

SLOUGH BOROUGH COUNCIL

REPORT TO: Cabinet **DATE:** 23rd June 2014

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WARD(S): ALL

PORTFOLIO: Cllr Sohail Munawar - Commissioner for Social and Economic Inclusion

PART I **KEY DECISION**

CONSUMER PROTECTION AND BUSINESS COMPLIANCE ENFORCEMENT POLICY

1 Purpose of Report

For Members to review and approve the revised Consumer Protection and Business Compliance (previously Public Protection) Enforcement Policy.

2 Recommendation(s)/Proposed Action

The Cabinet is requested to Recommend:

- (a) That the draft Consumer Protection and Business Compliance Enforcement Policy be approved.
- (b) That the revised policy be adopted by all other regulatory and enforcement service areas where appropriate within the Council.
- (c) That the Head of Consumer Protection and Business Compliance Services be authorised to make minor amendments to the adopted Policy as required to reflect changes in legislation or guidance and codes of practice where a full review of the Policy is not warranted.

3. The Slough Joint Wellbeing Strategy, the JSNA and the Corporate Plan

3a. **Slough Joint Wellbeing Strategy Priorities** – The Enforcement Policy supports the effective, consistent, proportionate, robust and accountable delivery of the Council's statutory regulatory services which underpin key parts of the SJWS, the JSNA and the Corporate Plan, for example:

- Economy and Skills: enforcement action against rogue traders to ensure a level playing field for Sloughs local businesses to grow and prosper
- Health and Wellbeing: protecting the vulnerable from doorstep sales, loan sharks and underage sales; dealing for poor standards of hygiene in food premises
- Safer Communities; supporting action against anti-social behaviour

4. Other Implications

(a) Financial

There are no financial implications. The policy will be fully met within existing budgets

(b) Risk Management

Risk	Mitigating action	Opportunities
Legal	Quality assurance procedures will ensure that enforcement decisions are taken in line with the revised Policy document.	All regulatory services are required to have in place an Enforcement Policy having regard to the Regulators Code. The revised policy sets out a transparent, risk based and graduated approach to enforcement.
Property	None	None
Human Rights	As detailed at (c) below	As detailed at (c) below
Health and Safety	None	None
Employment Issues	None	None
Equalities Issues	As detailed at (d) below	As detailed at (d) below
Community Support	None	None
Communications	None	None
Community Safety	None	None
Financial	As detailed in (a) above	As detailed in (a) above
Timetable for delivery	For approval by Cabinet on 23 rd June 2014	For approval on 23 rd June 2014
Project Capacity	None	None
Other	None	None

(c) Human Rights Act and Other Legal Implications

Section 1 and Schedule 1 Parts I & II of The Human Rights Act 1998, apply:

- Article 1 – Every person is entitled to the peaceful enjoyment of his or her possessions including the possession of licence and shall not be deprived of the possession except in the public interest
- Article 6 – That in the determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

The revised draft Policy document has regard to both Article 1 and Article 6 as above.

Section 21 of the Legislative and Regulatory Reform Act 2006 (the “Act”)

imposes a duty on any person exercising a specified regulatory function to have regard to the five principles of good regulation. This principle provides that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent and should be targeted only at cases in which action is needed.

Section 22 of the Act provides for the issue of code of practice relating to the exercise of regulatory functions, (the “Regulators’ Compliance Code”). This section imposes a duty on any person exercising a specified regulatory function to have regard to the Regulators’ Compliance Code when determining general policies or principles by reference to which that person exercises those functions.

Under Section 22(3) of the Act, where a person exercises a regulatory function of setting standards or giving general guidance about the exercise of other regulatory functions, the duty to have regard to the Regulators’ Compliance Code applies directly to the exercise of setting that function of setting standards or giving general guidance. Through the Legislative and Regulatory Reform Act 2006, the Better Regulation Delivery Office (BRDO) issued the “Regulators’ Code” which came into statutory effect on 6 April 2014. It replaces the previous Regulators’ Compliance Code, and is designed to provide clearer understanding for both the regulators and those regulated of the regulatory framework.

