



Fermanagh & Omagh
District Council

Comhairle Ceantair
Fhear Manach agus na hÓmaí

Fermanagh & Omagh District Council

The Clean Neighbourhoods and Environment Act (Northern Ireland) 2011

Enforcement Policy

Revised March 2023

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Introduction

The Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 received Royal Assent on 4 May 2011.

The objective of the Act is to improve the quality of the local environment by giving district councils additional powers to deal with litter, nuisance alleyways, graffiti and fly posting, abandoned and nuisance vehicles, dogs, noise and statutory nuisance.

The Act is divided into eight parts. Part 1 makes provision for Gating Orders, Part 2 - Vehicles, Part 3 - Litter, Part 4 - Graffiti and Other Defacement; Part 5 - Dogs, Part 6 - Noise, Part 7 - Statutory Nuisances and Part 8 contains miscellaneous and supplementary provisions.

Fermanagh and Omagh District Council is committed to fully applying the spirit of the Act and take the appropriate enforcement action where appropriate.

Effective implementation of the enacted powers has assisted Fermanagh and Omagh District Council in delivering the priorities outlined in the Fermanagh and Omagh Community Plan 2030, in particular outcome 6 of the plan “Our outstanding and culturally rich environment is cherished, sustainably managed and appropriately accessible.” This is further supported through the Council’s Corporate Plan 2020-2024 “Delivering Sustainable Change Together”. Action 25 details the Council’s commitment to this legislation “Deliver on our responsibilities to improve the quality of the local environment through the Clean Neighbourhoods and Environment (NI) Act 2011, including working with communities to develop initiatives aimed at creating and promoting community pride in local neighbourhoods.”

Enforcement Principles

One of the aims of the Council is to provide a better environment for its citizens both for the present and into the future. It will achieve much of this through education by providing advice and regulating the activities of others however, securing compliance with regulatory requirements using enforcement powers, including prosecution, can play an important role in achieving this aim, within the context of the Council's Scheme of Delegation. To this end the Council has developed two procedures as guidance for Officers on enforcement and prosecution issues.

The Enforcement and Regulation Procedure is attached as Appendix A and sets out the principles and approach which the Council and its officers will follow so as to provide an effective and fair service, and to ensure consistent and open enforcement. It is written for the guidance of the Council and its officers and will be made available to any business representatives or members of the public who enquire about our procedures. It applies to all dealings, whether formal or informal, between businesses and members of the public with officers of the Council in relation to regulation and enforcement matters.

Similarly, the Prosecution Procedure, Appendix B, sets out the principles upon which the Council exercises its judgement in all cases which give rise to potential criminal proceedings.

Authorised Officers

Authorisation

The statutes enforced by the Council require that enforcement officers are duly authorised.

The Chief Executive, Directors and Heads of Service have delegated powers to authorise Officers within their Directorates/Service areas.

Format of the authorisation

The authorisation will identify the officer by name and position, will describe the legislation that the officer is authorised to enforce and will be signed and dated by the Director or relevant Head of Service.

Posts designated as Authorised Officers:

Posts	Part(s)
Director of Community and Wellbeing	1,2,3,4,5,6,7
Head of Regulatory Services	1,2,3,4,5,6,7
Regulatory Services Managers	1,2,3,4,5,6,7
Principal Environmental Health Officers	1,2,3,4,5,6,7
Environmental Health Officers	6,7
Enforcement Officers	1,2,3,4,
Dog Wardens	3*,5

3* This includes the offence of dog fouling.

Fixed Penalty Notices

For several offences in the Clean Neighbourhoods and Environment Act 2011, there is an option for councils to specify the amount of the fine, within a defined range. It should be noted that the level of fines and any agreement on discounted periods for payment of fines may be varied at any time following Council approval.

1: Offences with Local Level Setting:

Description of offence	Legislation	Range legislation prescribes	Council FPN amount
Audible Intruder Alarms – Notification of nominated key Holders. Failure to nominate key- holder (within an alarm notification area) or to notify district council in writing of nominated key-holder’s details. ****Refer to Note 1	CNEA (NI) 2011 s.52(2)	£50 - £80 Default £75	£75
Noise from domestic premises. Exceeding noise of a permitted level.	Noise Act 1996 s.8(1)	£75 - £110 Default £100	£100
Litter. Dropping litter in the open air.	Litter (NI) Order 1994 A.6(1)	£50-£200	£100
Street litter control notices. Failure to comply with a Street Litter Control Notice.	Litter (NI) Order 1994 A.14A(2)	£75 - £110 Default £100	£100
Litter clearing notices. Failure to clear land of litter when required by Notice.	Litter (NI) Order 1994 A.12A	£75 - £110 Default £100	£100
Unauthorised distribution of literature on designated land. Handing out flyers without consent in a Designated Zone ****Refer to Note 2	Litter (NI) Order 1994 A 14B of Schedule 1A	£50 - £80 Default £75	£75
Graffiti and flyposting. Applying graffiti. Putting up fly posters	CNEA (NI) 2011 s.26(1)	£50 - £80 Default	£75

Description of offence	Legislation	Range legislation prescribes	Council FPN amount
Unauthorised signage		£75	
Dog Control Orders - Failure to comply with a Dog Control Order which may include any or all of the following: Allowing a dog to foul. Allowing a dog off lead in an on-lead area. Allowing a dog into an area where dogs are excluded. Exceeding the number of dogs which a person may take on a lead. ****Refer to Note 3	CNEA (NI) 2011 s.43(2)	£50-£200 £50-80 £50-80 £50-80	£100 £80 £80 £80

Note 1

Offences in relation to Audible Intruder Alarms will only apply to those areas of the district where the Council has designated the area as an "Alarm Notification Area". To date no areas so designated.

Note 2

Offences in relation to the distribution of free literature will only apply to those areas of the district where the Council has by Order designated specified areas where the distribution of leaflets is only permitted by consent of the Council. To date no areas so designated.

Note 3

Offences under a Dog Control Order will only apply to specified areas of land that have been designated by the Council.

2. Offences with No Local Level Setting:

Description of offence	Legislation	Range legislation prescribes
Nuisance Parking. Advertising 2 or more cars in the same street within 500 m. Repairing cars in the street as part of a business.	CNEA (NI) 2011 s.4(1)	£100
Abandoning a vehicle. Abandoning a vehicle in open air.	Pollution Control & Local Government (NI) Order 1978 A.29A(1)	£200
Noise from offending premises. Exceeding noise of a permitted level. ****Refer to Note 4	Noise Act 1996 s. 8(3)	£500

Note 4

Definition of Offending Premises includes:

- (a) any premises in relation to which an exhibition licence has effect;
- (b) any place in relation to which an entertainments licence has effect;
- (c) any licensed premises;
- (d) a place at which the sale of intoxicating liquor is for the time being authorised by an occasional licence;
- (e) any premises where meals of refreshments are supplied whether for consumption on or off the premises; and
- (f) any premises occupied by a registered club.

Discounts for early payment of Fixed Penalty Notices

A discounted rate to the full Fixed Penalty Notice charge will apply for early payment, which will encourage quick payment and minimise the administration process. The early payment discounts are as follows:-

- Where the fixed penalty is £75, if paid within 10 working days from the date of the notice, this will be discounted to £50.
- Where the fixed penalty is £80, if paid within 10 working days from the date of the notice, this will be discounted to £50
- Where the fixed penalty is £100, if paid within 10 working days from the date of the notice, this will be discounted to £75. In the case of dog fouling and littering the discounted fee will be £80.
- Where the fixed penalty is £200, if paid within 10 working days from the date of the notice, this will be discounted to £175.

Part 1 Gating Orders



Part 1 Gating Orders

A Gating Order restricts public access to a road over which the public would normally have a right of passage.

A Gating Order may be made in respect of a road which is facilitating high and persistent levels of crime and/or anti-social behaviour that adversely affects local residents or businesses.

The Council is required to publicise its intention to make a Gating Order and also to obtain the approval of the Department for Infrastructure prior to making the Order.

To date no Gating Orders have been made in the district.

The Head of Community Services, Head of Waste Management and Head of Parks, Estates and Property will be consulted as part of any process to consider areas for Gating Orders as necessary.

