

Meeting of:	Shared Regulatory Services Joint Committee
Date of Meeting:	Wednesday, 27 September 2023
Relevant Scrutiny Committee:	Homes and Safe Communities
Report Title:	Review of the Shared Regulatory Services Compliance and Enforcement Policy
Purpose of Report:	To advise the Joint Committee of the recent review of the Shared Regulatory Services Compliance and Enforcement Policy and to seek approval for implementation and use of the revised Policy
Report Owner:	Director of Environment and Housing Services
Responsible Officer:	Head of Shared Regulatory Services
Elected Member and Officer Consultation:	No Elected Members have been consulted. The following officers have been consulted: <ul style="list-style-type: none"> • Assistant Director, Cardiff Council • Chief Officer Legal, Regulatory and Human Resources, Bridgend County Borough Council
Policy Framework:	This is a matter delegated to the Joint Committee
<p>Executive Summary:</p> <ul style="list-style-type: none"> • The report advises the Joint Committee of a recent review of the Shared Regulatory Services Compliance and Enforcement Policy. The Policy has been in place since 2016 to set the standards that will be applied when dealing with issues of non-compliance with public protection law. A draft revised Policy has been prepared as a result of this review, with the aim of ensuring that it is up to date and fit for purpose. • The report seeks the approval of the Joint Committee for the Shared Service to implement the updated Policy and also that it recommends adoption of the revised Policy by the three partner Councils. 	

Recommendations

The Joint Committee is asked to:

- 1.** Acknowledge the recent review of the Shared Regulatory Services Compliance and Enforcement Policy and approve use by SRS of the updated Policy and accompanying Annexes.
- 2.** Recommend the adoption of the revised Policy by the respective Councils for those functions undertaken by the Shared Service on their behalf.
- 3.** Authorise the Head of Shared Regulatory Services to make minor administrative amendments and updates to the revised Compliance and Enforcement Policy once implemented, should the need arise.

Reasons for Recommendations

- 1.** The SRS Compliance and Enforcement Policy ensures consistency across geographical areas and across the various areas of the work of the Service. The recent review and updating of the Policy will ensure that it remains current, relevant, and fit for purpose.
- 2.** The decision to prosecute breaches of legislation enforced by the Shared Service rests with each Council and, as such, the revised Policy will need to be adopted by each of the three partner local authorities.
- 3.** To ensure that during the lifetime of the revised Policy (i.e., prior to its next full review), minor updates and amendments can be incorporated without the need to seek approval on each occasion from the Joint Committee.

1. Background

- 1.1** The Shared Regulatory Services Compliance and Enforcement Policy was first adopted by the three partner Councils following its approval by the Joint Committee early in 2016. Since that time, three Annexes have been added to the overarching Policy (each being subject to further approval by the Joint Committee). These Annexes cover the specialist areas of Food, Feed and Health and Safety respectively.
- 1.2** The purpose of the Compliance and Enforcement Policy is to set the standards that will be applied when dealing with issues of non-compliance with public protection law, and what residents, consumers and businesses can expect from the Shared Service as a law enforcement agency.

- 1.3 Based upon the principles of the Regulator's Code of 2014, the Policy helps to promote efficient and effective approaches to regulatory inspection and enforcement and balances the need for improvement in regulatory outcomes while at the same time minimising, where possible, unnecessary burdens on business.
- 1.4 Since its adoption in 2016, the Policy has been effective in ensuring a consistent enforcement approach that is appropriate to the circumstances, and enabling any legal challenges in respect of enforcement action, to be mitigated. While the Policy has been monitored over the course of the last seven years to ensure that it remains appropriate, the time had come for a root and branch review to ensure that it reflects changes in the law, in best practice, and in the enforcement options available.

2. Key Issues for Consideration

- 2.1 As part of the review of the existing SRS Compliance and Enforcement Policy, its currency and fitness for purpose were considered by a Barrister. The conclusion drawn from this appraisal was that the Policy was well constructed and had stood the test of time, and as such, no change in approach was required. Rather, a number of areas were identified where amendments would be recommended, in order to update references to legislation, guidance and best practice. In this context, it can be seen that the updated Policy (included as **Appendix 1** to this report) now makes clear reference for example to the principles of the Victims Code of 2020.
- 2.2 The opportunity was also taken to better reflect the full range of enforcement approaches and outcomes available to the Service /partner Councils. For example, the revised Policy includes a more detailed narrative on *financial investigations and the confiscation of assets* under the Proceeds of Crime Act (section 9.4.6 of the overarching Policy).
- 2.3 The revised draft Policy sets out further enforcement / outcome options, some of which have only recently become possible. Thus section 9.5.4 outlines the ability to seek a premises *closure order* under the Anti-social Behaviour, Crime and Policing Act 2014 in respect of retail outlets selling illicit products such as counterfeit and non-duty paid tobacco. Likewise, section 9.5.5 of the overarching Policy outlines the ability to seek a Criminal Behaviour Order from the Court in order to prevent an offender from trading in a particular way in the future.
- 2.4 Shared Regulatory Services has worked with the Legal Services Departments of the three partner Councils, to ensure that the draft revised Policy attached as **Appendix 1** is fit for purpose now and in into the future. The draft revised Policy

has also been subject to limited consultation with partner agencies, the views of which have been reflected as appropriate.

3. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?

3.1 The Well-being of Future Generations Act requires the SRS to underpin decision making by contributing to the seven well-being goals of the Act, following the five ways of working, and consequently undertaking actions that will have a positive impact on people living in the future as well as those living today. Consequently SRS seeks to work in the following ways:

- Looking to the long term
- Taking an integrated approach;
- Involving a diversity of the population in the decisions affecting them;
- Working with others in a collaborative way to find shared sustainable solutions
- Acting to prevent problems from occurring or getting worse.

4. Climate Change and Nature Implications

4.1 One of the key strategic themes for the Shared Regulatory Service is *Protecting the Local Environment*.

4.2 The SRS Business Plan articulates the work carried out under this theme to deliver on the corporate priorities for the participant Councils, including their ambitions to minimise climate change and impacts on the natural environment.

4.3 In this context, the Joint Committee is regularly updated on the contribution of SRS to this agenda, for example through its work in the areas of animal health and welfare, air quality, contaminated land, energy efficiency in the private rented sector and investigating greenwashing claims or environmental fraud.

5. Resources and Legal Considerations

Financial

5.1 The Participants' contribution towards the Shared Regulatory Service is recharged on a quarterly basis, based upon the approved budgets for 2023/24. Accounting for the full year is reported to the Committee at the Annual General Meeting.

Employment

5.2 There are no immediate employment implications associated with this report.

Legal (Including Equalities)

5.3 The Policy seeks to ensure that regulatory decisions will not be influenced by the gender, disability, language, ethnicity, religion, political beliefs or sexual preference of the subject, victims, or witnesses. Through monitoring and review of the Policy, the Shared Service will ensure that its enforcement activity reflects this position and is in keeping with the Equality Statements and Policies of the participant authorities.

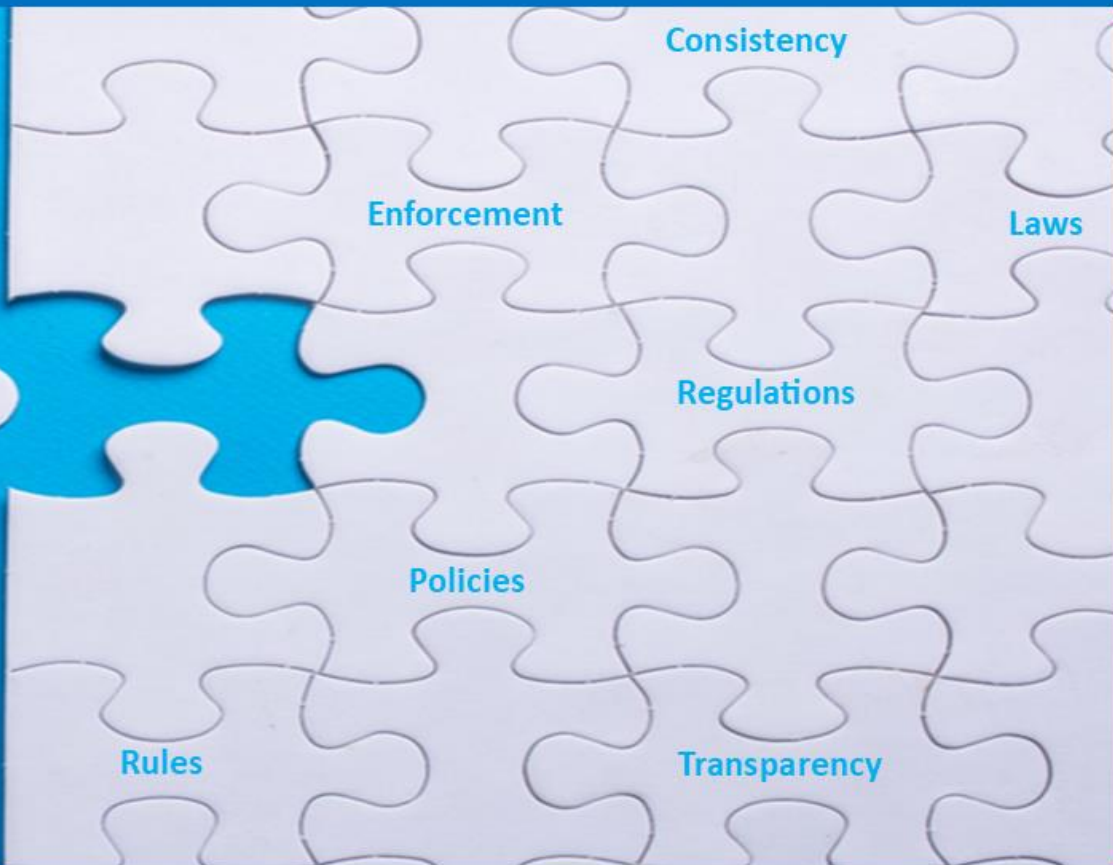
6. Background Papers

- Appendix 1 Draft revised SRS Compliance and Enforcement Policy (with 3 Annexes)



Shared Regulatory Services

Compliance and Enforcement Policy



Shared
Regulatory
Services

Gwasanaethau
Rheoliadol
a Rennir



Shared Regulatory Service Compliance and Enforcement Policy

Contents

- 1. Introduction**
- 2. Aims of the Shared Regulatory Service**
- 3. What is this policy for?**
- 4. When does this policy apply?**
- 5. Our approach to compliance and enforcement**
- 6. Advising on the rules**
- 7. Checking compliance**
- 8. Responding to breaches of the rules**
 - 8.1 Overview
 - 8.2 Conduct of investigations
 - 8.3 Communication
 - 8.4 Decisions on enforcement action
- 9. Civil remedies and criminal enforcement actions available**
- 10. Review of this policy**
- 11. Comments and complaints**

Compliance and enforcement policy	Date of issue <i>DRAFT 08/23</i>	Ref: SRS/MC/POL/001	Head of Shared Regulatory Services	V.1
-----------------------------------	-------------------------------------	---------------------	------------------------------------	-----

1. Introduction

- 1.1 The Shared Regulatory Service (SRS) administers the Environmental Health, Trading Standards and Licensing functions on behalf of Bridgend County Borough Council, City of Cardiff Council and the Vale of Glamorgan Council. The services provided include food safety, animal health and welfare, health and safety, fair trading, pollution control, and weights and measures. It also has licensing responsibility for a range of matters including alcohol, gambling and taxis.
- 1.2 The SRS is committed to good enforcement practice and the development of this policy is based upon the current legislation, guidance and codes that apply in this context, and in particular the Regulator's Code.
- 1.3 This policy sets out the approach of the SRS to compliance and enforcement activities, and is intended to establish a consistent approach to enforcement across its various functions, without placing too heavy a burden on local businesses, organisations and the public. This policy has been subject to consultation across a range of stakeholders. However further feedback is always welcomed using the contact details provided below. We will give consideration to the inclusion of any suggested improvements in future revisions.
- 1.4 In adopting this policy, the SRS intends to apply legal powers consistently and fairly, whatever the circumstances. Decisions will not be influenced by the gender, disability, language, ethnicity, religion, political beliefs or sexual preference of the subject, victims or witnesses.
- 1.5 The SRS wants to make it easy for you to receive our information. This policy is published in English and Welsh on our website <https://www.srs.wales/en/Home.aspx> and in hard copy. We are also able to provide the document in alternative formats including audio tape, large print and in community languages. We have access to interpreter services where required. Requests for copies in other formats or other languages should be addressed to:-

Shared Regulatory Services
Vale of Glamorgan Council
Civic Offices
Holton Road
Barry
CF63 4RU
Email:enquiries@srs.wales

Compliance and enforcement policy	Date of issue <i>DRAFT 08/23</i>	Ref: SRS/MC/POL/001	Head of Shared Regulatory Services	V.3
-----------------------------------	-------------------------------------	---------------------	------------------------------------	-----

2. Aims of the SRS

2.1 The National Enforcement Priorities for Wales are:

- To protect individuals from harm and promote health improvement;
- To ensure the safety and quality of the food chain to minimise risk to humans and animal health;
- To promote a fair and just trading environment for citizens and business; and
- To improve the local environment to positively influence quality of life and promote sustainability.

