



Torridge District Council  
Corporate Enforcement Policy

October 2018

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## 1. Introduction

Torridge District Council's Corporate Enforcement Policy provides guidance to officers, businesses, consumers and the general public on the range of options that are available to achieve compliance with the legislation it enforces. We believe that effective and well-targeted enforcement is essential in promoting fairness and protection from harm. We recognise that effective and timely guidance and advice on compliance supports and enables economic growth for businesses and improves public health and environmental outcomes.

This Enforcement Policy is the core of our approach to enforcement and supports all of this Authority's strategic plan goals:

*Developing a Prosperous & Sustainable Economy  
Stronger, Safer, Healthier Communities  
Protecting and Enhancing our Quality Environment  
An Effective and Customer Focused Council*

It incorporates best practice and sets common principles that we will follow and how we will comply with good enforcement principles and best practice including the [Regulators' Code](#). This seeks to promote an efficient and effective approach to regulatory inspection and enforcement, improving the outcome of regulation without imposing unnecessary burdens on businesses. Details of the legislation and guidance taken into consideration in preparing this policy are given as [Appendix A](#).

***The prime consideration of all enforcement activities undertaken by the Council is to protect the public from harm. Torridge District Council recognises the key role its enforcement function has in safeguarding, and will carry this out at all times with adherence to national and regional safeguarding policy.***

We will publicise this corporate policy and invite comment on feedback on it and make revisions as necessary. The policy will be reviewed anyway from time to time and any revisions will be published.

## 2. What is this policy for?

This policy outlines our approach to dealing with non-compliance with legislative requirements of businesses and individuals affected by our activities. It also informs enforcement officers of the local authority of standards and expectations of them.

Authorised officers will act in accordance with this policy by being properly trained and qualified, by having knowledge of this policy and through management and oversight of their activities.

## 3. When does this policy apply?

This Corporate Enforcement Policy is an overarching policy for enforcement functions of the Council. Enforcement activities will include any action carried out in the exercise of statutory powers and duties. This is not limited to formal enforcement action such as prosecution or the issuing of Notices. It also includes the inspection of premises for the purpose of checking compliance with regulation or conditions and the investigation of complaints.

Under this there are more detailed policies which cover specific functions in more detail.

All function specific policies will meet the overall aims and objectives of the Corporate Policy. Any new function specific policies that include any enforcement function shall be developed having regard to the Corporate Enforcement Policy.

The list of service specific policies or strategies is given below. These should be read in conjunction with this policy.

<b>Policy</b>	<b>Version/Date</b>
<a href="#">Local Enforcement Plan (planning)</a>	Undated
<a href="#">Tree Protection Strategy</a>	Undated
<a href="#">Gambling Act Statement of Principles</a>	January 2013
<a href="#">Empty Homes Strategy</a>	December 2015
<a href="#">Private Sector Housing Enforcement Policy</a>	July 2018
<a href="#">Contaminated Land Strategy</a>	April 2013
<a href="#">Licensing Enforcement Policy</a>	January 2015
<a href="#">Sexual Establishment Licensing Policy</a>	September 2014
<a href="#">Taxi and Private Hire Licensing Policy</a>	February 2017

**Where no service specific enforcement policy is in place and enforcement action is taken, the Corporate Enforcement Policy will apply.**

A departure from this policy must only be in exceptional circumstances and capable of justification. Any departure will first be considered by the Operational Manager or Senior Manager for that function or unless a delay in making such a decision will result in serious risk of personal injury, risk to public health or impact effective running of the service. All such decisions will be recorded in compliance with the Openness of Local Government Bodies Regulations 2014.

## 1. Our approach to dealing with non-compliance

Our approach will aim to:

- Challenge and educate the behaviour of the offender
- Eliminate any damage, risk or harm caused as a result of any offences
- Eliminate any financial gain or benefit from non-compliance
- Be responsive and appropriate for the particular offender and regulatory issue, including the punishment and public stigma associated with a criminal conviction
- Be proportionate to the nature of the offence and the harm caused
- Where possible, restore the harm caused by non-compliance
- Seek to deter future non-compliance.

We welcome businesses or regulated individuals to approach us where they believe they are non-compliant and we will offer advice as to how they can reach this standard. Where an approach of this nature is made, provided a willingness to comply is demonstrated, we are unlikely to take direct enforcement action but instead cooperate to ensure compliance is achieved. Where matters are progressed through these informal means, these will be monitored to completion. When compliance is reached this will be communicated and confirmed with the business or individual concerned.

