

**PLANNING, ECONOMIC DEVELOPMENT & REGENERATION**

**ENVIRONMENTAL HEALTH & TRADING STANDARDS ENFORCEMENT**

**POLICY & GUIDANCE**

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## Executive Summary

This document is the enforcement policy for the Environmental Health & Trading Standards service, a division of Planning, Economic Development & Regeneration Services of West Lothian Council. It applies to the regulatory controls within the following teams/sections:

- Environmental Health
  - Food safety (including water quality, infectious diseases)
  - Workplace safety (including licensing)
  - Public health, housing and pollution
  - Dog warden
  - Pest control
- Trading Standards

The document sets out the key principles under which enforcement officers will seek to achieve compliance with the civil and criminal legislation enforced by the various regulatory services and is intended to guide enforcement officers in deciding what course of action to take on discovery of an infringement and to improve consistency in the decision making process.

The policy is essentially built around a process of 'escalation', which will vary depending on individual team/section circumstances. We will only submit a report to the Procurator Fiscal in circumstances where:

- an offender has acted wilfully and, or, where their actions are likely to cause significant material loss or harm to others, or;
- where they have ignored written warnings or statutory notices, or;
- endangered to a significant degree the health, safety or wellbeing of people, animals or the environment, or;
- assaulted or obstructed an officer in the course of their duties.

The enforcement guidance for the policy is set out as follows:

- Section 1 – Trading Standards.
- Section 2 – Animal health & welfare, dog warden, animal licensing:
  - 2.a. Animal health and welfare.
  - 2.b. Dog control, dog fouling, straying and barking.
  - 2.c. Animal establishment licensing.
- Section 3 – Food safety, private water supplies:
  - 3.a. Food hygiene.
  - 3.b. Food standards.
  - 3.c. Miscellaneous.
  - 3.d. Enforcement in council operated premises.
  - 3.e. Private water supplies.
- Section 4 – Public health, housing, pollution and pests:
  - 4.a. Public health statutory nuisance.
  - 4.b. Noise pollution.
  - 4.c. Housing standards and defective buildings.
  - 4.d. Vehicle pollution and idling.
  - 4.e. Pest control.
  - 4.f. Caravan and mobile home sites.
- Section 5 – Workplace safety, smoking in public places:
  - 5.a. Workplace safety.
  - 5.b. Smoking in public places.
- Section 6- Internal enforcement arrangements (non food) for council operated sites, establishments and activities.

The policy is designed to help businesses and individuals understand our objectives and methods for achieving compliance and the criteria considered when deciding what the most appropriate response is to a breach of legislation.

All decisions regarding the appropriate enforcement action will have regard to current statutory guidance, codes of practice, the Crown Office –Reports to the Procurator Fiscal – A Guide for Specialist Reporting Agencies and the Human Rights Act 1998.

## Craig Smith Environmental Health & Trading Standards Manager

هذه المعلومات متوفرة بلغة برييل وعلى شريط وبخط كبير وبلغات الجالية.

الرجاء الإتصال بخدمة الترجمة على الهاتف 01506 280000

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یہ معلومات بریل (انعموں کے رسم الخط)، ٹیپ، بڑے حروف کی طباعت اور کیسٹلٹی میں بولی جانے والی زبانوں میں دستیاب ہے۔ براہ مہربانی انٹرنیٹنگ آئیڈز اسٹیبلشمنٹ سروس سے ٹیلیفون نمبر 01506 280000 پر رابطہ قائم کریں۔

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Text phones offer the opportunity for people with a hearing impairment to access the council. The text phone number is **18001 01506 464427**. A loop system is also available in all offices.

Published by West Lothian Council

## 1. Introduction

1.1 The aim of Environmental Health & Trading Standards is:

*"To protect and enhance, through the application of statute, the health, welfare, environment, safety, and trading market-place of the people of West Lothian and those using services obtained from within West Lothian."*

1.2 Environmental Health & Trading Standards will endeavour to comply with the requirements of the Regulators' Code regardless of the fact that the code only applies to the regulatory services enforcing 'reserved matters' i.e. legislation made by the UK Government. This code exemplifies 'best practice' and stresses the need for regulatory services to adopt a positive and proactive approach towards ensuring compliance by:

- Helping and encouraging businesses and individuals to understand and comply with the law.
- Responding proportionately to breaches of the law.
- Using comprehensive risk assessment and local/national intelligence sources to concentrate resources in the areas that need them most.

The service contributes towards this challenge through the advice given to legitimate businesses, particularly during start up, the adoption of a fair treatment policy, promoting good business rather than stifling entrepreneurial activities and protecting legitimate businesses from being undercut by fraudulent trading.

## 2. The Principles of Good Enforcement

2.1 West Lothian Council has adopted the following principles of good enforcement:

- Openness – we will provide information, as far as legislation permits, and advice in plain language. We are open about how we do our work and take account of stakeholders' views, where possible.
- Helpfulness – we believe that prevention is better than cure and work with businesses, especially small and medium sized businesses, to advise and assist with compliance.
- Proportionality – We minimise the costs of compliance for businesses by ensuring that any action we require is proportionate to the risks. As far as the law allows, we take account of the circumstances of the case and the attitude of the business or individual when considering action. We take particular care to work with small businesses and voluntary/community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.
- Consistency – we carry out our duties in a fair, equitable and consistent manner. While officers are expected to exercise their professional judgement in individual cases, we have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement agencies using the 'Home Authority Principle' hosted by the Trading Standards Institute. Advice given to businesses participating in the Primary Authority Scheme will be consistent with any advice given to them by their own Primary Authority Partner.
- Complaints About Service – West Lothian Council has a formal corporate complaints procedure. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with concise details of the process and the timescales involved.

