

PART A

Report to: Licensing Committee
Date of meeting: 15 September 2016
Report of: Head of Community and Customer Services
Title: Environmental Health and Licensing Compliance Policy

1.0 Summary

- 1.1 Environmental Health and Licensing is responsible for ensuring compliance with legislation relating to areas such as anti-social behaviour, environmental protection, housing, food safety, licensing and health and safety at work. The Council approves, and from time to time reviews policies on how the section should approach compliance and how legislation should be enforced in a proportionate and consistent manner. This report sets out a revised Compliance Policy for Members' consideration.

The Compliance Policy replaces the Environmental Services Enforcement Policy adopted on 14th July 2014.

2.0 Recommendations

- 2.1 That the Environmental Health and Licensing Compliance Policy set out at appendix 1 be adopted on 19th September 2016

That the policy be reviewed no later than July 2021

Contact Officer:

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Report approved by:

Alan Gough, Head of Community and Customer Services

3.0 **Detailed proposal**

3.1 The Council is the primary enforcement body for a range of legislation which applies to:

- anti-social behaviour
- environmental protection and pollution
- statutory nuisances such as noise, vibration and light
- infectious diseases
- filthy and verminous premises
- littering, fly-tipping and other environmental crimes
- health and safety at work
- gambling
- alcohol, entertainment and late-night refreshment
- taxis and private hire vehicles
- street trading
- houses in multiple occupation
- charity collections
- food hygiene
- housing standards
- dog fouling and dangerous dogs
- drainage
- animal welfare
- pest control
- abandoned vehicles
- smoke-free legislation.

3.2 When exercising those functions the Council has the option to use a wide variety of powers including, but not limited to:

Inspections

Closures of commercial and private premises

Issuing legally binding notices

Interviewing people under caution

Issuing fixed penalty notices

Imposing other financial penalties

Withdrawing, amending or refusing permissions

Issuing formal cautions

Taking civil legal action or instituting criminal proceedings (prosecutions).

3.3 This council, and nearly all other councils, delegate these powers to council officers with the exception of review powers under the Licensing and Gambling Acts. The Compliance Policy sets out the limits and expectations of how the various powers are to be exercised by officers on the council's behalf.

- 3.4 When undertaking work to ensure compliance with regulations or legislation the council has responsibilities under the Regulators' Code to ensure that any efforts are risk based and proportionate. This responsibility includes having regard to the Code when determining any general policy or principles about the exercise of specified regulatory functions. Paragraph 6.2(d) of the Code says regulators should publish a policy showing their approach to compliance (Appendix 2).
- 3.5 Publication of the code and policy make it clear to everyone involved the operational parameters within which legal powers ought to be exercised. It also acts as a safeguard against abuse or over-zealous use of those powers. In addition, Regulators across Hertfordshire have also signed up to a voluntary Charter that sets out what businesses can expect in relation to compliance services (Appendix 3).

3.6 **Existing Enforcement Policy, New Compliance Policy and Rational for Change**

- 3.7 The existing Environmental Services Enforcement Policy was adopted on 14th August 2014 and now requires updating (Appendix 4)

Whilst the majority of the policy is retained in terms of the approach that officers are required to take when dealing with compliance issues, there are numerous additions to the policy.

There is nothing inherently wrong with the existing policy.

- 3.8 There has been no change to our policy objectives or general principles but the use of terms such as 'enforcement' or 'perpetrator' has been avoided in order that the policy more accurately reflects our approach to compliance.
Better regulation, including the Better Business for All Partnership in Hertfordshire, works on the principle that regulation should be a partnership between regulator and business or individual, driving down the cost of regulation and improving the chances that businesses and individuals comply for the right reasons and because they see the benefits of doing so.
- 3.9 Although the Compliance Policy reflects this approach it should be noted that the Council always retain the right to depart from the policy should circumstances require it. Such circumstances may be when the offences is so serious, for example loss of life, the offender is likely to flee or any other time if justifiable, reasonable and proportionate.
- 3.10 The aim of this policy remains to ensure that the council can show a robust and clear procedure that allows good businesses to grow, does not unnecessarily or disproportionately penalise any person who breaches regulations, and allows officers to take a risk based approach to ensuring compliance. Such a policy safeguards the authority as well as those who are required to improve or ensure compliance.

3.11 The main changes to the existing policy are as follows:

Change of corporate objectives. These have been updated to reflect the new corporate aims.

Change to legislation. There have been some legislative changes since 2014, for example the introduction of the Anti Social Behaviour and Crime Act 2014, replacing the Anti-Social Behaviour Act 2003. Legislative changes have been updated.

Certain housing matters can now be dealt with by way of the imposition of a financial penalty as an alternative to prosecution. Other alternatives to prosecution have been included in the new policy.

There have been updates to regulatory guidance and consideration of other consultative studies such as the ethical regulation of business published by the Better Regulation Delivery Office. In April 2016 the BRDO became the Regulatory Delivery Office.

Section 6.10 details the specific approach officers will take when dealing with licensing offences, notably, taxi or private hire licensing offences, as agreed with trade representatives at a series of workshops.

There has been a minor change to this section to remove the list of specific types of offence for which a two day suspension of a licence may be applied. This is because the list may be seen to contradict our current Guidelines on the Issue of Licences. The matter of specific offences is dealt with in great detail in the new proposed Guidelines on the Issue of Licences. The length of time of any suspension remains at a maximum of two days as previously agreed with both the trade and Members.

The final change to the licensing section covers the reporting and recording of intelligence that is necessary to ensure the safe-guarding of children and any other vulnerable passengers. These changes have been made following the audit of services requested by the Council and undertaken by the Shared Internal Audit Service between July and September 2015. This intelligence will be recorded as per standard recording protocols and may be used to inform future decisions as to the fitness and propriety of any driver or to highlight concerning patterns of behaviour.

3.12 **Public Consultation**

3.13 The Policy was open for public consultation between 15th July 2016 and 19th August 2016

3.14 As of 19th August 2016 no responses were received.

4.0 IMPLICATIONS

4.1 Financial

4.1.1 There are no financial implications arising from this report.

4.2 Legal Issues (Monitoring Officer)

4.2.1 The Head of Democracy and Governance comments that the compliance policy is one required by legislation as identified in the report. The draft policy and the report indicate that all relevant legal standards are being met. It is important to have an up-to-date and robust policy, as defence counsel are more likely to question in court a council's authority and rationale in bringing a prosecution. In the case of R v Glen Adaway (2004), the court held that consideration had to be given to the council's policy guidelines on prosecuting offences before criminal proceedings could be instituted. In London Borough of Wandsworth v Rashid (2009) the court found that it was for the local authority to decide when to prosecute even when other options were open to it, and the court should only stop a prosecution where there an abuse of that process. It is therefore important to have a policy to ensure those issues are addressed.

4.3 Equalities

4.3.1 This policy does not inherently discriminate and applies equally to all customers/service users who are considered within its scope or whom are affected by the actions of someone being considered. Systems of approval, monitoring and review are in place to ensure equality of application.

4.4 Potential Risks

Potential Risk	Likelihood	Impact	Overall score
Legal challenge to policy during a prosecution	2	3	6
Reputation	2	3	6

Appendices

Appendix 1 – draft Environmental Health and Licensing Compliance Policy 2016-2021

Appendix 2 – Regulators Code

Appendix 3 - Hertfordshire's Regulator's Charter

Appendix 4 - Current Environmental Health and Licensing Enforcement Policy 2014-2019

Background Papers

Consultation Responses

File Reference

Environmental Health and Licensing enforcement policies