



Community and Enterprise Resources

Environmental Services

Enforcement Guidance

January 2016

If you need this information in another language or format, please contact us to discuss how we can best meet your needs.

Phone: 0303 123 1015

Email: equalities@southlanarkshire.gov.uk

1. **Purpose of this guidance**

This guidance has been prepared to explain how we will use enforcement action. It aims to:

- make clear what enforcement action we can take, and under what circumstances different types of enforcement action might be appropriate;
- give an overview of what to expect and the options available to any person against whom we take enforcement action.

This guidance is directed at any person (including a business) carrying on any activity where we are the enforcing authority. In this document this person is referred to as the responsible person and includes a very wide range of activities and people.

In addition this guidance supports our enforcement policy and aligns with the Scottish Regulators' Strategic Code of Practice.

2. **Background**

Our role, as a regulator, is to protect public health and safety, the environment and the wellbeing of people in South Lanarkshire and benefit the economy by regulating local businesses.

Where a responsible person causes, or risks causing, harm or fails to comply with the conditions of their authorisation or legislative requirements, or fails to obtain an authorisation we need to be able to take action to rectify this. Ideally, we would seek to work with a responsible person and use advice and guidance to achieve our enforcement outcomes. However, there are situations when this type of partnership approach will not secure our desired enforcement outcomes and another form of enforcement action is appropriate from the outset.

Environmental Services' enforcement policy on the use of enforcement action

Our Enforcement Policy sets out our approach to enforcement. The Policy is underpinned by the better regulation principles, which are that regulatory functions should be exercised in a way that is:

- proportionate;
- consistent (fairness and legal correctness);
- transparent;
- accountable;
- targeted (efficient, effective and evidence based).

These principles and the principle of taking a timely approach, form the foundations of our approach to enforcement and this guidance.

3. **Our approach to enforcement**

Regulation is about changing behaviour in a way that generates positive outcomes for the environment, communities and the economy. In individual cases where we identify non-compliance the enforcement outcomes we seek to achieve are:

- to secure compliance with regulatory requirements and bring the activity under regulatory control and stop offending;
- to stop harm or reduce the risk of harm to an acceptable level;
- to restore or remediate the harm caused by regulatory non-compliance, where appropriate;
- to deter future non-compliance and re-offending.

4. Who can action be taken against

Where an offence has been committed or harm caused by a responsible person carrying on any activity where we are the enforcing authority, we may take enforcement action against the responsible person. In general, employers are responsible for the actions of their employees and would be considered as a responsible person where non-compliance is the result of their employees' actions.

If an investigation identifies a number of persons who are responsible for having committed an offence or offences, and we have enough evidence to take action against each responsible person, we may progress multiple actions.

Other examples of when someone is a responsible person include where an offence has been committed by:

- A company in circumstances where its directors have also committed an offence. We may take action against each of the responsible directors who has committed an offence.
- A firm or partnership, in circumstances where individual partners have also committed an offence. We may take action against each of the responsible partners who has committed an offence as well as or instead of the firm or partnership.
- An unincorporated association, in circumstances where its governing body or management committee, office bearers and/or members have also committed an offence. We may take action against each of the responsible members who has committed an offence as well as, or instead of, the association.

In summary, for any offence:

- We may take action against each of the responsible persons who have committed an offence.
- We may take the same or a different enforcement action or impose the same or a different penalty on each of the responsible persons who have committed an offence. This is to reflect any difference in the behaviour of the different parties involved.

In practice, this approach could result in actions being taken against company directors and the company itself for the same offence.

5. How Environmental Services determines which enforcement action is appropriate

Having first taken any immediate action to protect public health, the environment or the economy we will collect the facts and/or evidence about the offence before making a decision on what enforcement action(s) may be appropriate.

The form of enforcement action which we use will differ depending on:

- the enforcement outcome(s) we are seeking to achieve; and
- the significance of the offence, which is dependent on several enforcement factors.

The enforcement decision making section (section 6) describes how we make enforcement decisions systematically and consistently and how enforcement decisions are made.

