



West Lothian
Council

DEVELOPMENT & REGULATORY SERVICES

**ENVIRONMENTAL HEALTH & TRADING STANDARDS ENFORCEMENT
POLICY**

Policy Ref:	EHTS_EP_001 01
Supercedes Policy Ref:	Food law enforcement policy (April 2006). Trading Standards Enforcement Policy. Animal health and welfare enforcement policy.
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Executive Summary

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

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

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

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

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

The enforcement actions available to duly authorised enforcement officers are set out in this policy document, as follows:

- Section 1 – Trading Standards.
- Section 2 – Animal health & welfare, dog warden, animal licensing:
 - 2.a. Animal health and welfare.
 - 2.b. Dog fouling, straying and barking.
 - 2.c. Animal establishment licensing.
- Section 3 – Food safety, private water supplies:
 - 3.a. Food hygiene.
 - 3.b. Food standards.
 - 3.c. Feed hygiene.
 - 3.d. Miscellaneous.
 - 3.e. Enforcement in council operated premises.
 - 3.f. Private water supplies.
- Section 4 – Public health, housing, pollution and pests:
 - 4.a. Public health statutory nuisance.
 - 4.b. Noise pollution.

- 4.c. Housing standards and defective buildings.
- 4.d. Vehicle pollution and idling.
- 4.e. Pest control.
- Section 5 – Workplace safety, smoking in public places:
 - 5.a. Workplace safety.
 - 5.b. Smoking in public places.

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

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

Andrew Blake.
Environmental Health & Trading Standards Manager.

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<p>Text phones offer the opportunity for people with a hearing impairment to access the council. The text phone number is 18001 01506 464427. A loop system is also available in all offices.</p>
<p>Published by West Lothian Council.</p>

1. Introduction

1.1 The aim of Environmental Health & Trading Standards is:

"Environmental Health & Trading Standards exist to protect and enhance, through the application of statute, the health, welfare, environment, safety, and trading market-place of the people of West Lothian and those using services obtained from within West Lothian."

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

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

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

2. The Enforcement Concordat

2.1 West Lothian Council has adopted the 'Enforcement Concordat' which sets out the Council's commitment to the principles of good enforcement in terms of:-

- Openness – we will provide information, as far as legislation permits, and advice in plain language. We are open about how we do our work and take account of stakeholders' views, where possible.
- Helpfulness – we believe that prevention is better than cure and work with businesses, especially small and medium sized businesses, to advise and assist with compliance.
- Proportionality – We minimise the costs of compliance for businesses by ensuring that any action we require is proportionate to the risks. As far as the law allows, we take account of the circumstances of the case and the attitude of the business or individual when considering action. We take particular care to work with small businesses and voluntary/community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.
- Consistency – we carry out our duties in a fair, equitable and consistent manner. While officers are expected to exercise their professional judgement in individual cases, we have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement agencies using the 'Home Authority Principle' operated by the Local Authority Co-

ordinators of Regulatory Services (LACORS). Also, businesses participating in the 'Primary Authority' scheme will receive greater consistency in the compliance advice they get from local regulators.

- Complaints About Service – West Lothian Council has an effective corporate complaints procedure. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with concise details of the process and the timescales involved.

3. General Principles

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

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

4. Who Decides What Enforcement Action is taken

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

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

- Enforcement officer(s);

- Service managers/Principal officers
- Solicitors from Legal Services

5. Enforcement Action

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

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

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

6. Reporting to the Procurator Fiscal

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

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

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

- Evidential Test – the enforcement officer must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against an accused on each charge. A 'realistic prospect of conviction' is an objective test that means that the Procurator Fiscal, and ultimately the Sheriff, is more likely than not to convict the accused of the charge/s alleged.
- Public Interest Test - the public interest must be considered in each case where there is enough evidence to provide a 'realistic prospect of

conviction'. Before submitting a report to the Procurator Fiscal consideration must be given to balance the factors for and against any proposed report carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the accused. Some factors may increase the need to submit a report to the Procurator Fiscal but others may suggest that another course of action would be more appropriate.