There is an expectation that our staff will clearly explain to relevant persons non-compliance and the reason for, and status (whether formal or informal), of any advice being given, actions being required or decisions taken. There will be an opportunity for dialogue in relation to this. This commitment does not extend to situations that require immediate enforcement action to prevent or respond to a serious breach or where providing such an opportunity would be likely to defeat the purpose of the proposed enforcement action.

We will aim to communicate with businesses and individuals in a way that is effective and convenient to them, whether this is verbally, in writing or by electronic means. Where we have not done so, we will confirm all information, guidance, decisions and reasoning in writing on request.

The Council delegates the powers it has to investigate and enforce various pieces of legislation so that individual enforcement officers who, with the appropriate levels of competence, and where required qualification, have specific authority to act. This is set out in the Councils Constitution ([found here](#)). Investigating Officers are responsible for day to day management of investigations in accordance with all policies and procedures relevant to their function. Enforcement teams are overseen by suitably qualified and experienced team leaders and managers.

Enforcement Officers carry identification and confirmation of their authorisation.

We will refer matters to other authorities or enforcement bodies where we believe they are the most appropriate to deal with a matter. We will also accept referrals from others where we are the most appropriate enforcement body to deal with something effectively. All exchanges of information will meet the requirements of current Data Protection legislation and good practice. Where regular or specific exchanges of information are required between enforcing Authorities, this will be in accordance with specific information sharing agreements. Internal sharing of information for investigation or enforcement purposes will be secure, fair and proportionate. To reduce the burden on regulated businesses and individuals, we will

aim to follow the “collect once, use many times” principle (insofar as this is permissible if dealing with personal information). We will work with other regulators where conflict of advice to regulated businesses or individuals has become apparent in order to determine the most appropriate way forward for all parties.

Enforcement decisions will be fair and objective and will not be influenced by any of the protected characteristics of the suspect, victim, witness or offender and will be in line with our Equality Policy ([found here](#)). Decisions will not be influenced by improper or undue pressure from any source. Non-compliance found in relation to the Councils own assets or activities will be treated seriously and promptly and internal processes will be used to achieve compliance standards, escalating the matter corporately if necessary.

We will determine a proportionate response in all cases where non-compliance is detected based not just on the nature of the contravention but the overall capability and capacity of the business or regulated person to comply, including the level of technical advice available to them. In coming to a decision about proportionate response, we will weigh up the likely cost to the business, the expected benefit to public health or safety or the environment from compliance as well as the seriousness of the non-contravention.

We will apply the Primary Authority Principal for businesses which have a Primary Authority partnership. Where any business has a ‘Primary Authority’ relationship established with a local authority regulatory service our officers will communicate with that service at the earliest opportunity. For any businesses for which we are Primary Authority, we will encourage other enforcement authorities to abide by the principles of good enforcement.

We are committed to dealing firmly with those that deliberately, persistently or significantly fail to comply with legislation.

If possible, the outcome of enforcement activity will be publicised where this is deemed necessary or useful for public education. This may also appear on the Council’s website, publications, publicised by the local press and on statutory registers where the Authority has a legal obligation to maintain or to contribute to one.

Investigation requests made to the Council will be prioritised and actioned in a proportionate and appropriate manner taking in such factors as risk to individuals or the environment, vulnerability of the person making the request or put at risk from the situation, and timeliness/ current status of the alleged non-compliance, and the risks from future or continuing non-compliance. Where enforcement action is not available or cannot be progressed, the reasons for this will be communicated to the person or body making the request. We will take an evidence based approach to determine priority risks for our proactive investigations and targeted inspections.

In some situations enforcement action can only be taken with the assistance of complainants and on the basis of supporting information and intelligence they provide to the Council and other authorities. In these situations the evidential requirements will be explained. We will not get involved in vexatious complaints or civil disputes.

## 5. Conduct of investigations

All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to Torridge District Council:

- the Police and Criminal Evidence Act 1984
- the Criminal Procedure and Investigations Act 1996
- the Regulation of Investigatory Powers Act 2000 (as amended by the Protection of Freedoms Act 2012)
- the Criminal Justice and Police Act 2001
- the Human Rights Act 1998
- the Crime and Disorder Act 1998

These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.

Powers vary depending on the legislation being used. Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.