Authorised Officers Part 1 Gating Orders:

Director of Community and Wellbeing
Head of Regulatory Services
Regulatory Services Managers
Principal Officers

Part 2 Vehicles



Part 2 Vehicles

Section 2 – Exposing vehicles for sale on a road

This section makes it an offence for a person to park motor vehicles on a road or roads, where the vehicles are parked merely in order to be sold. There must be two or more vehicles within 500 metres of each other for the offence to be committed. A person will not be convicted of an offence if he can prove that he was not acting for the purposes of a business.

Enforcement Action:

Offence: Exposing vehicles for sale on a road (Section 2(1)) 1st offence

Informal written warning	Fixed Penalty Issued if not removed within 7 days of warning	Enforcement Proceedings Commenced
Yes	Yes £100 (£75 if paid within 10 working days)	If not paid

Offence: Exposing vehicles for sale on a road (Section 2(1)) 2nd offence

Informal written warning	Fixed Penalty Issued if not removed within 7 days of warning	Enforcement Proceedings Commenced
No	Yes £100 (£75 if paid within 10 working days)	If not paid

Section 3 – Repairing vehicles on a road

This section makes it an offence to carry out “restricted works” to vehicles on a road.

“Restricted works” means:

- works for the repair, maintenance, servicing, improvement or dismantling of a motor vehicle or of any part of or accessory to a motor vehicle;
- works for the installation, replacement or renewal of any such part or accessory.

A person will not be convicted of an offence if he proves that the works were not carried out in the course of a business or for gain or reward. However, this defence is only available where the works did not give “reasonable cause for annoyance” to persons in the vicinity.

A person will also not be convicted of an offence where the repairs arose from a breakdown or accident and were carried out promptly or were otherwise authorised.

Enforcement Action:

Offence: Repairing vehicles on a road (Section 3(1)) 1st offence

Informal written warning	Fixed Penalty Issued if not removed within 7 days of warning	Enforcement Proceedings Commenced
Yes	Yes £100 (£75 if paid within 10 working days)	If not paid

Offence: Repairing vehicles on a road (Section 3(1)) 2nd offence

Informal written warning	Fixed Penalty Issued if not removed within 7 days of warning	Enforcement Proceedings Commenced
No	Yes £100 (£75 if paid within 10 working days)	If not paid

Section 7 – Abandoned Vehicles

The Act amends the Pollution Control and Local Government (Northern Ireland) Order 1978, Article 29 making it an offence to abandon a motor vehicle, or anything that has formed part of a motor vehicle, on any land in the open air, or on any other land forming part of a road.

A vehicle may be considered abandoned if it displays all or some of the following characteristics:

- it has been left by the side of the road, on waste ground or on any public road for a few weeks
- it has been vandalised, partially or fully burned out
- the doors are opened or off their hinges, or the boot is open, or the tyres are flat
- it is not currently taxed.

Enforcement Action:

Offence: Abandoned vehicles (Article 29 of the Pollution Control and Local Government (Northern Ireland) Order 1978,) 1st offence

Informal written warning	Fixed Penalty Issued if not removed within 7 days of warning	Enforcement Proceedings Commenced
Yes	Yes £200 (£175 if paid within 10 working days)	If not paid

Offence: Abandoned vehicles (Article 29 of the Pollution Control and Local Government (Northern Ireland) Order 1978,) 2nd offence

Informal written warning	Fixed Penalty Issued if not removed within 7 days of warning	Enforcement Proceedings Commenced
No	Yes £100 (£75 if paid within 10 working days)	If not paid

Authorised Officers Part 2 Vehicles:

Director of Community and Wellbeing
 Head of Regulatory Services
 Regulatory Services Managers
 Principal Environmental Health Officers
 Enforcement Officers

Part 3 Litter



Part 3 Litter

Litter can be anything from wrappers, cans, bottles, food, plastic bags, cigarette ends, and chewing gum to larger items such as bags of rubbish and abandoned shopping trolleys, but not animal waste. Dog Fouling is dealt with in accordance with the Litter (NI) Order 1994 A.6(1).

Litter is most commonly assumed to cover discarded materials which are left behind by people, rather than in the proper bins.

Section 14 – Offence of dropping litter in lake, pond or watercourse.

This section amends the offence of dropping litter in the Litter (Northern Ireland) Order 1994 (the Litter Order) in relation to a lake, pond or watercourse.

N.B. In relation to dumping and fly-tipping, these offences are dealt with in accordance with the Litter (NI) Order 1994.

Enforcement Action:

Offence: Dropping litter in the open air. (Litter NI) Order 1994 Article 6 (1). 1st minor offence

Informal warning	Fixed Penalty Issued if not removed within 7 days of warning	Enforcement Proceedings Commenced
Yes	Yes £100 (£80 if paid within 10 working days)	If not paid

Offence: Dropping litter in the open air. (Litter NI) Order 1994 Article 6 (1). 2nd offence

Informal warning	Fixed Penalty Issued if not removed within 7 days of warning	Enforcement Proceedings Commenced
No	Yes £100 (£80 if paid within 10 working days)	If not paid

Section 17 – Litter clearing notices

This section inserts a new Article 12A into the Litter Order empowering district councils to serve “litter clearing notices” on particular occupiers where they are of the view that defacement caused by the litter is detrimental to the amenity of the area.

Enforcement Action:

Offence: Failure to clear land of litter when required by Notice (Litter NI) Order 1994 Article 12 (A). 1st offence

Informal warning	Fixed Penalty Issued if not cleared within 7 days of warning	Enforcement Proceedings Commenced
Yes	Yes £100 (£75 if paid within 10 working days)*	If not paid

Offence: Failure to clear land of litter when required by Notice (Litter NI) Order 1994 Article 12 (A). 2nd offence

Informal warning	Fixed Penalty Issued if not cleared within 7 days of warning	Enforcement Proceedings Commenced
No	Yes £100 (£75 if paid within 10 working days)*	If not paid

* If the Council enters land to remove litter, the landowner will be required to pay the costs.

Section 18 – Street litter control notices

This section extends the application of street litter control notices under Article 13 of the Litter Order to cover vehicles, stalls and other moveable structures used for street vending, so that mobile vendors can also be required to take steps to minimise and clear up litter on any street or open land adjacent to it that originates from their commercial or retail activities.

Enforcement Action:

Offence: Failure to comply with a Street Litter Control Notice (Litter NI) Order 1994 Article 14 (A)(2) . 1st offence

Informal warning	Fixed Penalty Issued if not cleared within 7 days of warning	Enforcement Proceedings Commenced
Yes	Yes £100 (£75 if paid within 10 working days)	If not paid

Offence: Failure to comply with a Street Litter Control Notice (Litter NI) Order 1994 Article 14 (A)(2) 2nd offence

Informal warning	Fixed Penalty Issued if not cleared within 7 days of warning	Enforcement Proceedings Commenced
No	Yes £100 (£75 if paid within 10 working days)	If not paid

Section 21 – Controls on free distribution of printed matter

This gives the Council the power to control the distribution of free literature to prevent such material from becoming litter in the local environment, by issuing an Order designating areas where the distribution of leaflets is only permitted with the Council's consent. The restrictions in this Article are subject to exceptions in the case of charity, religious and political material.

Paragraph 7 enables a council, or any person authorised by a council, to issue a fixed penalty notice for this offence, offering the offender an opportunity to discharge any liability to the offence.

Enforcement Action:

Offence: Handing out flyers without consent in a designated zone (Litter NI) Order 1994 Article 14 (B) of Schedule 1A) 1st offence

Informal warning	Fixed Penalty Issued if not cleared within 7 days of warning	Enforcement Proceedings Commenced
Yes	Yes £75 (£50 if paid within 10 working days)	If not paid

Offence: Handing out flyers without consent in a designated zone (Litter NI) Order 1994 Article 14 (B) of Schedule 1A) 2nd offence

Informal warning	Fixed Penalty Issued if not cleared within 7 days of warning	Enforcement Proceedings Commenced
No	Yes £75 (£50 if paid within 10 working days)	If not paid

Section 24 – Abandoned shopping and luggage trolleys

This section amends Schedule 1 to the Litter Order so as to enable a district council to charge the person believed to be the owner of an abandoned shopping or luggage trolley for its removal, storage and disposal. The charge is payable to the council on demand and is recoverable by the council as a debt due to it.

Authorised Officers Part 3 Litter:

Staff within Environment and Place will assist Enforcement Officers with investigations which may result in formal action.

Director of Community and Wellbeing
Head of Regulatory Services
Regulatory Services Managers
Principal Environmental Health Officers
Lead Officers
Enforcement Officers

Part 4 Graffiti and Other Defacement.



