

To: LEADERSHIP BOARD

On: 14TH SEPTEMBER 2016

**Report by: DIRECTOR OF COMMUNITY RESOURCES and
DIRECTOR OF FINANCE & RESOURCES**

**Heading: RENFREWSHIRE COUNCIL - INTEGRATED ENFORCEMENT
POLICY**

1. Summary

- 1.1 In order to ensure enforcement decisions are consistent and transparent, local authorities are encouraged to develop Enforcement Policies in relation to the legislation enforced by the local authority.
- 1.2 In March 2015, Fergus Ewing MSP, in his role as Minister for Business, Energy and Tourism wrote to all Scottish Local Authorities, advising of the publication of the Scottish Regulators' Strategic Code of Practice. The Code, which has been introduced under section 5 of the Regulatory Reform (Scotland) Act 2014, applies to various devolved functions of Local Authority Regulators, such as Trading Standards Officers, Environmental Health Officers or Community Safety Wardens. A similar code exists for reserved matters (i.e. UK Government legislation) – the "Regulators' Code".
- 1.3 These Codes, which were developed by and with both regulators and business, require regulators to take a risk-based approach, to communicate clearly and to take steps to understand those they regulate, in line with the principles of Better Regulation. Regulators were advised to review existing enforcement policies or service-specific enforcement guidance for compliance with the Code.

- 1.4 In late 2015, Community Resources initiated a review of existing enforcement policies across the Council, in line with the requirements of these codes. The review has been completed, and a single strategic Integrated Enforcement Policy for Renfrewshire Council has been developed. This may be backed up within each relevant service area with specific operational enforcement guidance, as required.
- 1.5 The purpose of this report is to seek the Leadership Board's approval of the Integrated Enforcement Policy, as attached at Appendix 1.
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2. Recommendations

- 2.1 It is recommended that the Leadership Board:
- (i) approves the Renfrewshire Council Integrated Enforcement Policy attached as Appendix 1;
 - (ii) authorise officers to prepare guidance notes relevant to individual service areas, as appropriate.
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3. Background

- 3.1 In 1998, Renfrewshire Council adopted the UK Government's Enforcement Concordat, which was endorsed in full by COSLA, Local Government Regulation (formerly LACORS) and the Scottish Government.
- 3.2 Changing economic priorities in the UK mean that businesses require greater support to allow for economic recovery. Regulators contribute towards this challenge through the advice given to legitimate businesses, particularly during start up and by protecting legitimate businesses from being undercut by fraudulent trading.
- 3.3 On publication of these new Strategic Codes, regulators were encouraged to:
- Review existing core operational policies e.g. enforcement policy, service charters etc. and ensure alignment with the Code.
 - Take account of the Code in developing new operational policies and build the Code into relevant staff training/awareness-raising.
 - Ensure that the Code and core operational policies are available to regulated operators/persons so they know what to expect.
 - Pursue continuous improvement under the Code and share and seek to understand good practice with other regulators.
 - Use existing Governance arrangements to publish an annual statement on compliance with the Code.

- 3.4 The policy attached at Appendix 1 takes into account the requirements of the “Regulators’ Code” for reserved matters (i.e. UK Government legislation), and the “Scottish Regulators’ Strategic Code of Practice” for devolved matters (i.e. Scottish Government legislation). These codes exemplify “best practice” and stress the need for regulatory services to adopt a positive and proactive approach towards ensuring compliance by:
- Helping and encouraging businesses and individuals to understand and comply with the law,
 - Responding proportionately to breaches of the law, and
 - Using comprehensive risk assessment and local/national intelligence sources to concentrate resources in the areas that need them most.
- 3.5 The Renfrewshire Council Integrated Enforcement Policy will be reviewed whenever there are significant legislative changes, or changes in central or local government policy. Any significant changes to the Enforcement Policy will be reported to the relevant Policy Board. A statement on compliance with the policy will be published annually, in line with existing governance arrangements.
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Implications of the Report

1. **Financial** - none.
2. **HR & Organisational Development** - none.
3. **Community Planning**
Jobs and the Economy - This policy will support economic recovery by setting out guidelines along which regulators will seek to ensure compliance, rather than enforcement unless necessary.
Safer and Stronger - The policy allows for regulators to take enforcement in circumstances where this is required, to ensure a level playing field for businesses which will allow legitimate business to flourish.
4. **Legal** - none.
5. **Property/Assets** - none.
6. **Information Technology** - none.
7. **Equality & Human Rights** -
 - (a) The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No

negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.