If we have used enforcement action to deal with an offence but this fails to change behaviour and the offending is repeated or continues, or an additional offence has been committed, we will consider all the available enforcement actions

in deciding the appropriate action to take next. However, it is unlikely we would use the same type of enforcement action, if this has previously failed to change behaviour.

Also, if we identify a referral to Crown Office and Procurator Fiscal Service (COPFS) for consideration of prosecution as the most appropriate enforcement action for repeat or additional offending we may refer the matter to COPFS even if we have used other enforcement options to deal with a similar previous offence or a different offence.

6. Enforcement decision making

6.1 Choosing what enforcement action we will take

For any non-compliance, our priority will be to identify whether, and if so what, immediate action is needed to protect the public health and safety, the environment or the economy. If any immediate action is needed we will take action to ensure the responsible person is clear what steps they must take. In some circumstances we may take steps ourselves to ensure the communities, environment and economy are protected.

When we identify potential non-compliance we undertake an investigation, appropriate to the circumstances, to collect the available evidence regardless of what any eventual enforcement action may be. Any enforcement action we take must be supported by sufficient evidence.

Having identified through investigation that offending has occurred, in general we seek to achieve a change in behaviour to prevent future offending or harm. In each individual case where we identify offences, the enforcement outcomes we seek to achieve are one or more of the following:

- to secure compliance with regulatory requirements designed to protect and improve public health, the environment or the economy and bring the activity under regulatory control and stop offending;
- to stop harm or reduce the risk of harm to an acceptable level;
- restore or remediate the harm caused by regulatory non-compliance, where appropriate;
- to deter future non-compliance and re-offending.

For any non-compliance there may be a number of different enforcement outcomes we want to achieve. We will then identify what enforcement action is required to secure the desired enforcement outcome(s).

In deciding which action to take we consider how effective that action will be at achieving our desired outcome(s) alongside the significance of the offending using our enforcement factors. Deciding on the right enforcement action is not simply about applying a set of prescriptive rules that determine the type of enforcement action depending on the number of factors involved. Using the facts and/or evidence we will decide how important each factor is in the circumstances of each case.

By taking into account all these factors and how effective enforcement action is expected to be in the individual circumstances, we will be able to make an informed and reasoned judgement about which enforcement action(s):

- is most likely to produce the desired outcome(s)
- is proportionate to the significance of the offending.

In any event and taking into account all the circumstances of the case, we must be satisfied that whatever action we take is reasonable.

We will consider which enforcement action, or combination of actions, would best change behaviour in light of the responsible person's behaviour towards the offence.

If the responsible person provides us with the details of an offence voluntarily or through a self-reporting mechanism then we may consider that advice and guidance might be an appropriate response – depending on other factors.

However, if the responsible person is uncooperative with the investigation or remediation then we may consider that advice and guidance is unlikely to change behaviour - depending on the other factors - and another type of enforcement action is needed.

6.1. What are the enforcement factors

To determine what enforcement action, or combination of actions, is most appropriate or proportionate to secure the outcome(s), we will review the facts and/or evidence against our enforcement factors. In all cases we will consider:

- intent;
- foreseeability;
- impact;
- financial implications;
- deterrent effect;
- previous history.

However, this is not an exclusive list and depending on the particulars of an individual case other factors may need to be considered.

In general terms the more significant the impact, the greater the scale of the offending and/or the more deliberate the behaviour, the more likely it is that the appropriate form of enforcement action is a referral to COPFS for consideration of prosecution.

6.2.1. Intent

We will consider the following questions to help determine the level of intent:

- Was the offence committed deliberately, recklessly or with negligence?
- Was any false or misleading information provided?
- Has the responsible person cooperated fully and helpfully with our investigation?
- Was the responsible person aware of their legal obligations i.e. have they had correspondence, information or previous warnings or discussion?
- Was the offence the result of a genuine accident or exceptional events?

Where an offence was committed as a result of an accident or a genuine mistake this is less likely to result in referral to COPFS for consideration of prosecution.

6.2.2. Foreseeability

Here, we will consider the following questions:

- Could the circumstances leading to the offence reasonably have been foreseen?
- Was the responsible person aware of the hazards associated with the activity, and the preventative measures that might have been taken?
- Were preventative measures taken or not taken?
- Where the circumstances could have reasonably been foreseen we will normally apply a form of enforcement action beyond advice and guidance or the issuing of a warning.