Part 4 Graffiti and Other Defacement.

Sections 26 to 30 give an authorised officer of a district council the ability to issue fixed penalty notices to offenders who have perpetrated acts of graffiti or fly-posting. The intention is to levy the penalties only on the persons actually committing these acts, and not, in the case of fly-posting, on the person (unless he is one and the same) whose goods or services are advertised on the poster.

Section 31 – Defacement removal notices

Subsections (1) and (2) of this section enable the Council to serve a "defacement removal notice" on the owners of street furniture, statutory undertakers and educational institutions whose property is defaced with graffiti or any poster or placard displayed on a relevant surface in contravention of regulations made under Article 67 of the Planning (Northern Ireland) Order 1991 and which is either detrimental to the amenity of the district or offensive.

Section 32 – Recovery of expenditure

This section sets out the process for the Council to recover costs from the persons responsible for the property they clean under section 31(4).

Section 36 – Removal or obliteration of graffiti, placards and posters

This section replaces Article 18 of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985 with a new Article 18. Article 18 provides the Council with the power to remove or obliterate graffiti which is detrimental to the amenity of any land in its district or any illegally displayed placards or posters. It also enables the council, in certain circumstances, to recover the costs it incurs in carrying out such removal or obliteration.

Fly Posting and Distribution of Flyers on cars and on the street

There is zero tolerance of fly posting and distribution of flyers on vehicles or on the street. If the offender is identified they will be issued with a fixed penalty notice, unless the flyer relates to a Charity, Religious or Recognised Political event. The offender can be either an individual or an organisation.

Advertising by Community Groups, Charities, Churches or Recognised Political Groups

Signs will be tolerated subject to:

- Signs being displayed for not more than two weeks and being removed within two days of completion of event.
- One sign, maximum size, 1 metre x 1 metre will be permitted on each approach to the relevant town, village or location where the event is to be held.

- No interference with existing directional signage or sightlines.

Election Posters – are permitted on lampposts with a size restriction and must be removed within two weeks following the election day.

Council staff across a number of services will adhere to internal protocols regarding investigation of graffiti and fly posting on Council estate.

Enforcement Action:

Offence: Applying Graffiti/Erecting Fly Posters (Clean Neighbourhood Act (NI) 2011 Part 4. Section 26(1). 1st offence

Informal warning	Fixed Penalty Issued if not cleared within 7 days of warning	Enforcement Proceedings Commenced
Yes	Yes £75 (£50 if paid within 10 working days)	If not paid

Offence: Failure to comply with a Street Litter Control Notice (Litter NI) Order 1994 Article 14 (A)(2) 2nd offence

Informal warning	Fixed Penalty Issued if not cleared within 7 days of warning	Enforcement Proceedings Commenced
No	Yes £75 (£50 if paid within 10 working days)	If not paid

Section 37 – Sale of aerosol paint to children

This section makes it an offence to sell aerosol spray paints to persons aged under 18.

Subsection (6) requires district councils to consider, at least once a year, the extent to which it is appropriate to have a programme of enforcement action in relation to this section and, to that extent, to carry out such a programme.

Enforcement Action:

Offence: Sale of aerosol spray paints to persons aged under 18 (Clean Neighbourhood Act (NI) 2011 Part 4. Section 37(3). 1st offence

Informal warning	Fixed Penalty Issued if not cleared within 7 days of warning	Enforcement Proceedings Commenced
No	No	A person guilty of an offence under this section shall be liable on

		summary conviction to a fine not exceeding level 4 on the standard scale- - currently £2,500.
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Section 38 – Unlawful display of advertisements

Subsections (2) and (3) of section 38 amend the statutory defence in the Planning Order so that a person has to prove that the advertisement was either displayed without his knowledge; or that he either took all reasonable steps to prevent the display, or to secure its removal after the advertisement had been displayed. Subsections (5) and (6) make similar amendments to the Roads Order.

Permanent Signs – If an advertising sign has been in place for more than 10 years, enforcement action cannot be taken.

Banner Points in Enniskillen

There are four authorised points for the erection of banners on the approach roads into Enniskillen where banners can be erected advertising upcoming community/charitable events. Slots can be booked in advance with staff at the Killyvilly Depot, Enniskillen.

Sandwich Boards and Signs on Footpaths will be tolerated with the following conditions:

- Maximum Board Size 1m x 1m
- Must be adjacent to the actual property they are promoting or advertising
- The footpath on which they are placed must be at least 2 metres wide and they must not interfere with pedestrians taking into consideration visually impaired people, motorised scooters, prams/pushchairs and wheelchair users.

If there is a breach of these conditions Council officers will, in the first instance, speak to the owner and if the problem persists the Council will remove the sign, contact the offender, the offender will have to pay to recover their sign, sign an agreement that they will not put the sign out again. Should they re-offend again the sign will be confiscated permanently and a Fixed Penalty of £75 imposed.

Enforcement Action:

Offence: Unlawful display of advertisements (Clean Neighbourhood Act (NI) 2011 Part 4. Section 38. 1st and 2nd Offence

Informal warning	Fixed Penalty Issued if not cleared within 7 days of warning	Enforcement Proceedings Commenced
Council officers will, in the first instance, speak to the owner and if the problem persists the Council will remove the sign, contact the	No	No

offender, the offender will have to pay to recover their sign, sign an agreement that they will not put the sign out again		
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Offence: Unlawful display of advertisements (Clean Neighbourhood Act (NI) 2011 Part 4. Section 38. Subsequent Offences

Informal warning	Fixed Penalty Issued if not cleared within 7 days of warning	Enforcement Proceedings Commenced
No	The sign will be confiscated permanently and a Fixed Penalty of £75 imposed. ((£50 if paid within 10 working days)	If not paid.

Bill Boards

Unauthorised signs for commercial businesses on public property will be removed and a fixed penalty notice will be issued. Offenders will be encouraged to apply for planning permission for unapproved signage on private property, otherwise it will be a planning matter.

Unauthorised signs on private property – enforcement action will be taken through planning enforcement.

Variable Message Signage (VMS) advertising events – These are not permissible unless for a statutory function e.g. road closure. Transport NI will deal with unauthorised signs on the public road; the Council to deal with on private property.

Authorised Officers Part 4 Graffiti and Other Defacement

Director of Community and Wellbeing
 Head Regulatory Services
 Regulatory Services Managers
 Principal Environmental Health Officers
 Lead Officers
 Enforcement Officers

Part 5 Dogs



Part 5 Dogs

Section 40 – Power to make dog control orders

This section enables district councils to make orders that apply offences aimed at the control of dogs (“dog control orders”) to specified land in their area.

“The Fouling of Land by Dogs (Fermanagh and Omagh) Order” was introduced in 2017 and applies across the entire district.

Further Orders were introduced with effect from 6th April 2020.

The Dogs on Leads (Fermanagh and Omagh District Council) Order 2020

- The Order makes it an offence for a person in charge of a dog to fail to keep the dog on a lead of not more than 1.8 metres in length on any land so specified.

The Dogs Exclusion (Fermanagh and Omagh District Council) Order 2020

- The Order makes it an offence for a person in charge of a dog to take the dog onto or permit dog to enter or remain on any land so specified

The Dogs on Leads by Direction (Fermanagh and Omagh District Council) Order 2020

- The Order makes it an offence for a person in charge of a dog to fail to comply with a direction given by an authorised officer of the Council to put and keep the dog on a lead of not more than 2 metres in length on any land specified in the Order.

Copies of the Orders including specific maps of the areas to which apply are available by downloading www.fermanaghomagh.com

Section 41 – Dog control orders: supplementary

This section requires the Department to make regulations which set out: the maximum penalties for dog offences; the content and format of dog control orders; and the process to be undertaken by district councils before and after making such orders (including requirements in respect of consultation on, and publication of, such orders).

Section 46 - Byelaws

This section removes the ability of district councils to make byelaws to control dogs in circumstances where it would also be possible for the council to make a dog control order in respect of the same matter in relation to the land in question. Existing

byelaws will remain in place unless that land is made the subject of a dog control order for the same type of offence, as detailed above.

