

Environmental Health, Waste and Climate Action Enforcement Policy



MALDON
DISTRICT COUNCIL

Environmental Health, Waste and Climate Action Enforcement Policy

Document Control Sheet

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Summary of purpose	To provide an outline of the overarching principles applied to making enforcement decisions, and the process all officers will use when deciding what action to take when carrying out their statutory duties on behalf of Maldon District Council.
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Environmental Health, Waste and Climate Action Enforcement Policy

1. Objective of this policy

The purpose of this Enforcement Policy is to provide a general outline of the overarching principles applied to making enforcement decisions, and the process all officers will use when deciding what action to take when carrying out their statutory duties on behalf of Maldon District Council.

Fair and effective enforcement is essential to protect the interests of residents, visitors, employees and businesses of Maldon. Even in a minor case, a decision about enforcement action has serious implications for all involved; the general public, businesses, victims, witnesses and defendants. The Environmental Health, Waste and Climate Action (EHWCA) team applies this policy so that it can make fair and consistent decisions about enforcement.

2. Scope

The council has a wide range of regulatory and enforcement functions. This Policy applies to all the legislation enforced by authorised officers within the EHWCA team. It supports existing, specific guidance on enforcement action in the statutory code of practice for regulators, relevant guidance documents and guidelines issued by other government departments and other bodies.

In addition, consideration will be given to any other enforcement policy or scheme such as the Home / Primary Authority principle, where relevant.

The primary aims of the policy are:

- To ensure compliance with environmental health legislation.
- To protect the health, safety, and welfare of the public.
- To promote a fair and equitable approach to enforcement.
- To support businesses and individuals in understanding and meeting their legal obligations.

3. Background

Regulators whose functions are specified by the Legislative and Regulatory Reform Act 2006 **must** have regard to the Regulators Code of Compliance (“the Code”) when developing policies and operational procedures that guide their regulatory activities.

This enforcement policy (“the Policy”) aims to provide consistency of approach within Maldon District Council (“the Council”).

Environmental Health, Waste and Climate Action Enforcement Policy

The Policy has been prepared having regard to:

- The Enforcement Concordat: Good Practice Guide for England and Wales
- The Police and Criminal Evidence Act 1984
- The Human Rights Act 1998
- The Code for Crown Prosecutors
- The Legislative and Regulatory Reforms Act 2006 (LRRA)
- The Regulatory Enforcement and Sanctions Act 2008
- The Regulators' Compliance Code Human Rights Act 1998, the European Convention on Human Rights
- The Freedom of Information Act 2000
- Regulation of Investigatory Powers Act 2000.

This Policy reiterates the basic principles of enforcement activity that “reduce administrative burdens through effective inspection and enforcement through transparency, accountability, proportionality, consistency and targeted action”.

The Council nevertheless acknowledges the need for firm action against those who flout the law and puts residents, consumers and others at risk. The Council expects all officers taking enforcement action decisions to take this Policy as a guide when making those decisions.

4. Principles of Enforcement

In determining the nature of enforcement action to be taken, the Council should ensure that any sanction or penalty:

- Aims to change the behaviour of the offender;
- Aims to eliminate financial gain or benefit from non-compliance;
- Is responsive and consider what is appropriate for the particular offender and regulatory issue;
- Aims to restore the harm caused by the regulatory non-compliance where appropriate;
- Aims to deter future non-compliance

We will have regard to the Code and will ensure that any decision to depart from it, or this policy, will be properly reasoned, based on material evidence and documented.

We will adhere to the following principles:

- **Proportionality:** This means ensuring enforcement action corresponds appropriately to the risks arising. This will include any actual or potential harm arising from a breach of the law. We will ensure that our actions are proportional to the potential risk to health, safety, the environment and the benefits arising from the actions taken

Environmental Health, Waste and Climate Action Enforcement Policy

- **Consistency:** The council will carry out its duties in a fair, equitable and consistent manner to ensure that similar issues are dealt with in a similar way, making full use of guidance produced by government and other agencies. Decisions on enforcement always entail a degree of judgement and the circumstances of each case will inevitably differ in detail and may result in different outcomes.
- **Transparency:** Clear information will be provided about what is expected and the reasons for any enforcement action. We will also provide a clear distinction as to what are statutory requirements and advice or guidance about what is desirable but not compulsory.
- **Accountability:** We will provide well publicised, effective, and timely complaints procedures easily accessible to business, the public, employees, and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely timescales involved.
- **Targeting:** We will adopt an intelligence led approach to our interventions and enforcement actions, using systems, procedures and techniques that provide us with such intelligence. We will keep apprised of matters that are relevant to the sectors we regulate at a national, regional and local level and will closely work with our internal partners, other LAs and national enforcement agencies to share information and intelligence on important regulatory issues and enforcement matters.

5. Enforcement Actions

The Council has a range of enforcement options, including:

- **Advice and Guidance:** Where appropriate, we will seek to achieve compliance through early engagement, mediation, education and advice. In cases, where this is not deemed possible by officers as the appropriate route, these decisions will be recorded and considered as justified.
- **Informal Action:** For minor breaches of the law we may give verbal or written advice. We will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable and take into account the seriousness of the contravention and the implications of the non-compliance.
- **Formal Notices:** 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 or a Housing Act Prohibition Order. 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. It is Environmental Health's policy to recover costs when works have to be carried out in default.

