Council and its officers in a position of responsibility to ensure that its approach fits with national and local policy, codes and guidance. This is particularly important with regard to the economic challenges facing local government and business.

## **2.0 Executive Summary**

- 2.1 The purpose of this policy is to set out clearly the approach of the Council's Licensing, Food and Safety Team towards enforcement when dealing with non-compliance. It provides guidance on the range of options available to achieve compliance with the legislation we enforce, and how discretionary powers may be used to regulate and raise standards in various sectors. The document is intended to communicate Colchester Borough Council's policy in respect of its approach to those affected by its activities and officers of the local authority.
- 2.2 It also sets out the principles applied to encourage smarter, risk-based enforcement. The Council is committed to ensuring that its officers act in accordance with this policy. It is not in itself a statement of law and does not affect the discretion of the Council to take legal proceedings where this is considered to be in the public interest.
- 2.3 This policy was written having regard to the principles outlined in the Better Regulation Delivery Office – statutory Regulators Code, the enforcement concordat and current legislation.

### **3.0 Enforcement Policy Statement**

- 3.1 The Council is committed to following good enforcement practice in accordance with current legislation listed at Appendix 1. This includes carrying out our activities in a way that enables those we regulate to comply and grow, avoiding imposing unnecessary regulatory burdens, and assessing whether similar social, environmental and economic outcomes could be achieved by less burdensome means.
- 3.2 This policy has been produced in cognisance of Colchester Borough Council's (CBC) obligations under Section 17 of the Crime and Disorder Act 1998 to exercise its functions and do all that it reasonably can to prevent and reduce crime and disorder in its area.
- 3.3 This policy is also in accordance with the government's 'Better Regulation Agenda'. Specifically, it implements good practice recommended by the Cabinet Office Enforcement Concordat; the Regulators' Code; and the regulatory principles required under the Legislative and Regulatory Reform Act 2006, including the duty to have regard to economic growth (the 'Growth Duty').
- 3.4 All authorised officers when making enforcement decisions shall abide by this policy, and the supporting documented procedures, both within the appendices and departmental processes.
- 3.5 This Policy lays out the generic principles for good enforcement. This is refined where relevant with service-specific enforcement standards, procedures and standards that are referenced within the attached appendices; such as Licensing, Food Safety, Health and Animal Welfare. These will be reviewed and updated in light of new legislation, guidance and service demands.

### **4.0 Context of Enforcement.**

#### **4.1 Definition of 'Enforcement'**

"Enforcement" includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law. The term "enforcement" therefore has a wide meaning and applies to all dealings between the Council and those upon whom the law places responsibilities. It is not limited to formal enforcement action such as prosecution but can include a range of interventions that seek to achieve compliance with the law.

#### **4.2 The role of enforcement**

Regulation is important for the protection of the vulnerable, or to achieve other social or environmental objectives. The appropriate use of

enforcement powers, including prosecution is important, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failures to comply. The Council places great importance on the consistent use of enforcement action and does not set itself numerical targets for prosecutions or statutory notices.

Good enforcement should help economic prosperity and encourage sustained growth without placing unreasonable burdens on businesses. Through their actions, the regulators incorporated within this policy, help to maintain a 'level playing field' to allow fair competition and good companies to thrive.

It is acknowledged that this resource should also be encouraging compliant businesses to grow through proportionate regulatory activity and provision of reliable advice, without compromising the protection of the public. There is also ample evidence to show that appropriate compliance can reduce avoidable expenditure, for example by lowering labour costs as a result of fewer accidents.

#### 4.3 The need for a Licensing Food and Safety Enforcement policy

There is an expectation from national bodies such as the Better Regulation Delivery Office (Department for Business, Innovation and Skills), the Food Standards Agency, the Institute of Licensing, Gambling Commission and the Health and Safety Executive amongst others that local authorities will clearly set out their policy with respect to enforcement to ensure that there is clarity for all parties who may be affected. Fair and effective enforcement is essential to protect the health and safety and economic interests of the public, businesses and the environment. Decisions about enforcement action and, in particular the decision to prosecute, have serious implications for all involved. CBC will apply this policy to ensure that: -

- Decisions about enforcement action are open, fair, proportionate and consistent
- Officers apply current Government guidance and relevant codes of practice
- Everyone understands the principles, which are applied when enforcement action is considered.

#### 4.4 Scope of the enforcement policy

The Regulators Code and Enforcement Concordat apply to: -

- Food Safety
- Health and Safety
- Licensing
- Animal Welfare

#### 4.5 Colchester's approach to enforcement

In coming to a decision on how to deal with non-compliance, we will have regard to the following principles which are set out in the Macrory review<sup>1</sup> Regulatory Penalties. In particular, our actions should:-

[http://webarchive.nationalarchives.gov.uk/20070305103615/http://cabinetoffice.gov.uk/regulation/reviewing\\_regulation/penalties/index.asp](http://webarchive.nationalarchives.gov.uk/20070305103615/http://cabinetoffice.gov.uk/regulation/reviewing_regulation/penalties/index.asp)

- 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.

In achieving compliance, we will also deliver against the principles of good enforcement which include openness, helpfulness, proportionality, consistency, targeting, transparency and accountability. On occasions this will involve working in partnership with other enforcement agencies.

#### **Openness:-**

- We will provide information and advice in plain language on the rules that we apply. This may be provided either verbally, by telephone, on the Councils' website, by personal visit where appropriate, electronically or in writing.
- We will be open about our work, including any charges that are set.
- We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.
- We will make it clear what should be expected from the Council as an Enforcement Authority.
- We will respond to requests for information under the Freedom of Information Act or Environmental Information Regulations, within 20 working days. Our document retention policy will detail our commitment to data & record Management.

#### **Helpfulness:-**

- As prevention is better than cure, we will actively work with individuals and businesses to advise and assist. We encourage compliance by providing guidance and liaising with stakeholders on how this can best be presented and disseminated – a request for advice will not directly trigger enforcement action where there is a willingness to resolve any non-compliance which may be identified.
- Our staff will identify themselves and provide a courteous and efficient service.
- We will provide a contact point and telephone number to encourage individuals and businesses to seek advice/information from us.
- Applications for approval of establishments, licensing, registration, or authorisation will be dealt with efficiently and promptly.

### **Proportionality:-**

- We aim to minimise the cost of compliance by ensuring that any action required is proportionate to the risk and that we take proper account of the economic consequences of our actions.
- As far as the law allows, we will take account of the circumstances of the case and the attitude of the offender when considering action.
- We will help to promote a thriving local economy by maintaining a fair and safe trading and working environment.
- We are committed to choosing proportionate approaches based on relevant factors such as business size and capacity.
- We are committed to dealing firmly with those who deliberately or persistently fail to comply.

### **Consistency:-**

- We will carry out our duties in a fair, equitable and consistent manner.
- Officers are expected to exercise judgment in individual cases and we will ensure that a similar approach is taken in similar circumstances.
- We will take account of advice offered to us through bodies such as the Local Government Association (LGA), Institute of Licensing, Gambling Commission, Food Standards Agency (FSA), Health and Safety Executive (HSE) and the Department for Business, Innovation and Skills (BERR).
- Where a Primary Authority Partnership exists, officers will consider advice previously issued by the primary authority when considering the most appropriate course of action. Where, after further liaison with the primary authority, officers consider that formal action is still appropriate; the statutory notification process will be followed. This scheme does not preclude officers from taking immediate action in the event of serious or imminent risks to health or safety.



- Where there is a wider regulatory interest, we will liaise and co-operate with or pass information to the appropriate enforcement agency. This may include the sharing of intelligence with other Government Agencies, Police Forces, Fire Authorities, Statutory Undertakers or other Local Authorities.
- We will liaise with our colleagues in other Essex Authorities and Regulatory Services, to share information and intelligence, and develop a consistent approach to enforcement, e.g. through the use of common protocols.
- We will consult in developing clear standards, setting out the level of service and performance the public and businesses can expect to receive.
- We will publish our standards and how we have performed annually by way of service plans, statutory and key performance indicators.
- Advice from officers will be clear and an explanation given as to why remedial works are necessary.
- The timescales for compliance with notices will be reasonable.

#### **Targeting:-**

- We will ensure resources are targeted primarily on those whose activities give rise to the most serious risks, where the hazards are least well controlled, or where there is most potential for irreversible harm to the built and natural environments.
- We will ensure that action is focused on the duty holders who are responsible for the risk and who are best placed to control it through the use of a graduated enforcement approach.
- We will identify and implement risk-rating schemes for all service areas where our work routinely brings us into contact with businesses.
- We will seek to ensure our resources are used with maximum effectiveness to avoid burdening businesses with the costs of unnecessary interventions.
- Where more serious non-compliance is identified, we will advise duty holders of the circumstances under which a revisit will be undertaken and the timescale for that revisit.

#### **Transparency:-**

- We will help duty holders to understand what is expected of them and what they should expect from officers.
- We will clearly distinguish between legal requirements and good practice advice.
- We will have regard to this enforcement policy when making decisions about the appropriateness of enforcement actions. Where for any reason a decision needs to be taken outside of, or in

contravention of this policy, a clear and reasoned argument will be recorded as to why that decision was taken.

#### **Accountability:-**

- We will ensure that we have policies and procedures against which our work can be judged.
- We will ensure there is an effective and accessible mechanism for dealing with comments and complaints.
- Officers are responsible to Elected Members, the public and Government bodies for their actions.

### **5.0 Types of Intervention and Enforcement Carried Out by Licensing, Food and Safety**

Colchester has a range of interventions and enforcement actions available that enable effective monitoring of activities subject to regulatory control and appropriate actions to secure compliance.

Varied types of enforcement and options are open to staff dependant on the legislation enforced and which are chosen based on criteria shown in 5.6.

#### **5.1 Planned Inspections, Interventions and Surveillance Programmes**

These form an important and fundamental part of the Council's monitoring regime to ensure we meet our statutory duties with respect to our Licensing, Food and Safety and wider public protection responsibilities.