Enforcement Action:

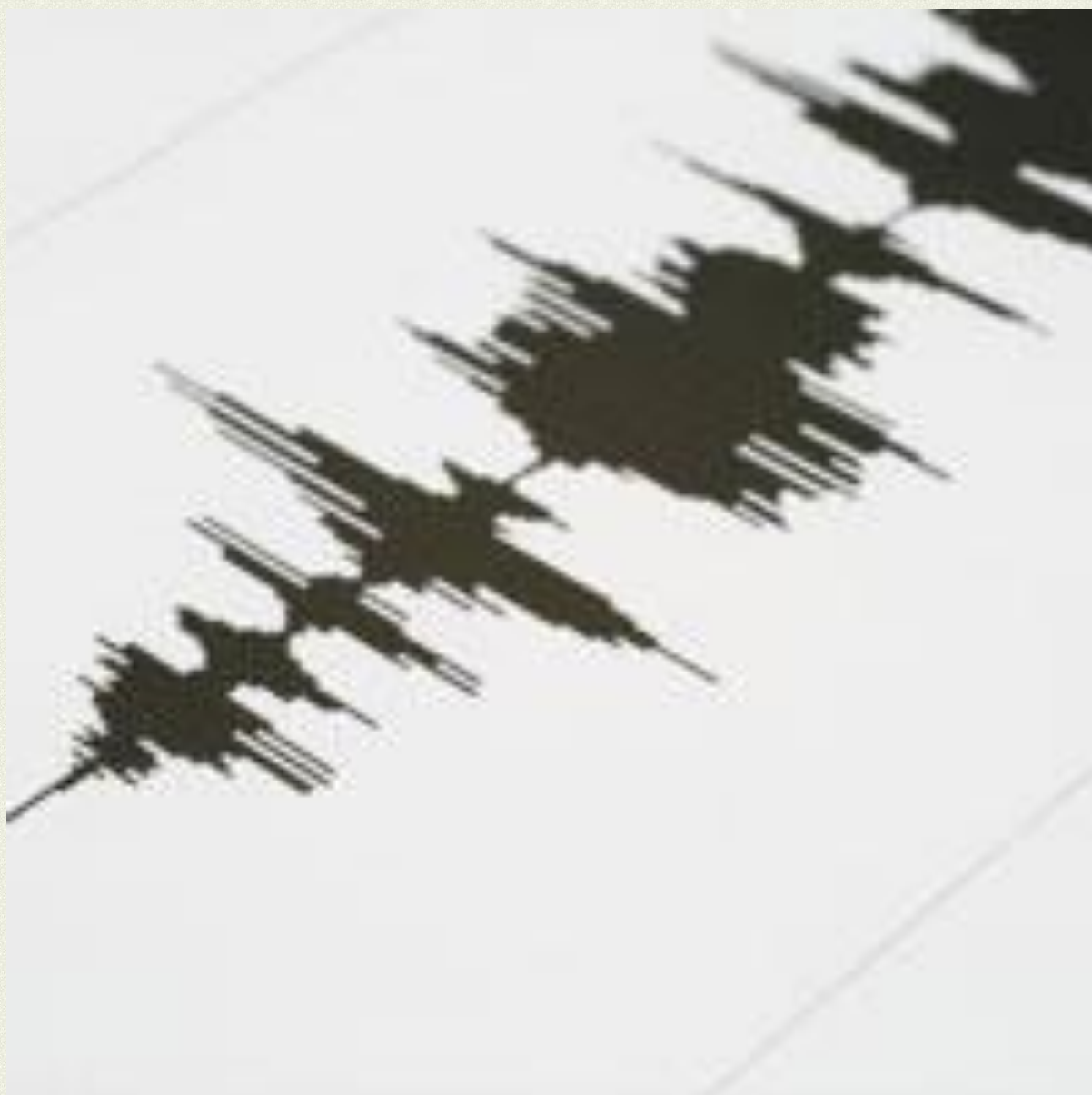
Offence: Failure to comply with a Dog Control Order (Clean Neighbourhood Act (NI) 2011 Part 5. Section 43. 1st and 2nd Offence

Informal warning	Fixed Penalty Issued	Enforcement Proceedings Commenced
No	£80 £100 for dog fouling, discounted to £80 if paid within 10 days.	If unpaid, potential fine of £1,000

Authorised Officers Part 5 Dogs

Director of Community and Wellbeing
 Head of Regulatory Services
 Regulatory Services Managers
 Principal Environmental Health Officers
 Enforcement Officers
 Dog Wardens

Part 6 Noise



Part 6 Noise

Chapter 1: Audible Intruder Alarms.

Section 48 – Designation of alarm notification areas

This section sets out the steps that must be followed by a council wishing to designate an area as an alarm notification area.

Section 50 – Notification of nominated key-holders

This section requires that the responsible person in respect of premises with an audible intruder alarm within an alarm notification area must nominate a key-holder for the premises and then notify the district council of that key-holder's name, address and telephone number.

Subsection (4) makes it an offence for the responsible person to fail either to nominate or to notify within the specified time period.

Section 52 – Offences under section 50: fixed penalty notices

This section (subsections (1) and (2)) enables an "authorised officer" of a district council to issue a fixed penalty notice where it appears to that officer that an offence of failing to nominate or notify details of a key-holder has been committed, offering the offender an opportunity to discharge, by payment of a fixed penalty (within 14 days), any liability to conviction for the offence.

Section 56 – Powers of entry

This section (subsections (3) and (4)) provides an authorised officer of a district council with a power of entry (but not by force) in order to silence an intruder alarm in or on premises in the council's district where the officer is satisfied that the conditions described in subsection (2) are met.

Section 57 – Warrant to enter premises by force

This section provides that an authorised officer may enter premises using reasonable force if necessary to silence an alarm following the issue of a warrant by a lay magistrate.

To date there have been no areas of the district designated as alarm notification areas

Chapter 2: Amendments to the Noise Act 1996

Section 60 – Dealing with noise at night

This section amends the Noise Act 1996, which currently gives powers to district councils to deal with noise at night (by way of warning notices, fixed penalties etc.). These powers have previously only applied to a district council in Northern Ireland that adopts them in its district.

Section 62 – Extension of Noise Act 1996 to licensed premises etc.

This section and Schedule 1 extend the powers under the Noise Act 1996 for a district council to take action to deal with noise at night (formerly restricted to noise from dwellings) to premises as specified in paragraph 3(2) of the said Schedule 1.

Enforcement Action:

Offence: Exceeding Noise of a permitted level – Noise Act 1986 Section 8 (3)

Issue Warning Notice	Fixed Penalty for Non-Compliance	Enforcement Proceedings Commenced
1 st Offence only	£100 - Domestic £500 – Other premises	If unpaid.
Repeated	Domestic – Level 3 Other premises Level 5	

Authorised Officers Part 6 Noise

Director of Community and Wellbeing
 Head of Regulatory Services
 Regulatory Services Managers
 Principal Environmental Health Officers
 Lead Environmental Health Officers
 Environmental Health Officers

Part 7 Statutory Nuisances



Part 7 Statutory Nuisances

Section 63 – Statutory Nuisances

This section sets out a definitive list of statutory nuisances. It also updates and clarifies the definitions of statutory nuisances in a number of minor respects. New statutory nuisances specified are:

- ❖ Artificial light e.g. floodlighting
- ❖ Insects from industrial, trade or business premises
- ❖ Fumes or gases emitted from premises
- ❖ Accumulation/deposit – it is necessary to establish if it is prejudicial to health or a nuisance

Section 64 – Duty of District Council to inspect for Statutory Nuisance.

This section re-enacts the existing duty on councils to inspect their district from time to time to detect any statutory nuisance that ought to be dealt with under sections 65 or 66, and to take such steps as are reasonably practicable to investigate a complaint about a statutory nuisance.

Section 65 – Summary proceedings for Statutory Nuisances

This section gives district councils a new power to serve an abatement notice in anticipation of a statutory nuisance occurring. It gives councils power to serve a notice to abate existing nuisance or to prohibit commission of future nuisance.

Enforcement Action:

Offence: Causing a Statutory Nuisance - (Clean Neighbourhood Act (NI) 2011 Part 7 Section 65.

Issue Warning Notice	Abatement Notice Served	Enforcement Proceedings Commenced
Limited delay to service of abatement notice once a statutory nuisance is established	Abatement notice served on person responsible	If non-compliance with Abatement Notice..

Authorised Officers Part 7 Statutory Nuisances

Director of Community and Wellbeing
Head of Regulatory Services
Regulatory Services Managers
Principal Environmental Health Officers
Lead Environmental Health Officers
Environmental Health Officers

Part 8 Miscellaneous and Supplementary provisions

Section 73 – Offences relating to pollution etc: penalties on conviction

The maximum fine on summary conviction is £50,000 that may be provided for in Regulations made under pollution prevention and control provisions in the Environment (Northern Ireland) Order 2002.