6.2.3. Impact

There are three aspects that we will consider here:

- The extent and significance of the potential and/or actual harm to people, the environment and/or the economy.
- Whether steps have been taken to mitigate any harm or remediate and restore situation.
- Whether the offending impacts on our ability to be an efficient and effective regulator, for instance where our staff are seriously obstructed in the conduct of their duties.

Where the harm caused is significant or there is serious obstruction we would normally refer the offence to COPFS for consideration of prosecution.

6.2.4. Financial implications

We will ask the following questions when determining the level of financial benefit:

- Is legitimate business being disadvantaged?
- Has revenue accrued or have costs been avoided, such as costs saved by not obtaining an authorisation?

If the responsible person has sought to gain a financial benefit we will normally consider a referral to COPFS for consideration of prosecution.

There may be other cases where there is a broader economic impact e.g. on the local community, local and other private businesses, disruption to public services or infrastructure. We will take this into account when considering the appropriate enforcement action.

5 6.2.5. Deterrent effect

We will consider the deterrent effect, both on the responsible person and others, when choosing which form of enforcement action is most appropriate.

6 6.2.6. Previous history

We will consider how well the responsible person has responded to advice and guidance, or other enforcement actions that we have taken in the past.

We will also take into account the degree of previous offending (including site-specific offending or previous offending by the responsible person (or companies/directors associated with that person) at other sites) and any evidence of wider criminality.

We will also have regard to the outcome of any previous enforcement actions taken against the responsible person.

We will also take into account the general attitude of the responsible person towards meeting their regulatory obligations. For example, in the past has the responsible person worked proactively and constructively with Environmental Services?

Where offending has continued or been repeated, despite us taking enforcement action, we will normally change our enforcement response to pursue a more effective course of enforcement action.

6.3. The types of enforcement action available

The form of enforcement action, or combination of enforcement actions, which we use to achieve our enforcement outcomes, will differ depending on the nature of the non-compliance, the harm caused and the compliance history of the responsible person in

question. We will also consider what immediate action is needed to protect public health, the environment and the economy. How we decide what enforcement action is needed is described in the enforcement decision making section of this guidance.

6.4. The enforcement action we might take

The following section identifies the different enforcement actions that are available for us to initiate. An overview of the circumstances in which their use may be appropriate is included. It should be noted that this is not a hierarchy of enforcement actions or a series of sequential enforcement steps. We will take whatever action is the most appropriate to achieve our outcomes and to change behaviour. Also, we are not limited to choosing one type of enforcement action and that in some circumstances a combination of enforcement actions may be required.

6.4.1. Informal action

Advice and guidance will usually be appropriate on its own where a change in behaviour will result from giving the responsible person a better understanding of what needs to be done to comply with environmental obligations. We will provide advice and guidance to inform and raise awareness and where it is the most appropriate action to achieve our desired outcome(s).

Considerations: -

- The Act or omission is not serious enough to warrant formal action.
- There is sufficient confidence in the proprietor, manager or other agent of the business to ensure that all matters will be corrected and no evidence of deliberate, repeat or continued offending.
- Consequences of non-compliance do not pose a significant risk to consumers, the general public, health and safety, legitimate businesses or the environment.

6.4.2. Verbal advice/warnings

Informal action may be given by verbal instruction and the officer will indicate a reasonable timescale for corrective action. Verbal advice that is given, will be recorded on our database.

Advisory Letters/Inspection Reports will be kept on record and will be followed up by the issuing Officer to ensure that remedial action has been undertaken when appropriate.

Advisory Letters/Inspection Reports will give clear and precise legislative advice to recipients and will contain timescales for compliance where appropriate.

Written information given to businesses/individuals will:

- Contain all information necessary to allow recipients to understand what is required and why it is necessary
- Indicate the legislation which maybe being contravened and give guidance on compliance with legal requirements and the timescale for rectification.
- Clearly indicate where guidance is purely recommendations, i.e. a code of practice requirement as opposed to a strict legal obligation.
- Indicate that other means of achieving the same effect may be chosen.