7. Deviation from Enforcement Policy and Monitoring

- 7.1 Where an officer feels that enforcement action out with the scope of the policy is required in order to protect the health, safety or wellbeing of people, animals or the environment then this will be discussed with a Principal officer. The outcome of this discussion will be recorded on the form in appendix A.
- 7.2 Principal officers will ensure that the requirements of the policy are being applied by enforcement officers.

8. Liaison with other Enforcement Agencies

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

9. Recovery of costs

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

10. Council Approval of Policy

- 10.1 It a requirement to ensure that this policy document and any subsequent significant changes are agreed by Council.

11. Review of the Enforcement Policy

- 11.1 The enforcement policy will be reviewed annually or when external changes dictate.

Section 1 – Trading Standards

Enforcement Guide:

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

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

Enforcement Orders	Consideration should be given to the use of Enforcement Orders through application to the civil courts for breaches of certain domestic and community infringements as specified in the Enterprise Act 2002. This should only be considered where the infringement harms the collective interests of consumers. Any decision to apply for an Enforcement Order does not preclude a recommendation to prosecute.
Penalty Charge Notices	Penalty Charge Notices shall be issued where Warning Letters have failed to ensure compliance with: Housing (Scotland) Act 2006 - as it relates to the failure to possess/provide 'home reports' Consumers, Estate Agents and Redress Act 2007 – as it relates to the failure to join an approved redress scheme.
Prosecution	See 6. Reporting to the Procurator Fiscal.

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

Enforcement Guide:

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

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

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

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

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

	informal action and warnings have not resolved the complaint.
S.80 abatement notice – Environmental Protection Act 1990	Where there is excessive dog fouling being allowed to accumulate on private land, or where statutory nuisance is proved in dog barking cases.
Fixed penalty notice – Dog Fouling (Scotland) Act 2004.	Where an owner or person in charge of a dog allows the dog to foul in a public place and refuses to pick up the fouling when challenged by an officer.
Fixed penalty notice – Environmental Protection Act 1990	Will be served where abatement notice has not been complied with as an opportunity to avoid a report being sent to the Procurator Fiscal.
Prosecution	See 6. Reporting to the Procurator Fiscal.

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

Enforcement Action	Conditions which would merit the action or occasions when action would be considered most appropriate
Advice	Given on every occasion
Inspections / site visits	Following receipt of licence application for a new establishment. On an annual basis for licensed establishments. Following receipt of a complaint or request for service regarding a licensed establishment.
Informal action	Informal action to secure compliance with legislation includes offering verbal advice, verbal warnings, requests for action, use of temporary conditions and the use of advisory letters. Circumstances appropriate for informal action include: <ul style="list-style-type: none"> • cases where the act or omission is not serious enough to warrant formal action or be a significant danger to animal health and welfare. • cases where from the establishment's past history, it can be reasonably expected that informal action will achieve compliance. • cases where informal action is deemed more appropriate and is able to produce a satisfactory resolution.
Reporting to other agencies	Where following an inspection or site visit concerns are highlighted regarding animal health and welfare issues.
Refusal / Removal of licences	Any establishment which fails to meet the requirements of the licensing legislation relevant to that establishment and by doing so significantly increases the likelihood of harm to animal health and welfare. Any person failing to meet the requirements of the legislation to hold a licence.
Prosecution	See 6. Reporting to the Procurator Fiscal.

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

Enforcement Guidance:

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

Enforcement action	Conditions which would merit the action or occasions when action would be considered most appropriate.
Advice	Given on every occasion
Inspections / interventions	Inspections and other interventions are carried out in accordance with the Food Law Code of Practice (Scotland), and at a frequency determined by the appropriate hygiene inspection rating for the premises.
Inspection report differentiating between legal requirements and recommendations	Given on every formal planned inspection and further intervention.
Revisit or further intervention	Undertaken when the detailed inspection report indicates that significant contravention's relating to food safety (as opposed to minor offences) exist. Further interventions will also be carried out where premises are deemed not to be broadly compliant, and, or where business requires further assistance in ensuring compliance. The inspection report will indicate under the heading 'proposed action' when the revisit will take place. Investigation of complaints or incidents notified to West Lothian Council.
Service of Hygiene Improvement Notice	Normally when one or more of the criteria below apply:- <ul style="list-style-type: none"> • Where such action is proportionate to the risk to public health. • Where the history of the premises indicates a record of non-compliance with breaches of food hygiene or food processing regulations • Where the enforcing officer is not entirely confident that an informal approach will be successful, or where an informal approach has failed on the previous inspection. <p style="text-align: center;">And</p> Where the enforcing officer is satisfied that there would be sufficient evidence to present a case to the Procurator Fiscal.
Service of Hygiene Emergency Prohibition Notice. (HEPN)	Where imminent risk of injury to health exists and accepting the food business operator's offer of a voluntary closure is not considered appropriate.
Prosecution.	See 6. Reporting to the procurator Fiscal

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

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

3.c. Feed hygiene enforcement action will be taken in accordance with the following table.

Enforcement action	Conditions which would merit the action or occasions when action would be considered most appropriate.
Advice	Given on every occasion
Inspections / interventions	Inspections and other interventions are carried out in accordance with the Feed Law Enforcement Code of Practice (Great Britain) and the LACORS Guidance on Premises Risk Assessment, and at a frequency determined by the appropriate inspection rating for the premises.
Inspection report differentiating between legal requirements and recommendations	Given on every formal planned inspection and further intervention.
Service of Feed Hygiene Improvement Notice	Normally when one or more of the criteria below apply:- <ul style="list-style-type: none"> • Where such action is proportionate to the risk to animal or public health. • Where there is a record of non-compliance with breaches of specified feed law listed in feed hygiene regulations. • Where the authorised officer has reason to believe that an informal approach would not be successful.
Prosecution	See 6. Reporting to the procurator Fiscal.

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

Enforcement action	Conditions which would merit the action or occasions when action would be considered most appropriate.
Refusal to approve an establishment in accordance with Regulation (EC) 853/2004.	Establishment fails to meet the necessary hygiene and management controls required in legislation.
Revocation of establishment approval.	Continued serious breaches of hygiene and safety requirements. Service of Hygiene Emergency Prohibition Notice.
Remedial action notice	Significant breach of hygiene conditions in approved establishment.
Seizure and detention of food	Food which has been certified as not being produced or processed in line with hygiene regulations. Food which is deemed to be unfit or unsafe. Food which has been illegally imported from a third country.
Report to licensing board	Failed official samples. Service of a hygiene emergency prohibition notice. Report to the Procurator Fiscal.
Report to Administration Licensing Section	Street trader operating out-with the terms of the Street Traders Licence

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

The Food Law Code of Practice (Scotland) states:

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

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

Contract caterers that operate within local authority premises should be assessed in accordance with Annex 5 and be inspected accordingly.

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

Enforcement action	Conditions which would merit the action or occasions when action would be considered most appropriate.
Advice	Given on every occasion
Inspections / interventions	Inspections and other interventions are carried out in accordance with the Food Law Code of Practice (Scotland), and at a frequency determined by the appropriate hygiene and food standards inspection rating for the premises.
Inspection report differentiating between legal requirements and recommendations	Given on every formal planned inspection and further intervention.

Revisit or further intervention	<p>Undertaken when the detailed inspection report indicates that significant contravention's relating to food safety (as opposed to minor offences) exist.</p> <p>Further interventions will also be carried out where premises are deemed not to be broadly compliant, and, or where business requires further assistance in ensuring compliance.</p> <p>The inspection report will indicate under the heading 'proposed action' when the revisit will take place.</p> <p>Investigation of complaints or incidents notified to West Lothian Council.</p>
Report to service manager	<p>Where a routine inspection or other visit identifies no issues or only minor issues of non – compliance with food safety matters the normal reporting mechanism will continue. A copy of the report will be left on site and a further copy sent to the appropriate manager for the service. Each service area will have identified the members of staff and management they wish correspondence to be sent to. All such individuals should be in a position to ensure appropriate action is taken, if required, following an inspection by officers from environmental health.</p>
Report to CEO and Director	<p>Where significant contraventions or continued issues of non – compliance are identified then these matters will be brought directly to the attention of the Chief Executive and appropriate Director. A timeframe for compliance will be identified in this notification. The appropriate staff and management of the affected service will also be included in this notification. Before notification is made the matter will have been fully discussed with the Principal Environmental Health Officer.</p> <p>When the timeframe for compliance has expired a further visit will be made by officers from environmental health to assess compliance. If the matters have been addressed this will be confirmed in writing to the Chief Executive and appropriate Director. Equally if the matter has not been addressed this will be confirmed in writing.</p>