Section 74 – Offences by Bodies Corporate

The effect of this section is that it makes a company director and those that have control over a company guilty of an offence under this Act if it can be proved that the offence was committed with their consent or connivance or could be attributed to their neglect.

Schedule 1 – Application of the Noise Act 1996 to licensed premises

This Schedule makes various amendments to the Noise Act 1996 so as to extend its application to licensed premises (including premises subject to an occasional licence), registered clubs and premises subject to an exhibition licence, entertainments licence and to premises where meals or refreshments are supplied.

Schedule 2 – Statutory Nuisances – Supplementary Provisions

This Schedule provides supplementary provisions in connection with Part 7 (Statutory Nuisances) of the Act concerning appeals to a court of summary jurisdiction, powers of entry etc., offences relating to entry, default powers, protection from personal liability and statement of right of appeal in notices.

Appendix One



Enforcement and Regulation Procedure

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Section 1 Introduction, Aim and Scope of the Procedure

Introduction

The Council is the enforcing authority for a wide range of legislation including local bye-laws. The areas covered by enforcement include the following

- Building Control
- Cleansing and Waste management
- Environmental Health
- Animal Welfare and Dog Control
- Licensing
- Planning
- Housing
- Off Street Car Parking

In general, the enforcement role has been delegated to Senior Officers of the above departments though some enforcement decisions may be made by the Council in accordance with the Council's Scheme of Delegation.

The Council's aim is to provide a better environment for its citizens both for the present and the future. It will achieve much of this through education by providing advice and regulating the activities of others however, securing compliance with regulatory requirements using enforcement powers, including prosecution, can play an important role in achieving this aim.

Aim and Scope of the Procedure

This procedure sets out the principles and approach which the Council and its officers will follow so as to provide an effective and fair service, and to ensure consistent and open enforcement. It is written for the guidance of the Council and its officers and will be made available to any business representatives or members of the public who enquire about our procedures. It applies to all dealings whether formal or informal between businesses and members of the public with officers of the Council in relation to regulation and enforcement matters.

In addition to this generic procedure, officers have been issued with a range of more specific enforcement guidelines and procedural documentation to support them in making enforcement decisions.

When applying this procedure the Council recognises its duty to act in accordance with its statutory responsibilities including:

- The Human Rights Act 1998
- The Regulation of Investigatory Powers Act 2000,
- The Criminal Procedure and Investigations Act 1996
- The Police and Criminal Evidence (NI) Order 1989

- The Data Protection Act 2018 and The General Data Protection Regulation (GDPR)
- All associated Codes of Practice.

The Council is committed to fulfilling its responsibilities under Section 75 of the Northern Ireland Act 1998. Therefore any decision regarding enforcement will be impartial and shall not be influenced by the religious beliefs, political opinion, racial group, age, gender, marital status or sexual orientation of any alleged offender, complainant or witness.

Section2 – Principles of Enforcement

Principles of Enforcement

The Council believes in effective but fair regulation and supports the NI Better Regulation Strategy and the Principles of Better Regulation which include **proportionality** in application of the law and in securing compliance; **targeting** of enforcement action; **consistency** of approach, **transparency** about how the Council operates and what those regulated may expect from the Council, and **accountability** for the Council's actions.

Proportionality

In relation to enforcement actions, proportionate means that where a person or business has failed to comply with a statutory requirement, the Council will take into account the risk posed by the failure and the cost which would be incurred in securing compliance with the law.

Where possible the Council will minimise the costs of compliance by ensuring that any action it requires is proportionate to the risks detected. As far as the law allows, the Council will take account of the circumstances of the case including

- risk to the public or the environment
- seriousness and consequences of the breach
- attitude and actions of the offenders, and
- history of any previous incidents or breaches of the law.

The Council will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

Consistency

The Council will aim to be consistent in its response to all incidents and complaints, in the advice Officers give and in using its enforcement powers, including when deciding whether to prosecute. Where appropriate, it will liaise with other enforcement bodies and organisations, including the Local Authority Better Regulation Office, to ensure that its activities are consistent with other enforcers regionally and nationally.

The Council, however, recognises that consistency does not simply mean uniformity and Officers must be able to exercise their professional judgement in individual cases.

Whilst the Council will try to achieve consistency internally and with other enforcing authorities, it alone will determine whether a prosecution or other enforcement action is appropriate having considered the circumstances of the case and any prevailing legal requirements.

Decisions on enforcement action are a matter of professional judgement and the Council, through its Officers, should exercise discretion. The Council will continue to develop arrangements to promote consistency including effective arrangements for liaison with other enforcing authorities.

Transparency

The Council will be transparent and open in all its activities. It will provide information and advice in plain language on the rules that it applies and will disseminate this as widely as possible. It will be open about how it sets about its work, including any charges that it sets. It will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

Transparency is an integral part of the role of council officers and the council continues to train its staff and to develop its procedures to ensure that:-

- Where remedial action is required, it is clearly explained (in writing, if requested) why the action is necessary and when it must be carried out; a distinction being made between legal requirements and advice on best practice.
- Opportunity is provided to discuss what is required to comply with the law before formal enforcement action is taken, unless urgent action is required, for example, to prevent serious illness/injury or to prevent evidence being destroyed.
- Where urgent action is required, a written explanation of the reasons is provided as soon as practicable after the event.
- A clear written explanation is given of all rights of appeal against formal enforcement action at the time the action is taken. (Whenever possible this advice will be issued with the enforcement notice.)

Having due regard to legal constraints and requirements, keep all other relevant parties informed during investigations and with respect to enforcement decisions.

Targeting

The Council shall ensure that regulatory efforts are directed primarily towards those whose activities give rise to the greatest risk of social, economic and environmental impacts. Action will be primarily focused on law-breakers or those directly responsible for the risk and who are best placed to control it.

Accountability

The Council fully recognises that they are accountable to the public for their actions. Consequently policies and standards have been put in place against which the Council's actions can be judged and procedures exist for dealing with comments and handling complaints.

Complaints about service

In the event that a "customer" is dissatisfied with the service provided, there are a number of forms of recourse available as outlined in Section 6, which Officers will ensure the customer is made aware of. The exact procedure followed in any particular case will depend not only upon the nature of the grievance itself but also the course of action the complainant wishes to pursue.

The Council will provide well publicised, effective and timely complaints procedures easily accessible to individuals and organisations. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

Helpfulness

The Council believes that prevention is better than cure and that its role, therefore, involves actively advising on and assisting with compliance. It will provide a courteous and efficient service and its staff will identify themselves by name. It will provide a contact point and telephone number for further reference and it will encourage individuals and organisations to seek advice/information.

Section 3 – Arrangements for Enforcement

Arrangements for Enforcement

The Council shall make adequate arrangements to provide effective enforcement services by ensuring that

- Sufficient numbers of enforcement Officers are employed who are adequately qualified, trained, experienced and competent to carry out their duties.
- All enforcement actions are taken by Officers who have been specifically authorised in accordance with the relevant legislation and the Council's Scheme of Delegation
- All investigations are carried out in compliance with the Police and Criminal Evidence (NI) Order 1989, the Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000 and relevant codes of practice

Where necessary, specific enforcement guidelines, procedures and documentation has been and will continue to be developed to support officers making enforcement decisions and to ensure compliance with all relevant statutory codes of practice and official guidelines.

Working with other Regulators and the Courts

Where the Council and other enforcement bodies have the power to prosecute, the Council will liaise with that other body to ensure effective co-ordination, to avoid inconsistencies and to ensure that any proceedings instituted are for the most appropriate offence. The Council will also consult with other local authorities acting as Lead/Home/Primary Authorities as appropriate. The Council will, when appropriate and when requested to, seek to raise the awareness of the courts of the gravity of certain offences and the full extent of their sentencing powers. In certain cases it may also be appropriate to draw the attention of the courts and/or the DPP to the fact that disqualification of a director may arise under relevant legislation.