6.5. Final warning letters

6.5.1. What is a final warning letter?

A final warning letter is a written warning about a particular non-compliance. It provides a reasonable opportunity for the responsible person to address that non-compliance and take preventative steps to stop the non-compliance from continuing or recurring.

If we issue a final warning letter, we will be clear about the steps to be taken to rectify or prevent further non-compliance in order to avoid further enforcement action being taken.

The final warning letter provides a final chance through informal means for responsible persons to change their behaviour and come into compliance before we take formal enforcement action.

Any subsequent prosecution might relate to the non-compliance covered by a final warning letter.

A Written Notification and Formal Written Warnings will be entered on record and followed up to ensure that remedial action has been taken. Clear and precise timescales will be contained within the notification/warning.

The formal written warning will contain the following:

- The addressee (the legal person responsible for the alleged offence)
- The date, the place and nature of the alleged offence
- The alleged breach of the legislation specifying the Act, Regulation or Order with the section, Regulation or article number.
- The consequences of not complying with the warning/notification.

6.5.2. When a final warning letter may be used

The use of a final warning letter is primarily aimed at those without a history of offending and the intention is to allow the responsible person to remedy the non-compliance without resorting to formal enforcement action. A final warning letter will be more appropriate than advice and guidance alone where we consider that the threat of further enforcement action being taken is needed. Advice and guidance will also be provided on how to comply with legislative obligations. The final warning letter will make it clear to the responsible person that a failure to take preventative steps to stop the non-compliance will not be tolerated.

A final warning letter may be an appropriate response in circumstances where:

- Advice and guidance, or other warnings, has not been effective on this occasion, but had worked previously.
- Giving a final warning is expected to change the behaviour of the responsible person.
- The responsible person should be given an opportunity to remedy the non-compliance or to take preventative steps to ensure that the non-compliance does not recur. This may apply where, for example, there is no history of offending.

6.5.1. When we will not use a final warning letter

We may take enforcement action, where it is appropriate to do so, without issuing a final warning letter. A final warning letter is not a prerequisite to us taking another form of enforcement action, including imposing a fixed penalty notice or referral to COPFS for consideration of prosecution.

We will not use a final warning letter in circumstances where:

- A final warning letter has previously been issued to the same responsible person for similar non-compliance.
- Advice and guidance alone is likely to change the behaviour of the responsible person and the threat of further enforcement action is unnecessary.
- Where there has been significant financial benefit.
- Where there has been significant harm

In addition, there will be circumstances where it is not appropriate to use a final warning letter. This will be determined when reviewing the circumstances of the non-compliance against our enforcement factors.

6.6. Formal enforcement action

6.6.1. What is a statutory notice?

We might use these for offences where we wish to specify the steps that need to be taken to stop the activity or harm from continuing, or the steps needed to prevent the harm or risk of harm in the future. Different statutory notices fulfil different roles, and their availability is dependent on the precise wording of the relevant legislation.

Officers will place realistic timescales on Notices for rectification of the alleged breach and will ensure that the business or individual is made aware of their rights of appeal, the appeal mechanisms and the consequences of not complying with a Statutory Notice.

6.6.2. When a statutory notice may be used

A statutory notice may only be used where the relevant legislation allows for it.

Generally, a statutory notice is used when we wish to specify the measures to be taken to prevent, stop or remediate harm, address a risk of harm or to prevent, stop or remedy non-compliance.

There are a range of statutory notices available to us across numerous regimes and these may be used wherever appropriate.

Statutory Notices will be issued where:

- there is a significant and serious alleged contravention of legislation
- the consequences of non-compliance with the legislation and the Notice could potentially endanger the health, safety or well being of people, animals or the environment and/or the economic interests of legitimate businesses.
- guidance criteria concerning issue of Notice specified in relevant Statutory Codes of Practice is fulfilled.
- a statutory nuisance exists
- a person has failed to respond informally to resolve a contravention
- there are significant contraventions of legislation
- there is lack of confidence in the individual or business to respond to an informal approach
- there is a history of non-compliance with informal action
- standards are generally poor with little awareness of statutory requirements
- the consequences of non-compliance could be potentially serious to public health
- although it is intended to prosecute, effective action also needs to be taken as quickly as possible to remedy conditions that are serious or deteriorating.