2.2 The SRS adopts these priorities as it aims to safeguard the health, safety and economic wellbeing of those who live in, work in or visit the region; while at the same time maintaining a fair and competitive market place where legitimate businesses can thrive.

2.3 Compliance with the law is encouraged proactively and to this end we want to work with business and individuals to promote this goal through the provision of advice and education, intelligence led checks on compliance and proportionate responses to regulatory breaches. Our ultimate purpose is to ensure that the “marketplace” functions effectively and that risks to health, social and economic wellbeing are addressed. When that purpose is undermined we will use our legal powers to take action to resolve any unsatisfactory situations and ensure that any wrongdoers are held to account. This is what is meant by the term enforcement action.

2.4 We are committed to taking firm and appropriate action in the following situations:-

- Against those who flout the law, or who deliberately or persistently fail to comply
- Where there is a serious or immediate risk to health and safety; and
- Where it is necessary to protect the more vulnerable in our communities from harm

2.5 The SRS publishes an annual service delivery plan which sets out our performance targets and our main areas of work for the year ahead and how these link in with national and local priorities as well as the corporate priorities of the participant Councils.

Compliance and enforcement policy	Date of issue <i>DRAFT 08/23</i>	Ref: SRS/MC/POL/001	Head of Shared Regulatory Services	V.1
-----------------------------------	-------------------------------------	---------------------	------------------------------------	-----

3. What is this policy for?

- 3.1 The purpose of this document is to set out the SRS policy in respect of its compliance and enforcement activities, and to give guidance to those affected by it, in particular businesses, consumers and the public. It does not, however, affect the discretion to take legal proceedings when this is considered to be in the public interest.
- 3.2 The staff of the SRS will adhere to this policy, and this will be subject to regular monitoring as part of the review process set out in section 10 below.

4. When does this policy apply?

4.1 This policy covers broadly the areas of:-

- Animal Health and Welfare
- Food Safety
- Food Standards
- Health and Safety
- Fair Trading
- Licensing
- Product Safety
- Pollution Control
- Housing Safety
- Port Health
- Communicable Disease
- Wales Illegal Money Lending Unit

4.2 In some instances we have developed a number of area specific enforcement policies which also exist to provide detailed information about how and when those areas will carry out a particular type of enforcement. These are:-

Annex 1 – Food Safety Enforcement Annex

Annex 2 – Feed Law Enforcement Annex

Annex 3 – Health and Safety Enforcement Annex

Should any conflict ever arise between this policy and those area specific documents, then this overarching Compliance and Enforcement Policy will take precedence.

Compliance and enforcement policy	Date of issue <i>DRAFT 08/23</i>	Ref: SRS/MC/POL/001	Head of Shared Regulatory Services	V.1
-----------------------------------	-------------------------------------	---------------------	------------------------------------	-----

5. Our approach to compliance and enforcement

5.1 We will ensure that the allocation of resources and effort is targeted where they would be most effective by assessing the risks against our regulatory outcomes. Such risk assessments will inform our approach to regulatory activity including data collection, inspection programmes, business advice and enforcement sanctions. As part of this risk assessment, we will give consideration to the combined effect of the potential impact of non-compliance on regulatory outcomes and the likelihood of that non-compliance.

5.2 The Legislative and Regulatory Reform Act 2006, as amended, requires the SRS to have regard to the Principles of Good Regulation when providing Environmental Health, Trading Standards and Licensing services.

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

- **Proportionate** – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence
- **Accountable** – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures
- **Consistent** – our approach 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 take a similar approach as other local authorities to achieve compliance with the law.
- **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
- **Targeted** – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

5.3 The SRS embraces the principles of good enforcement established in the **Regulators' Code** (April 2014), as amended, i.e.,

- Regulators should carry out their activities in a way that supports those they regulate to comply and grow;
- Regulators should provide straightforward ways to engage with those they regulate and hear their views;
- Regulators should base their regulatory activities on risk;
- Regulators should share information about compliance and risk;
- Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply
- Regulators should ensure that their approach to their regulatory activities is transparent

Compliance and enforcement policy	Date of issue <i>DRAFT 08/23</i>	Ref: SRS/MC/POL/001	Head of Shared Regulatory Services	V.1
-----------------------------------	-------------------------------------	---------------------	------------------------------------	-----

However, in certain instances we may conclude that a provision in the Regulators' 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 the available evidence. The decision and the reasons for it will be recorded in writing.

- 5.4 The SRS is committed in all aspects of its work to the promotion of equality in accordance with the participant authorities' Equality statements and policies. The Service will seek to adopt best practice in pursuit of that commitment, including in relation to the provision of assistance, information and advice. This policy will contribute to the fairness of decision-making and will seek to ensure that decisions will not be influenced by the ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity of the subject, defendant, victims or witnesses. During the monitoring and review of our practices under this policy we will make sure that our enforcement activity reflects this commitment.
- 5.5 In some areas of our work we have a shared enforcement role with other agencies, some examples being the Health and Safety Executive, National Resources Wales, Her Majesty's Revenue and Customs and the Police. Sometimes it will be more appropriate for other enforcement agencies or other local authorities to deal with particular breaches of legislation, so officers may pass details of offences to other such agencies. In circumstances where a shared or complementary role exists, we will still adhere to this Compliance and Enforcement Policy, but the other agencies will retain the right to take whatever action that they consider is necessary.
- 5.6 When we exchange information on enforcement activities with our partner agencies, we will do so in accordance with any established methods of information sharing and legal requirements, including the Data Protection Act 2018 and the Crime and Disorder Act 1998.
- 5.7 We will work closely with other service areas within the councils, and the appropriate external regulators to ensure that our 'own house is in order' to promote regulatory compliance in all relevant areas, for example food law, and fair trading. For example should an infringement be detected in the case of a serious food safety breach in local authority controlled establishments, the Chief Executive will be notified without delay.

6. Advising on the rules

- 6.1 Advice to business will be provided proactively and also in response to specific requests for guidance. Such advice will be given clearly and in plain language and will be confirmed in writing on request. Legal requirements will be clearly distinguished from best practice, codes of practice, guidance and other advice.
- 6.2 Officers will be encouraged to promote compliance with legal requirements, by raising awareness of relevant standards and legal requirements, by means of media releases, distributing leaflets, face-to-face contact and through business and community partnerships.

Compliance and enforcement policy	Date of issue <i>DRAFT 08/23</i>	Ref: SRS/MC/POL/001	Head of Shared Regulatory Services	V.1
-----------------------------------	-------------------------------------	---------------------	------------------------------------	-----

- 6.3 In offering advice to businesses, the SRS will act promptly; however, those businesses with which it has a Primary Authority agreement will be given priority when heavy demands are placed on limited staff resources. The Primary Authority arrangements of other local authorities will be respected.
- 6.4 The Service supports the Government’s ‘golden rules’ for guidance on regulation set out in the Code of Practice on Guidance Regulation http://www.fwr.org/WQreg/Appendices/CoP_on_Guidance_on_Regulation.pdf (BIS, 2009), in that it should be:
- Based on a good understanding of users
 - Designed with input from users and their representatives
 - Organised around the user’s way of working
 - Easy for the intended users to understand
 - Designed to provide users with confidence in how to comply with the law (i.e., no use of legal disclaimers of liability)
 - Issued in good time
 - Easy to access
 - Reviewed and improved
- 6.5 Businesses approaching the Service for advice on any non-compliance can in the main do so without fear of automatically triggering an enforcement action. Nevertheless there will be occasion in the circumstances outlined in 2.4 above, or when there is a history of non-compliance where after due consideration, enforcement action is unavoidable.

7. Checking compliance

- 7.1 The SRS adopts an intelligence-led approach to ensure that its resources are most effectively targeted. It also utilises a number of risk assessment frameworks across its areas of work to determine the frequency of checks on compliance which includes inspections of and other visits to business premises, taking samples, making of test purchases and so on.
- 7.2 Complaints received by the Service about alleged non-compliance will be assessed on an individual, case by case basis and allocated to an appropriate officer for investigation / action as necessary.
- 7.3 After dealing with issues of non-compliance by way of advice, the Service will follow up to ensure that the areas of concern have been rectified and the business is fully compliant. Where remedial work has been required, an explanation will be given as to why it is required, and over what timescale it has to be completed.

Compliance and enforcement policy	Date of issue <i>DRAFT 08/23</i>	Ref: SRS/MC/POL/001	Head of Shared Regulatory Services	V.1
-----------------------------------	-------------------------------------	---------------------	------------------------------------	-----

8. Responding to Breaches of the Rules

8.1 Overview

- 8.1.1 In responding to breaches of the law, a range of actions is available to the Service, and these are set out in 8.4 below. The appropriate action will be determined following careful consideration of the particular facts of each individual case and taking into account the approach of the offender, and any comments they wish to be taken into consideration.
- 8.1.2 The SRS will normally take a stepped approach within the hierarchy of enforcement, and progress to taking formal action when informal means have failed to achieve the desired effect. Note however, that as highlighted in 2.4 above, there will be circumstances that warrant appropriate formal action from the outset.
- 8.1.3 There may be circumstances where it is suspected that an offender has committed offences across a number of local authority areas. It may be more appropriate for another local authority outside of the Shared Service to take enforcement action even when an offence has been committed within the Bridgend County Borough, City of Cardiff or Vale of Glamorgan Council area. Conversely there may be occasion when it would be more appropriate for the Service, (through one of the participant Councils) to take enforcement action in respect of offences that occurred elsewhere. In such circumstances we may enter into a legal agreement for one authority to take the lead role, as appropriate, making use of the provisions of section 19 of the Local Government Act 2000, section 222 of the Local Government Act 1972 or any other enabling provisions.

