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**Interim
Environmental Health Enforcement Policy**

**Tewkesbury Borough Council
Gloucester Road, Tewkesbury, Gloucestershire, GL20 5TT**

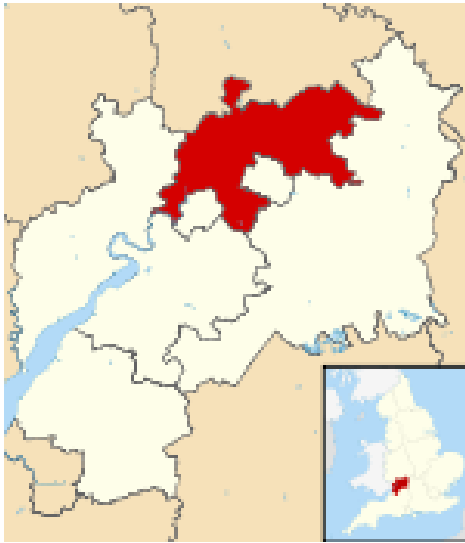
www.tewkesbury.gov.uk

Revised with effect from DATE

Tewkesbury Borough

Tewkesbury Borough covers an area of 160 square miles in North Gloucestershire. The borough is situated within the Severn Vale and stretches south beyond the outskirts of Cheltenham and Gloucester with borders alongside the county of Worcestershire to the north. It occupies the northern gateway into the south west region.

The borough is predominantly rural in nature with the largest towns / villages being Tewkesbury, Winchcombe, Bishops Cleeve and Churchdown.



INDEX	Page No.
1. Introduction	3
2. Purpose of the policy	3
3. Scope and application of the policy	4
4. Our approach to dealing with non-compliance	4
5. Conduct of investigations	6
6. Decisions on enforcement action	7
7. Review of this policy	9
8. Comments and complaints	9

1. Introduction

- 1.1. This document is the Interim Enforcement Policy for Tewkesbury Borough Council's Environmental Health and Licensing services. It is based on the principles of transparency, consistency and proportionality and sets out the key principles under which officers will seek to achieve compliance with the legislation we enforce. The policy conforms to the Regulators' Code (Better Regulation Delivery Office [BRDO]) April 2014, and should be read in conjunction with any applicable service specific policies and procedures.
- 1.2 Our aim is to deliver efficient, targeted and proportionate regulatory services to provide a positive approach to regulated activities. The policy will support the Council's visions and values by providing protection from harm for individuals and the environment, enabling businesses to flourish without unnecessary burdens of inspection and regulation, and improving the health and wellbeing of those within the Borough. The Council is committed to good enforcement practice and adherence to the current legislation, guidance, and codes of practice, that influence the policy.
- 1.3 We will exercise our regulatory activities in a way which is:
 1. **Proportionate** – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence.
 2. **Accountable** – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures.
 3. **Consistent** – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities.
 4. **Transparent** – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return.
 5. **Targeted** – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.
- 1.4 We will avoid imposing unnecessary regulatory burdens, and policies, procedures and practices will consider supporting or enabling economic growth by considering economic impacts and costs of compliance with a view to improving confidence in compliance of those regulated and encouraging compliance.
- 1.5 We will ensure that regulatory officers have the necessary knowledge and skills to;
 1. Support those that they regulate
 2. Understand those they regulate
 3. Understand the statutory principles of good regulation and how activities are delivered in accordance with the Code.

2. Purpose of the policy

- 2.1 This policy has been developed following review of the previous Corporate Enforcement Policy in light of the new Regulators' Code. This document details our approach to dealing with environmental health and licensing non-compliance.

- 2.2 All officers will have regard to this document when making enforcement decisions. Any departure from this policy must be exceptional, capable of justification and be fully considered by the Borough Solicitor before a final decision is taken. This provision shall not apply where a risk of injury or to health is likely to occur due to a delay in any decision being made. In cases of emergency or where any exceptional conditions prevail, the Chief Executive or the Deputy Chief Executive may suspend any part of this policy where necessary to achieve effective running of the service and/or where there is a risk of injury or to health of employees or any members of the public.

3. Scope and application of the policy

- 3.1 This policy relates to enforcement and regulatory functions discharged by the Council's Environmental Health and Licensing services.
- 3.2 Our aim is to achieve regulatory compliance in order to protect the public, legitimate business, the environment and groups such as consumers and workers. However, we reserve the right to take enforcement action in some cases after compliance has been achieved if it is in the public interest to do so.