6.6.1. What to expect in a statutory notice

A statutory notice will state the legislation which allows us to issue the notice, and will specify the grounds for issuing the notice. This might include the details of the contravention that we have identified. The statutory notice will also set out:

- who needs to take action;
- the steps to be taken which might include stopping an activity or part of an activity;
- by when the steps must be taken;
- whether or not an appeal can be made (see below).

The notice may also set out what the consequences of the notice are and/or what the consequences of failing to comply with the notice are.

A responsible person may wish to seek independent legal advice if we serve a statutory notice. Appealing against a statutory notice
Whether the responsible person can appeal against the notice depends on the

legislative framework of the particular notice served. Details explaining how to appeal a statutory notice will be included with the notice.

6.6.4. **When we can recover costs incurred**

Where a statutory notice is served on a responsible person, we may recover the costs of carrying out any work carried out in default of the notice from them. We will issue an invoice requiring the responsible person to pay the amount of those costs.

6.7. **Fixed penalty notices**

6.7.1. **What is a fixed penalty notice**

A fixed penalty notice (FPN) is a type of statutory notice which imposes a fine for a specified offence; therefore, the amount of the FPN is fixed in law. This also includes Penalty Charge Notices (PCN) and references to FPN will include PCN's.

FPNs are not available for all criminal offences – offences where we have powers available to issue a FPN are set out in the following table. This table identifies the amount of the FPN that might be associated with that offence:

Common offences and FPN/PCN amounts –

Offence	Fixed Penalty
Section 33 A of the Environmental Protection Act 1990 (unauthorised or harmful depositing, treatment or disposal etc. of waste; i.e. dumping, fly tipping, failing to arrange a special uplift, etc)	£200
Section 87 of the Environmental Protection Act 1990 (dropping litter)	£80
Section 5 of Dog Fouling (Scotland) Act 2003 (failure to immediately clear up after a dog)	£40 if paid within 28 days, then increases to £60.
Section 46 of Antisocial Behaviour etc. (Scotland) Act 2004 (failure to comply with the Warning Notice to reduce the noise level)	£100

Section 80 of Environmental Protection Act 1990 (<i>offering the opportunity of discharging any liability to conviction for failing to comply with an abatement notice for a statutory nuisance offence by payment of a fixed penalty</i>)	£400 commercial £150 individual
Regulation 7 of the Road Traffic (Vehicle Emissions) (Fixed Penalty) (Scotland) Regulations 2003 (a Vehicle Emission Test failure)	£60 if paid within 28 days, then increases to £90.
Regulation 7 of the Road Traffic (Vehicle Emissions) (Fixed Penalty) (Scotland) Regulations 2003 (a failure to turn off the engines when instructed to do)	£20 if paid within 28 days, then increases to £40.
Section 6 of the Smoking, Health and Social Care (Scotland) Act 2005 (offences relating to the ban on smoking in public places)	£200 commercial £50 individual
Section 27 of the Tobacco and Primary Medical Services (Scotland) Act 2010 (Display and sale of tobacco products and registration failures)	£150 if paid within 14 days Then rising to £200.
Section 111 of the Housing (Scotland) Act 2006 (breach of duty relating to home reports)	£500
Section 23 of the Consumers, Estate Agents and Redress Act 2007 (breach of duty relating to redress schemes)	£1000

6.7.2. Using fixed penalty notices

When we consider issuing a fixed penalty notice (FPN) as the appropriate measure to use to deal with non-compliance, we must have regard to any guidelines or explanatory notes. We have to be mindful that using a FPN may mean that criminal proceedings cannot be taken for the same offence.

Before issuing a FPN, we must have enough evidence that the responsible person has committed the offence to which the penalty relates.

Factors that we will consider when using FPN's include whether:

- advice and guidance has been given previously and not changed the behaviour;
- a relatively low monetary penalty is likely to change the responsible person's behaviour and deter future non-compliance;
- the FPN will deter others.

6.7.3. What to expect in a fixed penalty notice

Where we issue a FPN notice it sets out the grounds for us imposing the penalty and will include:

- a description of the offence that has been committed;
- the amount of the penalty;

- how payment can be made;
- when payment must be made;
- the consequences of non-payment and any late payment penalties;
- information about the right to appeal against the penalty.

