

**SLOUGH BOROUGH COUNCIL
REGULATORY AND ENFORCEMENT SERVICES
ENFORCEMENT POLICY**

(April 2020)

Slough Borough Council Regulatory and Enforcement Services - Enforcement Policy

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Related Documents	
Document Title	Location
Refer relevant sections	Policy

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1. INTRODUCTION

- 1.1 This document sets out what businesses and others being regulated can expect from Slough Borough Council Teams and authorised officers who carry out regulatory and enforcement activities.
- 1.2 This policy commits the Council to good enforcement practice with effective procedures and clear policies.
- 1.3 The Enforcement Policy is not exhaustive in its application. It is recognised that some regulatory services will have specific policies (which may be statutory in nature), that will either coexist alongside this policy, or in certain circumstances supersede it.
- 1.4 This document has been prepared with regard to the current principal legislation and statutory guidance including:

[Regulators' Code](#) (RC)

[The Enforcement Concordat: Good Practice Guide for England and Wales](#)

[The Regulatory Enforcement and Sanctions Act 2008](#) (The RES Act).

Regulatory Reform [Co-ordination of Regulatory Enforcement \(Enforcement Action\) Order 2009SI665/2009](#) (The CRE Enforcement Order).

[Co-ordination of Regulatory Enforcement \(Procedure for References to LBRO\)](#)

[Order 2009 SI670/2009](#) (The CRE LBRO Order).

[Legislative and Regulatory Reform Act 2006](#) (LRRA).

[Legislative and Regulatory Reform \(Regulatory Functions\) Order 2007](#)

Police and Criminal Evidence Act 1984

Human Rights Act 1998

Code for Crown Prosecutors

Data Protection Act 2018

- 1.5 The RES Act established the Local Better Regulation Office which has been renamed the Business, Energy and Industrial Strategy, BEIS.. It also imposed upon the Council the duty to:
 - (a) have regard to any guidance given to a Local Authority by the Office for Product Safety & Standards,
 - (b) a duty to comply with guidance where we are directed to do so by, the Office for Product Safety & Standards and
 - (c) a duty to have regard to any list of enforcement priorities published by the Office for Product Safety & Standards. The Council are committed to doing so.

- 1.5 The LRRRA, Part 2, requires the Council to have regard to the Principles of Good Regulation in that the Council carries out regulatory activities in a way which is proportionate, accountable, consistent, transparent, and targeted to situations which need action.
- 1.7 The Council's primary function is to achieve regulatory compliance in order to protect the public, legitimate business, the environment and groups such as consumers and workers. However, the Council reserves the right to take enforcement action after compliance has been achieved, if it is in the public interest to do so.
- 1.8 When considering formal enforcement action, The Council will, where appropriate and where reasonably practicable, discuss the circumstances with those suspected of a breach and take these into account when deciding on the best approach. This paragraph does not apply where immediate action is required to prevent or respond to a breach or where to do so is likely to defeat the purpose of the proposed enforcement action.

2. LEGAL STATUS OF THIS ENFORCEMENT POLICY

- 2.1 This Policy was originally the subject of consultation with other Berkshire Authorities, statutory external agencies such as the Police and Fire and Rescue Service, local business organisations and representatives as well as public consultation on the Council website.
- 2.2 The Policy was approved by Slough Borough Council Cabinet on 23rd June 2014
- 2.3 This policy is intended to provide guidance for authorised officers, businesses, consumers and the public. Each case will be considered on its own merits and circumstances having regard to this policy.

3. SCOPE AND MEANING OF 'ENFORCEMENT'

- 3.1 This Policy applies to the relevant legislation enforced by authorised officers of all teams within Slough Borough Council that carry out regulatory and enforcement activities
- 3.2 'Enforcement' includes any criminal or civil action taken by authorised officers aimed at ensuring that individuals or businesses comply with the law.
- 3.3 For the purposes of The RES Act the term 'enforcement action' has been given a general statutory definition, which is:
 - (a) action to secure compliance with a restriction, requirement or condition in relation to a breach or supposed breach;
 - (b) action taken in connection with imposing a sanction for an act or omission; and
 - (c) action taken in connection with a statutory remedy for an act or omission.
- 3.4 A list of specific 'enforcement actions' is provided in article 2 of the CRE Enforcement Order, which applies to Part 2 of The RES Act and the Primary Authority Scheme. This means that if you are a business or organisation

registered with the Primary Authority Scheme, and the Council are proposing to take action against you, and that action is one of those listed then, unless one of the permitted exemptions applies, the Council will contact your Primary Authority to give notice of the enforcement action proposed to take against you. (See paragraph 9 below in relation to the Primary Authority Scheme.)