Environmental Health, Waste and Climate Action Enforcement Policy

- **Fixed Penalty Notices (FPNs) or Penalty Charge Notices (PCNs):** 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 warning or decide to issue a written warning. Unpaid PCN's will result in the offender being pursued in the County Court for non-payment of debt.
- **Prosecution:** The Council has the discretion whether to prosecute for an offence and the decision to prosecute will be based on the circumstances of each individual case. When determining whether to take enforcement action, the authority will assess both the evidential test and the public interest test. The evidential test considers whether there is sufficient, reliable, and admissible evidence to support a realistic prospect of success. If this threshold is met, the authority will then evaluate the public interest test, taking into account factors such as the seriousness of the breach, the impact on individuals or the community, and whether enforcement is proportionate and necessary to uphold the law and maintain public confidence.

Not every breach of legislation will result in legal action. Relevant factors will be assessed by the investigating officer, Environmental Health Managers, Head of Service and, where appropriate, the Director of Service Delivery and the Lead Specialist: Legal or their nominated representative.

- **Seizure and Forfeiture:** Certain legislation enables authorised officers to seize goods or equipment. This would include unsafe food or dangerous pieces of work equipment, noise generating equipment and so on. Receipts will be issued to the person from whom the goods are seized. Where the law requires, seized goods will be taken before a Magistrate.
- **Refusal, Suspension, Review or Revocation of a Licence or Approval:** EHWCA 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 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.

- **Civil Penalties:** Under the Housing Act 2004, Housing and Planning Act 2016 and emerging Renters Rights Bill/Act 2024/25, the Council may impose a Civil Penalty, as an alternative to prosecution, up to a maximum of £30,000 in respect of the following offences:
 - Failure to comply with an Improvement Notice (Housing Act 2004)

Environmental Health, Waste and Climate Action Enforcement Policy

- Failure to license or other licensing offences relating to HMOs (Housing Act 2004), which applies to both mandatory and additional HMO Licensing Schemes.
- Failure to comply with an Overcrowding Notice (Housing Act 2004)
- Failure to comply with a regulation in respect of an HMO (Housing Act 2004)
- Breaching a Banning Order (Housing and Planning Act 2016)

In setting the amount for a civil penalty, the Council will have regard to its Civil Penalties Policy which is available on the Council's Website and relevant statutory guidance.

6. Decision-Making

In deciding what action to take in response to non-compliance or in anticipation of potential future non-compliance, consideration will be given to, among other criteria:

- The seriousness and effect of the potential offence.
- The previous history of the party concerned.
- The requirements/ directions within statute (i.e. shall/ must etc)
- Whether the offence was intentional, accidental, or otherwise.
- The offender's attitude to the offence and whether they have shown remorse.
- The willingness of the alleged offender to prevent a recurrence.
- The consequences or potential consequences of non-compliance.
- The deterrent effect of a prosecution on offenders and others.
- Whether there is sufficient evidence to prove the offence.
- Whether it is in public interest.
- The age, capacity, or vulnerability of the offender.
- The ability of witnesses and their willingness to co-operate
- Published guidance e.g. HHSRS Enforcement Guidance

In the main, a process of escalation will be used until compliance is reached. Exceptions may occur where there is a serious risk to public safety or the environment or the offences have been committed deliberately or negligently or involve deception, or where there is significant economic detriment.

Other Factors Considered When Using Enforcement Powers

• Power of Entry

Environmental Health staff 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 MDC 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

Environmental Health, Waste and Climate Action Enforcement Policy

investigations for a wide range of regulatory responsibilities including food safety, health and safety, environmental protection and housing 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 under Housing Act legislation, 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 1984 (Codes of Practice) Order 2004

Our officers will have close regard to the requirements set out in the Police and Criminal Evidence Act and any amendments and current 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 MDC’s RIPA policy and guidance on the use of covert surveillance.

• Local Government (Miscellaneous Provisions) Act 1976 section 16

This is used to formally request information about a premises 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 MDC. 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.

• Working with External Agencies and other Regulators

Where there is a wider regulatory interest, enforcement activities covering EHWCA will be co-ordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement. Where an enforcement matter affects a wider geographical area beyond MDC's boundaries, or involves enforcement by one or more other LAs 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.

Where a business operating in more than one local authority has chosen to have a registered Primary Authority Partnership under the Regulatory Reform Act 2006, we will, where required, comply with the agreement provisions for enforcement and notify the relevant Primary Authority of the enforcement action we propose to take.

Environmental Health will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies.

7. Authorisation of Officers

All enforcement officers will be authorised in writing by the Director of Service Delivery. The authorisation of each officer is dependent on the duties they have been appointed to undertake, their training, experience and competency. A copy of the documentation detailing each enforcement officer's areas of responsibility, credentials and warrant are held on file and are regularly reviewed and updated as necessary.

8. Review and Monitoring

This policy will be reviewed at least every two years. Minor amendments may be made sooner as a result of changes in legislation or guidance and publication of relevant court or tribunal decisions.