## 3. General Principles

3.1 Where we consider that enforcement action is necessary each case will be considered on its own merits. However, there are general principles that apply to the way each case must be approached. These are as follows:

- Enforcement decisions will be fair, independent and objective and will not be influenced by issues such as ethnicity or national origin, age, gender or gender identity, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.
- We will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance, in making the decision to take enforcement action.
- West Lothian Council is a public authority for the purposes of the Human Rights Act 1998. We will, therefore, apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improves regulatory outcomes without imposing unnecessary burdens.
- If we receive information [for example from a complainant] that may lead to enforcement action against a business or individual we will notify that business or individual as soon as is practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to those concerned or the general public.
- During the course of enforcement investigations/actions, business proprietors or individuals and witnesses will be kept informed of progress. Confidentiality will be maintained and personal information about individuals will only be released to a Court when required and/or in accordance with the Data Protection Act 2018 and the General Data Protection Regulations.
- All enforcement officers will be expected to adhere to the enforcement policy in order to achieve consistent, balanced and fair enforcement and to co-operate in helping businesses and individuals to comply with the law.

#### 4. Who Decides What Enforcement Action is taken?

- 4.1 Decisions about the most appropriate course of enforcement action to be taken are based upon professional judgement, legal guidelines, statutory codes of practice and Crown Office guidance.

Where appropriate, decisions about enforcement action will involve consultation between, or approval from:

- Enforcement officer(s);
- Service managers/senior officers
- Solicitors from Legal Services

#### 5. Enforcement Action

- 5.1 'Enforcement action' includes any action taken by duly authorised enforcement officers aimed at ensuring that businesses or individuals comply with the law. It includes 'enforcement activities' such as advisory visits, inspections, licensing and assisting with compliance.

The normal approach towards formal enforcement action is outlined as follows:



All enforcement officers will be expected to adhere to the enforcement policy detailed herein in order to achieve consistent, balanced and fair enforcement and to co-operate in helping businesses and individuals to comply with the law.

In reaching enforcement decisions officers will consider all the relevant facts, evidence and circumstances.

## **6. Reporting to the Procurator Fiscal**

6.1 A prosecution report will normally only be submitted to the Procurator Fiscal regarding a business or individual, where one or more of the following criteria exists:

- Endangering the health, safety or wellbeing of people, animals or causing harm to the environment.
- Deliberately, negligently or persistently breaching legal obligations likely to cause material loss, harm or nuisance to others.
- Deliberately or persistently failing to act on, or comply with, previously issued formal warnings or notices, having been given reasonable opportunity to do so.
- There is a history of similar breaches and/or previous convictions.
- Assault or obstruction of an enforcement officer in the course of their duties.
- It is considered that the defendant will be unlikely to establish any relevant statutory defences.

6.2 A Prosecution report will only be prepared when the case has passed both the evidential test and the public interest test. The principles outlined below apply equally to the other types of enforcement action that are available:

- Evidential Test – the enforcement officer must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against an accused on each charge. A 'realistic prospect of conviction' is an objective test that means that the Procurator Fiscal, and ultimately the Sheriff, is more likely than not to convict the accused of the charge/s alleged.
- Public Interest Test - the public interest must be considered in each case where there is enough evidence to provide a 'realistic prospect of conviction'. Before submitting a report to the Procurator Fiscal consideration must be given to balance the factors for and against any proposed report 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 accused. Some factors may increase the need to submit a report to the Procurator Fiscal but others may suggest that another course of action would be more appropriate.

## **7. Deviation from Enforcement Policy and Monitoring**

7.1 Where an officer feels that enforcement action out with the scope of the policy is required in order to protect the health, safety or wellbeing of people, animals or the environment then this will be discussed with a senior officer. The outcome of this discussion will be recorded on the form in appendix A.

7.2 Senior officers will ensure that the requirements of the policy are being applied by enforcement officers.

## **8. Liaison with other Enforcement Agencies**

- 8.1 Where appropriate, enforcement activities within the various regulatory services will be co-ordinated with other enforcement agencies and local authorities to maximise the effectiveness of any enforcement activities.
- 8.2 Where an enforcement matter concerns a business premises or person(s) outwith the boundaries of West Lothian Council, or involves enforcement action by one or more other local authorities or agencies, where appropriate, all relevant authorities and agencies will be informed of the matter as soon as possible and all enforcement activity co-ordinated with them.
- 8.3 The teams/sections within Environmental Health & Trading Standards will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies.

## **9. Recovery of costs**

- 9.1 Where the consequences of enforcement activity leads to additional costs being incurred by West Lothian Council, it will seek to recover these costs as appropriate from the individual or business responsible.

## **10. Council Approval of Policy**

- 10.1 It a requirement to ensure that this policy document and any subsequent significant changes are agreed by Council. Changes to the enforcement guidance sections will not require approval by Council. This reflects the need to be able to apply nationally agreed legislative powers within the general policy framework.

## **11. Review of the Enforcement Policy**

- 11.1 The enforcement policy will be reviewed by environmental health and trading standards annually or, more frequently, when external changes dictate.

Approval Date: 26/02/2013

Enforcement Guidance Last Update: 06/10/2021

## ENFORCEMENT GUIDANCE SECTION

### Section 1 – Trading Standards

Enforcement Guide:

Trading Standards Enforcement Action may be taken in accordance with the following table.