8.2 Conduct of Investigations

- 8.2.1 All investigations will be carried out with due regard to the following legislation and any associated guidance or codes of practice, in so far as they relate to the SRS
- the [Criminal Procedure and Investigations Act 1996](#)
 - the [Police and Criminal Evidence Act 1984](#)
 - the [Regulation of Investigatory Powers Act 2000](#)
 - the [Criminal Justice and Police Act 2001](#)
 - the [Human Rights Act 1998](#)
 - the [Protection of Freedoms Act 2012](#)
 - the [Health and Safety at Work etc. Act 1974](#)

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

Compliance and enforcement policy	Date of issue <i>DRAFT 08/23</i>	Ref: SRS/MC/POL/001	Head of Shared Regulatory Services	V.1
-----------------------------------	-------------------------------------	---------------------	------------------------------------	-----

- 8.2.2 Our procedures for interviewing suspects follow the principles set out in the Police and Criminal Evidence Act 1984, as amended, and the relevant associated Codes of Practice.
- 8.2.3 Enforcement powers are provided by the legislation under which our officers are authorised, and staff will use these powers when necessary, but always in a proportionate manner. Officers will reasonably expect co-operation during the investigation of alleged contraventions and it can be an offence to obstruct an authorised officer in the course of their duties.
- 8.2.4 Where officers exercise their powers of seizure, the person from whom any goods or documents are seized (or their representative) will be advised of the fact and provided with a receipt. Seized items will be stored securely and in accordance with documented procedures.
- 8.2.5 Offenders are not normally subject to the possibility of arrest under the law enforced by the SRS, however there are some exceptions. These include offences under the Trade Marks Act 1994, and other law, subject to the necessity test of section 24 of the Police and Criminal Evidence Act 1984, for example when the bringing of a case would be hindered by the disappearance of the suspect.
- 8.2.6 All investigations will be completed in a timely fashion and having regard to any time limits for bringing formal action prescribed by specific pieces of legislation.
- 8.2.7 Where the Council has an interest in a premises it will carry out its enforcement duties in exactly the same way that it does in other premises in which it does not have an interest. Furthermore, it will ensure that the attention received is in accordance with the criteria applied to other duty holders.

8.3 Communication

- 8.3.1 Our staff will always communicate with any Primary Authority or Home Authority at the earliest possible opportunity in an investigation.
- 8.3.2 Those subject to enforcement action (i.e., suspects and defendants) will be kept informed of the progress of investigations. This will be done in a clear, appropriate and timely manner.
- 8.3.3 As decisions are made regarding the direction in which an investigation will be concluded, those subject to the investigation will receive written confirmation of the intended course of action. This will be provided as soon as practicable, together with information on rights to representation and appeal.
- 8.3.4 In respect of the those directly impacted by the non-compliance of others under public protection law, the SRS embraces the relevant principles of the Victims Code 2020 - [MoJ Victims Code 2020 \(publishing.service.gov.uk\)](https://www.gov.uk/government/publications/victims-code-2020). These are:
 - To be able to understand and to be understood
 - To have the details of the crime recorded without unjustified delay
 - To be provided with information when reporting the crime

Compliance and enforcement policy	Date of issue <i>DRAFT 08/23</i>	Ref: SRS/MC/POL/001	Head of Shared Regulatory Services	V.1
-----------------------------------	-------------------------------------	---------------------	------------------------------------	-----

- To be referred, where appropriate, to services that support victims and have services and support tailored to your needs.
- To be provided with information about compensation, where eligible, that might be obtained for any loss, damage or injury caused as a result of crime.
- To be provided with information about the investigation and any prosecution.
- To make a Victim Personal Statement.
- To be given information about the trial, trial process and your role as a witness.
- To be given information about the outcome of the case and any appeals.
- To be paid expenses if required to attend court to give evidence, and to have any property used as evidence returned.
- To be given information about the offender following conviction.
- To make a complaint should they feel that their Rights not being met – *see also section 11 of this Policy.*

8.3.5 The SRS will publish the results of its prosecution cases on its website. Such results may also be drawn to the attention of interested parties.

8.4 Decisions on Enforcement Action

8.4.1 A range of enforcement outcomes is available to the Service, as detailed in session 9 below. Additional options are sent out in Annex 1, 2 and 3 of this policy in respect of food law enforcement, feed law enforcement and health and safety, respectively. The appropriate action will be determined following careful consideration of the circumstances of each individual case.

8.4.2 We will use compliance advice 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 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 taken into account in considering the most appropriate enforcement action to take on that occasion.

8.3.3 We recognise that where a business has entered into a Primary Authority Partnership, the Primary Authority may provide compliance advice and support, and will take such advice into account when considering the most appropriate enforcement action to take. We may discuss any need for compliance advice and support with the Primary Authority.

Compliance and enforcement policy	Date of issue <i>DRAFT 08/23</i>	Ref: SRS/MC/POL/001	Head of Shared Regulatory Services	V.1
-----------------------------------	-------------------------------------	---------------------	------------------------------------	-----

9. The civil remedies and criminal enforcement actions available

There are a number of civil remedies and criminal enforcement actions available to the Service:

9.1 Voluntary Undertakings

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

9.2 Injunctive Actions

In some circumstances the Service may seek an injunction or order from the court that an identified breach is rectified and / or prevented from recurring, or it may control or prohibit a particular activity in the future. 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 an injunctive action constitutes a contempt of court offence which may lead to imprisonment.

9.3 Civil Sanctions

The Regulatory Enforcement and Sanctions Act 2008 enables the government to give local authorities the power to impose various new civil sanctions. These options are:-

- The issuing of a fixed monetary penalty notice
- The issuing of a variable monetary penalty notice
- The issuing of a compliance notice
- The issuing of a restoration notice
- The issuing of a stop notice
- Permitting a business to make an enforcement undertaking

In respect of certain legislation, local authorities in Wales currently have powers to impose the following:

9.3.1 Fixed Monetary Penalties

The Service may impose Fixed Monetary Penalties, which are capped at a relatively low level and are not intended to be used for more serious cases of non-compliance. Fixed

Compliance and enforcement policy	Date of issue <i>DRAFT 08/23</i>	Ref: SRS/MC/POL/001	Head of Shared Regulatory Services	V.1
-----------------------------------	-------------------------------------	---------------------	------------------------------------	-----

Monetary Penalties are not criminal fines and do not appear on an individual’s criminal record. Fixed Monetary Penalties cannot be used in conjunction with any other sanction.

9.3.2 **Discretionary Requirements**

The Service has powers under certain legislation to impose Variable Monetary Penalties and Non-Monetary Discretionary Requirements. Variable Monetary Penalties may be imposed up to a maximum level set out in the relevant legislation. Non-Monetary Discretionary Requirements are requirements to take steps to ensure that a breach does not continue or recur. Where the Service chooses to impose Non-Monetary Discretionary Requirements it will clearly set out what those steps should be and the time period within which they must be completed. A failure to comply with the requirements is likely to result in a financial penalty.

Variable Monetary Penalties and Non-Monetary Discretionary Requirements may be used in combination.

Should the Government make additional sanctions available to the Service, we will comply with the legislative requirements for their use, provide guidance on how we will use these penalties and publicise details of any case in which these sanctions are used.

9.4. **Criminal Enforcement Actions**

9.4.1 **Statutory Notices**

In respect of many breaches, the Service 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 (see 9.5.1 below).

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.

9.4.2 **Fixed penalty notices and penalty notices for disorder**

Compliance and enforcement policy	Date of issue <i>DRAFT 08/23</i>	Ref: SRS/MC/POL/001	Head of Shared Regulatory Services	V.1
-----------------------------------	-------------------------------------	---------------------	------------------------------------	-----

The Service has powers to issue *fixed penalty notices* in respect of certain breaches. Where available, these notices give the offender the opportunity to avoid prosecution by payment of the prescribed sum in recognition of the offence.

A *penalty notice for disorder* (PND) may be an option for disposal in the case of underage sales of alcohol, and in such cases, the SRS will have due regard to the relevant guidance [Penalty Notices for Disorder \(PNDs\) guidance \(publishing.service.gov.uk\)](https://publishing.service.gov.uk) when their use is being considered. When making decisions regarding the issuing of a PND, any departure from the guidance will be justified and recorded in writing.

Both a fixed penalty notice and a penalty notice for disorder will only be offered where the evidence would have been sufficient to support a prosecution. Payment of the penalty does not provide an individual with immunity from prosecution in respect of similar or recurrent breaches. In some circumstances, in particular where breaches are serious or recurrent, it may be the case that prosecution is more appropriate than the issuing of a fixed penalty notice or penalty notice for disorder.

9.4.3 Enforcement Orders

In some circumstances the Service may seek an order from the Court. Failure to comply with a court order constitutes contempt of court, which may lead to imprisonment.

The Service 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, a court order will generally only be sought where there are serious concerns about compliance with voluntary undertakings or a notice.

In some instances, the Service may ask the Court for forfeiture orders in respect of seized goods or articles with a view to their destruction / confiscation.

9.4.4 Simple Caution

A simple caution (previously known as a formal caution) is an alternative to prosecution, where the circumstances are such that the caution is likely to be effective and its use is appropriate to the offence.

Simple cautions can only be given in cases where the offender is over the age of 18, and where:

- There is sufficient evidence to give a realistic prospect of a conviction,
- The offender admits their guilt, and
- It is considered to be in the public interest to use a simple caution rather than institute criminal proceedings.

Compliance and enforcement policy	Date of issue <i>DRAFT 08/23</i>	Ref: SRS/MC/POL/001	Head of Shared Regulatory Services	V.1
-----------------------------------	-------------------------------------	---------------------	------------------------------------	-----

There is no legal obligation for a person to accept the offer of a simple caution, but failure to accept a caution will normally result in prosecution for the offence.

Where the offence committed is a recordable offence, a simple caution will appear on an offender's criminal record. A simple caution is likely to influence how the Service and others deal with any similar breaches in the future and may be cited if it is relevant to any proceedings in the future. 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 and in certain circumstances may be revealed as part of a criminal record check.

Simple cautions will be used in accordance with the Ministry of Justice guidance on the cautioning of adult offenders, currently - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/416068/cautions-guidance-2015.pdf, and other relevant guidance.

9.4.5 Prosecution

The SRS may, through the relevant participative Council, prosecute breaches of legislation, particularly in respect of those who flout the law or who act irresponsibly, or where there is an immediate risk to health and safety. Where other enforcement actions, such as voluntary undertakings, statutory notices or a caution have failed to secure compliance previously, then prosecution is more likely.

As with the preceding enforcement options, a number of factors will be taken into consideration including

- The seriousness of the offence
- The previous history of the offender
- Any statutory defence available
- Action taken to avoid recurrence
- Any explanation offered, and if the law allows the circumstances and attitude of the offender
- What course of action will best serve the public interest
- Whether there is a realistic prospect of conviction

The decision as to whether prosecution is the most appropriate course of action in a particular case will be made:

Compliance and enforcement policy	Date of issue <i>DRAFT 08/23</i>	Ref: SRS/MC/POL/001	Head of Shared Regulatory Services	V.1
-----------------------------------	-------------------------------------	---------------------	------------------------------------	-----

- In accordance with this Policy;
- In accordance with [The Code for Crown Prosecutors](#); and
- In accordance with statutory requirements, taking into consideration all relevant codes of practice, and without any unnecessary delay.

In following the Code for Crown Prosecutors, a prosecution will only be commenced where the Service and the relevant participant Council is satisfied that there is **sufficient evidence** to provide a realistic prospect of conviction against the defendant(s). In addition the Service / Council must be satisfied that having considered all the relevant facts and circumstances of the case, and having regard to the criteria established by the Code for Crown Prosecutors, a prosecution would be **in the public interest**.

Having considered all the relevant facts and circumstances of an individual case, the Head of SRS will recommend a course of action to the relevant local authority.

- In respect of prosecutions undertaken by Bridgend County Borough Council, the decision to institute proceedings will be made by the Chief Officer Legal, Regulatory and Human Resources
- In respect of prosecutions undertaken by the City of Cardiff Council, the decision to institute proceedings will be made by the Director of Governance
- In respect of prosecutions undertaken by the Vale of Glamorgan Council, the decision to institute proceedings will be made by the Head of Legal Services

In certain circumstances, the Head of SRS may institute legal proceedings in consultation with the officers identified above.

A successful prosecution will result in a criminal record. There is a range of punishments available to the court depending on the charge, and the particular circumstances of a case and the offender. These include a discharge, a fine, a community order, or a prison sentence in serious cases. 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, and may have consequences for individuals seeking certain types of employment.