Under some legislation enforcement officers are given particular powers to carry out certain activities including for example test purchasing, sampling, inspection of premises, goods equipment or documents. In certain circumstances where offences are suspected or evidence required legislation gives our officers powers to seize goods and documents. Where any items are seized officers will supply written confirmation of anything taken at the time or if not practical as soon as possible afterwards.

Legislation enforced can include offences of obstructing officers involved in enforcement activities and this can include failure to give appropriate assistance in some circumstances. Offences of obstruction will be formally pursued. Occasionally our officers work with the police and in some circumstances the police may use their powers of arrest or to stop vehicles. Our officers do not have the power of arrest or to stop vehicles.

Where a person, company or other legal entity is suspected of breaching legal requirements and formal action remain under consideration, wherever possible they will:

- Be formally interviewed under caution in accordance with the Police and Criminal Evidence Act 1984 usually but not exclusively audio recorded
- Be given the opportunity to demonstrate if a statutory defence is available to them
- Have the opportunity to give an explanation or make any additional comments about the alleged breach.

Investigations will be governed by the statutory time limit given in the legislation concerned. Any decision to prosecute will be taken as soon as evidence permits and action will be progressed as quickly as practicable. Unsuccessful enforcement action will be reviewed and any necessary changes to procedures or decision making criteria will be actioned and communicated to enforcement staff.

Investigation cases will be regularly reviewed to ensure it remains within the statutory time limit and whether it remains in the public interest to continue with the investigation.

We undertake to notify both potential defendants and witnesses in a timely way of the progress of investigations, the outcomes of our decisions of enforcement action and any rights of appeal or representation which exist. Alleged offenders or their legal representatives are encouraged to contact the investigating officer or team if they wish to know the progress on their investigation. Any person interviewed under caution will be informed in writing of decisions on enforcement action and the matter should not be considered as concluded until confirmed in writing, or a court case has taken place.

Costs of enforcement action will be pursued fully where the legislation allows.

## **6. Decisions on enforcement action**

There is a range of enforcement options available to the Authority through the legislation it enforces. Enforcement can relate to both criminal and civil breaches. These vary and one or more may be relevant to apply in each case. In some areas, function specific enforcement policies will provide details in relation to their legislation. In general though, the following types of action are available:

### **Compliance Advice, Guidance and Support**

Torridge District Council uses compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter (sometimes called an 'informal caution') will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence.

We recognise that where a business has entered into a partnership with a primary authority, the primary authority will provide compliance advice and support, and Torridge District Council will take such advice into account when considering the most appropriate enforcement action for it to take. It may discuss any need for compliance advice and support with the primary authority.

Where more formal enforcement action, such as a simple caution or prosecution, is taken, we recognise that there is likely to be an ongoing need for compliance advice and support, to prevent further breaches.

### **Voluntary Undertakings**

Torridge District Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. We will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

### **Statutory (Legal) Notices**

In respect of many breaches Torridge District Council has powers to issue statutory notices. These include: 'Stop Notices', 'Prohibition Notices', 'Emergency Prohibition Notices', and 'Improvement Notices'. Such notices are legally binding. Failure to comply with a statutory

notice can be a criminal offence and may lead to prosecution and/ or, where appropriate, the carrying out of work in default.

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.

## **Financial penalties**

We have powers to issue fixed penalty notices, and authorise others to do so, in respect of some breaches. A fixed penalty notice is not a criminal fine, and does not appear on an individual's criminal record. If a fixed penalty is not paid, Torridge District Council may commence criminal proceedings or take other enforcement action in respect of the breach.

If a fixed penalty is paid in respect of a breach we will not take any further enforcement action in respect of that breach. Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches.

Torridge District Council and delegated Officers are only able to issue fixed penalty notices where it has specific powers to do so. If fixed penalty notices are available, their issue is at Torridge District Council's discretion. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice.

Some legislation allows civil penalties to be imposed for offences. We will consider this option where we are satisfied that an offence has been committed. In each case, we will additionally consider whether the imposition of a civil penalty is in the public interest. The level of penalty imposed will be in accordance with any policy for imposing financial penalties which will be detailed under the enforcement policy for that function.

## **Injunctive Actions, Enforcement Orders etc.**

In some circumstances we may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

Torridge District Council is required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, we will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

## **Simple Caution**



Torrige District Council has the power to issue simple cautions (previously known as 'formal cautions') as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, we are likely to consider prosecution.

A simple caution will appear on the Local Authority's records. It is likely to influence how Torrige District Council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.

Simple cautions will be used in accordance with Home Office Circular 016/2008 and other relevant guidance.