<b>Enforcement Action</b>	<b>Conditions which would merit action or occasions when action would be considered most appropriate</b>
Inspection of premises	Business premises shall be assessed against the relevant premises risk assessment schemes which will, in turn, determine inspection frequencies.
Informal action	<p>Informal action to secure compliance with legislation includes offering verbal advice, verbal warnings, requests for action and the use of advisory letters.</p> <p>Circumstances appropriate for informal action include:</p> <ul style="list-style-type: none"> <li>• cases where the act or omission is not serious enough to warrant formal action;</li> <li>• cases where from the individual's/enterprise's past history, it can be reasonably expected that informal action will achieve compliance;</li> <li>• cases where confidence in management is high;</li> <li>• cases where the consequences of non-compliance will not pose a significant risk to public health and safety or detriment to the interests of consumers;</li> <li>• cases where some of the above criteria are not met, but where there may be circumstances in which informal action will be more effective than a formal approach.</li> </ul>
Statutory Notices and Warning Letters	<p>The use of statutory notices and warning letters shall in general be related to the risk to health or safety, or significant technical deficiencies. It will not be appropriate to use statutory notices for minor technical contraventions.</p> <p>Circumstances suitable for the use of statutory notices and warning letters include:</p> <ul style="list-style-type: none"> <li>• cases where there is significant contravention;</li> <li>• cases where there is a lack of confidence in the proprietor or enterprise to respond to an informal approach;</li> <li>• cases where there is a history of non-compliance with informal action;</li> <li>• cases where standards are generally poor with little management awareness of statutory requirements;</li> <li>• cases where the consequences of non-compliance could be potentially serious to public health or safety or result in significant detriment;</li> <li>• cases where, even if it is also intended to prosecute, effective action also needs to be taken as quickly as possible to remedy serious practices or deficiencies.</li> </ul>



Enforcement Orders	Consideration should be given to the use of Enforcement Orders through application to the civil courts for breaches of certain domestic and community infringements as specified in the Enterprise Act 2002. This should only be considered where the infringement harms the collective interests of consumers. Any decision to apply for an Enforcement Order does not preclude a recommendation to prosecute.
Penalty Charge Notices/ Fixed Penalty Notices	Penalty Charge Notices shall be issued where Warning Letters have failed to ensure compliance with: <ul style="list-style-type: none"> <li>• Housing (Scotland) Act 2006 - as it relates to the failure to possess/provide 'home reports'</li> <li>• Consumers, Estate Agents and Redress Act 2007 – as it relates to the failure to join an approved redress scheme.</li> </ul> Fixed penalty notices may be issued in respect of non – compliance with the Tobacco & Primary Medical Services (Scotland) Act 2010 – as it relates to the sale, purchase and display of tobacco or nicotine vapor products.
Prosecution	See <b>6. Reporting to the Procurator Fiscal</b> , within enforcement policy document.

## Section 2 – Animal Health & Welfare, Dog Warden & Animal Licensing

Enforcement Guide:

2.a. Animal health and welfare enforcement action may be taken in accordance with the following table.

<b>Enforcement Action</b>	<b>Conditions which would merit action or occasions when action would be considered most appropriate</b>
Inspection of farms and other premises	Farms and other business premises shall be assessed against the relevant risk assessment schemes which will, in turn, determine inspection frequencies.
Informal action	<p>Informal action to secure compliance with legislation includes offering verbal advice, verbal warnings, requests for action and the use of advisory letters, guidance notes or information sheets.</p> <p>Circumstances appropriate for informal action include:</p> <ul style="list-style-type: none"> <li>• cases where the act or omission is not serious enough to warrant formal action;</li> <li>• cases where from the individual's/enterprise's past history, it can be reasonably expected that informal action will achieve compliance;</li> <li>• cases where confidence in management is high;</li> <li>• cases where the consequences of non-compliance will not pose a significant risk to animal health and welfare or public health;</li> <li>• cases even where some of the above criteria are not met, but where there may be circumstances in which informal action will be more effective than a formal approach.</li> </ul>

Statutory Notices and Warning Letters	<p>The use of statutory notices and warning letters shall in general be related to the risk to animal health and welfare, public health, the outbreak of disease, or significant technical deficiencies. It will not be appropriate to use statutory notices for minor technical contraventions.</p> <p>Circumstances suitable for the use of statutory notices and warning letters include:</p> <ul style="list-style-type: none"> <li>• cases where there is significant contravention;</li> <li>• cases where there is a lack of confidence in the proprietor or enterprise to respond to an informal approach;</li> <li>• cases where there is a history of non-compliance with informal action;</li> <li>• cases where standards are generally poor with little management awareness of statutory requirements;</li> <li>• cases where the consequences of non-compliance could be potentially serious to animal health and welfare or public health;</li> <li>• cases where the consequences of non-compliance could result in the outbreak of disease; and</li> <li>• cases where, even if it is also intended to prosecute, effective action also needs to be taken as quickly as possible to remedy serious practices or deficiencies.</li> </ul>
Prosecution	See <b>6. Reporting to the Procurator Fiscal</b> , within enforcement policy document.

2.b. Dog control, dog fouling, straying and barking enforcement action may be taken in accordance with the following table.

<b>Enforcement Action</b>	<b>Conditions which would merit action or occasions when action would be considered most appropriate</b>
Advice	Given on every occasion.
Site visits / area monitoring	Following complaints and requests for service from customers. Identified problem areas for dog fouling and stray dogs.
Informal action	<p>Informal action to secure compliance with legislation includes offering verbal advice, verbal warnings, requests for action and the use of advisory letters.</p> <p>Circumstances appropriate for informal action include:</p> <ul style="list-style-type: none"> <li>• cases where the act or omission is not serious enough to warrant formal action;</li> <li>• cases where from the individual's past history, it can be reasonably expected that informal action will achieve compliance;</li> <li>• cases where informal action is deemed more appropriate and is able to produce a satisfactory resolution.</li> </ul>
Removal of stray dog	Any stray dog found out with the owners control in a public place.
Recovery of financial expenses and prescribed costs for removal of stray dogs	Where a stray dog has been removed and detained.