9.4.6 **Confiscation of Assets**

Officers may make applications under the Proceeds of Crime Act 2002 for confiscation of assets of offenders in serious cases. The purpose is to recover the financial benefit that the offender has obtained from their crimes. Proceedings only take place after a criminal conviction has been obtained, but they are conducted according to the civil standard of proof. Where appropriate, compensation orders can also be sought from the court.

Compliance and enforcement policy	Date of issue <i>DRAFT 08/23</i>	Ref: SRS/MC/POL/001	Head of Shared Regulatory Services	V.1
-----------------------------------	-------------------------------------	---------------------	------------------------------------	-----

The SRS uses powers pursuant to sections 294 to 298 of the Proceeds of Crime Act 2002 to seize, detain and forfeit cash. If there are reasonable grounds to believe that cash is derived from or intended for use in crime it can be seized by an Accredited Financial Investigator (AFI). The AFI may detain the cash for a period of 48 hours and / or apply for an order made by the Magistrates Court that the cash be detained for a period of up to 2 years. While cash is detained, an application can be made by the AFI to the Magistrates Court for the forfeiture of the cash. A person aggrieved by an application for detention and / or forfeiture will be provided with details as to how they can resist these applications in the Magistrates Court.

9.5 Other remedies and sanctions

9.5.1 Works in default

Under certain pieces of legislation, the Service has powers to carry out works in default where a person has been required to do works but has failed to do so. The work in default powers are provided in the legislation being used in relation to a case.

In most circumstances, a person will be given notice of the intention to carry out works in their default. Once work has started, it is an offence for that person to obstruct the Council or any of the contractors that have been employed to carry out the works. The cost of the works will be recovered in accordance with the relevant legislation.

9.5.2 Refusal, Suspension or Revocation of Licences

Powers exist to review, suspend and revoke a range of licences. Some of these powers are delegated to officers acting under section 113 of the Local Government Act 1972, but where legislation prescribes or the authority has reserved the right under its scheme of delegations, such actions can only be taken by a sub-committee of the relevant participant Council. Licence holders have the right to attend hearings and to be informed of their right of appeal against a decision. When considering future licence applications, the previous breaches and enforcement action will be taken into account.

9.5.3 Taking animals into possession and disqualification of keepers

In cases where it is established that protected animals are suffering or are likely to suffer if their circumstances do not change, Officers will use powers under the Animal Welfare Act 2006 to remove the animals by seizing them. An application can be made to the court for the Vale of Glamorgan Council to be given ownership of the animals, enabling them to be disposed of through rehoming and other available means as appropriate. The costs of caring for animals taken into possession will always be sought.

Compliance and enforcement policy	Date of issue <i>DRAFT 08/23</i>	Ref: SRS/MC/POL/001	Head of Shared Regulatory Services	V.1
-----------------------------------	-------------------------------------	---------------------	------------------------------------	-----

In cases where individuals are found guilty of animal welfare offences, consideration will be given to seeking their disqualification, through the court, from keeping animals in the future. Such disqualifications may be for a finite time (months or years), while in the case of very serious or persistent offending, a lifetime disqualification order may be granted.

9.5.4 Closure Orders

In cases where illicit products are being supplied, for example the supply of counterfeit or non-duty paid tobacco, a closure notice may be issued under the Anti-social Behaviour, Crime and Policing Act 2014. Such a Notice requires the premises concerned to remain closed for 48 hours prior to the matter being considered by the Magistrates Court.

The Court then has the power to grant a closure notice on the premises for a period of up to 3 months, which may be extended by the Court upon application.

9.5.5 Criminal Behaviour Orders

A Criminal Behaviour Order may be sought from the court in circumstances where an individual convicted of an offence has engaged in behaviour that has caused, or is likely to cause, harassment, alarm or distress, and the court believes that making the order will help prevent the offender from engaging in such behaviour.

10. Review

- 10.1 This policy will be updated and developed as required by changes in the law and will be reviewed biennially for continued accuracy and adherence to it by staff and reported to the Joint Committee and the respective Overview and Scrutiny Committees.
- 10.2 Data on equality profiles of those affected by this policy will be collated and monitored for any discriminatory practices.

Compliance and enforcement policy	Date of issue <i>DRAFT 08/23</i>	Ref: SRS/MC/POL/001	Head of Shared Regulatory Services	V.1
-----------------------------------	-------------------------------------	---------------------	------------------------------------	-----

11. Comments and Complaints

11.1 We strive to provide a high standard of service. However, for anyone wishing to make a complaint about the service they have received from us, there is a [formal complaints procedure](#), to ensure that concerns are dealt with quickly and consistently. Complaints can be made in person, in writing, by email or by using the online complaints form – link.

11.2 Any comments or complaints about the application of this policy should be addressed to the SRS at the address given in the introduction to this Compliance and Enforcement policy. If it is felt that a complaint about this policy has not been satisfactorily concluded, it will be passed to the Director of Environment and Housing at the Vale of Glamorgan Council and will be dealt with in accordance with the formal complaints procedure detailed above.

However, sometimes your concern or complaint will not be dealt with via the Corporate Concerns and Complaints Policy, examples include:

- an appeal against a ‘properly made’ decision made by the Council
- a means to seek change to legislation or ‘properly made’ policy decision
- decisions in respect of which there is a separate right of appeal or review, e.g. via a Magistrates Court

Compliance and enforcement policy	Date of issue <i>DRAFT 08/23</i>	Ref: SRS/MC/POL/001	Head of Shared Regulatory Services	V.1
-----------------------------------	-------------------------------------	---------------------	------------------------------------	-----

Compliance and Enforcement Policy

Annex 1 : Food Safety Enforcement

1. Introduction

- 1.1 This annex supplements the Shared Regulatory Services Compliance and Enforcement Policy in establishing a consistent approach to the enforcement of food safety law.
- 1.2 This annex applies to all enforcement action taken by Officers under food safety legislation and must be read in conjunction with the overarching Compliance and Enforcement Policy.
- 1.3 Where there is any conflict in interpretation between this annex and the overarching Compliance and Enforcement Policy, the latter will take precedence.

2. Primary Authority

- 2.1 All officers considering intervention must check if a business is registered as being in a Primary Authority partnership, whether in its own name or part as part of a co-ordinated partnership through a franchise arrangement or trade association. The Office for Product Safety and Standards (OPSS) (part of the Department for Business and Trade) co-ordinates the Primary Authority scheme, including approving and registering all Primary Authority partnerships. Where a Primary Authority is registered, any other Local Authority (known as an “enforcing authority” for the purposes of the scheme) proposing to take enforcement action against a business within the scheme, must contact the Primary Authority first unless immediate action is necessary. The Primary Authority may challenge a proposed enforcement action if it believes it to be inconsistent with advice or guidance that it has previously provided. OPSS will determine any resulting disputes.
- 2.2 “Primary Authority” means an authority which has entered into a formal agreement, in relation to specified legislative controls, to be the principal source of advice on compliance with these requirements and to co-ordinate enforcement actions.

Annex 1 - Compliance and enforcement policy	Date of issue DRAFT August 2023	Ref: SRS/MC/POL/004	OM – CS	V.1
---	------------------------------------	---------------------	---------	-----

3. Additional considerations for ships and aircraft

- 3.1 This annex includes the enforcement of relevant food safety legislation in relation to any ship or aircraft as they fall within the definition of premises for The Food Hygiene (Wales) Regulations 2006. However, it should be noted that Schedule 4 to these Regulations which sets out specific temperature control requirements does not, by virtue of paragraph 1b), apply to these means of transport. In addition, the Food Hygiene Rating (Wales) Act 2013 will only apply if a vessel is registered as a food business by a Food Authority in Wales and it does not meet the criteria to make it exempt.
- 3.2 For an aircraft or ship that is registered within the UK a check will be made by the Authorised Officer to establish if there is a Home Authority agreement in place and if this is the case will liaise with the Home Authority to advise of any contraventions noted and discuss the possibility of any enforcement action proposed in accordance with the LGA guidelines (unless emergency measures are required.)
- 3.3 For a foreign registered aircraft or ship the Authorised Officer should contact the UK office of the company, or the handling agent if a Hygiene Improvement Notice or Hygiene Emergency Prohibition Notice is served. In respect of ships, the authorised Officer should also contact the Maritime Coastguard Agency (MCA) at the earliest opportunity. Where there is no such UK office or handling agent, the competent authority in the country where the ship or aircraft is registered should be made aware of the defects found.
- 3.4 If the ship or aircraft is registered within another Member State, the procedures set out in Chapter 2.5 “Food Law Code of Practice (Wales)- April 2014” shall be followed. Any difficulties should be discussed with the Food Standards Agency.
- 3.5 If the ship or aircraft is registered in a third country, the Food Standards Agency should be given full details to allow the matter to be raised with the competent authorities in the relevant countries.

Annex 1 - Compliance and enforcement policy	Date of issue DRAFT August 2023	Ref: SRS/MC/POL/004	OM – CS	V.1
---	------------------------------------	---------------------	---------	-----

4. Definitions

- 4.1 For the purpose of this annex "Authorised Officer" shall mean an Officer who has the relevant delegated powers to operate under the European Communities Act 1972, Food Safety Act 1990, Food Hygiene (Wales) Regulations 2006, Official Feed and Food Control (Wales) Regulations 2009, Trade in Animals and Related Products (Wales) Regulations 2011, Food Hygiene Rating (Wales) Act 2013 and the regulations issued thereunder and has been authorised by the Head of Shared Regulatory Services.
- 4.2 For the purpose of this annex "Partner Authorities" shall mean the following local authorities that collaborate to provide Shared Regulatory Services:
- Bridgend County Borough Council
 - The County Council of the City and County of Cardiff
 - Vale of Glamorgan County Borough Council

5. Taking Enforcement Action

- 5.1 Section 8.4 of the SRS Compliance and Enforcement Policy is concerned with decisions on enforcement action and considers the broad range of enforcement options available to the Service. This purpose of this section is to set out the additional enforcement options available that are specific to the administration of food law.
- 5.2 If there is evidence that a food business operator is failing to comply with food safety requirements, the following courses of action will be considered and the most appropriate selected and implemented in accordance with the relevant procedural documents, practice guidance and the Code of Practice issued under the Food Safety Act 1990, the Food Hygiene (Wales) Regulations 2006 and the Official Feed and Food Controls (Wales) Regulations 2007:
- Compliance, advice and support
 - Fixed penalty notices
 - Statutory notices
 - Voluntary closure
 - Seizure and detention of food
 - Simple caution
 - Prosecution
 - Apply for hygiene prohibition order

These are set out in detail from section 6 below.

Annex 1 - Compliance and enforcement policy	Date of issue DRAFT August 2023	Ref: SRS/MC/POL/004	OM – CS	V.1
---	------------------------------------	---------------------	---------	-----

- 5.3 In deciding upon the type of enforcement action to take, authorised officers must have regard to the nature of the breach and the history of compliance of the food business operator. Unless circumstances indicate a significant risk, officers will operate a graduated and educative approach moving to more formal action where informal action does not achieve the desired effect. In the case of new businesses, an assessment will be made of the food business operator's willingness to undertake the work identified by the officer.
- 5.4 In order to ensure compliance in food establishments run by one of the SRS partner authorities, or where one of the partner authorities has an interest, the Shared Service will carry out its enforcement duties in exactly the same way as it does in other premises. Furthermore, it will ensure that the attention received is in accordance with the criteria applied to other duty holders.
- 5.5 The following procedure is to be adopted where a partner Authority is the proprietor of a food business:
- 5.5.1 Authorised food safety officers will inspect premises where a partner Authority is the proprietor in accordance with the Food Law Code of Practice risk-rating scheme which determines the frequency of inspection. Following the inspection an inspection report indicating statutory contraventions and recommendations will be submitted to the relevant Operational Manager and/or Director, e.g. Catering Services
- 5.5.2 The inspecting officer will follow up the report to ensure any necessary improvements are undertaken as would be the case for any other food business; and recommend enforcement action where appropriate.