3.f. Private water supplies enforcement action will be taken in accordance with the following table.

Enforcement action	Conditions which would merit the action or occasions when action would be considered most appropriate.
Advice	Given on every occasion
Site visits and sampling	Type A supplies will be visited and sampled in accordance with requirements of the private water supply legislation.
Warning / Advisory Letter	When water quality fails microbiological and chemical parameters required by legislation and corrective action is required to protect public health.
Formal action and notice	<p>Considerations likely to give rise to the service of notice:</p> <ul style="list-style-type: none"> ▪ Serious breach of water quality and safety, having regard to: <ul style="list-style-type: none"> ▪ consultation with the Consultant in Public Health Medicine or appointed Medical Officer of Health; ▪ linked or direct cause of illness;

	<ul style="list-style-type: none"> ▪ historic data showing poor standard of compliance; ▪ whether it is reasonable to serve the Notice; ▪ whether a temporary departure under the 2006 Regulations can be granted; ▪ improvements carried out to the supply and the time taken for these to be done; ▪ poor condition of the supply giving rise to a risk to public health; ▪ details of relevant person(s) and any legal agreements; ▪ Class (Type/Level) of supply/tenure/type of premises; ▪ Lack of co-operation shown by the relevant person(s) and users of the supply; ▪ availability of alternative supplies and the public mains; and ▪ requirements of other legislation.
Further investigations and monitoring	Where further involvement is required to ensure that steps are being taken to protect public health, and or improve water quality and safety.
Prosecution.	See 6. Reporting to the procurator Fiscal.

Section 4 – Public Health, Housing, Pollution and Pests

Enforcement Guide:

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

Enforcement action	Conditions which would merit the action or occasions when action would be considered most appropriate.
Informal action	<p>Informal action to secure compliance includes offering verbal advice, verbal warnings, requests for action and the use of advisory letters.</p> <p>Such circumstances include:</p> <ul style="list-style-type: none"> ▪ Cases where the level of nuisance is not established as statutory but advice is required to prevent circumstances deteriorating further. ▪ Cases where the consequences of non – compliance will not pose a significant or immediate risk to public health. ▪ Cases where previous compliance has been established by informal means and this will be more effective than formal approach.
Statutory notice – S.80 Environmental Protection Act 1990	<p>Informal approach has failed to ensure compliance and a statutory nuisance exists.</p> <p>Statutory nuisance is deemed to exist and present a significant or immediate risk to public health.</p>
Works in default and recovery of costs.	At the discretion of West Lothian Council works can be carried out to remove statutory nuisance if notice period has expired.
Fixed penalty notices – Environmental Protection Act 1990.	Issued for non – compliance with statutory notice as alternative sanction to report being sent to the Procurator Fiscal. Failure to accept alternative sanction will result in prosecution being considered.
Prosecution.	See. 6 Reporting to the Procurator Fiscal.