The FPN has to be paid within a specified period from the date of the penalty notice. Early payment in some instances will result in the amount payable being decreased.

If the FPN is not paid on time, the responsible person is liable for the amount of the penalty and any late payment penalty as a civil debt. We will take action to recover that debt. In relation to dumping and littering FPN's, non-payment reverts back to the original criminal offence.

6.7.4. Is there a right of appeal

The responsible person can make an appeal as specified on the notice, if an appeal mechanism is not specified representation in writing can be made to the Environmental Services Manager within 2 working days of receiving the FPN notice, on the basis that:

- The decision was based on an error of fact.
- The decision was wrong in law.
- The decision was unreasonable.
- Any other reason.

However, an appeal cannot be made against the amount imposed. This amount will be fixed by legislation. The Environmental Services Manager can be contacted at: Environmental Services, Montrose House, 154 Montrose Crescent, Hamilton ML3 6LB or by email at: slc_environmental_services@southlanarkshire.gcsx.gov.uk

6.8. Civil court actions

6.8.1. What are civil court actions

We may seek an interdict (or interim interdict) or specific implement from the civil courts, which is a court order that requires a responsible person to stop or start doing something.

We may also seek a court order to enforce the terms of a statutory notice, for example under Section 81 of the Environmental Protection Act 1990.

If the responsible person ignores the order, they risk being in contempt of court. Under the Enterprise Act 2002 officers can seek Undertakings and / or take civil legal action in the form of an Enforcement Order under Part 8 of the Act where there are alleged breaches of consumer protection and fair trading legislation and to implement Enhanced Consumer Measures (ECMs), as defined in section 219A of the Act.

6.8.2. When we may consider civil court actions

We will consider civil court actions (i.e. non-criminal) where:

- The use of statutory notices or other enforcement action would fail or has failed to protect the environment or human health.
- Those who are operating a particular process or carrying on a particular activity are doing so without an authorisation or licence and refuse to cease activities.
- The consumer detriment caused and use of Undertakings and Enforcement Orders are the best way of dealing with the business.

6.8.3. When we will not use a civil court action

If other enforcement action would be more effective at achieving our enforcement outcomes, we will not be likely to use civil court actions to achieve those outcomes.

For example, if we consider that an enforcement notice will ensure that an activity that is causing environmental harm ceases, then we will not seek an interdict or interim interdict to do so.

In addition, there will be circumstances where it is not appropriate to use civil court actions. This will be determined when reviewing the circumstances of the non-compliance against our enforcement factors.

6.8.4. Is there a right of appeal

There may be a right of appeal against the interdict or interim interdict or other remedy that has been awarded if the court dealing with the action allows it.

6.9. Enhanced consumer measures (ECM's) - undertakings and enforcement orders

6.9.1. What is an undertaking and an enforcement order?

Under the Enterprise Act 2002 officers can seek Undertakings and / or take civil legal action in the form of an Enforcement Order under Part 8 of the Act where there are alleged breaches of consumer protection and fair trading legislation and to implement Enhanced Consumer Measures (ECMs), as defined in section 219A of the Act.

An Undertaking is a written agreement between a trader and Trading Standards that the trader will comply with their legal obligations under Trading Standards law. A failure to comply with an Undertaking can result in Trading Standards seeking an Enforcement Order.

An Enforcement Order is granted by the civil court against the trader either on application by Trading Standards or following a breach of an Undertaking, and a failure to comply is contempt of court and is punishable by a fine and / or imprisonment.

6.9.2. What are the benefits of ECM's

ECMs allow a much wider range of measures under the Enterprise Act 2002 and enable Trading Standards to consider on a case by case basis the best way of dealing with an alleged breach of the law. Officers have more flexibility to seek Orders aimed at achieving one or more of:

- redress, giving consumers who have suffered loss a suitable remedy
- compliance, reducing the likelihood of future breaches
- information, enabling consumers to exercise greater choice in the market

It should be noted that the legislation does not contain a list of what might constitute suitable measures. This is to ensure that as much flexibility as possible is available to identify the most suitable approach to dealing with an alleged breach of the law.