In the event of a failure to address the contraventions identified within a reasonable time period the matter will be escalated and brought to the attention of the appropriate Client Officer of the partner Authority.

6. Compliance, advice and support

- 6.1 Sections 6 of the overarching SRS Compliance and Enforcement Policy is concerned with the provision of advice and guidance to businesses as a means of achieving compliance.
- 6.2 Specifically in connection with food law administration, informal action could include the offering of advice, the issuing of verbal warnings and requirements for action by the use of informal letters and food hygiene inspection reports.

Annex 1 - Compliance and enforcement policy	Date of issue DRAFT August 2023	Ref: SRS/MC/POL/004	OM – CS	V.1
---	------------------------------------	---------------------	---------	-----

- 6.3 The following circumstances have been identified as appropriate for the use of informal action to secure compliance with the requirements of food safety legislation or good practice within a reasonable time period:
- Circumstances where the consequence of non-compliance with the contravention identified will not pose a significant risk to public health.
 - Acts or omissions which are not serious enough to warrant formal action.
 - From the food business operator's past history and/or willingness to undertake the necessary work, it can be reasonably expected that informal action will result in compliance.
 - Confidence in management of the business is high.
 - Initial breaches that do not give rise to an imminent risk to public health and which apply to food business associated with voluntary organisations using volunteers.
- 6.4 Each case shall be assessed on its merits and if necessary in consultation with a more senior officer Team Manager or Operational Manager when guidance or advice is required.
- 6.5 A letter shall be sent to the food business operator on each occasion and this shall clearly differentiate between legal requirements and matters recommended as good practice.

7. Fixed Penalty Notices

- 7.1 Section 9.4.2 of the overarching SRS Compliance and Enforcement Policy considers the use of fixed penalty notices.
- 7.2 With respect to food law enforcement, an authorised officer has the discretion to issue a fixed penalty notice for an offence under section 9 of the Food Hygiene Rating (Wales) Act 2013 concerning the display, or failure to display, of the appropriate food hygiene rating scheme score. In addition a fixed penalty notice can be served for an offence under Regulation 5 of the Food Hygiene Rating (Promotion of Food Hygiene Rating) (Wales) Regulations 2016 with regard to failure to comply with requirements for the promotion of ratings on publicity materials.

These may be given where there is no reasonable excuse for non-compliance.

Annex 1 - Compliance and enforcement policy	Date of issue DRAFT August 2023	Ref: SRS/MC/POL/004	OM – CS	V.1
---	------------------------------------	---------------------	---------	-----

8. Statutory Notices

8.1 It is the policy of Shared Regulatory Services to utilise statutory notices as an option to secure compliance with legislation. Such action will include the issuing of the following notices under the given Regulation of the Food Hygiene (Wales) Regulations 2006: Hygiene Improvement Notices under Regulation 6, Hygiene Prohibition Notices and Hygiene Emergency Prohibition Notices under Regulations 7 and 8 and Remedial Action Notices and Detention Notices under Regulation 9.

8.2 *Improvement Notices*

8.2.1 Hygiene/Food Standards Improvement Notices will be used to secure compliance with food safety requirements, within a reasonable time scale in circumstances where the authorised officer is satisfied that there has been a contravention of food safety legislation but the contravention does not pose an imminent risk to health. Those circumstances might include

- Having considered the risk to public health, where the consequences of could pose a potential risk to public health; or
- Where there are significant contraventions of food safety legislation; or
- Where there is a lack of confidence in the food business operator to respond to an informal approach; or
- Where there is a record of non-compliance following the use of an informal approach; or
- Where standards are generally poor with little management awareness of statutory requirements or
- Where a contravention is sufficiently serious to warrant prosecution

8.2.2 The following circumstances have been identified as inappropriate for the use of Hygiene/Food Standards Improvement Notices:

- the contravention may be a continuing one and a notice would only secure an improvement at one point in time, for example, personal cleanliness of staff
- The contravention presents no risk to public health;
- In transient situations, where breaches exist which pose a serious risk to public health and where it is considered that swift enforcement action is needed;

Annex 1 - Compliance and enforcement policy	Date of issue DRAFT August 2023	Ref: SRS/MC/POL/004	OM – CS	V.1
---	------------------------------------	---------------------	---------	-----

- It would be more appropriate and in the best interests of public health to use an informal approach;
- Where there is a breach of good hygiene practice but no failure to comply with an appropriate regulation.

8.2.3 Hygiene/Food Standards Improvement Notices shall only be served by authorised officers. An authorised officer shall not sign a Hygiene/Food Standards Improvement Notice unless the contraventions have been witnessed and the relevant criteria set down in the Regulations and Practice Guidance satisfied.

8.2.4 All Hygiene/Food Standards Improvement Notices shall be issued in accordance with the relevant Code of Practice.

8.2.5 Single Hygiene Improvement Notices with suitable numbers of schedules attached shall be served unless the authorised officer is satisfied that:

- There is likely to be an appeal against one or more items contained within the schedule, which may suspend the whole notice; or
- Separate time limits are more appropriate for the different items contained in the schedule; or
- In such circumstances suitable numbers of separate notices with individual schedules attached shall be served.

8.2.6 Authorised officers must place realistic time limits on notices, having regard to the works which will be specified and the availability of appropriate solutions, preferably after discussions with the food business operator. In any case a minimum time period of 14 days must be given.

8.2.7 Failure to comply with a Hygiene Improvement Notice is an offence which will in general result in a recommendation to instigate Court proceedings. Authorised officers must therefore have sufficient evidence available to justify their issue, be prepared to pursue non-compliance in the Courts and be satisfied that proceedings are likely to succeed. The recipients of Hygiene Improvement Notices must be made aware of their right of appeal and of how and where to make an appeal.

8.2.8 Requests for an extension of time will only be considered if made in writing and recipients of notices will be advised of this policy at the time of service.

8.2.9 Before considering any enforcement action, where appropriate the matter will be discussed with any relevant Primary, home or originating authority.

Annex 1 - Compliance and enforcement policy	Date of issue DRAFT August 2023	Ref: SRS/MC/POL/004	OM – CS	V.1
---	------------------------------------	---------------------	---------	-----

8.2.10 The Service will notify other appropriate enforcement bodies and other relevant interested parties of its action together with advice outlining the remedial action necessary to comply.

8.3 **Remedial Action Notices**

8.3.1 A Remedial Action Notice is a notice in writing served on the relevant food operator or the operator's duly authorised representative which:

- Prohibits the use of any equipment or any part of the establishment specified in the notice;
- Imposes conditions upon or prohibits the carrying out of any process; or
- Requires the operation of the food business to be stopped completely or reduced to such extent as is specified in the notice.

8.3.2 The officer will also consider whether food at the establishment should be detained for the purposes of examination by means of a Detention Notice.

8.3.3 Circumstances which may lead to the issue of a Remedial Action Notice in respect of an establishment include:

- The failure of any equipment or part of an establishment to comply with the requirements of the food hygiene regulations;
- Cross contamination issues;
- The need to impose conditions upon or the prohibition of the carrying on of any process breaching the requirements of the regulations or hampering adequate health inspection in accordance with the regulations; or
- Where the rate of operation of the business is detrimental to its ability to comply with the regulations.

8.3.4 Any Remedial Action Notice must be served as soon as practicable and must state why it is being served. In the event that the authorised officer relies upon any breach of any requirements of the Hygiene Regulations, the notice must specify the breach and the action needed to remedy it.

8.3.5 When an authorised officer serves a Remedial Action Notice at an establishment subject to approval under Article 4(2) of Regulation 853/2004, the officer should also consider whether food at the establishment should be detained for the purposes of examination by means of a Detention Notice under Regulation 9 of the Food Hygiene (Wales) Regulations 2006. Circumstances which might lead to the issue of a Detention

Annex 1 - Compliance and enforcement policy	Date of issue DRAFT August 2023	Ref: SRS/MC/POL/004	OM – CS	V.1
---	------------------------------------	---------------------	---------	-----

Notice include where there are indications or suspicions that food at an establishment is unsafe.

- 8.3.6 Once an authorised officer is satisfied that the remedial action has been taken to comply with Remedial Action Notice served, he or she must withdraw the notice by serving a further notice in writing upon the food business operator or the duly authorised representative of the food business operator.
- 8.3.7 The use of Remedial Action Notices and Detention Notices should be proportionate to the risk to public health and where immediate action is required to ensure food safety.
- 8.3.8 All Remedial Action Notices and Detention Notices shall be issued in accordance with the relevant Code of Practice. The recipient of a Remedial Action Notice must be made aware of the right of appeal to the Magistrates' Court.

8.4 **Hygiene Emergency Prohibition Notices**

- 8.4.1 The following circumstances have been identified as appropriate for the use of Hygiene Emergency Prohibition Notices following the identification of an imminent risk to health:
- The consequences of not taking immediate and decisive action to protect public health would be unacceptable.
 - An imminent risk of injury to health can be demonstrated, e.g. evidence from relevant experts such as a Food Analyst or Food Examiner.
 - The guidance criteria specified in the relevant Code of Practice, concerning the conditions when prohibition may be appropriate, are fulfilled.
 - The food business operator is unwilling to confirm in writing any suggested offer of a voluntary prohibition.
- 8.4.2 Hygiene Emergency Prohibition Notices shall only be signed and served by an appropriately authorised Commercial Services Officer, who shall notify the Team Manager as soon as possible of their actions.
- 8.4.3 An authorised Commercial Services Officer shall not sign Hygiene Emergency Prohibition Notices unless the situation has been witnessed and the relevant criteria satisfied.
- 8.4.4 All Hygiene Emergency Prohibition Notices shall be issued in accordance with the relevant Code of Practice. The recipient must be made aware of the right of appeal

Annex 1 - Compliance and enforcement policy	Date of issue DRAFT August 2023	Ref: SRS/MC/POL/004	OM – CS	V.1
---	------------------------------------	---------------------	---------	-----

to the Magistrates' Court.

- 8.4.5 The Solicitor of the relevant Legacy Authority and appropriate Operational Manager shall be advised immediately of the service of a Hygiene Emergency Prohibition Notice.
- 8.4.6 Once a Hygiene Emergency Prohibition Notice has been served, an application for a Hygiene Emergency Prohibition Order must be made to the Magistrates' Court within 3 working days of the service of the Notice and the food business must be given at least one day's notice of the intention to do this.
- 8.4.7 The food business operator of premises that has been subject to a Hygiene Emergency Prohibition Notice must be served with a Notice of Application for a Hygiene Emergency Prohibition Order at least one day before the date of the application to a Magistrates' Court. The notice will give details of the time and date of the application.
- 8.4.8 Failure to comply with a Hygiene Emergency Prohibition Notice is an offence and will result in the matter being referred for consideration of prosecution.
- 8.4.9 The Authority will notify other enforcement bodies and other relevant interested parties of its action.

9. Voluntary Closure

- 9.1 Voluntary procedures to remove a health risk condition may be used as an alternative to the service of a Hygiene Emergency Prohibition Notice. This approach could be at the instigation of the food business operator or the authorised officer.
- 9.2 The food business operator or manager and the authorised officer should confirm any voluntary closure agreement in writing, with an undertaking by the food business operator or manager not to re-open without the officer's prior approval. The food business operator will be advised that by offering to close voluntarily, any right to compensation is lost. A voluntary closure agreement will not preclude legal proceedings being undertaken for non-compliance with food safety legislation.