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

Enforcement action	Conditions which would merit the action or occasions when action would be considered most appropriate.
Informal action	<p>Informal action to secure compliance includes offering verbal advice, verbal warnings, requests for action and the use of advisory letters. Such circumstances include:</p> <ul style="list-style-type: none"> ▪ Cases where the level of nuisance is not established as statutory but advice is required to prevent circumstances deteriorating further. ▪ Cases where the consequences of non – compliance will not pose a significant or immediate risk to public health. ▪ Cases where previous compliance has been established by informal means and a reasonable time period has elapsed since previous problem. ▪ Cases where informal procedure must be followed before taking formal action e.g. dealing with audible intruder alarms of property and vehicles.
Statutory notice – S.80 Environmental Protection Act 1990	Informal approach has failed to ensure compliance and a statutory nuisance exists.
Report to licensing board	Licensed premises found to be breaching inaudibility criteria on three separate occasions within a reasonable short time frame, or having been established as causing statutory nuisance.
Fixed penalty notices – Environmental Protection Act 1990.	<p>Issued for non – compliance with statutory notice as alternative sanction to report being sent to the Procurator Fiscal.</p> <p>In cases of recurrence of noise nuisance for each time conditions of notice are breached. This will be up to a maximum of three occasions at which time further breaches will result in a report to the Procurator Fiscal.</p> <p>Failure to accept alternative sanction will result in prosecution being considered.</p>
Prosecution.	See. 6 Reporting to the Procurator Fiscal.

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

Enforcement action	Conditions which would merit the action or occasions when action would be considered most appropriate.
Informal action	<p>Informal action to secure compliance includes offering verbal advice, verbal warnings, requests for action and the use of advisory letters. Such circumstances include:</p> <ul style="list-style-type: none"> ▪ Cases where the level of problem is not established as risk to public health or safety but advice is required to prevent circumstances deteriorating further. ▪ Cases where the consequences of non – compliance will not pose a significant or immediate risk to public health. ▪ Cases where previous compliance has been established by informal means and this will be more effective than formal approach.

Improvement order	Circumstances where a domestic dwelling fails to meet the tolerable standard requirements of the Housing (Scotland) Act 1987 and 2006 and is determined to be in a state where improvement is considered appropriate.
Closing order	Circumstances where a domestic dwelling fails to meet the tolerable standard requirements of the Housing (Scotland) Act 1987 and 2006, and is in such a state that an improvement order is not considered appropriate. This would apply to a house which forms only part of a building, and the building does not comprise only houses which do not meet the tolerable standard.
Demolition order	Circumstances where a domestic dwelling fails to meet the tolerable standard requirements of the Housing (Scotland) Act 1987 and 2006, and is in such a state that an improvement order is not considered appropriate. This would apply only to a building which is a single dwelling or contains a majority of homes not meeting the tolerable standard.
Repairs notices	Where serious disrepair is identified in any house and previous informal action has failed to ensure effective repair is carried out under the Building (Scotland) Act 2003.
Defective buildings notices – Environmental Protection Act 1990, and Section 87(3) of the Civic Government (Scotland) Act 1982.	Where serious disrepair is identified in any house or non – domestic building and previous informal action has failed to ensure effective repair is carried out. Immediate service for water ingress to ensure effective repair is carried out..
Works in default and recovery of costs	Works in default may be considered appropriate in circumstances where the terms of certain notices have not been complied with. Circumstances may also include emergency access to a property to effect repair.
Prosecution.	See. 6 Reporting to the Procurator Fiscal.

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

Enforcement action	Conditions which would merit the action or occasions when action would be considered most appropriate.
Informal action	Informal action to secure compliance includes offering verbal advice, verbal warnings, requests for action and the use of advisory letters. Such circumstances include: <ul style="list-style-type: none"> ▪ Cases where vehicles emissions are outwith legal parameters and the owner has sought assistance to make improvements. ▪ Drivers of idling vehicles are co – operative when approached by officers. ▪ Campaigns to maximize awareness of damage caused by vehicle emissions. Including ongoing advertising and establishment of phone and text lines (wee system). ▪ Offering free vehicle emissions checks. ▪ Establishment of system to work with bus companies to reduce the amount of idling carried out by buses. ▪ Liaison with schools over the four partnership areas to reduce vehicle idling outside schools.