Section 4 – Enforcement Action

Enforcement Action

Officers will determine what, if any, enforcement action is appropriate, in accordance with the aforementioned principles, from the following informal and formal options:

Types of Enforcement Actions

Where offences are observed, the actions and sanctions taken by Officers should aim to:

- secure compliance
- change the behaviour of the offender
- be responsive and consider what is appropriate for the particular offender
- be proportionate
- deter further non-compliance
- ensure that action is in the public interest

Where an offence has occurred the Council expects that providing advice or guidance will be all that is required in the majority of cases. However, where such methods have been, or are likely to be, unsuccessful or where the breach is of a serious nature then formal enforcement action will be taken. In addition, formal enforcement action may be taken where offences are not serious in isolation but are likely to have a cumulative effect.

There are a wide range of actions available to the Council in dealing with offences. The following describes the main types of actions available. In determining the most appropriate action to take, Officers will consider the circumstances of the incident and this procedure.

Action Available	Explanation	Circumstances
Informal Advice	Verbal or written advice identifying non compliance and remedial measures. No Follow-up action	Where the offence is minor and the risk from non-compliance is low
Informal warnings	Verbal or written warning requiring remedial measures within a defined period of time. Will be followed up to ensure compliance	Where non-compliance is not posing a serious risk and it is expected, from what is known of the offender, that informal action will achieve compliance.
Enforcement Letters	Warning that a recurrence or continuation of an infringement will result in legal action or service of a statutory notice	Where non-compliance is not posing a serious risk and it is expected that the offender will achieve compliance, however the offence itself is significant, recurring or longstanding.
Statutory Notices	Where available under specific legislation, usually requires persons to take action or prohibits certain activities. Serving a notice does not preclude prosecution. Failure to comply is often an offence and prosecution will normally follow. Some notices require emergency action.	There are significant contraventions of legislation and/or a lack of confidence in the proprietor/individual or enterprise to respond to an informal approach
Fixed Penalty Notices	Certain offences are subject to fixed penalty notices where prescribed by legislation. They are recognised as a low	Where a person or business fails to accept or pay a fixed penalty notice, the Council will consider escalation of enforcement

Action Available	Explanation	Circumstances
	level enforcement tool and enable a defendant to avoid a criminal record.	action. This may include consideration of a prosecution for the original offence under the primary legislation. Where a written/fixed penalty notice has been issued on a previous occasion, and a further offence is committed, for the same contravention, on a separate occasion, the Council may then consider prosecution if appropriate.
Caution	A caution may be issued to an individual or business where there is an admission of guilt, and extenuating circumstances exist which make prosecution inappropriate. A caution is a written acceptance by an offender that they have committed an offence and may only be used where a prosecution could properly have been brought. The acceptance of a caution will be noted locally and brought to the Courts attention if the offender is convicted of a subsequent offence.	The Council will take account of current Home Office guidelines when considering whether to offer a formal warning. Where a person declines such an offer the Council will consider taking alternative enforcement action, which will usually take the form of a prosecution. The Council recognises that other bodies such as home and originating authorities will require to be advised of the formal cautions issued by the Council and their outcome.
Revocation, suspension or variation of permits, approvals and licenses	Revoking or suspending a licence, approval or permit is a serious decision that will normally only be taken by elected members, in line with the Council's scheme of delegation.	A licence, permit or approval may be revoked or suspended if any condition attached to the licence is breached or where an activity presents a serious risk.
Works in default	this action is permitted under certain legislation and is reserved for those cases where there is an imminent danger to persons or property and the legal process would not provide adequate remedy	In cases where work in default is carried out, the Council will make every effort to recover the costs of the works from the relevant party.
ASBO	The Council can apply to the Magistrates Court for an antisocial behaviour Order which will prohibit a person from acting in an antisocial manner or from carrying out an act which contributes to anti-social behaviour	Where there has been persistent, relatively low level offending or more serious matters that cause harassment, alarm or distress to others. An order is necessary to protect people from that type of behaviour in the future. An ASBO may be sought upon conviction but may also be sought where a person has not been convicted, or even charged, with an offence, provided there is sufficient evidence that an ASBO is necessary.
Injunctive proceedings	May be sought to require a party to either do a specific act or refrain from doing a specific act or acts	This will be considered in instances where the use of other enforcement powers would not be a sufficient remedy, e.g. where a person repeatedly fails to comply with the law or where there is an imminent risk to public health or public safety
Prosecution (Section 5)	Prosecution is an important part of enforcement. It aims to punish wrongdoing to avoid a recurrence, and to act as a deterrent to others	A prosecution will not be commenced by the council unless it is satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and that there is a realistic prospect of conviction.

Section 5 - Prosecution

Prosecution

The use of the criminal process to institute a prosecution is an important part of enforcement. It aims to punish wrongdoing to avoid a recurrence, and to act as a deterrent to others. It follows that it may be appropriate to use prosecution to ensure certain requirements are met. Where the circumstances warrant it, prosecution without prior warning or recourse to alternative sanctions will be pursued.

The Council recognises that the institution of a prosecution is a serious matter that should only be taken after full consideration of the implications and consequences. Decisions about prosecution will take account of the Public Prosecution Service Code for Prosecutors (2016).

A prosecution will not be commenced by the council unless it is satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and that there is a realistic prospect of conviction. If the case does not pass this evidential test, it will not go ahead. Where there is sufficient evidence, a prosecution will not be commenced or continued by the council unless it is in the public interest to do so.

The Council's Prosecution Procedure and decision mechanism for considering prosecution will be followed in all cases where prosecution is being considered by officers as part of the Council's Scheme of Delegation.

Offences by a Person Under the Age of 18 Years

When a minor is alleged to have committed an offence the name, address, age and date of birth of the suspect should be obtained, together with the name and address of their parent or legal guardian. Once the age of the suspect has been ascertained, the correct course of action can then be followed. Authorised Officers will operate in accordance with the relevant guidance and associated Council procedures and avoid criminalising minors in all but the most exceptional of cases.

A person under the age of 18 is deemed a minor by the courts and is normally prosecuted in the Youth Court. The Council does not normally prosecute minors and will instead use one of the other enforcement actions detailed in this procedure. However, where an offence is truly exceptional, and the circumstances are straightforward and 'clear cut' and no alternative sanction is appropriate, consultation with the Youth Justice Agency will take place prior to the service of any fixed penalty notice/or prosecution. A formal interview will also take place before such action is taken.

A young person's parents or legal guardian should be informed at the earliest opportunity, ideally by letter, explaining the action to be taken, and to give the opportunity to discuss the case with the relevant officer of the council and to be present at any formal interview.

For persistent offenders aged 17 years old or those who behave aggressively towards an Enforcement Officer, a Fixed Penalty Notice can be issued using the same procedure as for adults.

Vulnerable Adults

If there is any doubt in the Authorised Officer's mind that the person who has committed the offence is not capable of understanding what they have done, have significant learning disabilities, or otherwise, formal action would not be in the public interest, hence education should be considered. This could include asking the person to rectify their actions or explaining the consequence of their actions. In any event, the evidence should be discussed with the line manager before a decision on formal action including issuing a fixed penalty is made.

Death at Work

Where there has been a breach of the law leading to a work-related death, enforcing authorities need to consider whether the circumstances of the case might justify a charge of manslaughter.

The PSNI are responsible for deciding whether to pursue a manslaughter investigation and whether to refer a case to the Director of Public Prosecutions (DPP) to consider possible manslaughter charges. If in the course of a health & safety investigation evidence indicating that manslaughter may have been committed, the Council will work to the principles of the Northern Ireland Agreement for Liaison (Investigation of work-related Deaths) and ensure matters are properly co-ordinated with both the PSNI and DPP.

Section 6 - Complaints

Complaints Related to Enforcement Action Decisions

Appeals

If a person wants to appeal against any enforcement action taken it is recommended that legal advice should be sought. However, the following information will be made available by the council;

- Officers will advise persons against whom any enforcement action has been taken of their right to make representation to the Officer's Head of Service.
- If the Council serve a notice and the legislation used has a statutory appeal provision, details of that right of appeal and how it should be lodged will be served upon the recipient at the same time as the notice.

Section 7 – General Provisions

General Provisions

Public Access to Information

This procedure will be made freely available to all members of the public on request and a copy will be posted on the Council website.

Officers will adhere to the restrictions placed on them by legislation in relation to the release of any information to a third party, obtained by them in the course of their duties. When convictions have been obtained however, the Council will, in addition to reporting the details to the appropriate authorities, consider alerting the media and making the details of the conviction public. Such action will serve to draw the attention of a wider audience to the need to comply with legal requirements and deter others tempted to disregard their legal duties.