Regulators must have regard to the Code when setting standards or giving guidance which will guide the regulatory activities of other regulators. Therefore the Council is required to reconsider its enforcement policies and procedures in light of the new Code.

The Local Authorities (Functions & Responsibilities) (England) Regulations 2000 sets out a scheme for dividing the Council’s regulatory functions into either Council side or Executive (Cabinet) functions. The regulatory functions which come under the remit of the Corporate Enforcement Policy consist of both Council and Executive functions and it is therefore appropriate for to consider the Policy and make recommendations prior to approval by full Council.

(d) Equalities Impact Assessment

An Equalities Impact Assessment has been completed. The Assessment has not identified any potential for discrimination or adverse impact and all opportunities to promote equality have been taken.

5. Supporting Information

- 5.1 In April 2012 Cabinet approved a comprehensive Enforcement Policy for the then Public Protection Service..
- 5.2 During the Course of 2012 changes were made to the structure of the Customer and Community Services Directorate creating a new Consumer Protection and Business Compliance Service (CP&BC) area which includes Food and Safety, Trading Standards, Licensing and most recently Community Safety.
- 5.3 The Policy is being reviewed to take account of changes in legislation and the introduction of a new Regulators Code. Due to statutory requirements the policy must be approved by both Cabinet and Council. The intention of the new policy is to

create a clearer, consistent approach covering all regulatory service across the Council. This is to further enhance and formalise our joint working and partnership approach.

- 5.4 The previous Enforcement Policy document has been revised and updated to reflect introduction of the Regulators Code. The Code is designed to regulate for the protection of the vulnerable, the environment, social or other objective, whilst seeking to promote proportionate, consistent and targeted regulatory activity through the development of transparent and effective dialogue and understanding between regulators and those they regulate. The revised draft document for approval is attached at **Appendix A**
- 5.5 The Regulators Code is central to the better regulation agenda, embedding a risk based and transparent approach to regulatory inspection and enforcement activity.
- 5.6 A Corporate Enforcement Policy promotes a consistent approach and ensure that all departments involved in enforcement are complying with its principles. At the same time it allows the flexibility for each service area to develop its own enforcement mechanisms taking on board the legal and operational differences between the service areas. For example, the unique requirements associated with the closure of food premises. The specialist policies will be updated, audited and reviewed by the relevant departments.
- 5.7 The revised policy document provides guidance to officers, managers, businesses and consumers in relation to the enforcement actions and decisions taken by CP&BC services areas.
- 5.8 Although the revised document relates at this time to the Consumer Protection and Business Compliance services, the 'General Principles' at **Point 5** and the overview of 'Enforcement Actions' at **Point 6** do apply to all other regulatory and enforcement service areas within the Council.
- 5.9 With regards to Penalty Charge Notices, these are a specifically prescribed enforcement action relating to Parking Enforcement and have been included in the revised document following consultation with the Team Leader - Parking Enforcement and Development, during the consultation period.
- 5.10 The revised document has been subject to a consultation process which has included internal service areas, identified consultees as well as the public. A full list of consultees, their responses and the a reply to the responses is attached at **Appendix B**.

6. Comments of Other Committees

None

7 Conclusion

- 7.1 The revised draft Policy sets out in an open and transparent manner, the local authority's approach to enforcement and demonstrates a firm commitment to the statutory obligations under the Regulators Code. The policy will also ensure that enforcement decisions are taken in a proportionate, fair and consistent manner based on risk.

8 Appendices Attached (if any)

'A' - Draft Consumer Protection and Business Compliance Enforcement Policy (June 2014)

'B' - Consultation consultees, responses and replies

9 Background Papers

1 - Regulators Code (April 2014)

2 - Equality Impact Assessment

3. - Public Protection Enforcement Policy (April 2012)