8. **Health & Safety** - none.
9. **Procurement** - none.
10. **Risk** - none.
11. **Privacy Impact** – the proposed new categories will not require the Council to gather any additional personal or sensitive data, than is already gathered in the course of the administration of this scheme. .

List of Background Papers

- (a) None
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Appendix 1



REGULATORY SERVICES

INTEGRATED ENFORCEMENT POLICY

1. Introduction

Renfrewshire Council has statutory powers and duties to determine applications and consider suspension of licences and to enforce certain pieces of legislation in the Renfrewshire area. Laws and regulations play an essential role in ensuring a thriving, fair and safe society. They provide essential rights and protections for residents, consumers, workers, businesses, communities and the environment; can stimulate innovation and modernisation and support economic development. Often, the assurance of regulatory controls delivers multiple benefits – for communities, the environment and the economy.

This Enforcement Policy governs how these regulatory controls are applied across Renfrewshire Council, in services such as:

- Consumer Protection - Food Safety, Health & Safety, Trading Standards,
- Environmental Health - Contaminated Land, Housing Disrepair, Air Quality,
- Community Safety Partnership - Community Safety, Environmental Legislation, Anti-social Behaviour,
- Building Standards,
- Civic Government Licensing, and
- Housing.

The policy sets out the key principles which govern the work of a range of Enforcement Officers across the Council, including Civic Government Enforcement Officers, Environmental Health Officers, Trading Standards Officers, Technical Officers and Community Safety Wardens. These principles are designed to ensure that enforcement is carried out in a consistent and fair manner.

This policy takes into account the requirements of the “Regulators’ Code” for reserved matters (i.e. UK Government legislation), and the “Scottish Regulators’ Strategic Code of Practice” for devolved matters (i.e. Scottish Government legislation). These codes exemplify “best practice” and stress the need for regulatory services to adopt a positive and proactive approach towards ensuring compliance by:

- Helping and encouraging businesses and individuals to understand and comply with the law,
- Responding proportionately to breaches of the law, and
- Using comprehensive risk assessment and intelligence sources as appropriate, to concentrate resources in the areas that need them most.

Council services seek to achieve these aims by various methods, including the provision of advice to businesses - particularly during start up, promoting good business practices rather than stifling entrepreneurial activities and protecting legitimate businesses from being undercut by fraudulent trading.

2. Aims

The Renfrewshire Community Plan 2013-23 sets out a vision for Renfrewshire as a fairer, more inclusive place where all of our people, communities and businesses thrive.

Regulators within the Council aim to achieve this by:

- Protecting the mental health and physical, or emotional wellbeing of our residents,
- Having a growing economy that creates employment for a well trained, qualified and motivated workforce,
- Having attractive environments and town centres that support the growth of local communities and the economy,
- Supporting people to live independently for as long as possible in their own homes, and protecting members of the community from abuse and neglect,
- Ensuring the safety and security of the public, visitors, workers and residents of Renfrewshire, and
- Protecting the environment from pollution or contamination.

3. Principles of Enforcement

The “Regulators’ Code” and the “Scottish Regulators’ Strategic Code of Practice” both stress a focus on ensuring compliance from businesses by treating all regulated persons and businesses in a fair and consistent manner, taking proportionate enforcement action where necessary, while reducing the legislative burden on compliant businesses. The information below details the approach which regulators will take when considering whether enforcement action is appropriate in any case. These criteria reflect the recommendations to Regulators as set out in the Codes.

Council Services adopt a positive and enabling attitude - to ensure outcomes, where possible, contribute to sustainable economic growth. At all times Enforcement Officers will be helpful and assist with enquiries to their service. In cases where Officers are not able to assist, they will ensure service users are directed to the appropriate alternative service. There may be occasions where we may not be able to undertake action as requested by service users, and in these instances these decisions will be fully explained. Services will exercise their regulatory functions in an efficient and timely manner, in order to minimise costs and bureaucracy.