S.80 abatement notice – Environmental Protection Act 1990	Where there is excessive dog fouling being allowed to accumulate on private land and is deemed to be a statutory nuisance, or where statutory nuisance is deemed to exist or likely to occur, or recur in dog barking cases. Where complaints have been received and corroborated and informal action and warnings have not resolved the complaint.
Fixed penalty notice – Dog Fouling (Scotland) Act 2003.	Where an owner or person in charge of a dog allows the dog to foul in a public place and refuses to pick up the fouling when challenged by an officer, or is witnessed by another person failing to pick up the fouling.
Fixed penalty notice – Environmental Protection Act 1990	May be served, where abatement notice has not been complied with, as an appropriate alternative to a report being sent to the Procurator Fiscal.
Dog control notice – Control of Dogs (Scotland) Act 2010	Where a dog is out of control and exhibiting aggressive behaviour and an informal approach to control the dog fails, or the behaviour requires immediate action.
Destruction of dangerous and out of control dogs – Control of Dogs (Scotland) Act 2010.	Where a dog is deemed to be dangerous, and it would be inappropriate to consider a further notice or amendment to previous notice due to serious nature of threat.
Checking for compliant microchip – Microchipping of Dogs (Scotland) Regulations 2016	Where a dog has come to the attention of an officer whilst investigating other dog related matters, including, but not limited to an investigation in terms of the Control of Dogs (Scotland) Act 2010; stray dog investigation or follow up; and animal noise complaints.
Notice served on keeper of dog – Microchipping of Dogs (Scotland) Regulations 2016	Where an officer has identified that the keeper of the dog has failed to comply with the requirements of the regulations.
Removal of dog and implanting of compliant microchip, and cost recovery against keeper of the dog – Microchipping of Dogs (Scotland) Regulations 2016.	Where the keeper of the dog has failed to comply with the terms and requirements of a notice served on them.
Prosecution	See <b>6. Reporting to the Procurator Fiscal</b> , within enforcement policy document.

2.c. Animal establishment licensing enforcement action may be taken in accordance with the following table.

<b>Enforcement Action</b>	<b>Conditions which would merit the action or occasions when action would be considered most appropriate</b>
Advice	Given on every occasion
Inspections / site visits	Following receipt of licence application for a new establishment. On an annual basis for licensed establishments. Following receipt of a complaint or request for service regarding a licensed establishment.
Informal action	Informal action to secure compliance with legislation includes offering verbal advice, verbal warnings, requests for action, use of temporary conditions and the use of advisory letters.  Circumstances appropriate for informal action include: <ul style="list-style-type: none"> <li>cases where the act or omission is not serious enough to warrant formal action or be a significant danger to animal health and welfare;</li> </ul>

	<ul style="list-style-type: none"> <li>• cases where from the establishment's past history, it can be reasonably expected that informal action will achieve compliance;</li> <li>• cases where informal action is deemed more appropriate and is able to produce a satisfactory resolution.</li> </ul>
Reporting to other agencies	Where following an inspection or site visit concerns are highlighted regarding animal health and welfare issues.
Refusal / Removal of licences	Any establishment which fails to meet the requirements of the licensing legislation or licence conditions relevant to that establishment and by doing so increases the likelihood of harm to animal health and welfare. Any person failing to meet the requirements of the legislation to hold a licence.
Prosecution	See <b>6. Reporting to the Procurator Fiscal</b> , within enforcement policy document.

### Section 3 – Food Safety, Feed Safety and Private Water Supplies

Enforcement Guidance:

3.a. Food hygiene enforcement action may be taken in accordance with the following table.

<b>Enforcement action</b>	<b>Conditions which would merit action or occasions when action would be considered most appropriate.</b>
Advice	Given on every occasion.
Inspections / interventions	Inspections and other interventions are carried out in accordance with the Food Law Code of Practice (Scotland), and at a frequency determined by the appropriate hygiene inspection rating for the premises.
Inspection report differentiating between legal requirements and recommendations	Given on every formal planned inspection and further intervention.
Revisit or further intervention	Undertaken when the detailed inspection report indicates that significant contraventions relating to food safety (as opposed to minor offences) exist. Further interventions will also be carried out where premises are deemed not to be broadly compliant and, or, where a business requires further assistance in ensuring compliance. The inspection report will indicate under the heading 'proposed action' when the revisit will take place. Investigation of complaints or incidents notified to West Lothian Council.
Service of Hygiene Improvement Notice	Normally when one or more of the criteria below apply: <ul style="list-style-type: none"> <li>• Where such action is proportionate to the risk to public health.</li> <li>• Where the history of the premises indicates a record of non-compliance with breaches of food hygiene or food processing regulations.</li> <li>• Where the enforcing officer is not entirely confident that an informal approach will be successful, or where an informal approach has failed on the previous inspection.</li> </ul>

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	<b>And</b>
	Where the enforcing officer is satisfied that there would be sufficient evidence to present a case to the Procurator Fiscal.
Remedial action notice	Significant or continuous breach of hygiene conditions in food establishment. Failure to comply with requirements of other enforcement notices. Obstruction of officers in carrying out duties and attempts to hamper officer in carrying out duties e.g. by providing false or misleading information.
Service of Hygiene Emergency Prohibition Notice. (HEPN)	Where imminent risk of injury to health exists and accepting the food business operator's offer of a voluntary closure is not considered appropriate.
Prosecution.	See <b>6. Reporting to the Procurator Fiscal</b> , within enforcement policy document.

3.b. Food standards enforcement action (following inspections, complaints and sampling) may be taken in accordance with the following table.