Planned inspections will be based on the requirements set out by Government and its relevant departments and agencies, and we will give due regard to any law, relevant codes of practice, statutory guidance and advice issued by them. For example the Institute of Licensing codes of practice, FSA's Food Law Code of Practice and the HSE's National Local Authority (LA) Enforcement Code.

When conducting enforcement visits, officers will make their identity known, carry and show their formal written authorisation when requested except in circumstances where this might compromise the investigation.

Surveillance may include, for example, surveying for potential breaches of statutory nuisance, checking compliance with licence conditions and monitoring for air quality emissions.

#### **5.2 Service Requests & Complaints**

Service requests or complaints may be received from the public, including employers, residents, visitors, workers and consumers. The nature of the service request or complaint will determine the follow up actions necessary in terms of the priority, speed of those actions and resources deployed. They also

provide a useful form of intelligence that can help to determine future planned inspections and intervention programmes.

### 5.3 Statutory Notifications and Other Wider Intelligence Sources

This may be where information is provided by other Council services, other LAs or partners such as Trading Standards, Police, Fire and Rescue etc. Public Health England, HSE, FSA, the Director of Public Health, and Trades Unions may directly notify matters such as serious workplace accidents and incidents, food product safety alerts and recalls, and food poisoning incidents respectively. Follow up actions and response time will be assessed using the criteria set out in 5.6 below for the determination of enforcement actions.

Local businesses and/or their representative organisations can also provide information and intelligence that may be helpful when considering ongoing and future enforcement programmes and again the above criteria will be used for any proposed follow actions.

### 5.4 Primary Authority

Primary Authority Partnerships are statutorily based (Regulatory and Enforcement Sanctions Act 2008) and one of their key aims is to secure regulatory compliance standards across a wide range of regulatory activities in a consistent and proportionate manner. Fundamental to the scheme are partnerships between businesses who trade across more than one local authority boundary and the local authority regulator, normally (but not exclusively), where the businesses head office is based or primary production takes place.

There is also provision as part of the partnership agreement for the Primary Authority to produce an inspection plan that includes where enforcement authorities should target any inspection or planned intervention. As an enforcement authority we are required to have regard to any agreed inspection plans and focus our inspection and subsequent actions towards those aspects specifically identified requiring attention in the agreed inspection plan.

### 5.5 Enforcement of Non-Compliant Activities

Different enforcement powers are conferred by diverse legislation but a summary can be seen below and may be selected:

- No action
- Informal verbal or written advice / warning
- Fixed Penalty Notices (FPNs)
- Formal enforcement notices & orders
- Works in default
- Emergency remedial action

- Detention, seizure and/or destruction of foods, goods or equipment
- Refusal, revocation, suspension or review of a licence or approval
- Simple/formal caution
- Prosecution (Summary or Indictment)
- Referral to Crown Prosecution Service for charges of manslaughter

## 5.6 Criteria for Determining Choice of Specific Enforcement Action(s)

Each enforcement decision will be taken on its own merits but the following criteria can be applied:

- Seriousness in terms of impact or likely impact on public safety and health or the local environment
- Relevant Council policies and priorities
- Risk to animal health and welfare
- Deliberate or repeated non-compliance
- Non-compliance that gives an economic advantage over compliant businesses
- Public interest and confidence
- Other relevant national or European priorities

## 5.7 No Action

In some cases, a contravention of the law may not justify more formal action. Factors may include the cost of enforcing compliance which may be far greater than the detrimental effect of the contravention. A decision to take no action may also be taken in circumstances such as where a trader has ceased business and the risk no longer exists. Such decisions will be taken with a view to what is in the 'public interest' and in such cases the offender and any 'victim' will be informed of the reasons for taking no action.

## 5.8 Informal Verbal or Written Advice

For minor breaches we may only give verbal or written warnings or advice. We will clearly identify any contraventions and advise how to correct them along with a compliance deadline. This timescale will be reasonable and take into account the implications of non-compliance.

## 5.9 Fixed Penalty Notices (FPNs)

Some legislation offers the use of FPNs as an alternative to taking an offender to court. They are available for lower level offences and can avoid the defendant having a criminal record. Where legislation permits an offence to be dealt with by way of an FPN, we may choose to offer an FPN on a first

offence without prior warning or decide to issue a written warning. Some of the legislation that permits the use of FPNs includes:

- Health Act 2006 for smoke-free offences
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

#### 5.10 Formal Enforcement Notices & Orders

Some of the legislation we use allows formal notices to be served upon a duty-holder requiring them to provide information, remedy a defect or cease an activity. In situations where risk is immediate the notice may require an activity to stop straight away e.g. Health and Safety Prohibition Notice. In other cases, a reasonable time for compliance will be given taking into account the seriousness of the contravention and the implications of an immediate risk to health or safety.

All notices issued will include details of any appeal provisions. Some notices allow works to be carried out in default if not complied with or by the Council if there is an imminent risk to health and the possibility of cost recovery.

#### 5.11 Seizure, Detention or Destruction

Some legislation enables suitably authorised officers to seize, detain and/or destroy food, goods or equipment where there is a risk to health and safety or the environment. In all cases when items are seized, detained or destroyed appropriate 'notices' are left explaining our actions to the owner/duty-holder.

#### 5.12 Refusal, Suspension, Review or Revocation of Licence or Approval

Licensing is responsible for the approval and monitoring of many activities that need approval by way of a licence, registration, permit etc.

Each type of licence has a defined process for making applications and how the Licensing Team will consider the applications and where appropriate representations and objections. The Council's scheme of delegation determines the circumstances where an application can be determined by officers or when the application should be considered by an appropriate Committee or Sub-Committee.

- Applications may be granted, granted with appropriate conditions or refused.
- Applicants will be advised of their rights of appeal.

Licence holders who breach licence conditions may be warned verbally or in writing but can also be required to attend before the relevant Sub-Committee

or Magistrates' Court (dependent on the offence) which can result in the suspension or revocation of their licence or the addition of conditions.

### 5.13 Simple/Formal Caution

A Simple Caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction. For a Simple/Formal Caution to be issued a number of criteria must be satisfied:

- Sufficient evidence must be available to prove the case.
- The offender must admit the offence.
- It must be in the public interest to use a Simple/Formal Caution.
- The offender must be 18 years or over.

Officers will not offer a Simple/Formal Caution where the offender has already received one for a similar offence within the last 2 years.

A record of any Simple/Formal Caution will be kept on file for 2 years for health and safety cautions and 3 years for housing cautions.

If the offender commits a further offence, it may influence our decision to take a prosecution. If during the time the Simple/Formal Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, it may be cited in court, and this may influence the severity of the sentence that the court imposes.

Details of all cautions issued are a matter of public record.

### 5.14 Prosecution

A prosecution will normally ensue where the individual or organisation meets one or more of the following criteria:

- Deliberate, reckless, negligent or persistent breach of legal obligations, which were likely to cause material loss or harm to others.
- Deliberate or persistent ignoring of written warnings or formal notices.
- Endangered, to a serious degree, the health, safety or wellbeing of people, animals or the environment.
- There was an attempt to make financial gain at the expense of others.
- An authorised officer was assaulted and/or obstructed in the course of his/her duties.

### 5.15 Determining Whether a Simple Caution or Prosecution is Viable and Appropriate

Two 'tests' will be applied to determine whether a Prosecution or Simple Caution is viable and appropriate. The officers will follow guidance set by the CPS when applying the tests.

A Simple Caution or Prosecution will only be progressed when the case has passed both the evidential test and the public interest test.

- **The Evidential Test**

We must be satisfied that there is sufficient evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. A realistic prospect of conviction is an objective test that means that a jury or bench of Magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply.

- **The Public Interest Test**

The public interest will be considered in each case where there is sufficient evidence to provide a realistic prospect of conviction. A serious offence would also include the failure to comply with a Statutory Notice. We will balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect.

#### 5.16 Referral to Crown Prosecution Service

In cases where the breach of duty lead to a death(s) Colchester Borough Council may refer the matter to the Crown Prosecution Service (CPS) to consider whether manslaughter or corporate manslaughter charges are investigated in addition to our own criminal investigations. In such cases Licensing, Food and Safety will follow the Work Related Deaths Protocol

#### 5.17 Sharing of Intelligence regarding Enforcement

Licensing, Food and Safety will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies including:

- Health & Safety Executive
- Food Standards Agency
- Environment Agency
- The Police or Fires & Rescue
- HMRC
- Border Force
- RSPCA
- Other Local Authorities



- Other Regulators

## 5.18 Joint Enforcement Roles

Where enforcement roles are shared or overlap with other agencies we will cooperate or consult, (for example the Police Service for Licensing) including sharing information and providing evidence) to protect the local community, environment and groups such as vulnerable persons.

## 5.19 Proceeds of Crime Applications

Applications may be made under the Proceeds of Crime Act 2002 for the confiscation of assets. The purpose is to recover the financial benefit that the offender has obtained from their criminal conduct. Proceedings are conducted to the civil standard of proof.

## 5.20 Other Factors Considered When Using Enforcement Powers

### Power of Entry

Licensing, Food and Safety officers are provided with specific powers of entry by a wide range of legislation. This gives them a right (usually in the form of delegated authority from Colchester Borough Council to named officers) to legally enter defined premises, such as businesses, vehicles or land for specific purposes. Powers of entry include enabling our officers to undertake inspections and investigations for a wide range of regulatory responsibilities including Licensing, food safety and health and safety, legislation, in addition to dealing with emergencies or searching for evidence during those investigations.

Often, the power to enter is accompanied by what are known as ‘associated powers’, which set out what our officers are allowed to do once they have entered the premises. This might, for instance, include conducting a search, seizing relevant items or collecting samples.

In certain cases, (for example Animal Welfare Licensing) where entry is required to a residential property, then a period of notice is usually required to be given to the owner or occupier of the property before entry can be gained.

Officers also have the option to obtain a warrant from a magistrate and enter, at any time by force if necessary, to ascertain if an offence has been committed, to gather evidence or to undertake emergency remedial works or works in default.