Annex 1 - Compliance and enforcement policy	Date of issue DRAFT August 2023	Ref: SRS/MC/POL/004	OM – CS	V.1
---	------------------------------------	---------------------	---------	-----

10. Seizure and retention

- 10.1 If while inspecting food, or because of other information from a reliable source the authorised officer believes that the food fails to comply with the food safety requirements, the officer may detain or seize the food under Section 9 Food Safety Act 1990. Reliable sources may include Food Standards Agency, the UK Health Security Agency, Public Health Wales, Consultant in Communicable Disease Control.
- 10.2 Seizure and detention may also be necessary after food has been certified as not being produced, processed or distributed in accordance with Regulation 27 of the Food Hygiene (Wales) Regulations 2006.
- 10.3 If the authorised officer has good reason to suspect that the food does not satisfy food safety requirements then a detention of food notice may be served.
- 10.4 A decision to detain food should only normally be taken if it has been discussed with the owner or person in charge of the food and, if appropriate, with the manufacturer. Where the authorised officer has served a detention of food notice, professional judgment will be used to determine whether food should be detained where it is, or moved elsewhere. If the officer has any doubts about the security or physical care of the food, the detention notice should specify a place to which the food is to be moved. The officer will organise periodic monitoring of the food throughout the period of detention.
- 10.5 The authorised officer will act as quickly as possible when evidence or information indicates that detained food can be released, and in any case within 21 days. A Withdrawal of Detention of Food Notice will be served.
- 10.6 It is presumed under food law that all food is intended for human consumption until it is proved to the contrary. When considering whether to seize food an officer will consider whether the food in question can be treated or processed before consumption and if so, whether the food, after treatment or processing would be sound and wholesome and satisfy food safety requirements. Food previously detained by an officer may be seized and subject to condemnation after receipt of adverse findings.
- 10.7 When an officer makes a decision to seize food a food condemnation warning notice will be served on the person in charge of the food, or the owner. This notice will provide warning of the intention to take the food before a Justice of the Peace and apply for its condemnation.

Annex 1 - Compliance and enforcement policy	Date of issue DRAFT August 2023	Ref: SRS/MC/POL/004	OM – CS	V.1
---	------------------------------------	---------------------	---------	-----

10.8 Food that has been seized should be dealt with by a Justice of the Peace as soon as is reasonably practicable, normally within 2 days. Cases involving highly perishable food should be dealt with at the earliest opportunity. If necessary the time scale may be extended to ensure that parties and or their representatives have an opportunity to attend. However, action will not be delayed if the owner cannot be traced or contacted.

10.9 Dealing with Batches, Lots and Consignments

10.9.1 The decision to seize or detain a batch, lot, or consignment requires careful consideration before a notice is served. The authorised officer will use professional judgment and expert advice, if necessary, to decide whether to detain or seize the whole or part of the batch, lot or consignment. The authorised officer will consider:

- The evidence available;
- The nature of the contamination;
- The nature and condition of the container holding the food;
- The risk to health;
- The quantity of food involved in relation to any sampling that has been undertaken.

11. Compensation

11.1 In the event of a detention notice being withdrawn or if a Justice of the Peace fails to condemn seized food Shared Regulatory Services will consider compensation to the owner for any depreciation in its value resulting from the action taken by the authorised officer.

12. Voluntary Surrenders

12.1 Voluntary procedures to remove food that is not suitable for human consumption from the food chain may be used; either at the instigation of the owner of the food or at the suggestion of the authorised officer when the owner of the food agrees the food is not suitable for human consumption.

12.2 A receipt should be issued for food that is voluntarily surrendered to the Authority for destruction. The receipt should indicate that the food has been voluntarily surrendered to Shared Regulatory Services for destruction and be signed and counter-signed by the authorised officer and the person surrendering the food respectively.

Annex 1 - Compliance and enforcement policy	Date of issue DRAFT August 2023	Ref: SRS/MC/POL/004	OM – CS	V.1
---	------------------------------------	---------------------	---------	-----

13. Destruction and Disposal

- 13.1 Shared Regulatory Services, by agreement, may charge the owner of the food for the destruction and disposal of voluntarily surrendered foodstuffs.
- 13.2 Shared Regulatory Services will usually make an application to the Justice of the Peace for costs associated with the destruction and disposal of seized food.
- 13.3 If food is to be disposed of Shared Regulatory Services, will make every effort to ensure that this is done in a suitable manner and that there is no possibility of food returning to the food chain.

14. Simple Caution

- 14.1 See section 9.4.4 of the Shared Regulatory Services Compliance and Enforcement Policy.

15. Prosecution

- 15.1 See section 9.4.5 of the Shared Regulatory Services Compliance and Enforcement Policy.

16. Hygiene Prohibition Order

- 16.1 If a food business operator is convicted of an offence under the Food Hygiene (Wales) Regulations 2006 and the Court is satisfied that the health risk condition is fulfilled with respect to the food business concerned, the Court has the power to impose a Hygiene Prohibition Order against the appropriate prohibition, under Regulation 7 of the Food Hygiene (Wales) Regulations 2006.
- 16.2 Following a successful prosecution, the Court has the power to impose the appropriate prohibition if they are satisfied that there is a risk of injury to health as defined in Regulation 7 (2) and (3) of the Food Hygiene (Wales) Regulations 2006. The Court is required to impose an appropriate Hygiene Prohibition Order which may relate to prohibition of a process or treatment, or the use of a premises or equipment for the purpose of a food business.
- 16.3 Following a successful prosecution against the food business operator of a food business the Court may, by virtue of Regulation 7 (4) of the Food Hygiene (Wales) Regulations 2006, impose a Hygiene Prohibition Order on the food business operator

Annex 1 - Compliance and enforcement policy	Date of issue DRAFT August 2023	Ref: SRS/MC/POL/004	OM – CS	V.1
---	------------------------------------	---------------------	---------	-----

participating in the management of any food business, or any food business of a class or description specified in the order.

- 16.4 The authorised officer shall as soon as practicable after the making of the Hygiene Prohibition Order, serve a copy of the Hygiene Prohibition Order on the food business operator of the business and in the case of a Hygiene Prohibition Order served under Regulation 7 (1) of the Food Hygiene (Wales) Regulations 2006, affix a copy of the order in a conspicuous position on the premises.
- 16.5 Failure to comply with a Hygiene Prohibition Order is an offence and will result in being forwarded with a view to prosecution.
- 16.6 Other interested bodies, including the Food Standards Agency and the Chartered Institute of Environmental Health shall be advised of the issue of a Hygiene Prohibition Order issued under Regulation 7 (4) of the Food Hygiene (Wales) Regulations 2006.

17. Ship Sanitation Controls

17.1 Ship Sanitation Inspection

A Master/Operator of a ship which during its voyage has been in a foreign port will be required to produce a valid ship sanitation certificate on boarding by an authorised officer. If the Master/Operator is unable to produce a valid certificate, or makes a request for a new certificate, an authorised officer may inspect the ship in order to issue a valid ship sanitation certificate which is a requirement under the International Health Regulations.

17.2 Ship Sanitation Control Exemption Certificate

If the authorised officer finds no evidence of public health risks or spread of infection a Ship Sanitation Control Exemption Certificate will be issued. This certificate will be valid for up to 6 months. The port health authority will make a charge for certificates which will be based on those recommended by the Association of Port Health Authorities (APHA).

17.3 Ship Sanitation Control Certificate

A ship sanitation control certificate will be issued when evidence of a public health risk, including sources of infection and contamination, are detected on-board and the required control measures have been satisfactorily completed. The certificate records the evidence found, the control measures taken and the results. If the control

Annex 1 - Compliance and enforcement policy	Date of issue DRAFT August 2023	Ref: SRS/MC/POL/004	OM – CS	V.1
---	------------------------------------	---------------------	---------	-----

measures cannot be completed within the port the authority will make a note on the certificate and notify the next port of the required control measures.

If the Master/Operator has a valid ship sanitation certificate the authorised officer will amend this to show the evidence, controls applied and results. If the Master/Operator does not have a valid ship sanitation certificate the authorised officer will complete a new Ship Sanitation Control Certificate and a charge will be made based on those recommended by APHA. A ship sanitation control certificate will be valid for six months.

17.4 Extension of Ship Sanitation Certificates

Sanitation certificates issued by a port authorised by the World Health Organisation are valid for a maximum of 6 months. An authorised officer may extend a certificate if an inspection or the control measures cannot be accomplished at the port. If, however, the ship constitutes a serious risk for the spread of disease the authority will inform the next port so the effective control measures can be carried out without delay.

Annex 1 - Compliance and enforcement policy	Date of issue DRAFT August 2023	Ref: SRS/MC/POL/004	OM – CS	V.1
---	------------------------------------	---------------------	---------	-----

Compliance and Enforcement Policy

Annex 2: Feed Law Enforcement

1. Introduction

- 1.1 As part of the revised Feed Delivery Programme established by the Food Standards Agency, Shared Regulatory Services (SRS), which covers Bridgend County Borough Council, the City of Cardiff Council and Vale of Glamorgan Council undertakes Feed enforcement work on behalf of these three local authorities, which are classed as feed authorities within the Agriculture Act 1970.

Animal feed forms a key part of the food chain, having implications for the safety and quality of livestock products (meat, eggs and milk) for human consumption. The Service has responsibility for enforcement of the controls on animal feeding stuffs in relation to their hygiene, composition and marketing.

The purpose of this document is to set out our current approach to enforcement in this area. Our approach is based upon the principles detailed in the overarching SRS Compliance and Enforcement Policy. This document is subject to Joint Committee approval.

2. Purpose

- 2.1 This procedure establishes a uniform approach for the enforcement of the law relating to animal feeds. It must be read in conjunction with the overarching SRS Compliance and Enforcement Policy of which this procedure forms an Annex.
- 2.2 This annex aims to assist officers in making enforcement decisions that adequately protect the public, livestock and the environment whilst also taking into account the needs and rights of business.

3. Scope

- 3.1 This annex applies to all action taken by Officers of SRS in respect of any animal feed, whether such requirements are imposed by UK or EU regulation.

Annex 2 - Compliance and enforcement policy	Date of issue <i>DRAFT August 2023</i>	Ref: SRS/MC/POL/005	OM – E&SS	V.1
---	---	---------------------	-----------	-----

4. Definitions

4.1 For the purpose of this document “Authorised Officer” shall mean an Officer who has delegated powers to operate under the appropriate legislation which has been enacted to meet Regulations (EC) No 183/2005 laying down requirements for feed hygiene, (EC) No 1831/2003 on additives for animal nutrition, (EC) No 767/2009 on the placing on the market and use of feed and (EC) No 852/2004 food hygiene regulations, (EC) No 178/2002 on the principles of food and feed law and includes but is not limited to the following:

- Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016;
- Animal Feed (Hygiene, Sampling, etc. and Enforcement) (Wales) Regulations 2016;
- Official Feed and Food Controls (Wales) (Amendment) Regulations 2011;
- Food Hygiene (Wales) Regulations 2006

and that officer has been authorised by the SRS Head of Service.

5. Responding to breaches

5.1 SRS recognises and affirms the importance of achieving and maintaining consistency in the approach to making all decisions which concern feed law enforcement. To achieve and maintain consistency it is necessary that guidance issued by the Food Standards Agency, including in the Feed Law Code of Practice (Wales) <https://smartercommunications.food.gov.uk/connect/cGLgL9lfVC> is followed together with any other relevant guidance including the EU Code on good labelling practice for pet food, Home Authority / Primary Authority considerations and any Industry / Trade Association Codes as appropriate.

5.2 The Authorised Officers of SRS may obtain, provide and exchange information and evidence in accordance with the exercise of their legal obligations under the relevant regulations and guidance. Primary Authority arrangements will always be recognised.

5.3 If there is evidence that any relevant party is, or is suspected of failing to comply with legal requirements, various courses of action will be considered, the most appropriate selected and implemented in accordance with the relevant current legislation presently the Animal Feed (Hygiene, Sampling, etc. and Enforcement) (Wales) Regulations 2016, the Official Feed and Food Controls (Wales) (Amendment) Regulations 2011, subject to the Feed Law Practice Code and any relevant procedural documents and guidance.

