



Chester-le-Street
District Council

Report to: Council

Date of Meeting: 24 July 2008

Report from: Chief Environmental Health Officer

Title of Report: Transitional Environmental Health Enforcement Policy

Agenda Item Number:

1. Purpose and Summary and Recommendations

- 1.1 The purpose of the report is to request Council to approve and adopt a final version of the Transitional Environmental Health Enforcement Policy which is attached as Appendix A.
- 1.2 The draft Enforcement Policy was approved by Council in December 2007 for public consultation. Although the majority of its content remains relevant to current enforcement decision-making, there have been recent changes in national legislation and guidance which are not presently reflected within the existing Enforcement Policy.
- 1.3 The draft Enforcement Policy has been revised to incorporate technical amendments to address these local and national decisions and has been the subject of public consultation. The consultation raised few points that required alteration to the draft Enforcement Policy. Responses to the consultation are summarised in Appendix B.
- 1.4 The Transitional Environmental Health Enforcement Policy amalgamates and updates existing individual policies required by legislation and Statutory Codes of Practice into a single document. It is important that the Council has a current Enforcement Policy in place which is representative of current legislation, guidance and corporate priority expectation.
- 1.5 Council is recommended to:
- (i) Consider the summary of consultation comments and responses to them and agree amendments to the draft Enforcement Policy if required as attached as Appendix B.
 - ii) Agree and adopt a final version of the revised Enforcement Policy.

2. Consultation

2.1 The consultation exercise was undertaken involving a wide range of individuals, groups and organisations across the spectrum of Environmental Health regulatory activity. These consultations included:

- Members of the Council
- Parish Councils
- Police Authority
- Home Improvement Agency – Care and Repair
- Health and Safety Executive
- Food Standards Agency
- Local Residents Associations
- Local community groups
- Members of the public through the Council's website

2.2 Internally consultation has taken place with the:

- Legal and Democratic Services Manager
- Performance and Improvement Manager regarding diversity implications
- Risk and Financial Services Manager on risk management implications

2.3 Following the consultation processes, the comments received have been considered before the final version of the Enforcement Policy was prepared. Attached at Appendix B are the details of all comments and responses received and the consideration of these comments.

3. Transition Plan and People and Place Priority

3.1 The Transitional Environmental Health Enforcement Policy does not significantly impact on the Transition Plan and People and Place Priority.

3.2 The priority to update and amalgamate existing environmental health enforcement policies in line with current legislation and guidance was determined in 2007. This fulfills the Council's statutory responsibilities to have a Policy in place against which effective enforcement decisions could be made.

3.3 The Council recognises the importance of fair and effective enforcement which is a key to safeguarding and promoting public health and well being of those living, working and visiting the District and their commitment to protect their communities through the transition to the new unitary authority.

4. Implications

4.1 Financial Implications

- 4.1.1 The financial implications of introducing the new Enforcement Policy have been assessed as minimal. Costs incurred from the publication of the approved Enforcement Policy on the Council's website and the production and distribution of a summary leaflet for the public and businesses will be met from within existing budgets.

Value for Money Statement

- 4.1.2 The adoption of the Enforcement Policy will ensure more efficient and effective approaches to regulatory inspection and enforcement which will offer protection for the consumer and improve regulatory outcomes without imposing unnecessary burdens.
- 4.1.3 The Enforcement Policy requires that a particular approach to inspection and enforcement be adopted where the benefits justify the costs and which entail the minimum burden compatible with achieving objectives.
- 4.1.4 Risk-based assessment precedes and informs all aspects of approaches to regulatory activity defined within the Enforcement Policy. This includes the selection of the most appropriate level of enforcement through to the collection of data, inspection, advice, support and sanctions.
- 4.1.5 Resources will be directed where they are most effective. This will result in reducing unnecessary inspections and data collection from low risk and compliant businesses. It will enable the identification of those businesses needing more regular inspection and the release of resources to improve broader advice and support services and to address service priorities.

4.2 Local Government Reorganisation Issues

The Enforcement Policy is viewed as an interim policy demonstrating the Council's commitment to the importance of fair and effective enforcement to protect their communities during the transition to the new unitary authority.

4.3 Legal

- 4.3.1 The Enforcement Policy acknowledges the Council's statutory duty to enforce environmental health legislation.

4.3.2 The Enforcement Policy addresses the requirements of the Regulators' Compliance Code which came into force from 6 April 2008. Section 22 of the Legislative and Regulatory Reform Act 2006 sets out that regulators, should have regard to the requirements of this statutory Code.

4.3.3 The Enforcement Policy addresses the specific statutory requirements in relation to the 'Framework Agreement for Food Safety' issued under the Food Standards Act 1999 and Health and Safety Etc. Act 1974 Section 18 Guidance, both of which require an enforcement policy.

4.3.4 The adoption of a clear, transparent Enforcement Policy against which enforcement decisions can be made will reduce the risk of a successful legal challenge when attempting to take enforcement action.

4.4 Personnel

4.4.1 There are no human resource implications arising from this report.

4.5 Other Services

4.5.1 It is not expected that the adoption of the Enforcement Policy itself will lead to any increase in workload. The Policy does not fundamentally alter the Environmental Health services approach to enforcement; rather it amalgamates and expands a number of existing documents and practices.

4.6 Diversity

4.6.1 Consultation on the diversity aspects of the Enforcement Policy was undertaken with the Performance and Improvement Manager and comments have been incorporated.