## Police and Criminal Evidence Act (PACE) 2004

Our officers will have close regard to the requirements set out in the Police and Criminal Evidence Act and any amendments and current and codes relevant to our regulatory enforcement responsibilities. This includes investigation of relevant offences, powers of entry in the course of discharging statutory duties, taking samples to help in gaining necessary evidence and interviewing those suspected of committing offences.

## Regulation and Investigatory Powers Act (RIPA) 2000

The Act regulates the powers of public bodies to carry out surveillance and investigation, including the interception of communications, and we will ensure we use our powers in accordance with Colchester Borough Council's Corporate RIPA policy.

## Local Government (Miscellaneous Provisions) Act 1976 section 16

This is used to formally request information about a premise or a person.

## Protection of Human Rights

The provisions of the European Convention on Human Rights such as Article 1 of the First Protocol, Article 8 and Article 14 are relevant when considering any enforcement action. There is a clear public interest in enforcing relevant public and environmental protection regulations, in a proportionate way. In deciding whether enforcement action is taken, Environmental Health will, where relevant, have regard to the potential impact on the health and safety or welfare of those affected by the proposed action, and those who are affected by the breach of regulations. In particular, due regard will be given to the right to a fair trial and right to respect for private and family life, home and correspondence.

## Equalities, Vulnerable Persons and Minority Groups

The enforcement services covered by this enforcement policy will align with and meet the equality policies and objectives adopted by Colchester Borough Council. We will aim to effectively support and promote access to our enforcement services recognising the diversity of the communities we serve and ensure that residents and businesses are treated equally and fairly through the delivery of our services.

## Enforcement in Colchester Borough Council Premises and Contracted Services

On rare occasions, there may be a perceived potential for conflict of interest where the Council has ownership or management interests in premises normally enforced by their own inspecting officers. For instance, where the Council is the clear duty-holder for health and safety purposes, the premises will be transferred to the Health and Safety Executive for enforcement purposes. Responsibility for day-to-day health and safety at work matters on such premises lies with the head of the relevant service. In other contexts, such as food hygiene, licensing issues, the Licensing, Food Safety and Health and Safety Officers will offer advice as they would in other circumstances. If considered necessary, any disputed matters would be referred to the Head of Service.

## **6.0 Enforcement options and procedures**

6.1 Officers will take the most appropriate course of action and each case will be considered in accordance with this document. Enforcement decisions will be fair, independent and objective and will not be influenced by issues such as ethnicity or origin, gender, religious belief, political views or the sexual orientation of the suspect, victim, witness or offender. Decisions will not be affected by undue pressure from any source. Our decisions will have appropriate regard to the principles promoted through the Council's HR policies and equality policies.

6.2 Working in partnership with others

Where appropriate, enforcement activities within the Safety and Protection Service will be coordinated with other regulatory bodies and enforcement agencies, both within and outside the council. In this way, we will seek to maximise the appropriateness and effectiveness of any enforcement and have an integrated approach to problem solving.

Where an enforcement matter affects a wide geographical area beyond the Council's boundaries, potentially involving enforcement by one or more other local authorities or organisations, all relevant authorities and organisations will be informed of this matter as soon as possible and all enforcement activity coordinated with them.

## **7.0 Recovering our costs**

We will seek to recover all our legitimate costs from convicted offenders. The Council will also consider either through its own officers or in co-operation with the Police making an application under the Proceeds of Crime Act 2002 to restrain or confiscate the assets of the offender. The purpose of any such actions would be to recover any financial benefit that the offender has obtained from their criminal conduct.

## **8.0 Publicity**

We will consider, in all cases, drawing media attention to factual information about charges that have been laid before the courts, but will take great care to avoid any publicity that could prejudice a fair trial. We will also consider publicising any conviction that could serve to draw attention to the need to comply with legal requirements or deter anyone tempted to disregard their duties.

## **9.0 Comments, compliments, complaints**

Is committed to the delivery of responsive, good quality customer services to the people of the Borough and would welcome comments and feedback about the impact the enforcement policy may have on local residents and/or business through our Customer Service Team.

## **10.0 Policy review**

It is considered good practice to review Council policies. In future, a 3-yearly review of this Policy will provide a reasonable timetable in line with other Service policies of the Councils and Specifically the Licensing, Food and Safety Team. A review may also be appropriate in the intervening period if there is a significant change in legislation, national codes, guidance or national or local policy.

## Appendix one

### Licensing Food and Safety regulatory areas covered

The Licensing, Food and Safety Team deliver a wide range of services aimed at safeguarding the environment and improving the health, safety and well-being of our community. They work to ensure that the businesses are regulated, food is fit to eat; Drivers are fit and proper, animals' welfare is checked and workplaces are safe.

The Licensing, Food and Safety is divided into 2 sections supported by the Customer services centre team and reporting direct to the Assistant Director of Communities. There is a Licensing Team, a Food Safety Team and a Health Safety Officer, which covers food safety, health and safety, and a Licensing. The main areas of work are as follows: -

Animal Welfare	<ul style="list-style-type: none"><li>▪ The licensing of boarding Kennels,</li><li>▪ Home boarding, and Doggy Day care</li><li>▪ Licensing for the sale of Pets</li><li>▪ Licensing of Horse-Riding Establishment</li><li>▪ Licensing of Dog Breeding</li><li>▪ Licensing of Catteries</li><li>▪ Licensing for the performance of animals</li><li>▪ Zoo Licensing</li><li>✦ Dangerous Wild Animals</li></ul>
Public Health	<ul style="list-style-type: none"><li>▪ Promoting public health initiatives</li><li>▪ Enforcement of 'Smokefree Regulations'</li></ul>
Food Safety	<ul style="list-style-type: none"><li>▪ Investigating food poisoning outbreaks and control of communicable disease</li><li>▪ Inspection of food businesses - enforcement and advice</li><li>▪ Investigation of complaints about food and food sampling</li><li>▪ Sampling Food and Oysters</li><li>▪ Provision of food hygiene training courses.</li><li>▪ Food Hygiene Controls</li><li>▪ Pleasure Boat Licensing</li><li>▪ Tattooing, Electrolysis and Acupuncture Licensing</li></ul>
Health and Safety	<ul style="list-style-type: none"><li>▪ Inspection of workplaces - enforcement and advice</li><li>▪ Investigation of accidents at work.</li><li>▪ Investigation of complaints about health and safety at work</li><li>▪ Securing processes and workplaces</li></ul>
Licensing	<ul style="list-style-type: none"><li>▪ Various licensing and registration functions</li><li>▪ Regulating alcohol and entertainment,</li></ul>

	<ul style="list-style-type: none"> <li>▪ Regulating gambling, trading and Lotteries</li> <li>Regulating Sex Establishments</li> <li>▪ Charitable collections</li> <li>▪ Taxi and Private Licensing and Enforcement</li> </ul>
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**Legislation to which we act under:**

**Note:** this list is not Exhaustive.

<b>Anti-Social Behaviour, Crime and Policing Act 2014</b>
<b>Animal Welfare Act 2006</b>
<b>The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018</b>
<b>Caravan Sites and Control of Development Act 1960</b>
<b>Charities Act 2006</b>
<b>Clean Air Act 1993</b>
<b>Clean Neighbourhoods &amp; Environment Act 2005</b>
<b>Control of Pollution Act 1974</b>
<b>Dangerous Wild Animal Act 1976</b>
<b>European Communities Act 1972</b>
<b>Environmental Protection Act 1990</b>
<b>Food Safety Act 1990</b>
<b>Gambling Act 2005</b>
<b>Health and Safety at Work etc Act 1974</b>
<b>Health Act 2006</b>
<b>Highways Act 1980</b>
<b>House to House Collections Act 1939</b>
<b>Hypnotism Act 1952</b>
<b>Licensing Act 2003</b>
<b>Local Government (Miscellaneous Provisions) Act 1976</b>
<b>Local Government (Miscellaneous Provisions) Act 1982</b>
<b>Mobile Homes Act 2013</b>
<b>Noise &amp; Statutory Nuisance Act 1993</b>
<b>Police, Factories &amp;c. (Miscellaneous Provisions) Act 1916 as amended</b>
<b>Police and Crime Act 2009</b>
<b>Police Reform and Social Responsibility Act 2011</b>
<b>Public Health Act 1936</b>
<b>Public Health Act 1961</b>
<b>Public Health (Infectious Disease) Act 1984</b>
<b>Prevention of Damage by Pests Act 1949</b>
<b>Scrap Metal Dealers Act 2013</b>
<b>Sunday Trading Act 1994</b>
<b>Town Police Clauses Act 1847</b>
<b>Water Industries Act 1991</b>



**Appendix Two - Specific Regulatory Powers for Colchester Borough Councils Licensing Food and Safety Team**

Team: **Food Safety and Public Health**                      Function: **Food Safety**

Main Legislation: **Food Safety Act 1990 and associated Regulations, Building Act 1984**

**Enforcement Sanctions Available**

	No Action	Informal Written or Verbal Warning	Fixed Penalty Notice (FPN)	Formal Enforcement Notice	Seizure, Detention or Destruction	Simple Caution	Prosecution	Referral to CPS for Manslaughter
Power Available?	✓	✓	✗	✓	✓	✓	✓	✓
Specific Details		Legal requirements are clearly distinguished from recommendations of good practice		Hygiene Improvement, Hygiene Emergency Prohibition and Remedial Action Notices (Food Safety and Hygiene (England) Regulations 2013) – where premises or processes fail to comply with Hygiene Regulations	Detention and Seizure Notices (Food Safety Act 1990 and associated Regulations) where Food fails to comply with food safety requirements. Official Feed and Food Control Notices (Official Feed and Food Control Regulations (England) 2009) for illegal imports		Failure to comply with the terms of the statutory notice. Immediate prosecution for food hygiene contraventions	
Appeals				Magistrate’s Court	Right to be heard by a JP at the time of the decision to destroy food (different procedures for OFFC).	Offender does not have to accept Caution		
Other Factors to Consider	EP CBC Complaint FLCoP	EP CBC Complaint FLCoP		EP CBC Complaint FLCoP	EP CBC Complaint FLCoP	EP CBC Complaint FLCoP	EP CBC Complaint FLCoP	EP CBC Complaint FLCoP