4. Our approach to dealing with non-compliance

- 4.1 We recognise that most businesses and individuals strive to comply with the law; however, firm action will be taken against those who flout the law or act irresponsibly.
- 4.2 We will carry out all of our enforcement duties, including taking formal enforcement action, in a fair, equitable and consistent manner. Whilst officers exercise judgement in individual cases, we will have arrangements in place to promote consistency including liaison with other agencies and authorities.
- 4.3 Formal enforcement action will generally only be considered and taken in the first instance in cases where individuals have sought to obtain an unfair commercial advantage, intentional exploitation, unacceptable risk to the public, environment or animal health, safety or welfare, or other such situations that are considered to be so serious as to warrant formal action.
- 4.4 Where there is non-compliance, we will clearly explain the non-compliance and provide opportunity for discussion, to ensure consistency and proportionality, unless there is a need for immediate enforcement action. We will ensure that mechanisms are in place to allow businesses and individuals being regulated, and the public, to express views, provide feedback and contribute to the development of regulatory policies and service standards. We will consider the impact on business, and engage with businesses, before changing policies and service standards.

- 4.5 We recognise the importance of prevention and will actively work with business and residents to provide advice on and assistance with compliance with the law. In doing this we will ensure that:
1. Legal requirements are made available and communicated promptly upon request.
 2. The information we provide will be in clear, concise and accessible language and will be confirmed in writing where necessary.
 3. We clearly distinguish between legal requirements and good practice/guidance aimed at improvements above minimum standards.
 4. Provide advice to support compliance that can be relied upon.
 5. Work collaboratively with other regulators where those regulated by more than one regulator are affected, and where there is disagreement over advice given, regulators will reach agreement.
- 4.6 The Council's Scheme of Delegation, which includes details of who is responsible for managing investigations and making decisions on enforcement action, can be provided in electronic or paper format upon request.
- 4.7 We will be accountable for the efficiency and effectiveness of our activities, while remaining independent in the decisions we take.
- 4.8 We shall provide businesses and individuals with effective consultation and opportunities for feedback on our service.
- 4.9 Our officers will be courteous, fair and efficient at all times, and will identify themselves.
- 4.10 We believe in openness and equality in the way we provide services. We will give consideration to fairness, individual's human rights and natural justice, in all aspects of our enforcement work.
- 4.11 When making enforcement decisions we aim to ensure that there will be no discrimination against any individual regardless of culture, ethnic or national origins, gender, disability, age, sexual orientation, political or religious beliefs, socioeconomic status, or previous criminal conviction or caution which is not relevant to the current issue.
- 4.12 We understand that some members of the community may have specific requirements, which may need extra advice and assistance. Careful explanation will be given and if necessary the services of an interpreter may be used. Appropriate translated material will be arranged or practical help provided for people with impaired hearing, vision or other impairment.
- 4.13 Where the responsible person has failed to respond once a breach of legislation has been brought to their attention or the breach is so severe as to present an imminent risk, it is very likely that formal action will be initiated. Where legislation allows, and the Council has adopted powers, the responsible person will be charged a fee which reflects the officer time and ancillary costs involved with the preparation of a formal notice.
- 4.14 We will advise the responsible person of the potential of being charged for formal enforcement notices before any charge is incurred, unless the situation is an emergency. In emergency situations officers will make reasonable efforts to contact the responsible person. If the

responsible person cannot be contacted or cannot respond quickly enough, formal action will be initiated and a charge made.