## **Prosecution**

Torrige District Council may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute Torrige District Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

Prosecution will only be considered where Torrige District Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s).

Before deciding that prosecution is appropriate, Torrige District Council will consider all relevant circumstances carefully and will have regard to the following public interest criteria:

- The seriousness of the offence committed
- The level of culpability of the offender
- The circumstances of and the harm caused to the victim
- Whether the suspect was under the age of 18 at the time of the offence
- The impact on the community
- Whether prosecution is a proportionate response
- Whether sources of information require protection

A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches a prison sentence. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.

## **Refusal/Suspension/Revocation of Licences**

Torrige District Council issues a number of licences and permits. We also have a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a review of the licence which may result in its revocation or amendment.

When considering future licence applications, Torridge District Council may take previous breaches and enforcement action into account.

## **Other Enforcement Options**

Specific legislation can give the Local Authority additional sanctions in certain situations, for example in regard to financial enforcement. It can also confer powers such as seizure of property, enforced sale or works in default. Details of this will be given in conjunction with specific enforcement policies, or in the relevant legislation itself.

In exceptional circumstances, contraventions may not warrant any action. This can be where the cost of action taken by the offender to comply outweighs the detrimental impact of the contravention on the community, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community. A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where a business has ceased to trade, or the offender is elderly and frail and formal action could seriously damage their wellbeing. A decision to take no action will take into account the implications of the contravention. Usually a decision to take no action will only be made where the breach is not a serious one.

## **7. Review of this policy**

This Policy will be reviewed from time to time and refreshed should any changes in legislation or relevant codes of practice or guidance require it to be updated. We shall publish this and our service standards on our website and we welcome, and will respond to any comments on the Policy at any time. This policy and any updates or changes to it will be ratified in accordance with Torridge District Council's constitution.

## **8. Comments and Complaints**

In most situations where Torridge District Council takes enforcement action, there is a statutory right to appeal. This will always be communicated with the subject of the action at the appropriate time.

If an alleged offender is being prosecuted or subject to formal legal action in court then the court process has its own channels for legally challenging the action or the outcome through a court appeal.

If a matter has not yet reached court or in any other case where a person affected by an enforcement decision is dissatisfied, see our Complaints procedure for further advice on how to proceed ([found here](#))

### **Contact details for comments or complaints about the policy**

You can contact the Council by the following means:

**Address:** Riverbank House, Bideford, Devon EX39 2QG  
**Email:** [Complaints@torridge.gov.uk](mailto:Complaints@torridge.gov.uk)  
**Telephone:** 01237 428700  
**Website:** <http://www.torridge.gov.uk>

## **Appendix A: Legislation, Guidance and Codes that Influenced the Preparation of the Enforcement Policy**

### **A. Principles of Good Regulation**

The Legislative and Regulatory Reform Act 2006, Part 2, requires Torridge District Council to have regard to the Principles of Good Regulation when exercising a specified regulatory function<sup>1</sup>. For local authorities, the specified functions include those carried out by our environmental health, and licensing services.

We will exercise our regulatory activities in a way which is:

- (i) Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence,
- (ii) Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures,
- (iii) Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities,
- (iv) Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- (v) Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

### **B. Regulators' Code**

Torridge District Council has had regard to the [Regulators' Code](#) in the preparation of this policy. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

### **C. Human Rights Act 1998**

Torridge District Council is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

### **D. General Data Protection Regulations 2018**

Where there is a need for Torridge District Council to share enforcement information with other agencies, we will follow the provisions of the General Data Protection Regulations 2018.

### **E. The Code for Crown Prosecutors**

When deciding whether to prosecute Torridge District Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

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<sup>1</sup> Specified by the Legislative and Regulatory Reform (Regulatory Functions) Order 2007, available at [www.legislation.gov.uk](http://www.legislation.gov.uk)

The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

a. Evidential Test - is there enough evidence against the defendant?

When deciding whether there is enough evidence to prosecute, Torrige District Council will consider what evidence can be used in court and is reliable. We must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.

b. Public Interest Test - is it in the public interest for the case to be brought to court?

Torrige District Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that we will take into account are detailed under the enforcement options available to us as outlined in this policy.

**F. Regulatory Enforcement and Sanctions Act 2008 ('the RES Act')**

The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme. We will comply with the requirements of the Act when we are considering taking enforcement action against any business or organisation that has a primary authority, and will have regard to guidance issued by the Secretary of State in relation to Primary Authority.