Council Services are alive to other interests and business factors - including relevant community and business interests; taking business factors appropriately and proportionately into account, where possible, in their decision making processes; and protecting public health and safety. Where possible, before we take enforcement action, we will provide an opportunity to discuss the matter and, where possible, discuss points of difference. However, this will not apply when immediate action is

required (for example to prevent or respond to a serious breach, or where there is an imminent risk to health and safety).

Services adopt risk and evidence based approaches - which help target action where it's needed and help to ensure the achievement of measurable outcomes. We will use this approach to take into consideration the likelihood of non-compliance and the impact of non-compliance. We will use these principles to determine the frequency of inspection, and we will consider those principles when arranging other visits, for example to take samples and carry out projects. We will normally investigate all complaints from the public.

Services develop relationships and communication with those they regulate - and have clear two-way communication in place. Information is made available to regulated persons by Council Services in relation to reasons for decisions, appeals procedures and fees, on the Council's website and otherwise, as appropriate. In some cases, appeals require to be made to an external body, such as in Civic Government licensing where appeals are to the Sheriff.

Services tailor their approach - depending on the nature of the sector they are regulating and the desired outcomes. This includes a commitment to advice and support for those who seek to comply at an early stage, as we recognise that prevention is better than cure, allied with robust and effective enforcement when justified.

The Council is committed to the five principles of better regulation:

Transparency - Our services will provide clear and transparent information, as far as legislation allows, in relation to the enforcement activities carried out. Where Officers decide to take enforcement action, they will ensure that the reasons are made clear and any appeal procedures are explained.

Accountability - Our services may publish Improvement Plans or locally reported Operational Plans, which set clear performance standards that services are required to achieve in order to demonstrate their performance.

Consistency - Our services exercise their duties in a fair, equitable, non-discriminatory and consistent manner. While Officers must be able to exercise professional judgement, they must also take into account any local or national guidance available. Our Services ensure liaison arrangements are in place with other Local Authorities in order to maintain and promote consistency where required.

Proportionality - At all times, Officers will take action proportionate to the level of risk presented. Officers will work with businesses and the public to ensure they can meet legislative requirements without unnecessary expense. In certain situations enforcement penalties and fees are set by legislation and as such these cannot be changed. In relation to proportionality the following factors will be considered:

- The seriousness of the breach involved,
- Any steps taken to prevent the breach or minimise the impact,
- History of compliance,
- Likelihood of recurrence of the contravention, and
- The need to deter future breaches.

Necessity (work targeted only where needed) - Our services will undertake routine work on a risk-assessed basis, to avoid an unnecessary burden on compliant businesses. Other enforcement activities may be intelligence-led to ensure resources are targeted where required.

Our Services are committed to pursuing continuous improvement - Many services conduct customer satisfaction surveys to inform service development. Complaints made about services will be dealt with in accordance with the Council's complaints procedure. This procedure ensures that where disputes cannot be resolved, a Manager will investigate the complaint and respond with a written detailed account of the investigation.

4. Enforcement Guidance

Services may produce their own guidance documents, detailing any enforcement and regulatory action which is specific to their own service area.

5. Exemptions to the Policy

This Enforcement Policy should be adhered to at all times when making enforcement decisions, however it is recognised that there may be occasions where the policy may not be followed.

Should an Enforcement Officer consider it appropriate not to strictly follow this policy due to the seriousness of a contravention or persistence of breaches, that Officer may exercise their professional discretion to take the action deemed most appropriate in those circumstances. This decision must be notified to the relevant Manager as soon as possible.

Any departures from the policy will be recorded in accordance with Council or legislative procedures.

6. Review of the Policy

This Enforcement Policy will be subject to review and changes will be recorded. An annual statement on compliance with the code will be published in line with existing governance arrangements. The Policy will be reviewed where:

- There are any significant legislative changes,
- There are changes in national or local priorities,

- There is a need identified as part of our annual statement of compliance with the codes,
- Feedback from customers and employees indicates change is required, and
- There are changes in roles and responsibilities of Renfrewshire Council.

7. Publication of the Policy

This Enforcement Policy will be available on the Council website at www.renfrewshire.gov.uk, and in addition the document can be made available in an abridged leaflet form for anyone who requires it.

8. Contact

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Cotton Street,
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