In accordance with the Environment and Safety Information Order, the Council will keep and make available, a public register of statutory notices.

Revision

This procedure will be reviewed every two years or as necessary to ensure that it satisfies legal requirements and our customers' expectations of the service.

Comments

The Council welcomes comments on this procedure and on how we can improve services. Comments can be in the following ways:

- In person
- By telephone 0300 303 1777
- In writing

Townhall	The Grange
2 Townhall Street	Mountjoy Road
Enniskillen	Omagh
Co. Fermanagh	Co Tyrone
BT74 7BA	BT79 7BL
- By email info@fermanaghomaggh.com
- Via our website www.fermanaghomaggh.com

Appendix 2



Fermanagh & Omagh
District Council

Comhairle Ceantair
Fhear Manach agus na hÓmaí

Prosecution Procedure

Fermanagh and Omagh District Council Prosecution Procedure

1. Introduction

This procedure sets out the principles upon which the Council exercises its judgement in all cases which give rise to potential criminal proceedings. Its purpose is to promote efficient, consistent and fair decision making so as to develop and maintain public confidence in the Council's performance of this aspect of its duties.

Officers responsible for recommending that a prosecution should take place have the opportunity to exercise discretion at various stages of the enforcement and prosecution process. Officers must use that discretion to serve in the interests of justice, the public, victims, witnesses and offenders in accordance with the Principles of Better Regulation, which the Council has adopted.

The Council recognises that the prosecution of individuals or businesses is a serious matter. Fair and effective prosecution is essential to the maintenance of law and order whilst prosecution has serious implications for all concerned, be they victims, witnesses or offenders. This procedure has been devised so that officers of the Council can make fair and consistent decisions concerning the recommendation and decision to prosecute.

2. The Duties of Officers

The investigating officer and Head of Service/Director involved in recommending/deciding to prosecute must take an independent view of the evidence in any prosecution. When applying this procedure, the Council recognises its duty to act in accordance with its statutory responsibilities including:

- The Human Rights Act 1998
- The Regulation of Investigatory Powers Act 2000,
- The Criminal Procedure and Investigations Act 1996
- The Police and Criminal Evidence (NI) Order 1989
- The Data Protection Act 2018 and The General Data Protection Regulation
- Public Prosecution Service Code for Prosecutors (2016).
- All relevant associated Codes of Practice.

The Council is committed to fulfilling its responsibilities under Section 75 of the Northern Ireland Act 1998. Therefore, any decision regarding prosecution will be impartial and shall not be influenced by the religious beliefs, political opinion, racial group, age, gender, marital status or sexual orientation of any alleged offender, complainant or witness.

3. The Criteria to be Applied to each Prosecution

(See further specific information in the attached Appendix 1)

Each case is unique and must be considered on its own merits, but there are general principles that apply in all cases. There are two stages in the decision to prosecute.

The first stage is the **evidential test**. If the case passes the evidential test, consideration must be given as to whether a prosecution is needed in the public interest.

The second stage is the **public interest test**. The Head of Service/Director will only consider prosecution when the case has passed both tests.

3.1 The Evidential Test

The Head of Service/Director must be satisfied that there is enough evidence to provide a realistic prospect of conviction against the defendant. Consideration must be given as to what the defence case may be and how that is likely to affect the prosecution case. A realistic prospect of conviction is an objective test. It means that the court, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged.

When deciding whether there is enough evidence to prosecute, consideration must be given as to whether the evidence can be used and is reliable. There will be many cases in which the evidence does not give any cause for concern, but there will also be cases in which the evidence may not be as strong as it first appears.

3.2 The Public Interest Test

The public interest must be considered in each case where there is sufficient evidence to provide a realistic prospect of conviction. In serious cases, a prosecution will usually take place unless there are public interest factors against prosecution which clearly outweigh those in favour. Although there may be public interest factors against prosecution in a particular case, quite often the prosecution should go ahead and those factors should be put to the court when sentence is being passed. Consideration must also be given to the probable public benefit of a prosecution and the importance of the case e.g. whether it might establish a legal precedent.

The Head of Service/Director must balance factors for and against prosecution carefully and fairly having regard to any explanation offered by a potential defendant and also the previous history of the party concerned. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute, but others may suggest that another course of action would be better.

4.0 Recommendation of Formal Action by the Head of Service/Director

The investigating officer will usually be the person in possession of the facts of the case and will make a recommendation to prosecute using the appropriate pro forma to the Head of Service/Director who will consider all the facts of the case and the criteria outlined in this procedure. The Head of Service/Director will in turn sanction

the recommendation to prosecute or otherwise and this decision will be recorded on the same pro forma (Appendix 2).

5.0 Charging Procedure and Practice

When the Head of Service/Director has made the decision to prosecute an offender, the investigating officer will consult with the Council Solicitor on charges to be brought against an accused person and for what offence he/she will be prosecuted. Officers will exercise that discretion using the following principles: -

- Charges will be brought which reflect the seriousness of the offence.
- Regard will be given to the Courts sentencing powers.
- The charges will be selected in such a way so that the case can be presented in a clear and straightforward manner.
- Efforts should be made to keep the charges to a minimum. Numerous charges can impose an unnecessary burden upon the Courts and numerous charges can disguise the essential features of a case and make such a case unwieldy.
- Multiplicity of charges should never be used in order to obtain guilty pleas or to seek an increased penalty against the defendant.

6.0 Review and Discontinuance

All prosecutions must be reviewed continuously from the instigation of proceedings. Reviews are important especially when new evidence is found, or as details of the defence case emerges.

The officer must be resolute when made aware of new evidence or information and should not hesitate to recommend discontinuance of proceedings in appropriate cases e.g. where a summons has been issued for non-payment of a FPN and the defendant pays the FPN and all associated legal costs incurred, prior to the court hearing, then it may be appropriate to discontinue legal proceedings.

The officer should also take into account that it may be considered an abuse of the process of the Court if, for example, the prosecution concerned a failure to do some act and the act is subsequently carried out by the accused and the prosecution was discontinued as a result. In such cases the prosecution should normally be continued, although regard should be had to any contra-indications given by the Court (e.g. suggesting a Caution be given).

7.0 Accepting Guilty Pleas

In certain instances, defendants may wish to plead guilty to some but not all of the charges. Officers in consultation with the Council's Solicitor should only agree to accept the guilty pleas and to discontinue prosecution of the other charges if they are of the opinion that the Court is able to pass a sentence which matches the seriousness of the offences. A guilty plea must never be accepted merely because it is convenient.

8.0 Conclusion

The factors mentioned in the procedure are not conclusive. Each case will depend on its own facts, circumstances and merits. However, this procedure will give officers guidance and assistance in the exercise of their discretions. This procedure largely follows the Public Prosecution Service Code for Prosecutors where applicable, and the Principles of Better Regulation.

Appendix 1

Fermanagh and Omagh District Council**The Evidential Sufficiency Test**

The Head of Service/Director considering the case must be satisfied that there is sufficient evidence to provide a “realistic prospect of conviction” against every defendant on every charge.

The prosecution should not therefore be commenced unless there is admissible, substantial and reliable evidence that can be placed before the Court. Inadmissible evidence is evidence that would be excluded by the Court, such as improperly gathered evidence obtained in breach of, for example, the Police and Criminal Evidence Act (PACE), the Regulation of Investigatory Powers Act (RIPA), or the Data Protection Act. The evidence must be substantial, i.e. it can be proved beyond reasonable doubt. The evidence must also be reliable in that it should be able to stand up to scrutiny in any potential cross-examination by the Defence.

The officer responsible for investigating the case must have regard to the following matters:-

- Any statutory requirements relating to the conduct of investigations and interviews, or codes of practice made thereunder.
- If the case depends on admissions by the accused, the officer must have regard to any evidence which supports or detracts from the reliability of the confession.
- Consideration should be given to the age, intelligence, understanding or other circumstances of the accused.
- If the accused gives an explanation, regard must be had to whether or not it is considered credible in the light of the evidence as a whole.
- Officers must also consider any possible defence, e.g. due diligence or best practical means.
- If the identity of the accused is likely to be an issue, how strong is the evidence and have the correct procedures with regards to identification and recognition been applied?
- Are there any reasons to suggest that a witness may be unreliable? For instance, is his/her memory impaired, or is he/she either friendly or hostile to the accused or has he/she some other motive for forwarding their version of events.
- Are there matters which can be put to the witness by the Defence to attack his/her credibility?
- Is there a conflict between the evidence of witnesses?