- 4.15 In assessing what enforcement action is necessary and proportionate, consideration will be given to, amongst other things;
1. The seriousness of the compliance failure.
 2. The past and current performance of any business and/or individual concerned.
 3. Any obstruction on the part of the offender.
 4. The risks being controlled.
 5. Statutory guidance.
 6. Codes of Practice.
 7. Legal advice.
 8. Policies and priorities of Government and the Council.
 9. A person's age in relation to young people under the age of 18.
 10. The existence of a Primary Authority agreement.
- 4.16 Where the Council has enforcement and regulatory responsibility in relation to its own premises, we will enforce and legislate in accordance with legislation, procedures, and guidance. This will be consistent across all premises regardless of ownership. Where individuals are investigated who are also Council employees, or where they have known connections to the Council in any capacity, the investigation will be conducted in accordance with procedures developed to ensure that conflict of interest is minimised, and that the investigation is conducted in an open, honest and accountable manner. All individuals and business will be dealt with consistently, regardless of whether or not they have an interest in the Council.
- 4.17 Where prosecution and a conviction of an individual or business is achieved, the Council, upon legal advice, will publish details of the offence, perpetrators and convictions in both electronic and paper publications. This would be done to have a deterrent effect and to make the public aware that the Council is taking effective enforcement action where it is necessary.
- 4.18 When taking enforcement action, we will take into account particular circumstances and the approach of the business or regulated person to deal with the breach.
- 4.19 Those that deliberately or persistently fail to comply will be dealt with firmly by the Council.
- 4.20 We will give advice on non-compliance without directly triggering enforcement action, where they show a willingness to resolve the non-compliance, unless the matter is so serious that enforcement action is deemed necessary.
- 4.21 We will take proportionate approaches based on relevant factors.
- 4.22 Where a Primary Authority exists, we will consult on responses to breaches.
- 4.23 We will carry out checks and visits or re-visit to assess compliance where prior advice or guidance has been given, before considering further action.
- 4.24 Where we are aware of likely non-compliance where the enforcement powers are shared or with another agency, we will liaise with the relevant agency.
- 4.25 We will investigate all complaints of non-compliance.

5. Conduct of investigations

- 5.1 We will adhere to the legislative controls of how evidence is gathered and used when investigating breaches of legislation.
- 5.2 The powers used by authorised officers are determined and restricted to those set out in the appropriate statute and/or Council's Delegation of Powers scheme.
- 5.3 We will, where required to do so by the Regulator Enforcement Sanctions Act 2008 (The RES Act), comply with the agreement provisions for enforcement and notify the Primary Authority of the action we propose to take in following circumstances;
 1. When we have come to the decision to take enforcement action against a business organisation that operates in more than one Local Authority area and that business organisation has chosen to have a registered Primary Authority Partnership under The RES Act); and
 2. The enforcement action we propose to take is covered by the definition of enforcement action for the purposes of Part 2 of The RES Act.
- 5.4 The Primary Authority has the right to object to our proposed action, in which circumstance either they or we may refer the matter to BRDO.
- 5.5 Where any officer conducting regulatory or enforcement functions is obstructed in the course of their investigations, and legislation allows, formal action will be considered for obstruction offences.
- 5.6 Where legislation allows the seizure of equipment, articles, or items, we will adhere to legislation, guidance and specific policies in relation to those seizures.
- 5.7 Certain offences which are indictable, carrying a penalty of 12 months imprisonment or more, also carry provision for arrest in accordance with the Serious Organised Crime and Police Act 2005. Where necessary, we may request Police to exercise their powers of arrest.
- 5.8 Where it is believed that an offence has been committed, we will endeavour to interview where appropriate alleged perpetrators in accordance with the Police and Criminal Evidence Act 1984 and related guidance.
- 5.9 Legislation utilised by regulatory and enforcement officers, is often subject to statutory time limits for investigations from the point of discovery or commission of the offence. In all circumstances we will abide by these limitations when conducting investigations and when considering any subsequent enforcement actions.
- 5.10 Levels of authorisation are detailed within the Council's Scheme of Delegation. Within the Scheme of Delegation there is provision for levels of authorisations for certain enforcement actions such as prohibitions, seizures and works in default, which will require case review prior to authorisation.
- 5.11 All prosecution work is subject to case review through the line management arrangements prior to authorisation by the Borough Solicitor.