4.6.2 The range of proactive enforcement activities contained within the Enforcement Policy form an invaluable mechanism for the Council to both engage with and educate many employers and employees from minority backgrounds. Workers from minority groups can be particularly vulnerable in workplace situations. Proactive measures are essential to safeguard the health, safety and welfare of the business community and the public.

4.6.3 The Enforcement Policy commits the Council to the principles of good enforcement which include openness, fairness and consistency.

4.7 Risk

4.7.1 Lack of an up to date enforcement policy acknowledging current legislation, guidance and good practice is a significant risk. Without such an Enforcement Policy in place there is increased risk of inappropriate enforcement and enforcement actions being open to successful challenge.

4.8 Crime and Disorder

- 4.8.1 The adoption of the Enforcement Policy will enhance the delivery of a robust service in relation to environmental crime and breaches of legislation dealt with by the Environmental Health service.

4.9 Data Quality

Every care has been taken in the development of this report to ensure that the information and data used in its preparation and the appendices attached are accurate, timely, consistent and comprehensive. The council's Data Quality Policy has been complied with in producing this report.

4.10 Other Implications

- 4.10.1 There are no other implications arising from this report.

5. Background, Position Statement and Option Appraisal

- 5.1 The Council's Environmental Health Service has a statutory duty to enforce a wide range of legislation in respect of food safety, health and safety at work, pollution control, public health, pest control, contaminated land, environmental protection, housing and licensing.

- 5.2 It is important in exercising enforcement powers that they are carried out in a fair and consistent way, recognising the need to ensure proactive enforcement. The revised Environmental Health Enforcement Policy will achieve this by having a published enforcement policy in place, which lays out a set of principles that are applied to effective enforcement decision-making in compliance with current statutory Codes of Practice.

- 5.3 On 6 April 2008, a Regulators' Compliance Code (the Code) was published by the Department for Business Enterprise & Regulatory Reform (BERR). It extends to a wide variety of regulators and applies to local authorities in respect of many of their enforcement activities, including environmental health and licensing. This is a statutory Code of Practice which means that the Council must have regard to its content.

- 5.4 The Code is based upon the recommendations contained in the Hampton Report commissioned by the Government on 'Reducing Administrative Burdens: Effective Inspection and Enforcement' which was published in 2005.

- 5.5 The Councils' existing draft Enforcement Policy is based on the principles contained in an Enforcement Concordat published by the Local Government Association in 1998. The draft Enforcement Policy is comprehensive and should generally comply with the requirements of the new Regulators' Compliance Code and the draft Enforcement Policy has been reviewed and updated to ensure full compliance.

5.6 The Code requires that the Council have regard to five principles of good regulation. These provide for regulatory activities to be carried out in a way that is transparent, accountable, proportionate and consistent and for them to be targeted only at cases in which action is needed. The Code places a duty that Environmental Health functions have regard to the Code when determining enforcement policies.

5.7 The Code stresses the need for the Council to adopt a positive and proactive approach towards ensuring compliance by;

- Helping and encouraging businesses and the public to understand and meet regulatory requirements more easily and
- Responding proportionately to regulatory breaches

5.8 The Food Law Code of Practice has recently been revised to reflect the principles of better regulation and to reduce burdens on business while maintaining standards of public health and consumer protection. The main changes are the replacement of the inspection focused approach to food law enforcement with a more flexible regime, involving a wider range of interventions to monitor, support and increase business compliance.

5.7 Current position

5.7.1 The draft Enforcement Policy which was formally approved by Council in December 2007 as a version suitable for public consultation was based on the principles contained within the Enforcement Concordat.

5.7.2 From 6 April 2008 the Enforcement Concordat has been superseded by the introduction of the Regulators' Compliance Code in relation to the regulatory functions of environmental health and the statutory Food Law Code of Practice for England has been recently revised to reflect the better regulation agenda. The Council is duty bound to take the statutory Codes into account whilst undertaking its statutory duties

5.7.3 The draft Enforcement Policy is comprehensive and generally complies with the requirements of the Regulators' Compliance Code. However, minor revisions have been applied to ensure compliance with current statutory requirements and the amended version of the Policy was subject to public consultation as described.

5.7.4 A broad range of bodies have been consulted on the draft revised Enforcement Policy. The results of the consultation along with an appraisal of comments and proposed changes to the Policy are attached as Appendix B.

6. Recommendations

6.1 Council is recommended to:

- (i) Consider the responses following public consultation and agree amendments to the draft Enforcement Policy if required as attached at Appendix B
- (ii) Agree and adopt a final version of the Transitional Environmental Health Enforcement Policy

7. Background Papers/ Documents referred to

7.1 The Enforcement Concordat, 1998

The Code of Crown Prosecutors
'Reducing Administrative Burdens, Effective Inspection and Enforcement' Philip Hampton, March 2005

The Legislative and Regulatory Reform Act 2006

The Regulators' Compliance Code, 6 April 2008

Food Law Code of Practice England, 1 April 2008

LACORS 'Guidance for Councils on the Regulators' Compliance Code,
15 February 2008

Christine A Ditchburn
Environmental Health Manager (Commercial)
11 July 2008
Version 3.0

Christine Ditchburn Tel 0191 3872203
e mail christineditchburn@chester-le-stret.gov.uk

This page is intentionally left blank