- Officers must not ignore evidence. They should consider all available evidence in deciding whether to prosecute, whether it supports a prosecution or not.

The Public Interest Test

The rationale here is that the accused should not automatically be subject to prosecution proceedings. A prosecution should only be instigated if the public interest factors in favour of prosecution outweigh those against.

Factors that should weigh in favour of prosecution include the following: -

- Any conviction is likely to result in a significant sentence.
- A weapon or violence has been used or threatened during the commission of the offence.
- The accused was in a position of authority or trust, e.g. a public servant or a trustee.
- The accused was an organiser of the offence, where the offence was committed by a group of persons.
- There are grounds for believing that the offence is likely to be continued or repeated.
- The accused has allegedly committed the offence whilst under an order of the Court.
- The offence was motivated by any form of discrimination against the victim.
- The accused has been cautioned or has been convicted for similar or like offences in the past.
- The alleged offence, whilst not of itself serious, is being widely committed.
- There is an element of public risk or danger to health or harm or detriment to the environment and safety of the public.
- Any victim of the offence was particularly vulnerable or has suffered as a result of the alleged offence.
- The importance of the case itself, i.e. whether it would set a legal precedent.

The factors that weigh against the prosecution and may lead officers to consider other methods of enforcement, such as cautions or a formal warning,

- The offence is relatively minor.
- The Court is likely to impose a mere nominal penalty, such as a discharge or a small fine.
- The accused has already been convicted and sentenced by the Courts for a similar offence, and the further conviction is unlikely to result in the imposition of an additional sentence unless the matter is so serious that it requires further prosecution.
- The offence has been committed as a consequence of a genuine misunderstanding.
- The accused's positive attitude and willingness to prevent any recurrence
- The offence is "stale", i.e. there has been some considerable delay between the offence taking place and the commencement of a prosecution. The Courts have the power in all cases to dismiss a case if there has been undue delay by the prosecution (even if commenced within statutory time limits). However if: -

- (a) the offence is serious, or
 - (b) the delay has been caused or substantially caused by the accused, or
 - (c) the offence has only recently been found, or
 - (d) the offence is complex which has resulted in a long investigation then serious consideration should be given to prosecuting the matter.
- The age, mental or physical ill health of the accused. However, officers must always be aware of the seriousness of the offence. The accused is a Vulnerable Adult who is not capable of understanding what they have done or has significant learning disabilities.
 - The accused has rectified the loss or harm that he/she has caused. This should not be the sole reason not to prosecute.
 - Any undertaking and/or valid explanation offered by the Defendant.
 - Any prosecution could harm the interest of any informants. Usually all witnesses must provide evidence in open Court.

These considerations are not comprehensive or exhaustive – the public interest considerations which may properly be taken into account when deciding whether the public interest requires prosecution will vary from case to case. Assessing the public interest is not simply a matter of adding up the number of factors on each side and seeing which side has the greater number. Each case must be considered on its own facts and on its own merits.

The Victim

In certain cases there are clearly identifiable victims, e.g. noise nuisance cases where the person has to bear the nuisance. In such cases officers should always take into account the consequences to each person and any view expressed by him/her or his/her family before reaching a decision concerning whether to prosecute or not. However, the decision is that of the Council, not of the victim. Victims should always be informed about any decision which affects them.

Offences by a Person Under the Age of 18 Years

Providing a person has reached the age of criminal responsibility, officers should not avoid prosecuting a person merely because of their age. The seriousness of the offence and the youth's past behaviour are important factors.

Use of Caution.

A caution may be used as an alternative to prosecution in certain instances. The caution is a serious matter. It involves an admission by the offender that he/she has committed an offence. The caution may influence a Council to instigate proceedings in the event of a future offence and may be cited in court proceedings within a period of three years from the date of caution. Officers charged with investigating offences have discretion whether to recommend a caution instead of prosecuting an offender and in arriving at such a decision must consider:

- a. Whether the caution is likely to be effective
- b. Whether the caution is appropriate to the offence.

Before the caution is recommended the officer must be satisfied that there is sufficient evidence to provide a reasonable prospect of a conviction if the offender refuses to accept the caution. Decisions to offer a caution must be made on the basis that the case shall proceed to prosecution if the caution is rejected.

Appendix 2

Fermanagh and Omagh District Council

Decision for Consideration of Formal Action

File Reference No. _____

Legislation _____

Details of Offence _____

Issues to be Considered for Recommendation of Prosecution	Brief Detail of Case and determination of Recommendation
The gravity of the offence, together with the seriousness of any actual or potential harm	
Serious failures in management	
Whether it is appropriate in order to draw general attention to the need for compliance	
General record and approach of offender	
Reckless disregard of requirements	
Repeated breaches or persistent poor compliance	
Failure to comply with a written warning or notice served	
Willingness of offender to prevent a reoccurrence	
Likelihood of a successful due diligence or other defence	
Explanation offered by the offender	
Ability of witnesses to co-operate	
Would alternative action (e.g. caution, works in default, notice be preferable)	

Head of Service/Director Decision:	
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Under the Public Prosecution Service Code for Prosecutors does the case meet:

- (a) Evidential Test No Yes
 (b) Public Interest Test No Yes

Signature	
Date	Head of Service
Signature	
Date	Director

VERSION CONTROL

Amendments made should be recorded in the below table, recording date amendments made, short description, page number(s) amended and the new issue number (which should also be noted in the footer of this document)

DATE	DESCRIPTION	SECTION/PAGE NOS	ISSUE NO
October 2015	New CNEA Implementation and Enforcement Policy for FODC	New Document	1
October 2019	Revised CNEA Policy 2015	<p>Changes had been made through Committee which had not been reflected in the Policy document. In addition, it was not easy to take each Part in isolation and link back to possible enforcement action, and the relevant Authorising Officers.</p> <p>Fixed Penalty Notices - Changes had been made through Committee which had not been reflected in the Policy document, e.g. increase in FPN for Dog Fouling. Some of the Authorised Posts needed to be amended in respect of the Parts for which they had responsibility.</p> <p>Part 1 –Gating Orders-This part of the procedure is seldom invoked. The original Policy assigned authorisation to the Head of Environmental Health; however, this now falls within the remit of the Head of Community Services with particular reference to the PCSP.</p> <p>Part 2 – Vehicles - When originally drafted, there was no evidence of any problems with Abandoned Vehicles; however, this has now changed, and the Policy has been amended in this regard. There are problems in relation to data sharing with the Regulatory bodies in the Republic of Ireland in respect of tracing the owners of cars registered in that jurisdiction.</p> <p>Part 3 Litter - Litter remains a constant problem with incidents on the increase across the district. In relation to dumping and fly-tipping, these offences are dealt with in accordance with the Litter (NI) Order 1994. Updates to reflect comments</p>	2

		<p>Part 4 -Graffiti and Other Defacement The removal of graffiti is not a significant issue within the district. The removal of unauthorised signage has however, impacted upon the availability of employees within Street Scenes to undertake planned programmes of work. Updates to reflect comments</p> <p>Part 5 Dogs -Dog Fouling incidents remain a significant problem within the District. There is a recognition of the need to reverse this trend through a combination of more successful enforcement and effecting a change in people's behaviour and attitudes. Updates to reflect comments & focus on dog fouling</p> <p>Part 6: Noise -There are no officers available to provide an immediate response to dealing with noise at night. However, no this has not caused any issues to date.</p> <p>Part 7: Statutory Nuisance – No issues</p> <p>Part 8 Miscellaneous and Supplementary Provisions. – No Issues</p>	
March 2023	Revised CNEA Policy 2019	<p>Changes to overall layout to improve flow of document.</p> <p>Insert of Version Control table at end of document</p> <p>Changes to Responsible services and staff to reflect Co-Form process undertaken by Council. New Regulatory Services team.</p> <p>Enforcement & Regulation Procedure and Prosecution Procedure updated to reflect the most recent Public Prosecution Service Code for Prosecutors (2016) . Some changes to terminology. Updates to legislation.</p>	3
June 2023	March 2023 Policy updated	<p>Changes to fixed penalty fees provided for by the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Amendment) Regulations (Northern Ireland) 2022. No agreement in March 2023 and deferred to June 2023 with new Council mandate. Increases agreed to Fixed Penalty Notices for Littering and Dog Fouling. No other substantial changes to March Policy hence retained Policy date as March 2023</p>	4