	<ul style="list-style-type: none"> ▪ All idling complaints dealt with ensuring all parties involved understand the legal and social reasons behind the campaign and a line of communication opened for use in the future. ▪ “Hotspots” established in all partnership areas. These are monitored regularly and action taken when vehicles found idling. ▪ Ongoing monitoring of taxis, haulage and council vehicles with action being taken where necessary. Good working relationship established with management and drivers where possible. ▪ Switch off signs erected at known problem locations and where authority is given for their use.
Fixed penalty notices	Where informal action to ensure compliance has not achieved the required result and the implementation of this sanction has been adopted by the council.
Report to the traffic commissioner	The traffic commissioner receives a copy of the “East Central Scotland Vehicle Emissions Partnership” annual report and is aware of the campaign.

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

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

Section 5 – Workplace Safety, Smoking in public places.

Enforcement Guide:

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

Enforcement action	Conditions which would merit the action or occasions when action would be considered most appropriate.
Advice	Given on every occasion
Inspections / interventions	Inspections and other interventions are carried out in accordance with guidance on inspection ratings contained in LAC 67/1 and any subsequent amendments. Focused inspections of premises as part of national and local projects to improve health and safety.
Inspection report and written advice	Given on every formal planned inspection
Revisit or further intervention	Undertaken when the detailed inspection report indicates that significant contravention's relating to health and safety (as opposed to minor offences) exist. The inspection report will indicate under the heading 'proposed action' when the revisit will take place. Investigation of complaints or accidents notified to West Lothian Council.
Improvement Notice	Prior to service notice will be assessed in line with Enforcement Management Model. Normally when one or more of the criteria below apply:- <ul style="list-style-type: none"> • Where such action is proportionate to the risk to public health. • Where the history of the premises indicates a record of non-compliance with breaches of health and safety legislation. • Where the enforcing officer is not entirely confident that an informal approach will be successful, or where an informal approach has failed on the previous inspection. <p style="text-align: center;">And</p> Where the enforcing officer is satisfied that there would be sufficient evidence to present a case to the Procurator Fiscal.
Prohibition Notice.	Prior to service notice will be assessed in line with Enforcement Management Model. Circumstances which are found to present a risk of serious personal injury.
Prosecution.	Prior to service notice will be assessed in line with Enforcement Management Model. See 6. Reporting to the procurator Fiscal

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

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

Appendix A

Reasons for deviating from enforcement policy

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

Appendix B

Food Complaints Prosecution Criteria Guide

1. *Is there, or is there likely to be, sufficient evidence to prepare a report to the Procurator Fiscal? - If yes continue with decision criteria, if no, deal with the investigation as efficiently as possible not incurring excess time.*
2. Has the investigation identified failure to comply with Notices? - If yes prepare a report if no continue with decision criteria.

Decision Criteria (Guide- Yes answers tend towards prosecution)	No	SCORE	Yes
Nature of Offence – Unfit food score 3, Other Food Safety Act offence (Not of Nature) score 2, Food Regulation offence (labelling) score 1.	1	2	3
<u>Record of Compliance</u> - have similar complaints gone unattended to in the past ?	1	2	3
<u>Public Interest/Prevalence</u> – Is it in the public interest to report the incident. Will the ‘general public’ benefit from the action ?	1	2	3
<u>Willingness to Comply</u> – is there a poor record of willingness to comply ?	1	2	3
<u>Chronic Poor Hygiene Standard</u> – does the record Of the business indicate poor hygiene and food safety standards?	1	2	3
<u>Foreseeability</u> – should the business have been able to identify the risk leading to the compliant.	1	4	6
<u>Hazard Analysis</u> - had the proprietor failed to assess and control the potential hazards involved?	1	4	6
<u>Due diligence</u> – is it likely that the company would fail in relation producing a due diligence defence?	1	2	3
<u>Benefit to Accused</u> - Has the accused benefited from failure to comply	1	2	3
<hr style="width: 200px; margin-left: auto; margin-right: 0;"/>			
Total			

Guidance

- Score 0 – 18 Inclined not to proceed with report
- Score 19 – 22 Use Officers discretion / discuss with Principal E.H.O.
- Score 23+ Proceed with report – inform Principal E.H.O.

Officers Comments:-

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