- 3.5 The Council intends to enable authorised officers to interpret and apply relevant legal requirements and enforcement policies fairly and consistently between like-regulated entities in similar situations. The Council also aims to ensure that its own authorised officers interpret and apply legal requirements and enforcement policies consistently and fairly.

4. WHAT YOU CAN EXPECT FROM OUR STAFF

4.1 You are entitled to expect our staff to:

- Be courteous and helpful
- Be consistent, transparent and accountable
- Identify themselves by name and produce identification
- Provide a contact point for any further dealings
- Give clear and simple advice
- Confirm advice in writing on request, explaining the action required and over what time scale
- Clearly distinguish between what you must do to comply with the law and what is recommended as best practice
- Minimise the cost of compliance by requiring proportionate action
- Give you reasonable time to comply (unless immediate action is necessary in the interests of health healthy and safety or to prevent evidence being lost)
- Notify you if the matter is to be reported for legal proceedings
- Advise you of the procedure for making a complaint or representations in cases of dispute about our actions
- Maintain confidentiality except where there is a legal obligation to disclose information.

5. HOW TO OBTAIN A COPY OF THE POLICY

5.1 Obtaining a copy of the Policy

5.1.1 This Policy is available on the Slough Borough Council website at:

<http://www.slough.gov.uk/council/strategies-plans-and-policies/regulatory-and-enforcement-services-enforcement-policy.aspx>

If you would like a paper copy of the Policy, please contact us by:

Writing to the Service Lead – Regulatory Services, Observatory House, 25 Windsor Road, Slough SL1 2EL

Or email us on - <https://www.slough.gov.uk/contact-us/general-enquiries.aspx>

On request, this Policy will be made available on tape, in Braille or large type.

5.2 How you can make a complaint about decisions made

5.2.1 If you are unhappy with any decision that is made initially you should try and resolve the issue with the authorised officer. However if this fails you should discuss the matter with their manager. If you feel that you are still not satisfied then the Council has a Corporate Complaints procedure, and full details how to make a formal complaint can be found on the Council website at:

<http://www.slough.gov.uk/council/complaints-and-feedback/complaints-procedure.aspx>

5.2.2 Additionally, there will sometimes be a legal right to appeal an enforcement decision, such as the right to appeal certain licensing decisions to the Magistrates' Court. Where such a right exists it will have precedence over the Council's Corporate Complaints Procedure.

6. GENERAL PRINCIPLES

6.1 Our principles are informed by The Regulators' Code, the Enforcement Concordat and the guidance from the Office for Product Safety & Standards as to how to apply these documents.

6.2 The six principles of the Regulators Code are:

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

6.3 Prevention is better than cure and our role, therefore, involves actively working with businesses to advise on, and assist with compliance. Depending on the support needed by the business this may be carried out on a chargeable basis.

However, where it becomes necessary to take formal enforcement action against a business, or members of the public, the Council will do so. There is a wide range of tools available to us as an enforcement agency and these are detailed in full further in this policy document.

- 6.4 Where the Council considers that formal enforcement action is necessary each case will be considered on its own merits.
- 6.5 However, there are general principles that apply to the way each case must be approached. These are set out in this Policy and in the Regulators' Code.
- 6.6 In accordance with the Regulators' Code, the approach of the Council to the sanctions and penalties available to it, will aim to:
- (a) change the behaviour of the offender;
 - (b) change attitudes in society to offences which may not be serious in themselves, but which are widespread;
 - (c) eliminate any financial gain or benefit from non-compliance;
 - (d) be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
 - (e) be proportionate to the nature of the offence and the harm caused;
 - (f) restore the harm caused by regulatory non-compliance, where appropriate; and
 - (g) deter future non-compliance.

For more information about the Regulators' Code visit:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/262915/13-1016-regulators-code.pdf

- 6.7 All enforcement decisions will be fair, independent and objective. They will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.
- 6.8 The Council will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance, in making the decision to take formal action. This may include actual harm or loss or the impact on the wellbeing of the individual or potential or actual harm to the environment.
- 6.9 Slough Borough Council is a public authority for the purposes of the Human Rights Act 1998. The Council will, therefore, apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

6.10 All enforcement activities, including investigations and formal actions, will always be conducted in compliance with the statutory powers of the officer and all other relevant legislation, including but not limited to;

- [Police and Criminal Evidence Act 1984](#)
- [Criminal Procedure and Investigations Act 1996](#),
- [Human Rights Act 1998](#),
- [Regulation of Investigatory Powers Act 2000](#)
- [Investigatory Powers Act 2016](#)
- [Criminal Justice and Police Act 2001](#)
- [Crime and Disorder Act 1998](#)
- [Protection of Freedoms Act 2012 \(Code of Practice – Powers of Entry December 2014\)](#)
- [Anti-Social Behaviour, Crime and Policing Act 2014](#)

and in accordance with any formal procedures and codes of practice made under this legislation in so far as they relate to the Council's enforcement powers and responsibilities.