Other Relevant Guides or Procedures						Regulators' Code CPS Guidelines	Regulators' Code CPS Guidelines	WRDP
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Team: **Licensing, Food and Safety**

Function: **Health & Safety at Work**

Main Legislation: **Health and Safety at Work Etc. Act 1974 and associated Regulations**

Enforcement Powers Available

	No Action	Informal Written or Verbal Warning	Fixed Penalty Notice (FPN)	Formal Enforcement Notice	Seizure, Detention or Destruction	Simple Caution	Prosecution	Referral to CPS for Manslaughter
Power Available?	✓	✓	x	✓	✓	✓	✓	✓
Specific Details	-	-	-	Improvement Notice (S.21) Prohibition Notice (S.22)	Imminent Danger Notice (S.25)	-	Failure to comply with the terms of the statutory notice.	-
Appeals				Employment Tribunal		Offender does not have to accept Caution		
Other Factors to Consider	EP CBC Complaint EMM	EP CBC Complaint EMM HSE Panel	Offender does not have to accept Caution	EP CBC Complaint EMM	EP CBC Complaint EMM	EP CBC Complaint EMM	EP CBC Complaint EMM	EP CBC Complaint EMM



Other Relevant Guides or Procedures	-	-	-	Notice & Formal action Procedure	Notice & Formal action Procedure	Regulators' Code CPS Guidelines	Regulators' Code CPS Guidelines	WRDP
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Team: **Licensing, Food and Safety**

Function: **Smoke Free Enforcement**

Main Legislation: **Health Act 2006 and associated Regulations**

#### Enforcement Powers Available

	No Action	Informal Written or Verbal Warning	Fixed Penalty Notice (FPN)	Formal Enforcement Notice	Seizure, Detention or Destruction	Simple Caution	Prosecution	Referral to CPS for Manslaughter
Power Available?	✓	✓	✓	✗	✗	✗	✓	✗
Specific Details	-	-	Smoking in 'smoke-free' premises/vehicle S.7(2) No signage S.6(5)	-	Imminent Danger Notice (S.25)	-	Failure to comply with the terms of the statutory notice. Failure to pay or accept a fixed penalty notice. -	-
Appeals			Offender does not have to accept FPN			Offender does not have to accept Caution		

Other Factors to Consider	EP CBC Complaint	EP CBC Complaint	EP CBC Complaint	n/a	n/a	EP CBC Complaint	EP CBC Complaint	n/a
Other Relevant Guides or Procedures	-	-	CBC FPN Procedure LACORS	n/a	n/a	Regulators' Code CPS Guidelines	Regulators' Code CPS Guidelines	n/a

Team: **Licensing, Food and Safety**

Function: **Licensing**

Main Legislation: **Local Government (Miscellaneous Provisions) Act 1982, Licensing Act 2003, Gambling Act 2005 and Associated Regulations**

Enforcement Powers Available

	No Action	Informal Written or Verbal Warning	Fixed Penalty Notice (FPN)	Formal Enforcement Notice	Seizure, Detention or Destruction	Other Enforcement Options Available	Simple Caution	Prosecution
Power Available?	✓	✓	✗	✗	✗	✓	✓	✓
Specific Details	-	-	-	-	-	Refusal to grant or renew. Conditions on licence, consent, etc. Potential to suspend or revoke	-	Failure to have licence, consent etc. Offences within specific Act. Non-compliance with conditions. -

Appeals						Magistrates	Offender does not have to accept Caution	Higher Court
Other Factors to Consider	EP CBC Complaint	EP CBC Complaint	n/a	n/a	n/a	EP	EP CBC Complaint	EP CBC Complaint
Other Relevant Guides or Procedures	-	-	n/a	n/a	n/a	Section 182 Licensing Act Guidance. Committee rules & policies. Delegated powers	Regulators' Code CPS Guidelines. Section 182 Licensing Act Guidance	Regulators' Code CPS Guidelines. Section 182 Licensing Act Guidance

Team: **Licensing, Food and Safety**

Function: **Licensing (Taxis and Private Hire)**

Main Legislation: Local Government (Miscellaneous Provisions) Act 1976, & the Town and Police Clauses Act 1847

Enforcement Powers Available

	No Action	Informal Written or Verbal Warning	Fixed Penalty Notice (FPN)	Formal Enforcement Notice	Seizure, Detention or Destruction	Other Enforcement Options Available	Simple Caution	Prosecution
Power Available?	✓	✓	✗	✓	✗	✓	✓	✓

Specific Details	-	CBC Taxi and PH policy Points System	-	Driver Suspension/Revocation Letter/Notice Vehicle Suspension/Revocation Letter/Notice Operator Suspension/Revocation Letter/Notice	Require extra vehicle test Require extra driver medical	Refusal to grant or renew. Conditions on licence, consent etc. Potential to suspend or revoke	-	Failure to comply with the terms of the statutory notice. Failure to pay or accept a fixed penalty notice. -
Appeals		Licensing Sub-Committee or Magistrates		Magistrates	Magistrates	Magistrates	Offender does not have to accept Caution	Higher court
Other Factors to Consider	EP CBC Complaint	EP CBC Complaint	n/a	EP CBC Complaint D of T Guidance IOL guidance Council Policy	EP D of T Guidance IOL guidance Council Policy	EP	EP CBC Complaint	EP CBC Complaint
Other Relevant Guides or Procedures	-	IOL guidance Council Policy	n/a	-	Committee rules & policies. Delegated powers IOL guidance Council Policy	Committee rules & policies. Delegated powers IOL guidance Council Policy	Regulators' Code CPS Guidelines IOL guidance Council Policy	Regulators' Code CPS Guidelines IOL guidance Council Policy

Team: **Licensing, Food and Safety**

Function: **Public Health**

Main Legislation: **Food Safety Act 1990 and associated Regulations**

Enforcement Sanctions Available

	No Action	Informal Written or Verbal Warning	Fixed Penalty Notice (FPN)	Formal Enforcement Notice	Seizure, Detention or Destruction	Simple Caution	Prosecution	Referral to CPS for Manslaughter
Power Available?	✓	✗	✗	✓	✗	✗	✓	✗
Specific Details				Health Protection (Local Authority Powers) Regulations 2010 & Health Protection (Part 2A Orders) Regulations 2010: Various powers to a Local Authority to serve Notice on any person or group of persons, to request that the person or group of persons do, or refrain from doing, anything for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination which presents or could present significant harm to human health. Further power for Local Authority to ask a JP to grant an order where the matter is urgent.			Failure to comply with the terms of the statutory notice.	
Appeals				Right to be heard by a JP at the time of the decision to grant an order.				
Other Factors to Consider	EP CBC Complaint	EP CBC Complaint	EP CBC Complaint	n/a	n/a	EP CBC Complaint	EP CBC Complaint	n/a

Other Relevant Guides or Procedures				CIEH Health Protection Regulations 2010 – Toolkit			CPS Guidelines	
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Team: **Licensing, Food and Safety**

Function: **Animal Welfare**

Main Legislation: Animal Welfare Act 2006 and The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018(1) (the “Regulations”), Dangerous Wild Animals Act 1976 and Zoo Licensing Act 1981

#### Enforcement Powers Available

	No Action	Informal Written or Verbal Warning	Fixed Penalty Notice (FPN)	Formal Enforcement Notice	Seizure, Detention or Destruction	Other Enforcement Options Available	Simple Caution	Prosecution
Power Available?	✓	✓	✗	✗	✓	✓	✓	✓
Specific Details		Animal Welfare Reg 2018 Award or Refuse licence Legal requirements are clearly defined in statutory guidance  Zoo Licensing Informal works letter  DWA failure to licence		Animal Welfare Reg 2018 All powers fall under the Animal Welfare Act 2006 in relation to entry inspection and required Action Except for Revocation  Zoo refusal of Licence work conditioned Or revocation	Animal Welfare Reg 2018 fall to Animal Welfare Act 2006  DWA seizure of animal if unlicensed	Animal Welfare Regulations Grounds for suspension and variation without consent		For failure to comply with all legislative requirements of all acts

Appeals		Top Tier Tribunal Magistrates		Top Tier Tribunal Magistrates	Top Tier Tribunal Magistrates	Top Tier Tribunal Magistrates	Offender does not have to accept Caution	Magistrates Higher court
Other Factors to Consider	EP CBC Complaint	EP CBC Complaint	n/a	EP CBC Complaint Council Policy	EP Council Policy	EP	EP CBC Complaint	EP CBC Complaint
Other Relevant Guides or Procedures	-	EP Council Policy	n/a	-	Council Policy Statutory Guidance DWA Schedule of DW	Council Policy Statutory Guidance	Regulators' Code CPS Guidelines Council Policy	Regulators' Code CPS Guidelines Council Policy

Notes:

EP = Colchester Borough Council Licensing, Food and Safety Enforcement Policy <http://www.colchester.gov.uk>

CBC Complaints Procedure

<https://www.colchester.gov.uk/complaints>

EMM = HSE's Enforcement Management Model

<http://www.hse.gov.uk/enforce/emm.pdf>

WRDP = Work Related Deaths Protocol

<http://www.hse.gov.uk/enforce/wrdp/>

HSE Panel = Independent Regulatory Review Panel

<http://www.hse.gov.uk/contact/contactchallengepanel.htm>

Local Government Regulation (formerly LACORS)

<http://www.ihsti.com/lacors/upload/21012.pdf>

FLCoP = Food Law Code of Practice  
[practice](https://www.food.gov.uk/about-us/food-and-feed-codes-of-practice)

[https://www.food.gov.uk/about-us/food-and-feed-codes-of-](https://www.food.gov.uk/about-us/food-and-feed-codes-of-practice)

Civil penalties under the Housing and Planning Act 2016

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/606653/Civil\\_Penalties\\_guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606653/Civil_Penalties_guidance.pdf)



**The following policies relates to the work of the individual sections within the Licensing, food safety Team of Communities. These policies set out the aims and objectives for each part of the service, and the specific enforcement options open to officers. Officers will have regard to them and to the various current Codes of Practice and Practice Guidance when making decisions about the most appropriate enforcement action. These documents are a companion policy to the Licensing, Food and Safety Enforcement Policy which contain the broad principles of Enforcement.**

### **[Appendix Three](#)**

## **COLCHESTER BOROUGH COUNCIL FOOD SAFETY ENFORCEMENT POLICY**

### **Introduction**

It is the Council's aim to ensure that food and drink intended for sale for human consumption which is produced, stored, distributed, handled or consumed within the borough of Colchester, is without avoidable risk to the health or safety of the consumer.