5.4 The courses of action to be considered are those set out in section 9.4 of the SRS Overarching Compliance and Enforcement Policy under the headings:

- Statutory Notices

Annex 2 - Compliance and enforcement policy	Date of issue <i>DRAFT August 2023</i>	Ref: SRS/MC/POL/005	OM – E&SS	V.1
---	---	---------------------	-----------	-----

- Enforcement Orders
- Simple caution; and
- Prosecution

5.5 Specifically in relation to feed, the use of a **feed business improvement notice** may be considered under the Feed (Hygiene and Enforcement) (Wales) Regulations 2005.

5.6 A feed business improvement notice will:

- State the officer's grounds for believing that the feed business operator is failing to comply with specified feed law;
- Specify the matters which constitute the feed business operator's failure to comply;
- Specify the measures which, in the officer's opinion, the feed business operator must take in order to secure compliance; and
- Require the feed business operator to take those measures within the specified period being not less than 14 days).

5.7 Failure to comply with a feed business improvement notice is an offence, however there is a route of appeal against a notice, and this is through the Magistrates Court. Persons served with a feed business improvement notice will be made aware of their right to appeal.

5.8 The following additional courses of action may also be considered:

5.8.1 **Suspension and / or Revocation of Registration or Approval as a Feed Business**

5.8.1.1 The authority may temporarily suspend the registration or approval of an establishment if it is shown that one or more of the activities carried out no longer complies with the requirements of EC Regulation 183 / 2005.

5.8.1.2 Any such suspension can last up to a maximum of one year after which time the registration or approval will be revoked.

5.8.1.3 In addition, the authority may revoke the registration or approval of an establishment for one or more of its activities if it identifies serious deficiencies or has had to stop production at the establishment repeatedly and the feed business operator is still not able to provide adequate guarantees regarding future production.

5.8.1.4 Those to whom the above applies will be notified of the rights of appeal available to them following the suspension or revocation of registration as a feed business.

Annex 2 - Compliance and enforcement policy	Date of issue <i>DRAFT August 2023</i>	Ref: SRS/MC/POL/005	OM – E&SS	V.1
---	---	---------------------	-----------	-----

5.8.2 **Inspection, Seizure and Detention of Feed**

5.8.2.1 It is the policy of SRS to use detention or seizure of animal feeds as necessary where it appears to an Authorised Officer that the material fails to comply with the requirements of specified feed law.

5.8.2.2 The Authorised Officer may either:

- Give notice to the person in charge of the material that until the notice is withdrawn it is not to be used as feed and it is not to be removed unless its removal is to a place specified in the notice; or
- Seize the material in order to have it dealt with by a Justice of the Peace who may order its destruction or disposal and the recovery of the costs incurred in such destruction or disposal.

5.8.2.3 Anyone knowingly contravening the requirements of the notice specified above is guilty of an offence.

Annex 2 - Compliance and enforcement policy	Date of issue <i>DRAFT August 2023</i>	Ref: SRS/MC/POL/005	OM – E&SS	V.1
---	---	---------------------	-----------	-----

Compliance and Enforcement Policy

Annex 3: Health and Safety Enforcement

1. Introduction

- 1.1 This annex supplements the Shared Regulatory Services Compliance and Enforcement Policy in establishing a consistent approach to the enforcement of health and safety law. It must be read in conjunction with the overarching Compliance and Enforcement Policy
- 1.2 This annex has been produced in response to the requirements of section 18 of the Health and Safety at Work Act 1974 which requires Local Authorities to make adequate arrangements for the performance of its duties as an “enforcing authority”.
- 1.3 This annex follows the guidance issued by the Health and Safety Commission and requires Local Authorities to follow the principles and approaches which have been agreed by the Health and Safety Executive and Local Authorities Enforcement Liaison Committee.
- 1.4 This annex will form part of the Health and Safety Service Plan produced in response to the requirements of section 18 of the Act.
- 1.5 Where there is any conflict in interpretation between this annex and the overarching Compliance and Enforcement Policy, the latter will take precedence.

2. Remit of the Service in enforcing health and safety law

- 2.1 Shared Regulatory Services (SRS) is an “enforcing authority” for the authorities of Bridgend, Cardiff and the Vale of Glamorgan and as such it has a responsibility under section 18 of the Health and Safety at Work Act 1974 to make adequate arrangements for the enforcement of health and safety law in relation to specified work activities.
- 2.2 The aim of SRS is to protect the health, safety and welfare of people at work, and to safeguard others, mainly members of the public, who may be exposed to risks from the way work is carried out. The main work activities for which SRS is responsible are:

Annex 3 - Compliance and enforcement policy	Date of issue <i>DRAFT August 2023</i>	Ref: SRS/MC/POL/006	OM – CS	V.1
---	---	---------------------	---------	-----

- offices
- shops
- retail and wholesale distribution centres
- sporting, leisure and entertainment activities
- catering establishments
- the provision of residential accommodation
- body piercing and tattooing
- consumer services in shops
- animal welfare establishments
- the provision of child care, playgroup or nursery facilities
- places of worship
- Undertakers and funeral directors.

2.3 More detailed information including exemptions to this list can be found in the Health and Safety Service Plan and in the Health and Safety (Enforcing Authority) Regulations 1998

This Enforcement Policy Statement sets out the general principles and approach that SRS will follow; our Inspectors will observe the principles of this Policy document.

The appropriate use of the full range of enforcement powers, including prosecution, is important, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failures to safeguard health, safety and welfare.

3. Taking enforcement action

3.1 Section 8.4 of the SRS Compliance and Enforcement Policy is concerned with decisions on enforcement action and considers the broad range of enforcement options available to the Service. This purpose of this section is to set out the additional enforcement options available that are specific to the administration of health and safety law.

3.2 The enforcement methods available to our inspectors include:

- providing verbal and written advice;
- providing written information regarding breaches of law;
- requiring improvements in the way risks are managed;
- stopping certain activities where they create serious risks; and
- recommending prosecution where there has been a serious breach of law.

Annex 3 - Compliance and enforcement policy	Date of issue <i>DRAFT August 2023</i>	Ref: SRS/MC/POL/006	OM – CS	V.1
---	---	---------------------	---------	-----

In allocating resources, due regard is given to the principles set out below, the objectives published in Health and Safety Commission's and the Health & Safety Executive/Local Authority Enforcement Liaison Committee's (HELA) strategic plans, and the need to maintain a balance between enforcement and other activities, including inspection.

- 3.3 In identifying the most appropriate courses of action, the Service is guided by the Health and Safety Executive's Enforcement Management Model (EMM) (see also sections 5.1.3 and 6.1 below).
- 3.4 We believe in firm, but fair, enforcement of the law. Our approach is that all enforcement action should be proportionate to the health and safety risks and to the seriousness of any breach of law. We consider that appropriate use of our enforcement powers is important, both to secure compliance with health and safety law and to ensure that those who have a legal duty (duty holders) are held to account for significant failures.

The following sections of this Annex describe:

- the purpose of enforcement;
- the principles of enforcement;
- the enforcement methods available to our inspectors; and
- how our enforcement principles relate to investigations and prosecutions.

4. The purpose of enforcement

- 4.1 The purpose of SRS as an Enforcing Authority is to ensure that duty holders manage and control risks effectively, thus preventing harm.

The purpose of enforcement is to:

- ensure that duty holders take action to deal immediately with serious risks;
- promote and achieve sustained compliance with the law;
- ensure that duty holders who breach health and safety requirements, and directors or managers, who fail in their responsibilities, may be held to account.

- 4.2 Enforcement is distinct from civil claims pursued by individuals such as injured parties, for compensation and is not undertaken in all circumstances where civil claims may be pursued. It is not the policy for Inspectors to assist in such claims other than to provide information requested by the respective parties.

Annex 3 - Compliance and enforcement policy	Date of issue <i>DRAFT August 2023</i>	Ref: SRS/MC/POL/006	OM – CS	V.1
---	---	---------------------	---------	-----

5. The principles of enforcement

5.1 In line with the overarching SRS Compliance and Enforcement Policy, we apply the following principles when conducting our enforcement activities in the context of health and safety law:

- **proportionality** in applying the law and securing compliance;
- **targeting** of enforcement action;
- **consistency** of approach;
- **transparency** about how the we operate as a regulator and what those regulated may expect;
- **accountability** for our service and actions.

These principles apply both to enforcement in particular cases of breaches in the law, and to our management of enforcement activities as a whole. They are not applied in isolation, but are informed by an understanding of the business environment. They allow for effective enforcement, without stifling economic growth, by requiring our inspectors to be proportionate in their decision-making and mindful in keeping the burden on business productivity to a minimum. These principles are also mirrored in the National Local Authority Code for Health and Safety at Work

5.1.1 Proportionality

- We adopt a proportionate approach to enforcing the law across different industries and sectors, recognising the importance of supporting businesses to comply and grow.
- This approach is based on the National Local Authority Enforcement Code - [National Local Enforcement Authority Code \(hse.gov.uk\)](https://www.hse.gov.uk/nlaec/)
- 'In our dealings with duty holders, we will ensure that our enforcement action is proportionate to the health and safety risks* and to the seriousness of any breach of the law. This includes any actual or potential harm arising from any breach, and the economic impact of the action taken.
- We expect that duty holders, in turn, will adopt a sensible and proportionate approach to managing health and safety, focussing on significant risks i.e. those with the potential to cause real harm.

Annex 3 - Compliance and enforcement policy	Date of issue <i>DRAFT August 2023</i>	Ref: SRS/MC/POL/006	OM – CS	V.1
---	---	---------------------	---------	-----



- Applying the principle of proportionality means that our inspectors should take particular account of how far duty holders have fallen short of what the law requires and the extent of the risks created.
- Some health and safety duties are specific and absolute. Others require action “so far as is reasonably practicable”. Our inspectors will apply the principle of proportionality in relation to both.
- Deciding what is reasonably practicable to control risk involves the exercise of judgement. Our inspectors, when considering the adequacy of the protective measures taken, will balance the degree of risk against the money, time or trouble needed to avert that risk. Unless it can be shown that there is a gross disproportion between these factors and that the risk is insignificant in relation to the cost, duty holders must take measures and incur costs to reduce the risk and comply with the law.

5.1.2 Targeting

- We use a risk-based approach when deciding which duty holders to proactively inspect, taking into account factors such as size, type of activities, industry sector, and the associated death, injury and ill-health rates.
- This approach is based on the National Local Authority Enforcement Code - [National Local Enforcement Authority Code \(hse.gov.uk\)](https://www.hse.gov.uk/nlaec/)
- We also use proportionate and outcome-based criteria when deciding which incidents, diseases and dangerous occurrences, reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR), have to be investigated. More information on how we decide whether or not we investigate can be found on our website.
- This means that we target our inspection and investigation resources primarily on those activities, industries and sectors giving rise to the most serious risks, where and when the hazards are least well controlled, or where competence to manage health and safety is in doubt. Low risk activities will not, in general, be subject to enforcement unless actual harm has occurred.
- We focus our enforcement activity on the most serious risks, and on those who are responsible for and best placed to control these risks - whether employers, employees, the self-employed, suppliers, contractors, landlords or others.
- We recognise that it is neither possible nor necessary to consider all issues of non-compliance which may come to light during an inspection or investigation.

Annex 3 - Compliance and enforcement policy	Date of issue <i>DRAFT August 2023</i>	Ref: SRS/MC/POL/006	OM – CS	V.1
---	---	---------------------	---------	-----



Our inspectors will, therefore target their enforcement action to deal with the most serious risks.

- Where duty holders have responsibilities, we may take action against more than one, when it is appropriate to do so in accordance with this policy.