6.11 This Policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Code. In certain instances the Council may conclude that a provision in the Code is either not relevant or is outweighed by another provision. The Council will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

7. NOTIFYING ALLEGED OFFENDERS

7.1 If the Council receives information, for example from a complainant, that may lead to formal enforcement action against a business or individual the Council will notify that business or individual as soon as is practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to those concerned or the general public or where notification would defeat the purpose of the enforcement action.

7.2 During the progression of enforcement investigations or enforcement actions, business proprietors or individuals and witnesses will be kept informed of progress.

7.3 Confidentiality will be maintained and personal information about individuals will only be released to a Court when required and/or in accordance with the Data Protection Act 2018

8. ENFORCEMENT ACTION

8.1. There are a number of enforcement options available to the Council's officers, which are detailed below. However, this list is not exhaustive and there may be other options or actions that the Council may avail themselves too dependent on the nature circumstances and seriousness of the individual case.

(a) No action.

(b) Informal Action and Advice.

- (c) Fee Paid Training
- (d) Fixed penalty Notices.
- (e) Penalty Charge Notices.
- (f) Formal Notice.
- (g) Compliance Support.
- (h) Seizure
- (i) Forfeiture Proceedings.
- (j) Tobacco restriction Orders
- (k) Taking Animals into Possession
- (l) Undertakings and Injunctive Actions under the Enterprise Act 2002 and other Civil Actions
- (m) Refusal/Suspension/ Revocation/Review/ of a licence.
- (n) Simple Caution.
- (o) Prosecution.
- (p) Proceeds of Crime Applications.
- (q) Statutory Orders
- (r) Press Releases

8.2 The order in which the enforcement actions are listed above is not necessarily in absolute order of escalating seriousness relative to each other. The Council reserves the right to escalate its level of enforcement action, having regard to the criteria in paragraph **8.3** below.

8.3 Deciding what level of action is appropriate

8.3.1 In assessing what enforcement action is necessary and proportionate, consideration will be given to, amongst other things:

- (a) The seriousness of the compliance failure.
- (b) The past and current performance of any business and/or individual concerned.
- (c) Any obstruction on the part of the offender.
- (d) The risks being controlled.
- (e) Statutory guidance.

- (f) Codes of Practice.
- (g) Any legal advice.
- (h) Policies and priorities of the Government, the Council, and related committees.
- (i) A person's age in relation to young people (termed 'juveniles') aged under 18.
- (k) The existence of a Primary Authority Agreement.

8.3.2. Certain enforcement action, such as the decision to Caution and/or the decision to prosecute, is further and specifically informed by those matters set out below.

8.4. Simple Caution

8.4.1. The Council has the power to issue simple cautions as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, the Council is likely to consider prosecution.

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

8.4.3 Simple cautions will be used in accordance with Home Office Circular 16/2008 and other relevant guidance.

For details on the Home Office guidance (Circular 16/2008) Cautioning of Offenders visit:

<http://www.homeoffice.gov.uk/>

8.5 Prosecution

8.5.1 A prosecution will normally be considered where none of the other forms of enforcement action are considered appropriate and the individual or organisation meets one or more of the following criteria:

- Deliberately, recklessly, negligently or persistently breached legal obligations, which were likely to cause material loss or harm to others.
- Deliberately or persistently ignored written warnings or other notices.
- Endangered, to a serious degree, the health, safety or wellbeing of people, animals or the environment.
- An attempt to make financial gain at the expense of others.
- Assaulted or obstructed an Officer in the course of his/her duties.

8.5.2 When deciding whether to prosecute the Council applies The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

8.5.3 The Code for Crown Prosecutors sets out the general principles to follow when decisions are made in respect of prosecuting cases.

8.5.4 The Code for Crown Prosecutors has two tests:

- Is there sufficient/ enough evidence against the defendant?

When deciding whether there is sufficient/enough evidence to prosecute, the Council must consider what evidence can be used in court and whether it is reliable. The Council must be satisfied there is sufficient/enough evidence to provide a "realistic prospect of conviction" against each defendant.

- Is it in the public interest for the Council to bring the case to court?
A prosecution will usually take place unless the public interest factors against prosecution clearly outweigh those in favour of prosecution.