We will seek to help businesses to achieve legislative compliance, through inspection, education and the provision of informal advice. In some circumstances, enforcement action may be necessary. In such cases, we will demonstrate that we have considered the aims of both the departmental and food safety policy when deciding on the most appropriate course of action.

We recognise the importance of achieving and maintaining consistency in the advice we offer, and the enforcement approach we take, particularly in terms of formal enforcement actions. Each case is unique and must be considered on its own merits. There are, however, general principles that apply to the way each case is approached.

In all cases, authorised officers will seek to exercise their powers courteously and with respect for persons and property.

A number of steps are taken to try to ensure that appropriate and consistent action is taken in similar cases. Officers undertaking enforcement duties will be suitably trained and qualified, so as to ensure that they are fully competent to undertake the level of enforcement activity for which they have been authorised. Continuing professional development training will be provided both in-house and externally and will cover both the technical and legal aspects of the officer's duties. The activities and enforcement options outlined in this enforcement policy are the subject to management systems monitoring the quality, nature and consistency of enforcement activity.

### **Liaison**

Where an enforcement matter affects a wider geographical area beyond the boundaries of Colchester Borough, 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 all enforcement activity co-ordinated with them.

### **Home Authority Principle**

Colchester Borough endorses and will work within the guidelines of the Home Authority Principle and where enforcement action is considered appropriate will liaise with and advise the Home Authority.

### **Primary Authority Partnership**

Where a Primary Authority Partnership exists, officers will consider advice previously issued by the primary authority when considering the most appropriate course of action. Where after further liaison with the primary authority officers consider that formal action is still appropriate, the statutory notification process will be followed. This scheme does not preclude officers from taking immediate action in the event of serious or imminent risks to health or safety.

### **Colchester Borough Council as a Food Business Operator**

In premises where Colchester Borough Council is the food business operator, any significant breaches of food legislation will be brought to the attention of the Chief Executive without delay (e.g. where enforcement action would normally be appropriate).

### **Service Requests**

Complaints received, which may result in enforcement action against a business or individual will be notified to that business or individual as soon as is practicable, except in the circumstances described in the paragraph below. During the progression of enforcement action, that business or individual will be further notified of progress and any new information.

In circumstances where notification could impede investigation of a complaint, notification will not take place until we are satisfied that to do so would not have a negative impact on the investigation. In the meantime, as in all investigations, we would have regard to relevant legislation and guidance including the Regulation of Investigatory Powers Act, Police and Criminal Evidence Act 1984, the Human Rights Act 1998 and the Criminal Procedures and Investigations Act.

### **Enforcement Options**

#### **No actions arising**

In exceptional circumstances, contraventions may not warrant any action. This could arise, for example where the cost of compliance to the business outweighs the

detrimental impact of the contravention on the community. The Regulators Compliance Code is clear in expecting the Service to recognise that a key element of our activity will be to allow, or even encourage economic progress and only to intervene where there is a clear case for protection.

Any decision to take no action will be recorded, including the reasons for this decision.

## **Revisit**

We will advise a business whether it is our intention to revisit. Revisits will be carried out in all instances where there is a formal notice. Where contraventions of food hygiene or processing regulations are found or evidence of poor hygiene practices, a revisit will normally be carried out. For very minor contraventions, we may advise that a check will be carried out at the next routine inspection.

Informal action to secure compliance with legislation will include offering advice and the use of written or verbal warnings, including those generated following inspections.

- the act or omission is not serious enough to warrant formal action;
- the previous history of the individual/enterprise indicates that it can reasonably be expected to achieve compliance through the use of informal action;
- confidence in the management is high;
- the consequences of non-compliance will not pose a significant risk to public health.

Where an informal approach is used to secure compliance the written documentation issued will: -

- explain the scope of the inspection;
- contain all clear, unambiguous information necessary as required by the Food Law Code of Practice in order that the business may understand what work is necessary and why;
- indicate the measures which will enable compliance with legal requirements and clearly state that other means of achieving the same effect may be used;
- clearly indicate any recommendations of good practice under an appropriate heading, to distinguish them from legal requirements.

The use of Hygiene Improvement or Remedial Action Notices would generally be followed in the following circumstances:

### **1. Formal Notices – Hygiene Improvement/Remedial Action**

- there are significant contraventions of the legislation;
- there is a lack of confidence in the food business operator or enterprise to respond to an informal approach;
- there is a history of non-compliance with informal action;

- standards are generally poor with little management awareness of statutory requirements;
- the consequences of non-compliance could be potentially serious to public health;
- where it is intended to prosecute, and effective action also needs to be taken as quickly as possible to remedy conditions that are serious or deteriorating;
- additionally in terms of Remedial Action Notices, where the inspection process is being obstructed.

## **Advice**

At the time of the visit, or at least prior to the service of a notice, the authorised officer will discuss with persons having the necessary authority to take action within the business, realistic time limits for compliance with the Notice – this will consider not only the practicality of carrying out works, but the food safety implications of the contravention.

A revisit will be made to assess compliance with the notice on the date of expiry. Failure to comply with a Hygiene Improvement Notice will normally lead to a prosecution.

## **2. Detention and Seizure**

Where officers have grounds for suspecting that food does not comply with the food safety requirements in Hygiene Regulations, they may use powers to inspect, detain, seize and arrange for condemnation of food. When food is seized, we will give the person from whom the food is taken an appropriate receipt. The food will then be taken before a Magistrate as soon as possible for them to confirm the seizure and condemn the food as unfit. If the Magistrate does not condemn the food, we will release it back to the owner who will be entitled to claim compensation for any loss suffered. We will always give full details of our actions to the owner of the food when we exercise this power and explain the procedures and implications of any actions taken by both sides.

## **3. Emergency Prohibition**

The use of a Hygiene Emergency Prohibition Notice will be considered appropriate only if there is an imminent risk of injury to health and one or more of the following circumstances are present: -

- the consequences of not taking immediate and decisive action to protect public health would be unacceptable;
- an imminent risk of injury to health can be demonstrated. This might include evidence from relevant experts, including a food analyst or food examiner;

- the guidance criteria, specified in the Food Law Code of Practice concerning the conditions when prohibition may be appropriate are fulfilled;
- there is no confidence in the integrity of any offer made by the food business operator to voluntarily close the premises or cease the use of equipment, process, or treatment associated with the imminent risk.
- the food business operator is unwilling to confirm in writing his/her offer of a voluntary prohibition;

Wherever possible, a second opinion from another suitably authorised officer will be obtained prior to the notice being issued.

#### **4. Refusal of Approval/Licence**

Generally, those food businesses who manufacture meat, fish or egg products and who supply to other premises (even premises within their own ownership) as a significant part of their overall business will require formal approval to enable them to continue to trade.

Approval involves making an application to the Council. There is no charge involved for the application or Approval and generally the Approval is a one-off procedure. We will visit the business and give advice on the steps necessary to enable the business to seek approval.

Where a conditional Approval is granted the business will be informed in writing about the terms of the Conditional Approval and the additional actions needed to enable the grant of full approval. Where approval is eventually refused, the business will be advised of the rights of appeal.

Details of all approvals will be notified to the Food Standards Agency (FSA) who maintain a national database of all Approved premises.

This action would only be taken once other enforcement options have been considered since to take such action would affect the ability of the business to continue to trade.

- serious deficiencies are identified;
- the officer has to repeatedly stop production at the establishment and the food business operator is not able to provide adequate guarantee that acceptable standards will be maintained in the future.

In such cases, temporary suspension would be considered as a possible enforcement option in the first instance.

A second opinion will be sought from another suitably authorised officer prior to any formal action being commenced.

#### **5. Simple Caution**

For a simple caution to be issued, a number of criteria must be satisfied:

## **6. Revocation or Suspension of Approval/Licence**

Revocation would be considered where: -

In certain circumstances, we will issue a simple caution. The purpose of this action is to provide an alternative to prosecution that enables less serious offences to be dealt with quickly and outside of the court system. The procedure adopted and the form and content of the caution will be in accordance with current Local Authorities Co-ordinators of Regulatory Services guidance and Home Office circular 016/2008.

- sufficient evidence must be available which would enable a realistic prospect of conviction;
- the offender must admit the offence;
- the offender clearly understands the significance of a simple caution and gives informed consent of being cautioned;
- the offence must not have been committed by the offender before.

If the offender refuses to accept a simple caution, legal proceedings will be instigated.

The enforcement officer will ensure that decisions to issue a simple caution are notified to all interested bodies including Home and Originating Authorities. The simple caution may be cited in court if similar offences are repeated in the future and could influence the severity of the sentence that the court imposes.

## **7. Prosecution**

- the alleged offence(s) involve a significant breach of the law such that public health has been put at risk;
- the alleged offence(s) involve a failure by the suspected offender to correct an identified risk to food safety having been given reasonable opportunity to comply with the lawful requirements of an authorised officer;
- the offence(s) involves a failure to comply in full or in part with the requirements of a statutory notice;
- obstruction of an officer whilst undertaking his or her duties;
- there is a history of similar offences

The officer must be satisfied that there is sufficient relevant, admissible, substantial and reliable evidence that an offence has been committed.

Further considerations in this connection are listed within the departmental enforcement policy. In addition, the Code for Crown Prosecutors gives additional advice and will be fully considered. The potential defendant will be advised at the earliest opportunity of the proposed action.

The final decision to prosecute will be taken in each case by the Food and Safety Manager in consultation with Legal Services.