5.1.3 Consistency

- We adopt a consistent approach to enforcement of the law across different industries and workplaces, recognising the importance of fair treatment to all in promoting and sustaining economic growth.
- This approach is based on the National Local Authority Enforcement Code - [National Local Enforcement Authority Code \(hse.gov.uk\)](https://www.hse.gov.uk/nlaec/)
- Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve compliance with the law.
- We understand that people managing similar risks in similar industries expect a consistent approach from our inspectors when taking enforcement action. However, consistency is not a simple matter. Every situation is different – by virtue of the industry, workplace, its risks, management systems etc. As a result, our inspectors are faced with many variables in addition to the degree of risk and the seriousness of any breach, including the attitude and competence of management, incident history and previous enforcement action.
- Any enforcement decision therefore requires the appropriate exercise of individual discretion and professional judgement.
- We aim to ensure, through the application of our health and safety enforcement decision-making framework, the Enforcement Management Model (EMM) and through peer review, that our enforcement decisions are consistent.
- Where enforcement action conflicts with the requirements of other regulators we will work with them to resolve the differences.

5.1.4 Transparency

- Our enforcement action should clearly outline to duty holders not only what they have to do but, where relevant, what they don't.

Annex 3 - Compliance and enforcement policy	Date of issue <i>DRAFT August 2023</i>	Ref: SRS/MC/POL/006	OM – CS	V.1
---	---	---------------------	---------	-----



- Where non-compliance has been identified, our inspectors will clearly and promptly explain the decision taken, their reasons, and the actions required to achieve compliance. They will discuss reasonable timescales with the duty holder and explain what will happen if they fail to comply.
- Additionally, our inspectors will differentiate between the actions required to comply with the law, and advice given to achieve good practice or inform of upcoming changes to legal requirements. This will ensure that unnecessary economic burdens are not imposed on businesses
- Transparency also involves keeping employees, employee representatives, injured persons and their families informed of relevant enforcement action. However, this is subject to legal constraints on disclosure.
- Our approach is based on the National Local Authority Enforcement Code - [National Local Enforcement Authority Code \(hse.gov.uk\)](https://www.hse.gov.uk/nlaec/)

5.1.5 Minimum standards and targets have been set for some specified activities within Health and Safety Enforcement, namely

ACTIVITY		STANDARD
1	All high-risk proactive inspections	Routine visits made by appointment
2	All other categories of proactive visits	Visits made on a priority basis or as required as part of the annual business plan
3	All Service Requests, including complaints	All responded to and investigated. Discretion is given to anonymous and vexatious complaints
4	All complaints received in connection with working conditions and work activities	1 st response within 4 days and investigated as per Complaint Investigation Policy
5	Accident and Incident investigations	1 st response within 4 days, and investigated as per Accident Investigation Policy
6	Statutory Reports	Response dependant on details of the Statutory Report
7	Consultation with the Health and Safety Responsible Authority	1 st response within 5 days

Annex 3 - Compliance and enforcement policy	Date of issue <i>DRAFT August 2023</i>	Ref: SRS/MC/POL/006	OM – CS	V.1
---	---	---------------------	---------	-----

Administrative arrangements are in place to monitor our performance against these standards and the results will be published annually in the Service Plan and on the SRS website.

5.1.6 **Accountability**

As a regulator, we are accountable to all and our enforcement actions can be judged against the principles and standards set out in this Annex. Whilst not diminishing the responsibility of duty holders to comply with the law, this includes our duty to have regard to economic growth in our regulatory activities.

Businesses, employees, their representatives and others will be provided with information to enable them to understand what to expect when our inspectors visit and how to raise any complaints they may have. That documentation will

- describe the procedure to complain about enforcement decisions made by our inspectors, or if procedures have not been followed; and,
- explain about the right of appeal to an Employment Tribunal in cases where statutory notices have been issued.

6. **Methods of enforcement**

6.1 We have a range of enforcement methods to secure compliance with the law and to ensure a proportionate response to any breaches.

- Our inspectors may provide information, advice, or formal warning letters regarding breaches of the law following a visit. This may include warning the duty holder that, in the opinion of the inspector, they are failing to comply with the law. Where appropriate, we may also serve improvement and prohibition notices, withdraw approvals, vary licence conditions or exemptions, issue simple cautions and we may prosecute.
- In determining what level of enforcement action is appropriate, our inspectors exercise discretion and professional judgement according to the circumstances found. They are guided in this process by the Enforcement Management Model (EMM), which provides a framework for consistent enforcement decision making and takes account of the business context on a case by case basis. It also considers aspects of economic gain that could undermine other businesses.
- A prohibition notice can be served when an inspector is of the opinion that there is a risk of serious personal injury associated with a particular work

Annex 3 - Compliance and enforcement policy	Date of issue <i>DRAFT August 2023</i>	Ref: SRS/MC/POL/006	OM – CS	V.1
---	---	---------------------	---------	-----



activity or process or, if a serious deficiency in measures is identified, to prevent or mitigate the effects of major hazards. There does not need to be a breach of the law. Such a notice can take immediate effect or be deferred for safety reasons.

- An improvement notice can be served when an inspector is of the opinion that there is a breach of the law which needs to be remedied within a certain period of time.
- Failure to comply with either type of notice is a criminal offence and can result in prosecution.
- Both prosecution and, where appropriate, cautions, are important ways to hold those responsible to account for breaches of the law. Where it is appropriate to do so in accordance with this policy, these measures can be taken in addition to issuing an improvement or prohibition notice.
- Where a business is found to be part of a Primary Authority partnership, inspectors will follow the Office for Product Safety and Standards rules of Primary Authority and follow assured advice.

Where inspectors have choices about how they exercise their functions, they will:

- consider how they might carry out their activities to minimise likely negative economic impact: and,
- adapt their activities to maximise any likely positive economic impact

6.2 Investigation

- We use discretion when deciding whether to investigate incidents. It is recognised that it is neither possible nor necessary for the purposes of the Health and Safety at Work etc., Act 1974 to investigate all issues of non-compliance with the law. When making such decisions, including the level of resource to be used, we take the following factors into account:
 - the scale of potential or actual harm;
 - the seriousness of any potential breach of the law;
 - our enforcement priorities;
 - the practicality of achieving results;
 - the wider relevance of the event, including serious public concern

Annex 3 - Compliance and enforcement policy	Date of issue <i>DRAFT August 2023</i>	Ref: SRS/MC/POL/006	OM – CS	V.1
---	---	---------------------	---------	-----

- The criteria for determining which incidents are mandatory to investigate are published on our website. We undertake investigations in order to:
 - gather information and establish the facts
 - identify the immediate and underlying causes and the lessons to be learnt
 - prevent recurrence
 - identify breaches of health and safety law
 - take appropriate action, including the service of notices and prosecution.

SRS will follow the principles of its Accident Investigation Policy in determining which accidents will be investigated. [Health and Safety Plan Accident Investigation Policy.doc](#)

SRS will follow the principles of its Complaint Investigation Policy in determining which complaints or Service Requests will be investigated as indicated [Health and Safety Plan Complaints Investigation Policy.doc](#)

We devote most resources to investigating incidents involving the more serious circumstances, including the investigation of all work-related deaths.

6.3 Investigation of work- related deaths

Where there has been a breach of law leading to a work-related death, consideration needs to be given to whether or not the circumstances of the case might justify a charge of manslaughter or corporate manslaughter.

To ensure decisions on investigation and prosecution are closely co-ordinated following a work-related death, we, together with other regulators, have jointly agreed and published *Work- related deaths. A protocol for liaison*

The police have primacy in a manslaughter investigation and therefore have responsibility for deciding whether or not to pursue a manslaughter or corporate manslaughter investigation and whether or not to refer a case to the CPS to consider possible manslaughter charges. If, during the course of our investigation into possible health and safety offences, we find evidence suggesting manslaughter or corporate manslaughter, we will refer it to the police. If the police or CPS subsequently decide not to pursue a manslaughter or corporate manslaughter case, we will consider whether or not to bring a health and safety prosecution in accordance with this policy.

Annex 3 - Compliance and enforcement policy	Date of issue <i>DRAFT August 2023</i>	Ref: SRS/MC/POL/006	OM – CS	V.1
---	---	---------------------	---------	-----

6.4 Formal legal proceedings

6.4.1 Simple Caution

Section 9.4.4 of the Shared Regulatory Services Compliance and Enforcement Policy deals with Simple Cautions.

6.4.2 Prosecution

Prosecution is an essential part of enforcement, ensuring that where there has been a serious breach of the law, duty holders (including individuals) are held to account. This includes bringing alleged offenders before the courts.

Section 9.4.5 of Shared Regulatory Services Compliance and Enforcement Policy deals with Prosecutions and the associated decision-making process.

Subject to the above, we recommend prosecution, where we consider this is warranted. We will consider the management arrangements and the role played by individual directors and managers and will consider taking action against them where the inspection or investigation reveals that the offence was committed with their consent or connivance or was attributable to their neglect and where it would be appropriate to do so in accordance with this annex. Where appropriate, we will seek disqualification of directors under the Company Directors Disqualification Act 1986.

We recommend prosecution, where, following an investigation or other regulatory contact, one or more of the following circumstances in the (non-exhaustive) list apply:

- death was a result of a breach of the legislation;
- the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it;
- there has been reckless disregard of health and safety requirements;
- there have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
- work has been carried out without, or in serious non-compliance with, an appropriate licence or safety case;
- a duty holder's standard of managing health and safety is found to be far below what is required by health and safety law and to be giving rise to significant risk;

Annex 3 - Compliance and enforcement policy	Date of issue <i>DRAFT August 2023</i>	Ref: SRS/MC/POL/006	OM – CS	V.1
---	---	---------------------	---------	-----

- there has been a failure to comply with an improvement or prohibition notice; or there has been a repetition of a breach that was subject to a simple caution;
- false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk;
- inspectors have been intentionally obstructed in the lawful course of their duties.

We recommend prosecution, where following an investigation or other regulatory contact, one or more of the following circumstances apply:

- it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, and conviction may deter others from similar failures to comply with the law;
- a breach that gives rise to significant risk has continued despite relevant warnings from employees, or their representatives, or from others affected by a work activity.

We will continue to seek to raise the courts' awareness of the gravity of health and safety offences to the full extent of their powers whilst recognising that it is for the courts to decide whether or not someone is guilty or not and what penalty to impose on conviction.

6.4.3 **Publicity**

SRS will consider in all cases drawing media attention to factual information about health and safety charges that have been laid before the courts; care will be taken to avoid any publicity which could prejudice a fair trial. We will also consider publicising any conviction which could serve to draw attention to the need to comply with health and safety requirements or deter anyone tempted to disregard their duties under health and safety law.

SRS may also make available information on Improvement notices and Prohibition notices that have been issued.

6.4.4 **Crown bodies**

Crown bodies must comply with health and safety requirements, but they are not subject to statutory enforcement, including prosecution. The Cabinet Office has established non-statutory arrangements for enforcing health and safety requirements in Crown bodies. These arrangements allow us to issue non-statutory

Annex 3 - Compliance and enforcement policy	Date of issue <i>DRAFT August 2023</i>	Ref: SRS/MC/POL/006	OM – CS	V.1
---	---	---------------------	---------	-----

improvement and prohibition notices, and for the censure of Crown bodies in circumstances where, but for Crown immunity, prosecution would have been justified. In deciding when to investigate or what form of enforcement action to take, we follow, as far as possible, the same approach as for non-Crown bodies, in accordance with this annex and the overarching Compliance and Enforcement Policy. Local authority enforcement has no jurisdiction, irrespective of main work activity.

Annex 3 - Compliance and enforcement policy	Date of issue <i>DRAFT August 2023</i>	Ref: SRS/MC/POL/006	OM – CS	V.1
---	---	---------------------	---------	-----