For a copy of the Code for Crown Prosecutors visit:-

http://www.cps.gov.uk/publications/code_for_crown_prosecutors/index.html

9. DECISIONS ON ENFORCEMENT ACTION

9.1 Decisions about the most appropriate enforcement action to be taken are based upon those matters set out in Section 8 above.

9.2 Where appropriate, decisions about what enforcement action to take may involve consultation between:

- (a) Investigating Officer(s).
- (b) Senior managers from the Council.
- (c) The Council's legal advisors.

9.3 The decision to prosecute a case will be taken by those with authority to do so in accordance with the Slough Borough Council Scheme of Delegation as contained within the Council's Constitution.

10. PRIMARY AUTHORITY PARTNERSHIP SCHEME AND ITS ENFORCEMENT PROVISIONS

10.1 When a decision has been made to take enforcement action against a business and:

- (1) That business is operating in more than one Local Authority and has a registered Primary Authority Partnership under The RES Act; and
- (2) The enforcement action we propose to take is covered by the definition of enforcement action for the purposes of Part 2 of The RES Act.

We will, where required to do so by that Act, comply with the agreement provisions for enforcement and notify your Primary Authority of the action we propose to take.

10.2 A Primary Authority has the right to object to our proposed action and in such

circumstances either they or we may refer the matter to the Office for Product Safety & Standards

11. LIAISON WITH OTHER REGULATORY BODIES AND ENFORCEMENT AGENCIES

- 11.1 In addition to the duties imposed upon the Council by The RES Act in respect of cooperating and working with Primary Authorities and BEIS ; the Council will, where appropriate, cooperate and coordinate with any relevant regulatory body and/or enforcement agency to maximise the effectiveness of any enforcement.
- 11.2 Where an enforcement matter affects a wide geographical area beyond the Council boundaries, or involves enforcement by one or more other local authorities or organisations; where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.
- 11.3 The Council will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, including:
- (a) Government Agencies.
 - (b) Police Forces.
 - (c) Fire Authorities.
 - (d) Statutory undertakers.
 - (e) Other Local Authorities.

12. DATA PROTECTION

- 12.1 Data protection is covered by the Data Protection Act 2018 (DPA) and the General Data Protection Regulation 2018 (GDPR). Together these statutes require that we look after any personal information we hold, keep only what we need to, maintain its accuracy, and dispose of it in a timely way when it is no longer required.
- 12.2 We have certain legal obligations to share information with certain statutory agencies in order to perform our statutory functions. We may also share information with other enforcement agencies where necessary and in accordance with the (DPA) and (GDPR).
- 12.3 We will not depart from the Councils Privacy Policy or any individual
Regulatory and
Enforcement Service Privacy Notice.
- 12.4 For more information on the Council's Privacy Notice go to:

<http://www.slough.gov.uk/council/data-protection-and-foi/your-privacy.aspx>

13. CONSIDERING THE VIEWS OF THOSE AFFECTED BY OFFENCES

13.1 The Council undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test, the consequences for those affected by the offence, and any views expressed by those affected will, where appropriate, be taken into account when making enforcement decisions.

14. PROTECTION OF HUMAN RIGHTS

14.1 This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the following:

- Right to a fair trial.
- Right to respect for private and family life, home and correspondence.

15. PARTNERSHIP WORKING

15.1 Wherever practicable we will endeavour to liaise with other relevant agencies that have a joint or complementary enforcement role to ensure a consistent and coordinated approach.

15.2 Before instigating formal action, the council teams carrying out regulatory and enforcement activities will liaise with all relevant agencies where a joint or complementary enforcement role identified. For example, Trading Standards and Food and Safety teams subscribe to the principles of the Department for Business Energy & Industrial Strategy (BEIS) Primary Authority Principle

15.3 We will share intelligence with other enforcement agencies where this is practicable, beneficial and cost effective (subject to restrictions under the Data Protection Act, and other legislation)

15.4 Data sharing will be conducted through appropriate information gateways.

15.5 The Planning Enforcement Policy deals with the enforcement of planning controls and is outside the scope of this policy document. For more information on planning enforcement, follow the below link:

<http://www.slough.gov.uk/planning-and-building-control/planning-enforcement.aspx>

16. REVIEW OF THE ENFORCEMENT POLICY

16.1 This Policy will be reviewed annually.

16.2 The Service Lead – Regulatory Services (formally the Head of Consumer Protection and Business Compliance Services) is 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.

16.3 A copy of this policy is available at:

<http://www.slough.gov.uk/council/strategies-plans-and-policies/regulatory-and-enforcement-services-enforcement-policy.aspx>