## **8. Warrant to Enter Premises**

The following are circumstances where prosecution may be initiated:

Officers may apply to the Magistrates Court for a warrant to enter premises in the following circumstances:

- necessary entry is required at an unreasonable time; and/or
- entry to a premise is refused; and/or
- entry is expected to be refused; and/or
- the premises are vacant, and entry is required.

In all cases, officers will exercise their powers courteously and with respect for persons and property, and only use reasonable force when this is considered necessary and proportionate to the circumstances.

### **Food Hygiene Rating Scheme**

Colchester Borough Council publishes all inspection ratings on the Food Standards Agency “Food Hygiene Rating Scheme” website which enables potential customers of food businesses to see how a business has been risk assessed during its latest inspection. Certificates and stickers are also supplied for display on the business premises. The maintenance of this scheme will be implemented in accordance with the criteria available for public viewing on the website – [food.gov.uk/ratings](http://food.gov.uk/ratings).

### **Departures from Policy**

All authorised officers when making enforcement decisions shall abide by this policy, the departmental policy and supporting documented procedures/

The Food and Safety Manager will only accept any departure from policy in exceptional circumstances capable of justification, and only after full consideration and authorisation.

### **Appeals**

If any business or individual is unhappy with the action taken, or the information or advice given by the Food and Safety Team, they will be given the opportunity of discussing the matter with the Licensing, Food and Safety Manager. This is without prejudice to any formal appeals mechanism.

### **Service Complaints**

Colchester Borough Council is committed to the delivery of responsive, good quality customer services to the people of the Borough. There is a corporate complaints procedure that can be used by anyone who is unhappy about our services, including allegations that we have not followed this enforcement policy.

We are committed to providing quality services, and the suggestions and criticisms about any aspect of our service will help us to do this. Details on how to make a complaint will be provided upon request.

### **Comments on this Policy**

We believe in continuous improvement, and you are invited to submit any comments or suggestions regarding this policy to the Licensing, Food and Safety Manager, Colchester Borough Council, 33 Sheepen Road, Colchester CO3 3WG.



## Appendix Four

### HEALTH AND SAFETY ENFORCEMENT POLICY

#### 1.0 AIM

The aim of Colchester Borough Council Health and Safety Enforcement Policy is to ensure that duty holders manage and control risks effectively thus preventing harm. In particular our policy is to:

- Ensure that duty holders take action to deal immediately with serious risks
- Promote and achieve sustained compliance with the law
- Ensure that duty holders who breach health and safety requirements, and directors or managers who fail in their responsibilities, are held to account, which may include bringing alleged offenders before the courts in the circumstances set out later in this policy.

In this context “enforcement” applies to all dealings between the Council as a health and safety enforcing authority and those on whom the law places duties (employers, the self-employed, employees and others).

The Council believes in firm but fair enforcement of health and safety law in line with Health and Safety Commission’s Enforcement Policy Statement (EPS). This is informed by the principles of proportionality in applying the law and securing compliance; consistency of approach, targeting of enforcement action, transparency about how we operate and what those regulated may expect, and accountability for our actions. These principles will apply both to enforcement in particular cases and to our management of enforcement activities as a whole and are explained in the main Policy section of this document.

Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be appropriate, or to assist such claims. We have a range of tools at our disposal in seeking to secure compliance with the law and to ensure a proportionate response to criminal offences. Many of our dealings are informal e.g. offering duty holders’ information and advice. Where appropriate our Officers may also serve Improvement and Prohibition Notices and prosecute.

Subject to the evidential tests in the Code for Crown Prosecutors, circumstances where we will normally prosecute, or recommend prosecution, following an investigation or other regulatory contact are where:

- death was a result of a breach of the legislation;
- the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it;
- there has been reckless disregard of health and safety requirements;

- there have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
- work has been carried out without or in serious breach of an appropriate licence;
- a duty holder's standard of managing health and safety is found to be far below what is required by health and safety law and to be giving rise to significant risk;
- there has been a failure to comply with a written warning or an improvement or prohibition notice; or there has been a repetition of a breach that was subject to a simple caution;
- Officers have been intentionally obstructed in the lawful course of their duties;
- false information has been wilfully supplied, or there has been intent to deceive.

We will also consider prosecution, or consider recommending prosecution where following an investigation or other regulatory contact, the following circumstances apply:

- it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, and conviction may deter others from similar failures to comply with the law.
- a breach that gives rise to significant risk has continued, despite relevant warnings from employees, or their representatives, or others affected by a work activity.

Where officer is assaulted we will also seek police assistance with a view to seeking the prosecution of offenders. Subject to the above we will identify and prosecute individuals if we consider that a conviction is warranted and can be secured. Additionally, we will actively consider the management chain and the role played by individual directors and managers. Where appropriate we will seek disqualification of directors under the Company Directors Disqualification Act 1986.

As with prosecution, we will use discretion in deciding whether incidents, complaints or cases of ill health should be investigated. We will use discretion in deciding when to investigate or what enforcement action may be appropriate.

The Health and Safety Commission's priorities are used to target our activities and resources via our Service Plan, including the provisions of the National Local Authority Enforcement Code. To maintain a proportionate response most resources available for investigation will be devoted to the more serious circumstances. We will carry out a site investigation of a reportable work-related death, unless there are specific reasons for not doing so. Our health and safety team will aim to:

- Inspect/carry out interventions at those premises for which it has enforcement responsibility and investigate accidents and complaints in accordance with the Council's selection criteria policy;

- <http://webarchive.nationalarchives.gov.uk/+http://www.berr.gov.uk/files/file10150.pdf>
- <http://www.hse.gov.uk/lau/national-la-code.pdf>
- Rate premises according to risk, (which includes management organisation, and the type of activities etc.) in order to determine the frequency of future inspections;
- Seek to promote health and safety through advice and guidance, and by the provision of training; and
- Take formal enforcement action, in accordance with the Licensing, Food and Safety Policy, when it is the most appropriate way of dealing with the matter.

Where we can we will endeavour to make provision for the particular interests of stakeholders. For example, we may make visits out of normal office hours but at times when the business is open; or we may arrange for interpreters/translators to be available if particular groups of duty holders do not have English as a first language.

Where there has been a death at work resulting from a failure to comply with health and safety law, the matter will be referred to the police if the circumstances of the case might justify a charge of manslaughter. The police are responsible for deciding whether or not to pursue a manslaughter case and this may occur alongside a prosecution for health and safety breaches. In all cases, the work-related deaths protocol for liaison signed by the Police, British Transport Police, the Crown Prosecution Service, the Health and Safety Executive and the Local Government Association will be followed.

## **2.0 PRINCIPLES OF ENFORCEMENT**

### **2.1 The Process of Enforcement**

Officers use various enforcement techniques to deal with risks and secure compliance with the law, ranging from the provision of advice to enforcement notices. Enforcement decisions must be impartial, justified and procedurally correct. The Health and Safety Executive's EPS sets out the approach we follow. The Enforcement Management Model (EMM) – together with the procedure for its application – provides the Council with a framework for making enforcement decisions that meet the principles in the EPS. It captures the issues Officers consider when exercising their professional judgment and reflects the process by which enforcement decisions are reached.

### **2.2 Purpose of the EMM**

The EMM is not a procedure in its own right. It is not intended to fetter Officers' discretion when making enforcement decisions, and it does not direct enforcement in any particular case. It is intended to:

- promote enforcement consistency by confirming the parameters, and the relationships between the many variables, in the enforcement decision making process;
- promote proportionality and targeting by confirming the risk based criteria against which decisions are made;
- be a framework for making enforcement decisions transparent, and for ensuring that those who make decisions are accountable for them; and
- help experienced Officers assess their decisions in complex cases, allow peer review of enforcement action, and be used to guide less experienced and trainee Officers in making enforcement decisions.

The EMM and the associated procedures enable managers to review the decision-making process and their Officers' enforcement actions to ensure the purpose and expectations of the EPS have been met.

The EMM does not exist in isolation. It is supported by quality procedures which address, amongst other things, the selection and investigation of accidents.

### **2.3 Enforcement Tools**

Enforcing Authority (EA) Officers have a range of tools at their disposal to seek compliance with the law and to ensure a proportionate response to criminal offences.

Where appropriate they may:

- Serve Improvement and Prohibition Notices
- Prosecute
- In very exceptional circumstances issue Simple Cautions.

Simple Cautions will not be used –

- As a 'let off'
- Where there are some mitigating circumstances □ Where there is doubt about the public interest
- Where either the prosecutor's office or the court are too busy.

### **2.4 Investigation**

As with prosecution (see below), the Health and Safety Executive expects us to use discretion in deciding whether incidents, complaints or cases of ill health should be investigated. The Commissions priorities are reflected in the HELA Strategy that we use to target our activities and resources via our Health and Safety Service Plan.

To maintain a proportionate response most resources available for investigation will be devoted to the more serious circumstances. The Health and Safety Executive's Strategic Plan recognises that it is neither possible nor necessary for

the purposes of the Act to investigate all issues of noncompliance with the law that are uncovered in the course of planned inspection or reported events.

A more detailed policy on investigating reportable workplace accidents and ill health is detailed below.

## **2.5 Action by the Courts**

Where appropriate we will draw the court's attention to all the factors that are relevant to the court's decision as to what sentence is appropriate on conviction. The Court of Appeal has given some guidance on some of the factors that should inform the courts in health and safety cases (R v F. Howe and Son (Engineers) Ltd [1992] 2 All ER, and subsequent judgments).

## **2.6 Representation to the Courts**

In cases of sufficient seriousness, and when given the opportunity, we will consider indicating to the magistrates that the offence is so serious that they may send it to be heard or sentenced in the higher court where higher penalties can be imposed. In considering what representations to make we will have regard to Court of Appeal guidance: the Court of Appeal has said "In our judgment magistrates should always think carefully before accepting jurisdiction in health and safety at work cases, where it is arguable that the fine may exceed the limit of their jurisdiction or where death or serious injury has resulted from the offence".