<b>Enforcement action</b>	<b>Conditions which would merit action or occasions when action would be considered most appropriate.</b>
Advice	Given on every occasion.
Inspections / interventions	Inspections and other interventions are carried out in accordance with the Food Law Code of Practice (Scotland), and at a frequency determined by the appropriate food standards inspection rating for the premises.
Inspection report differentiating between legal requirements and recommendations	Given on every formal planned inspection and further intervention.
Warning / Advisory Letter	Food complaint which does not warrant reporting to the Procurator Fiscal. Failed informal sample.
Revisit or further intervention	Undertaken when the detailed inspection report indicates that a legal requirement relating to food standards (as opposed to minor offences) has been contravened. Further interventions will also be carried out where premises are deemed not to be broadly compliant, and, or where business requires further assistance in ensuring compliance. The inspection report will indicate under the heading 'proposed action' when the revisit will take place. Investigation of complaints or incidents notified to West Lothian Council.
Prosecution.	See <b>6. Reporting to the Procurator Fiscal</b> , within enforcement policy document.

3.c. Notwithstanding enforcement actions above (3.a., 3.b.), the following action may be taken in accordance with the following table.

<b>Enforcement action</b>	<b>Conditions which would merit action or occasions when action would be considered most appropriate.</b>
Refusal to approve an establishment in accordance with Regulation (EC) 853/2004.	Establishment fails to meet the necessary hygiene and management controls required in legislation.
Revocation of establishment approval.	Continued serious breaches of hygiene and safety requirements. Service of Hygiene Emergency Prohibition Notice.
Seizure and detention of food	Food which has been certified as not being produced or processed in line with hygiene regulations. Food which is deemed to be unfit or unsafe. Food which has been illegally imported from a third country.
Report to Administration Licensing Section / Licensing committee	Street trader operating out-with the terms of the Street Traders Licence. Report to the Procurator Fiscal resulting in successful conviction of a premises holding a late hours catering licence.

3.d. Food hygiene and standards enforcement in West Lothian Council operated premises.

The Food Law Code of Practice (Scotland) states:

*The Food Authority's food law Enforcement Policy should detail the Food Authority's arrangements for ensuring compliance with food law in premises where the Food Authority is itself the proprietor of a food business and the steps taken to ensure enforcement decisions are free from any conflict of interest.*

*Any breaches of food law that may be detected in such establishments should be brought to the attention of the Chief Executive, without delay.*

*Contract caterers that operate within local authority premises should be assessed in accordance with the code and be inspected accordingly.*

With regards to West Lothian Council establishments action may be taken in accordance with the following table.

<b>Enforcement action</b>	<b>Conditions which would merit the action or occasions when action would be considered most appropriate.</b>
Advice	Given on every occasion.
Inspections / interventions	Inspections and other interventions are carried out in accordance with the Food Law Code of Practice (Scotland), and at a frequency determined by the appropriate hygiene and food standards inspection rating for the premises.
Inspection report differentiating between legal requirements and recommendations	Given on every formal planned inspection and further intervention.
Revisit or further intervention	Undertaken when the detailed inspection report indicates that significant contraventions relating to food safety (as opposed to minor offences) exist. Further interventions will also be carried out where premises are deemed not to be broadly compliant, and, or where a business requires further assistance in ensuring compliance. The inspection report will indicate under the heading 'proposed

	<p>action' when the revisit will take place.</p> <p>Investigation of complaints or incidents notified to West Lothian Council.</p>
Report to service manager	<p>Where a routine inspection or other visit identifies no issues or only minor issues of non – compliance with food safety matters the normal reporting mechanism will continue. A copy of the report will be left on site with a further copy sent to the appropriate manager for the service. Each service area will have identified the members of staff and management they wish correspondence to be sent to. All such individuals should be in a position to ensure appropriate action is taken, if required, following an inspection by officers from environmental health.</p>
Report to CEO and Depute Chief Executive	<p>Where significant contraventions or continued issues of non – compliance are identified, these matters will be brought directly to the attention of the Chief Executive and appropriate Depute Chief Executive. A timeframe for compliance will be identified in this notification. The appropriate staff and management of the affected service will also be included in this notification. Before notification is made the matter will have been fully discussed with the Environmental Health Manager.</p> <p>When the timeframe for compliance has expired a further visit will be made by officers from environmental health to assess compliance. If the matters have been addressed this will be confirmed in writing to the Chief Executive and appropriate Depute Chief Executive. Equally, if the matter has not been addressed this will be confirmed in writing.</p>

3.e. Private water supplies enforcement action may be taken in accordance with the following table.

<b>Enforcement action</b>	<b>Conditions which would merit action or occasions when action would be considered most appropriate.</b>
Advice	Given on every occasion.
Site visits and sampling	Type A supplies will be visited and sampled in accordance with requirements of the private water supply legislation.
Warning / Advisory Letter	When water quality fails microbiological and chemical parameters required by legislation and corrective action is required to protect public health.
Formal action and notice	<p>Considerations likely to give rise to the service of notice are serious breach of water quality and safety, having regard to:</p> <ul style="list-style-type: none"> <li>▪ consultation with the Consultant in Public Health Medicine or appointed Medical Officer of Health;</li> <li>▪ linked or direct cause of illness;</li> <li>▪ historic data showing poor standard of compliance;</li> <li>▪ whether it is reasonable to serve the Notice;</li> <li>▪ whether a temporary departure under the 2006 Regulations can be granted;</li> <li>▪ improvements carried out to the supply and the time taken for these to be done;</li> <li>▪ poor condition of the supply giving rise to a risk to public health;</li> <li>▪ details of relevant person(s) and any legal agreements;</li> <li>▪ Class (Type/Level) of supply/tenure/type of premises;</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Lack of co-operation shown by the relevant person(s) and users of the supply;</li> <li>▪ availability of alternative supplies and the public mains; and</li> <li>▪ requirements of other legislation.</li> </ul>
Further investigations and monitoring	Where further involvement is required to ensure that steps are being taken to protect public health, and or improve water quality and safety.
Prosecution	See <b>6. Reporting to the Procurator Fiscal</b> , within enforcement policy document.

## Section 4 – Public Health, Housing, Pollution and Pests

Enforcement Guide:

4.a. Public health statutory nuisance enforcement action may be taken in accordance with the following table.