6. Decisions on enforcement action

- 6.1 There are a range of actions that are available to the Council which are set out in legislation. For the purposes of this policy, formal enforcement actions include;
1. Compliance advice, guidance and support
 2. Voluntary undertakings
 3. Statutory (legal) notices
 4. Financial penalties
 5. Injunctive actions / enforcement orders etc.
 6. Simple caution
 7. Prosecution; and
 8. Variation / refusal / suspension / revocation of licences
- 6.2 Where appropriate we will also take into consideration additional guidance and codes of practice, including service specific policies and procedures.
- 6.3 We recognise that most businesses and individuals strive to comply with the law; however, firm action will be taken against those who flout the law or act irresponsibly.
- 6.4 We will carry out all of our enforcement duties, including taking formal enforcement action, in a fair, equitable and consistent manner. Whilst officers exercise judgement in individual cases, we will have arrangements in place to promote consistency including liaison with other agencies and authorities.
- 6.5 Formal enforcement action will generally only be considered and taken in the first instance in cases where individuals have sought to obtain an unfair commercial advantage, intentional exploitation, unacceptable risk to public, environment or animal health, safety or welfare, or other such situations that are considered to be so serious as to warrant formal action.
- 6.6 Formal enforcement action will also be considered and may be taken where advice has been ignored. Where formal enforcement action is necessary, we will consider the most appropriate course of action (from the range of sanctions and penalties available) with the intention of;
1. Aiming to secure public safety
 2. Aiming to change the behaviour of the offender
 3. Aiming to eliminate any financial gain or benefit from non-compliance
 4. Being responsive and considering what is appropriate for the particular offender and the issue(s) involved, including punishment and the public stigma that may be associated with a criminal conviction.
 5. Being proportionate to the nature of the offence and harm caused
 6. Aiming to restore the harm caused by non-compliance
 7. Aiming to deter future non-compliance.

6.7 Before formal enforcement action is taken;

1. Where appropriate there will be an opportunity to discuss the circumstances of the case, unless immediate action is required e.g. to prevent the destruction of evidence or there is an imminent risk to the environment or health and safety. This discussion will usually follow an interview under caution if a prosecution is being considered.
2. Where immediate formal enforcement action is taken, which will usually be the service of a written notice, reasons for such action will be given at the time (if possible) and confirmed in writing.
3. Where there are rights of appeal against formal enforcement action, notification of the appeal mechanism will be clearly set out in writing at the time the decision is communicated or the action is taken.
4. Clear reasons will be given for any formal enforcement action taken, and confirmed in writing.

6.8 Where the responsible person has failed to respond once a breach of legislation has been brought to their attention or the breach is so severe as to present an imminent risk, it is very likely that formal action will be initiated. Where legislation allows, and the Council has adopted powers, the responsible person will be charged a fee which reflects the officer time and ancillary costs involved with the preparation of a formal notice.

6.9 We will advise the responsible person of the potential of being charged for formal enforcement notices before any charge is incurred, unless the situation is an emergency. In emergency situations officers will make reasonable efforts to contact the responsible person. If the responsible person cannot be contacted or cannot respond quickly enough, formal action will be initiated and a charge made.

6.10 The decision to instigate legal proceedings will be determined by a number of factors, including:

1. The seriousness of the alleged offence
2. The history of the party concerned
3. The willingness of the business or the individual to prevent a recurrence of the problem and to co-operate with officers
4. Whether it is in the public interest to prosecute
5. Whether there is a realistic prospect of conviction
6. Whether any other action (including other means of formal enforcement action) would be more appropriate or effective
7. The views of any complainant and other persons with an interest in prosecution.

These factors are NOT listed in order of significance. The rating of the various factors will vary with each situation under consideration.

6.11 We will, where appropriate, cooperate and coordinate with any relevant regulatory body and/or enforcement agency to maximise the effectiveness of any enforcement.

6.12 Where an enforcement matter affects a wide geographical area beyond the Borough boundaries, or involves enforcement by one or more other local authorities or organisations;

where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.

6.13 Where the law allows regulation and enforcement we will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, including;

1. Government Agencies
2. Police Forces
3. Fire Authorities
4. Statutory undertakers
5. Other Local Authorities

6.14 All regulatory and enforcement actions are subject to review and monitor at varying line management levels dependent upon the action being considered. The degree of scrutiny will depend upon the action being taken and will vary accordingly between established Performance Management Frameworks, through to scrutiny by line managers and senior officers.

6.15 Decisions on enforcement actions will be provided in a timely explanation in writing, which will include any rights to representation or rights to appeal, and practical information on the process involved.

7. Review of this policy

7.1 This policy may be reviewed where feedback indicates that improvements or changes may be necessary, or where legislative changes require consideration of policy change, including those policies which are statutorily required.

8. Comments and Complaints

8.1 We will provide a clearly explained complaints procedure allowing those that are regulated to easily make complaints about the conduct of the regulator, including appeal against a regulatory decision or failure to act in accordance with the Regulators' Code. All complaints about the services offered by us will be dealt with in accordance with the Council's formal complaints procedure.

8.2 Methods of appeal against regulatory decisions or failure to abide by the Regulators' Code will be clear, impartial, timely, written, and publicised with those regulated against. Officers who took the decision or action against which an appeal is made will not be involved in considering the appeal.