## **2.7 Death at Work**

Where there has been a breach of the law leading to a work-related death, we will consider whether the circumstances of the case might justify a charge of manslaughter. We will liaise with the Police, Coroners and the Crown Prosecution Service (CPS) and if they find evidence suggesting manslaughter pass it on to the Police or where appropriate the CPS. If the Police or the CPS decides not to pursue a manslaughter case, we will bring a health and safety prosecution if that is appropriate. (To ensure decisions on investigation and prosecution are coordinated the HSE, the Association of Chief Police Officers and the CPS have jointly agreed and published "Work Related Deaths: A Protocol for Liaison.

Colchester Council has agreed that it should take account of the Protocol when responding to work-related deaths).

## **2.8 Incident Investigations**

It is the policy of the Council to investigate reportable accidents under the Reporting of Injuries, Disease, and Dangerous Occurrences Regulations 2013 according to the HSE's Incident Selection Criteria.

An initial assessment of the incident will be made, and a decision taken on investigation within 3 working days (except in the case of work-related deaths where a decision will be taken upon receipt by an officer).

They will be investigated in accordance with the principles of proportionality, consistency, targeting, transparency and accountability.

The purpose of investigation is to: -

- Identify immediate and underlying causes
- Ensure the duty holder takes appropriate remedial action to prevent reoccurrence
- Evaluate compliance with the relevant statutory provisions
- Apply the principles of the Enforcement Management Model and take enforcement action if appropriate.

Investigations will be:

- Continued only so far as they are proportionate to the achievement of the objectives set for them [see below]
- Conducted and/or supervised by staff who are competent
- Provided with adequate resources and support, including information, equipment and staffing
- Conducted so that efficient and effective use is made of the resources committed to them
- Timely, so far as this is within the control of the investigating Officer
- Subject to suitable management procedures for monitoring the conduct and outcome of investigations

The following factors will determine whether an investigation continues to be proportionate:

- Public expectation, for example, where there has been a fatality or fatalities, serious ill health, or an accident involving multiple serious injuries
- The potential (taking into account reasonable foreseeability) for a repetition of the circumstances to result a fatality or fatalities, serious ill health, or an accident involving multiple serious injuries either in the activities of a specific duty holder or within industry generally
- The extent to which the available evidence allows conclusions as to causation to be drawn and supported with sufficient certainty, including conclusions as to responsibility for alleged breaches of relevant legislation
- The extent to which the resources needed for the investigation are disproportionate to the hazard(s) or risk(s)
- The prevalence of the event, either in the activities under the control of a specific duty holder, or in an industry sector generally.

## **2.9 Complaints**

A complaint is a concern originating from outside the council in relation to a work activity for which Colchester Council is the enforcing authority, that is sufficiently specific to enable identification of the issue and the dutyholder and/or location and that either:

- Has caused or has potential to cause significant harm, or alleges the denial of basic employee welfare facilities, or
- Appears to constitute a significant breach of law for which Brentwood Council is the enforcing authority.

The level of investigation will depend upon:

- The severity and scale of actual or potential harm, or the high potential for harm arising from an event;
- The seriousness of any potential breach of the law;
- The track record of the duty holder;
- The enforcement priorities of the Council;
- The practicality of achieving results;
- The wider relevance of the event including serious public concern.

## Appendix Five

### LICENSING ENFORCEMENT POLICY

#### 1.0 Statement of objectives

1.1 The Licensing Team is committed to the Council's core priorities. This policy linked with the Licensing Policy gives detail on how the Council prioritises:

- *Environment*
- *Place*
- *Commercial Opportunity*
- *Community*

and will inform the enforcement actions taken. Amendments to priorities will be embedded automatically.

1.2 This service policy promotes efficient and effective approaches to regulatory inspection and enforcement that improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code as details in the main body of this Enforcement policy.

1.3 In certain instances the service may conclude that a provision in the Code is either not relevant or is outweighed by another provision. It will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

1.4 The service pursues a positive and proactive approach towards ensuring compliance by:

- Supporting the better regulation agenda;
- Helping make prosperity and protection a reality for the Boroughs community;
- Helping and encouraging regulated entities to understand and meet regulatory requirements more easily;
- Responding proportionately to regulatory breaches; and
- Protecting and improving public health and the environment.

1.5 This policy is based on the seven 'Hampton Principles' of: Economic Progress: Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection;

Risk Assessment: Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources in the areas that need them most; Advice and Guidance: Regulators should provide authoritative, accessible advice easily and cheaply; Inspections and other visits: No inspection should take place without a reason; Information requirements:



Businesses should not have to give unnecessary information or give the same information twice; Compliance and enforcement actions: The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions; and Accountability: Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.

1. 6 The rights and freedoms given to an individual under the Human Rights Act, particularly Article 6 and 8, will be observed, as will the provisions of the Regulation of Investigatory Powers Act.

## **2.0 Scope of the Policy**

- 2.1 This policy supports and supplements specific guidance on enforcement action contained in the Statutory Code of Practice for Regulators, Colchester Borough Council's Corporate Enforcement Policy, The Licensing, Food and Safety Enforcement Policy, Statutory Codes of Practice and relevant guidance documents and guidelines issued by Government Departments and co-ordinating bodies.
- 2.2 This policy relates to actions taken to educate and enforce legislation where non-compliances have been identified or have a realistic potential to occur.
- 2.3 The policy is limited to those enforcement activities Delegated down by the Assistant Director of Communities.

## **3.0 Training**

- 3.1 Officers undertaking enforcement duties will be suitably trained and qualified so as to ensure they are fully competent to undertake their enforcement activities.

## **4.0 Management Systems**

- 4.1 The service will maintain management systems to monitor the quality and nature of enforcement activities undertaken, so as to ensure, so far as is reasonably practicable, uniformity and consistency.

## **5.0 Enforcement Options**

- 5.1 The service recognises the importance of achieving and maintaining consistency in its approach to enforcement. Statutory Codes of Practice and guidance issued by Government Departments, other relevant enforcement agencies or professional bodies will therefore be considered and followed where appropriate.
- 5.2 Sanctions and penalties will be consistent, balanced, fairly implemented and relate to common standards that ensure individual's, public safety or the environment is adequately protected. The aim of sanctions and penalties are to:

- Change the behaviour of the offender;
- 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;
- Proportionate to the nature of the offence and the harm caused;  
and
- Aim to deter future non-compliance.

5.3 Criteria to be taken into account when considering the most appropriate enforcement option include:

- the potential of the offence to cause harm;
- confidence in the offender;
- consequences of non-compliance;
- likely effectiveness of the various enforcement options.

5.5 If the Licensing is considering taking enforcement action which it believes may be inconsistent with that adopted by other authorities, the matter will be referred to the appropriate local co-ordinating body.

## **6.0 Informal Warning**

6.1 Informal action may be taken when: -

- the act or omission is not serious enough to warrant formal action  
or
- from the individual's/enterprise's past history it can be reasonably expected that informal action will achieve compliance or
- confidence in the individual/enterprise's management or ability to resolve the matter is high or
- the consequences of non-compliance will not pose a significant risk to public health, public safety, animal welfare or the environment.

6.2 When an informal approach is used to secure compliance with regulations, written documentation issued will: -

- contain all the information necessary to understand what is required and why;
- indicate the regulations contravened, measures which will enable compliance with legal requirements and that other means of achieving the same effect may be chosen;
- clearly differentiate between legal requirements and recommendations of good practice. Such a differentiation will also be made when verbal advice is given.

## **7.0 Simple Caution**

7.1 A Simple Caution may be issued as an alternative to a prosecution.

Cautions may be issued to: -

- deal quickly and simply with less serious offences;
- divert less serious offences away from the courts;
- reduce the chances of repeat offences.

7.2 The following factors will be considered when deciding whether a caution is appropriate: -

- evidence of the suspect's guilt
  - has a clear and reliable admission of the offence been made either verbally or in writing
  - is it in the public interest to use a Caution as the appropriate means of disposal when taking into account the public interest principles set out in the Code for Crown Prosecutors.
- the suspected offender must understand the significance of a simple caution and give an informed consent to being cautioned.

7.3 No pressure will be applied to a person to accept a Simple Caution.

7.4 The 'cautioning officer' will be the most appropriate officer Head of Service, general Manager, Head of Service Environmental Health Manager or Licensing, Food and safety Manager. The Cautioning Officer must not have taken an active part in investigating the case.

7.5 Should a person decline the offer of a simple caution a prosecution will be recommended.

## **8.0 Prosecution**

8.1 The Department recognises that the decision to prosecute is significant and could have far reaching consequences on the offender.

8.2 The decision to undertake a prosecution will be taken after proper consultation in accordance with the Scheme of Delegation for the Council's functions. The decision to proceed with a prosecution will normally be taken following legal advice. The matters to be taken into account when deciding if the issue of proceedings is proportionate include: -

- the seriousness and nature of the alleged offence;
- the role of the suspect in the commission of the offence;
- any explanation by the suspect or any agent or third party acting on their behalf;
- was the suspect in a position of trust, responsibility or authority in relation to the commission of the offence;
- is there evidence of premeditation or disregard of a legal requirement for financial reward;
- risk of harm to the public, an individual or the environment;
- relevant previous history of compliance;
- reliability of evidence and witnesses

- any mitigating or aggravating circumstances or the likelihood that the suspect will be able to establish a defence;
- suspect's willingness to prevent a recurrence of the offence;
- the need to influence future behaviour of the suspect;
- the likely penalty to be imposed; and
- a prosecution is in the public interest, there is realistic prospect of conviction and sufficient evidence to support proceedings.

8.3 All relevant evidence and information will be considered before deciding whether to instigate proceedings in order to enable a consistent, fair and objective decision to be made.

8.4 Where an act or omission is capable of constituting both a summary and either way offence, when deciding which offence to charge the following will be considered: -

- the gravity of the offence;
- the adequacy or otherwise of the powers of the summary court to punish the offence;
- the record of the suspect;
- the suspect's previous response to advice or other enforcement action;
- the magnitude of the hazard;
- any circumstances causing particularly great public alarm;
- comments from the Council's Solicitor's Office.

8.5 As a general rule an individual or business will be given a reasonable opportunity to comply with the law although in some circumstances prosecution may be undertaken without giving prior warning e.g.

- the contravention is a particularly serious one;
- the integrity of the licensing framework is threatened.