<b>Enforcement action</b>	<b>Conditions which would merit action or occasions when action would be considered most appropriate.</b>
Informal action	<p>Informal action to secure compliance includes offering verbal advice, verbal warnings, requests for action and the use of advisory letters.</p> <p>Such circumstances include:</p> <ul style="list-style-type: none"> <li>▪ Cases where the level of nuisance is not established as statutory but advice is required to prevent circumstances deteriorating further.</li> <li>▪ Cases where the consequences of non – compliance will not pose a significant or immediate risk to public health.</li> <li>▪ Cases where previous compliance has been established by informal means and this will be more effective than formal approach.</li> </ul>
Statutory notice – S.80 Environmental Protection Act 1990	<p>Informal approach has failed to ensure compliance and a statutory nuisance exists, is likely to occur, or recur.</p> <p>Informal approach is considered inappropriate to ensure compliance and a statutory nuisance exists, is likely to occur, or recur.</p> <p>Where immediate resolution is required and formal action is necessary to allow the council to take intervention measures</p>
Works in default of S80 Notice and recovery of costs.	At the discretion of West Lothian Council works can be carried out to remove statutory nuisance if the notice period has expired.
Fixed penalty notices – Environmental Protection Act 1990.	<p>May be served, where abatement notice has not been complied with, as an appropriate alternative to a report being sent to the Procurator Fiscal. Failure to accept alternative sanction within the statutory period will remove this option and will result in prosecution being considered.</p> <p>Notices will not be offered where the cost of resolving the matter is likely to be more than the value of the fixed penalty or where prosecution is clearly in the public interest.</p>
Public health (Scotland) Act 2008 – notices and powers for disinfection, disinfestations, decontamination of premises and things, and destruction	Where there is deemed to be a risk to public health from infectious disease or contamination from a premises or anything in or on premises, and the informal approach has not been successful or the risks determine more immediate formal action.

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of things.	
Fixed penalty notices – Public Health (Scotland) Act 2008 – Section 105	Where an operator has failed to comply with the requirements of the legislation in regard to sunbeds informally – section 95, 98, 100 and 101 of the act.
Prosecution.	See <b>6. Reporting to the Procurator Fiscal</b> , within enforcement policy document.

4.b. Noise pollution / nuisance enforcement action may be taken in accordance with the following table.

<b>Enforcement action</b>	<b>Conditions which would merit action or occasions when action would be considered most appropriate.</b>
Informal action	<p>Informal action to secure compliance includes offering verbal advice, verbal warnings, requests for action and the use of advisory letters. Such circumstances include:</p> <ul style="list-style-type: none"> <li>▪ cases where the level of nuisance is not established as statutory but advice is required to prevent circumstances deteriorating further;</li> <li>▪ cases where the consequences of non – compliance will not pose a significant or immediate risk to public health;</li> <li>▪ cases where previous compliance has been established by informal means and a reasonable time period has elapsed since previous problem; and</li> <li>▪ cases where informal procedure must be followed before taking formal action e.g. dealing with audible intruder alarms of property and vehicles.</li> </ul>
Statutory notice – S.80 Environmental Protection Act 1990	<p>Informal approach has failed to ensure compliance and a statutory nuisance exists, is likely to occur, or recur.            Informal approach is considered inappropriate to ensure compliance and a statutory nuisance exists, is likely to occur, or recur.            Where immediate resolution is required and formal action is necessary to allow the council to take intervention measures</p>
Fixed penalty notices – Environmental Protection Act 1990.	<p>May be served, where an abatement notice has not been complied with, as an appropriate alternative to a report being sent to the Procurator Fiscal. Failure to accept alternative sanction within the statutory period will remove this option and will result in prosecution being considered.</p> <p>In cases of recurrence of noise nuisance for each time conditions of notice are breached. This will be up to a maximum of three occasions at which time further breaches may also result in a report to the Procurator Fiscal where prosecution is deemed to be in the public interest.</p> <p>Notices will not be offered where the cost of resolving the matter is likely to be more than the value of the fixed penalty or where prosecution is clearly in the public interest.</p>
Prosecution.	See <b>6. Reporting to the Procurator Fiscal</b> , within enforcement policy document.

4.c. Housing standards and defective buildings enforcement action may be taken in accordance with the following table.

Enforcement action	Conditions which would merit action or occasions when action would be considered most appropriate.
Informal action	<p>Informal action to secure compliance includes offering verbal advice, verbal warnings, requests for action and the use of advisory letters. Such circumstances include:</p> <ul style="list-style-type: none"> <li>▪ cases where the level of problem is not established as risk to public health or safety but advice is required to prevent circumstances deteriorating further;</li> <li>▪ cases where encouraging a collaborative approach by owners may realistically avoid the need for formal action and intervention;</li> <li>▪ cases where the consequences of non – compliance will not pose a significant or immediate risk to public health; and</li> <li>▪ cases where previous compliance has been established by informal means and this will be more effective than formal approach.</li> </ul>
Works notice	<p>Circumstances where a domestic dwelling is substandard, as defined by S68 of the Housing Scotland Act 2006. This includes:</p> <ul style="list-style-type: none"> <li>• failure to meet the tolerable standard requirements of the Housing (Scotland) Act 1987 and 2006,</li> <li>• is in a state of serious disrepair,</li> <li>• it is likely to deteriorate rapidly into a serious state of disrepair, or</li> <li>• it will damage other premises</li> </ul>
Closing order	<p>Circumstances where a domestic dwelling fails to meet the tolerable standard requirements of the Housing (Scotland) Act 1987 and 2006, and is in such a state that Works Notices, Defective Building Notices or action under the Environmental Protection Act is not considered appropriate.</p> <p>This would apply to a house which forms only part of a building, and the building does not comprise only houses which do not meet the tolerable standard.</p>
Demolition order	<p>Circumstances where a domestic dwelling fails to meet the tolerable standard requirements of the Housing (Scotland) Act 1987 and 2006, and is in such a state that Works Notices, Defective Building Notices or action under the Environmental Protection Act is not considered appropriate.</p> <p>This would apply only to a building which is a single dwelling or contains a majority of homes not meeting the tolerable standard.</p>
Defective Building Notice	<p>Where there are <i>'defects which require rectification in order to bring the building into a reasonable state of repair having regard to its age, type and location'</i></p>
Statutory notice – S.80 Environmental Protection Act 1990	<p>Informal approach has failed to ensure compliance and a statutory nuisance exists, is likely to occur, or recur.</p> <p>Informal approach is judged to be unlikely to ensure compliance and a statutory nuisance exists, is likely to occur, or recur.</p> <p>Where immediate resolution is required and formal action is necessary to allow the council to take intervention measures, for example burst pipes.</p>
Section 87(3) of the Civic Government (Scotland) Act 1982	<p>Where the the problem is of an 'emergency' nature and it is detrimental to another property.</p>
Works in default and recovery of costs	<p>Works in default may be considered appropriate in circumstances where the terms of certain notices have not been</p>