The decision on whether or not use of ECMs is appropriate to deal with a suspected breach rests with Trading Standards. Officers will need to evaluate the detriment caused and use this to decide on the best way of dealing with the business, taking into account this Enforcement Policy.

For example, there may be cases where it is appropriate that ECMs are used in addition to a criminal prosecution. In circumstances where a trader has caused considerable detriment to a number of elderly consumers, criminal prosecution might be suitable. However, it may also be appropriate for Trading Standards to use ECMs to seek an Order for the individual to pay those consumers, who had suffered loss, redress.

7. Prosecution

The role of the criminal justice system is to punish significant and serious offending and, where possible, to remove financial benefit resulting from that offending. Prosecution is a strong deterrent for future non-compliance. Sentencing options available to the courts may allow publicity to be given to convictions, and allow compensation or restoration orders to be made which contribute towards remediation or restoration of harm.

7.1. Prosecution and the Procurator Fiscal's role

We have the ability to refer offences to the Crown Office and Procurator Fiscal Service (COPFS) for consideration of prosecution. Their role includes assessing the sufficiency of evidence and assessing whether or not it is in the public interest to pursue criminal proceedings.

Before a report to the Procurator Fiscal is prepared, the Investigating Officer and Senior Officer must be satisfied that there is relevant, admissible, corroborated and reliable evidence that an offence has been committed by an identifiable person or a company. There must be a realistic prospect of conviction. A bare prima facie case is not enough.

When an Officer is preparing a Report, all relevant evidence and information will be considered and included in the Report to enable a consistent, fair and objective decision to be made.

7.2. When prosecution may be appropriate

Available for all criminal offences, we will normally refer to COPFS for consideration of prosecution those offences that are most serious.

Once we have referred a case, the decision on whether or not to take court proceedings or to deal with the case by way of a fiscal warning letter or fiscal fine is a matter for COPFS alone.

The legislation that establishes an offence also establishes the maximum fine for each offence and in some circumstances will provide that imprisonment or an unlimited fine may be imposed.

The decision to report to the Procurator Fiscal is a significant one and in general this decision will be taken where: -

- There has been a blatant and/or a deliberate disregard for the law.
- There has been refusal to achieve even the basic minimum legal requirements.
- The alleged infringement could seriously endanger the health, safety or wellbeing of people, animals or the environment.
- The business or individual has been involved in the deliberate or persistent breach of their legal obligations (disregarding warnings and/or formal notices) in circumstances which have caused or were likely to cause material loss or prejudice to others.
- It can be demonstrated that the alleged infringement caused or is likely to cause substantial loss or prejudice to others through negligence or gross carelessness.
- The alleged infringement is fraudulent.
- The alleged infringement involved obstruction of an Enforcement Officer carrying out his/her duties.
- Where there is a history of similar offences related to risk, to health, safety, consumer rights and/or environment.
- Where there are no other legal remedies available to the Council.

When decisions are being taken on whether to report to the Procurator Fiscal, regard will be given to the guidance contained in statutory Codes of Practice, guidance from Central Government and guidance from national co-ordinating bodies.

Once a decision has been made to report to the Procurator Fiscal, the Report will be compiled and referred timeously to the Procurator Fiscal. The Officer will advise any relevant bodies of Reports to the Procurator Fiscal and their outcome.

The table below indicates the most common outcomes associated with each enforcement action. However, this table is only indicative because we will consider the facts of each individual case when deciding which enforcement action(s) are likely to be effective at delivering the outcomes for an individual case.

Table B: Enforcement actions and their principle outcomes

	Restore/ remediate harm	Secure compliance	Stop harm/ reduce risk	Deter future non- compliance	Remove financial benefit
Advice and guidance					
Final warning letter / warning letter					
Statutory notice – enforcement					
Enforcement undertaking					
Fixed penalty notice					
Civil court actions					
Criminal sanctions					

8. How we will evaluate the effectiveness of our approach to enforcement

We will review this guidance and our governance procedure and make any necessary amendments in light of experience.

We will also review the circumstances in which the various enforcement actions have been used and how effective they were in achieving the desired enforcement outcome(s).