## **9.0 Appeals**

9.1 If any person is unhappy with the action taken, or information or advice given they will be given the opportunity of discussing the matter with the relevant team manager, Head of Service or Assistant Director.

9.2 Any such appeal does not preclude any aggrieved person from making a formal complaint about the service or any officers. Any such complaint will be dealt with in accordance with Corporate procedures and guidance.

9.3 Complaints that are not dealt with by the council's complaints procedure are listed in corporate policy and include:

9.4 Complaints where the complainant or another person has commenced or intends to commence legal proceedings against the council, in which case advice should be sought from Legal Services

9.5 Complaints where the council has commenced or intends to commence legal proceedings against the complainant or another person relating to the matter of complaint.

## Appendix Six

### **ANIMAL WELFARE ENFORCMENT POLICY**

#### **1.0 Statutory Duties**

The council has a statutory duty to licence certain establishments within the borough, these being:

- Selling Animals as Pets
- Dog Breeding Establishments
- Dog and Cat Boarding Establishments (Including Day Care and Home Boarding)
- Riding Establishments and the hiring out of Horses
- Owners of Dangerous Wild Animals
- Zoos.
- Keeping or training animals for exhibition

The Council takes its statutory duties seriously and seeks to achieve the delivery of careful and competent animal husbandry at licensed premises. In the allocation of resources, these duties will be given top priority above any non-mandatory services relating to animal care and control.

Colchester Borough Council will continue to require a qualified Veterinary Surgeon, or an appropriate expert where deemed to be appropriate or necessary, to inspect these premises, in addition to inspections carried out by its own Officers.

In considering the suitability of the establishment for licensing, regard shall be had to criteria set out in the laws that have created the licensing regimes; authoritative published guidance relevant to the activity; and any associated model licence conditions.

Inspections, including unannounced visits, shall be undertaken to verify that licences should be granted or renewed and that licence conditions are being adhered to.

#### **2.0 Approach to Enforcement**

It will continue to be the Council's role to enforce appropriate baseline standards of welfare through regulation. Colchester Council also commits itself to promoting accepted best practice when carrying out its animal welfare licensing functions. In addition to enforcement, use will be made of:

- Services provided by the Council, particularly the work of the Animal Control Team within Community Services;
- Methods of highlighting welfare standards in the production of food and animal products, so that consumers can make informed choices;
- Codes of Practice setting out requirements for good welfare and which explain best practice;

- Simple, coordinated communications providing information and advice to animal keepers; and
- Training and education, again including communicating best practice which promotes responsible ownership.

The Council's officers will seek compliance with welfare rules, with efficient and effective enforcement whilst having regard to the Licensing, Food and safety Enforcement Policy. They will avoid unnecessary burdens on animal keepers through the use of risk-based checks that, in turn, allow better targeting of limited resources.

Risk-based assessments carry inherent benefits for those who comply, since inspections are targeted towards those less likely to meet their responsibilities, and compliant individuals will therefore require fewer inspections.

Enforcement is not just about prosecution and penalties but includes the provision of suitable advice and guidance to animal keepers. Wherever possible, comprehensive guidance will be offered on the legislative requirements in an easy to access, 'one-stop-shop' format.

The application of welfare standards and enforcement are not limited to local and central government, but encompass the work of a number of stakeholder groups, including self-regulation by industry; companion animal organisations and breed societies, assurance schemes, and the contractual requirements imposed by those who commission services that impact on animals.

Complaints regarding licensed premises and keepers will be investigated in accordance with Licensing, Food and Safety service standards. Any complaint regarding the performance of the Council in relation to any of its duties will be addressed in line with Colchester Borough Council's corporate complaint procedures.

### **3.0 Training, Competency, and Appointment of Officers**

Colchester Council will ensure that those staff members who interact with animals as a part of their duties are properly and appropriately trained, and have the necessary skill and knowledge to ensure appropriate standards of animal welfare. Where appropriate, such officers will attend update training to ensure that any changes in legislation, or advancement in knowledge of welfare issues, are acted upon and knowledge disseminated.

## **4.0 The Council's Approach**

### **4.1 Provision of Advice and Information**

From time to time the Council may promote animal health and welfare seminars and campaigns on topical issues and make expert advice available through road shows, workshops, seminars and publications, including publication of information on the Council Web Site.

The Council will look to work with others and will seek to facilitate joined-up working and 'one-stop-shop' type initiatives that improve the ease of access for the user and minimise burdens. This could include raising public awareness on welfare issues, including through schools, the provision of advice/guidance on breeding policies and on the ways, animals should be kept, and formal welfare training schemes.

Moving toward joint working in this area, with greater co-ordination, should improve animal welfare by assuring the quality of information being communicated, and improving the penetration, coverage and ease of access of initiatives.

#### **4.2 Circuses, Performances, Exhibitions and Displays of Animals**

The Council does not have any duties to control the welfare of animals in circuses but any evidence of cruelty or mistreatment will be reported to the RSPCA. Circuses with animal performances will not be permitted on Council-owned land.

All other applications to hold exhibitions or displays of animals on any Council-owned land or premises will be considered individually and the decision to grant or refuse such applications will be based on a wide range of considerations, including animal welfare.

#### **4.3 Giving Animals as Prizes**

It is Council policy that the conditions for hiring or letting any of the Council's facilities, premises or land, shall include a clause specifically banning the provision of live creatures as prizes. The Council encourages other private premises or landowners to follow this lead. In all cases, the Animal Welfare Act prohibits giving animals as prizes to unaccompanied children under the age of 16.

#### **4.4 Horse, Pony and Donkey Rides**

Anyone offering donkey or pony rides on Council land must meet the conditions as set out in the Code Of Practice for Working Donkeys as produced by the Donkey Sanctuary. (See: [www.thedonkeysanctuary.org.uk](http://www.thedonkeysanctuary.org.uk)) The Council encourages other landowners to apply similar strict conditions

#### **4.5 Dogs**

The council liaises with other organisations to promote responsible dog ownership by: Providing dogs faeces bins, currently some 400 throughout the Borough (in addition to general waste bins).

- Encouraging the permanent identification of dogs through micro-chipping, a scheme currently supported by The Dogs Trust. (The Council's Animal Control Officer offers a dog micro-chipping service on a non-profit basis.). This is considered to be particularly important in advance of new legislation which is likely to make dog micro-chipping compulsory from



April 2016.

- Promoting animal welfare by distributing animal welfare leaflets from council reception areas and placing advice on the Council Website.

The Anti-social Behaviour, Crime and Policing Act 2014 enables the council to make Public Spaces Protection Orders, where considered appropriate. The Council recognises that the making of such Orders can have a beneficial effect on enforcing responsible dog ownership and a significant effect on dog's welfare and safety. The Council is also aware that dog owners, in order to comply with the Animal Welfare Act 2006, may wish to be able to let their dogs run off lead, and will consider this aspect when introducing any Orders that might ban dogs from some areas.

#### **4.6 Puppy Farming**

The Council opposes puppy farming and supports the RSPCA in recommending that prospective dog owners purchase only puppies that are seen with their mothers. The Council would also encourage residents to consider homing a rescue dog rather than a puppy, in an effort to reduce the population of unwanted dogs.

The transportation of litters of puppies is an integral element of the puppy farming trade. The 2005 EU Regulations on the transport of animals supported by the Welfare of Animals (Transport) (England) Order 2006 renders it illegal to transport puppies (and kittens) aged less than eight weeks old without their mother. Basildon Council will do all it can to assist in the enforcement of the Regulation within its area, where there is evidence that it is not being complied with.

#### **4.7 Cats**

The Council encourages residents to be responsible cat owners and supports local animal welfare organisations in their efforts to educate and assist cat owners.

#### **4.8 Animal Hoarding**

Anyone keeping large numbers of animals, including privately owned animal sanctuaries, needs to consider carefully whether they have adequate, suitable facilities, sufficient knowledge and resources, to care properly for all the animals. Professional advice should be sought. People are encouraged to report any suspected instances of animal hoarding to the Council (if nuisance is being caused) or the RSPCA (if the animals are being mistreated or neglected).

#### **4.9 Pet Sitting Services**

The Council encourages responsible pet ownership and recommends that pet owners use only licensed boarding establishments (**in respect of cats and dogs**). Where they choose to use non-commercial pet sitting services, it is recommended that they, take up references, visit the service provider and contact animal welfare

organisations for advice and recommendation when required. A current list of licensed boarding establishments within the borough are listed on the Council's Website

#### **4.10 Horses**

The Council supports the controls imposed by the Horse Passports Regulations 2009. The Council also supports the Protection against Cruel Tethering Act 1988 and will not allow the long-term tethering of horses or ponies, in an open environment, on any land owned or managed by the Council. In line with the RSPCA, the Council does not oppose an animal being tethered for short periods, e.g. for grooming or having a short break in a journey or working period. The Council would wish to remind owners that a tethered horse requires adequate feed and particularly water and should be cared for in accordance with the Code of Practice for the "[Welfare of Horses, Ponies, Donkeys and their Hybrids](#)" issued by the Department of Environment, Food and Rural Affairs (DEFRA). Where there are any concerns for the welfare of horses or ponies on council owned land, the Council will work with partner agencies to ensure that these concerns are addressed.

#### **4.11 Dangerous Wild Animals and Exotic Species**

The Council expects that if people are selling or keeping animals listed on the schedule of the Dangerous Wild Animals Act 1976 and other dangerous and/or exotic animals, they should have specialist knowledge on the care of these animals, as some of them can grow very large, live for a long time and can be a threat to life. The Council will provide links to relevant information on the keeping of such animals with a view to encouraging responsible ownership. Owners of non-human primates are recommended to familiarise themselves with the [Code of Practice](#) issued by the Department for Environment, Food and Rural Affairs (DEFRA).

#### **5.0 Publicity**

The Council will supply information to promote animal welfare, for example through articles in the Borough Council's website [www.Colchester.gov.uk](http://www.Colchester.gov.uk). This may include information on animal welfare legislation, advice, and links to useful related websites. The Council will ensure that this Policy is made widely available.