	complied with. Circumstances may also include emergency access to a property to effect repair.
Prosecution.	See <b>6. Reporting to the Procurator Fiscal</b> , within enforcement policy document.

4.d. Vehicle pollution and idling enforcement action may be taken in accordance with the following table.

<b>Enforcement action</b>	<b>Conditions which would merit the action or occasions when action would be considered most appropriate.</b>
Informal action	<p>Informal action to secure compliance includes offering verbal advice, verbal warnings, requests for action and the use of advisory letters. Such circumstances include:</p> <ul style="list-style-type: none"> <li>▪ cases where vehicles emissions are outwith legal parameters and the owner has sought assistance to make improvements;</li> <li>▪ drivers of idling vehicles are co – operative when approached by officers;</li> <li>▪ campaigns to maximise awareness of damage caused by vehicle emissions (including ongoing advertising and establishment of phone and text lines (wee system)).</li> <li>▪ offering free vehicle emissions checks;</li> <li>▪ establishment of system to work with bus companies to reduce the amount of idling carried out by buses;</li> <li>▪ liaison with schools over the four partnership areas to reduce vehicle idling outside schools;</li> <li>▪ all idling complaints dealt with ensuring all parties involved understand the legal and social reasons behind the campaign and a line of communication opened for use in the future;</li> <li>▪ “hotspots” established in all partnership areas (these are monitored regularly and action taken when vehicles found idling);</li> <li>▪ ongoing monitoring of taxis, haulage and council vehicles with action being taken where necessary. Good working relationship established with management and drivers where possible; and</li> <li>▪ switch off signs erected at known problem locations and where authority is given for their use.</li> </ul>
Fixed penalty notices	<p>Where vehicle users, following informal contact, in declared Air Quality Management Areas fail to switch off and continue idling (and exemptions do not apply). (This will not apply in other areas unless decision is taken by Council to pursue this course of action).</p>
Report to the traffic commissioner	<p>The Traffic Commissioner receives a copy of the “East Central Scotland Vehicle Emissions Partnership” annual report and is aware of the campaign.</p>

4.e. Pest control enforcement action may be taken in accordance with the following table.

<b>Enforcement action</b>	<b>Conditions which would merit the action or occasions when action would be considered most appropriate.</b>
Informal action	Informal action to secure compliance includes offering verbal

	<p>advice, verbal warnings, requests for action and the use of advisory letters. Such circumstances include:</p> <ul style="list-style-type: none"> <li>▪ cases where the consequences of non – compliance will not pose a significant or immediate risk to public health; and</li> <li>▪ cases where previous compliance has been established by informal means and this will be more effective than formal approach.</li> </ul>
Formal notices – Prevention of Damage by Pests Act – rats and mice	<p>Where informal approach has failed to secure appropriate action by landowner or occupier to remove rats and mice. An infestation which poses a significant or immediate risk to public health.</p>
Works in default	<p>Where landowner or occupier has failed to comply with the requirements of the formal notice and work is required by West Lothian Council to remove the problem. The completion of work remains at discretion of West Lothian Council.</p>

4.f. Caravan and mobile home sites with permanent residents enforcement action may be taken in accordance with the following table.

<b>Enforcement action</b>	<b>Conditions which would merit the action or occasions when action would be considered most appropriate.</b>
Informal action	<p>Informal action to secure compliance includes offering verbal advice, verbal warnings, requests for action and the use of advisory letters. Such circumstances include:</p> <ul style="list-style-type: none"> <li>• Minor issues of non-compliance with legal requirements, where no previous warning given.</li> <li>• Issues of minor non-compliance with site licence conditions, where no previous warning given.</li> </ul>
Refusal of site licence and renewal of licence application.	<p>Where there is a failure to meet the fit and proper person requirements to hold a site licence or operate as site management.</p>
Improvement notices	<p>Where there is a failure to meet site licence conditions and previous warnings have been issued.</p>
Penalty notices	<p>Where there is a failure to comply with an improvement notice served in regard to the site. Where the site is operating without a licence.</p>
Licence revoked	<p>The factors to be considered would include:</p> <ul style="list-style-type: none"> <li>• any enforcement action taken;</li> <li>• the seriousness of any breaches of licence conditions;</li> <li>• the site licence holder, or site manager's, behaviour on a site, including any reports of threatening or intimidating behaviour to residents, local authority officers, or others; and</li> <li>• persistent failures to address the site licence conditions breaches, or to co-operate with local authority officers investigating such breaches.</li> </ul>
Establishing interim arrangements for site management	<p>Where a site is without management through enforcement action or other reasons.</p>
Emergency action	<p>Where the licence holder is failing, or has failed, to comply with a site licence condition and as a result of that failure there is "an imminent risk of serious harm to the health and safety of any</p>

	person who is or may be on the land”.
Prosecution	See <b>6. Reporting to the Procurator Fiscal</b> , within enforcement policy document.

## Section 5 – Workplace Safety, Smoking in public places.

Enforcement Guide:

5.a. Workplace safety enforcement action may be taken in accordance with the following table.

<b>Enforcement action</b>	<b>Conditions which would merit the action or occasions when action would be considered most appropriate.</b>
Advice	Given on every occasion.
Inspections / interventions	Inspections and other interventions are carried out in accordance with guidance on inspection ratings and inspection frequencies. Focused inspections of premises as part of national and local projects to improve health and safety.
Inspection report and written advice	Given on every formal planned inspection.
Revisit or further intervention	Undertaken when the detailed inspection report indicates that significant contraventions relating to health and safety (as opposed to minor offences) exist. The inspection report will indicate under the heading 'proposed action' when the revisit will take place. Investigation of complaints or accidents notified to West Lothian Council.
Improvement Notice	Prior to service notice will be assessed in line with Enforcement Guide (Scotland). Normally when one or more of the criteria below apply: <ul style="list-style-type: none"> <li>• where such action is proportionate to the risk to public health;</li> <li>• where the history of the premises indicates a record of non-compliance with breaches of health and safety legislation; and</li> <li>• where the enforcing officer is not entirely confident that an informal approach will be successful, or where an informal approach has failed on the previous inspection.</li> </ul> <p style="text-align: center;"><b>And</b></p> Where the enforcing officer is satisfied that there would be sufficient evidence to present a case to the Procurator Fiscal.
Prohibition Notice.	Prior to service notice will be assessed in line with Enforcement Guide (Scotland). Circumstances which are found to present a risk of serious personal injury.
Prosecution.	Reports to the Procurator Fiscal will be prepared in line with the Enforcement Guide (Scotland) and <b>6. Reporting to the Procurator Fiscal</b> , within enforcement policy document.

5.b. Smoking in public places enforcement action may be taken in accordance with the following table.

<b>Enforcement action</b>	<b>Conditions which would merit the action or occasions when action would be considered most appropriate.</b>
Advice	Given on every occasion
Inspections / interventions	Inspections and other interventions are carried out in accordance with annual inspection programme. Carried out in conjunction with other visits to premises by Environmental Health & Trading Standards enforcement officers.
Informal action	Informal action to secure compliance includes offering verbal advice, verbal warnings, requests for action and the use of advisory letters. Such circumstances include: <ul style="list-style-type: none"> <li>▪ premises has not been subject to visit before and legislative breaches do not involve people smoking in the premises.</li> </ul>
Formal action – fixed penalty notices	Served where informal approach is not appropriate. Such circumstances include: <ul style="list-style-type: none"> <li>▪ informal action has been taken previously and non – compliance continues; and</li> <li>▪ evidence of individuals smoking or being permitted to smoke in public place.</li> </ul>
Prosecution.	See <b>6. Reporting to the Procurator Fiscal</b> , within enforcement policy document.

## **Section 6 - Internal enforcement arrangements (non food) for council operated sites, establishments and activities.**

Enforcement Guide:

Environmental health and trading standards may take action in relation to sites, establishments and activities operated by West Lothian Council in accordance with the following table.

<b>Enforcement action</b>	<b>Conditions which would merit the action or occasions when action would be considered most appropriate.</b>
Informal notification / guidance	Given on every occasion. Where concerns are received which do not merit further investigation or action the appropriate service manager and site manager will be notified. Where concerns are justified and are likely to be considered, or are considered, to breach legal obligations the service manager and site manager will be notified (no previous notifications having been given). The notification will set out the details of the potential breach and, where appropriate, will contain guidance on how the matter might best be addressed.
Report to service manager / head of service	Where the initial informal notification of the potential breach of legal obligations has failed to resolve concern, or where there is a potentially serious breach requiring prompt resolution (e.g. significant noise levels, housing disrepair impacting living

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	<p>conditions etc.) but not meriting the service of statutory notice at this point (if equivalent situation occurred in non – council setting), the matter will be escalated to the Service Manager and the Head of Service. The notification will set out the details of the potential breach and, where appropriate, will contain guidance on how the matter might best be addressed together with details of engagement up to that point with the service manager and site manager.</p>
<p>Report to CEO and Depute Chief Executive</p>	<p>Where significant contraventions or continued issues of serious non – compliance are identified, these matters will be brought to the attention of the Chief Executive and the appropriate Depute Chief Executive. This is effectively the same as serving a statutory notice. A timeframe for compliance will be identified in this notification. The appropriate staff and management of the affected service will also be included in this notification. Before notification is made the matter will have been fully discussed with the Environmental Health Manager or Trading Standards Manager.</p> <p>When the timeframe for compliance has expired a further visit will be made by officers from environmental health and trading standards to assess compliance. If the matters have been addressed this will be confirmed in writing to the Chief Executive and the appropriate Depute Chief Executive. Equally, if the matter has not been addressed this will be confirmed in writing.</p>
<p>Notification / communication with customer / individuals impacted</p>	<p>There will be ongoing communication with customers / individuals throughout investigations as is appropriate.</p> <p>If the internal arrangements for securing compliance have been exhausted within timescales established and matters remain unresolved, customers will be advised to pursue a private action and / or to pursue a formal complaint via the council’s customer complaints procedure.</p>

## Appendix A

## Reasons for deviating from enforcement policy

Premises -
Location –
Summary of matters which require enforcement action.
Summary of matters, including corrective actions, which would suggest the enforcement activity outlined in the Policy was inappropriate in this instance.
Agreed Course of action between officer and Principal Officer.
Inspecting officer (signed) Senior Officer (signed) Date