

REPORT TO: ENVIRONMENT COMMITTEE – 9th FEBRUARY 2015

REPORT ON: ENVIRONMENTAL PROTECTION – ENFORCEMENT POLICY REVIEW

REPORT BY: DIRECTOR OF ENVIRONMENT

REPORT NO: 48-2015

1.0 PURPOSE OF REPORT

- 1.1 To seek approval for the adoption of the updated departmental Enforcement Policy and the required changes to Standing Orders to accommodate recent legislative changes.

2.0 RECOMMENDATION

- 2.1 It is recommended that Committee approves the revised Enforcement Policy and remits to the Head of Democratic and Legal Services to make appropriate amendments to Standing Orders.

3.0 FINANCIAL IMPLICATIONS

- 3.1 There are no direct financial implications arising from this report.

4.0 MAIN TEXT

- 4.1 The Environmental Protection Division within the Environment Department carry out a wide range of statutory and regulatory functions. These include the enforcement of legislation associated with Public Health, Consumer Safety, Smoking Prohibition, Commercial Health & Safety, Litter, Dog Fouling etc.

- 4.2 Reference is made to Article No. IV of the Minute of the Meeting of the Environmental and Consumer Protection Committee of 21st May 2001 (Report No. 195-2001 refers) which approved the Food Safety and Standards Enforcement Policy Statement. Following a review of operational procedures, this policy statement has now been widened in its scope to cover the full range of services provided within the Environmental Protection Division and has also been reviewed in line with current legislation and guidance.

- 4.3 In order to ensure that all regulatory services are fair and open in their provision and that the relevant legislation is correctly applied, it is essential that the correct procedures are documented and followed. A copy of the revised document is provided in Appendix 1 for reference.

- 4.4 The recent introduction of new legislation relevant to environmental protection also requires Council Standing Orders to be amended in order to authorise officers to carry out further their duties as appropriate.

- 4.4.1 **The Single Use Carrier Bags Charge (Scotland) Regulations 2014** - These regulations came into force on the 20th October 2014 and now require retailers to charge customers for bags that are for the purposes of enabling goods sold to be taken away. Retailers also have a legal requirement to keep, retain and produce information on the bags they have supplied.

Enforcement of this legislation rests with local authorities and the Trading Standards section within the Environmental Protection Division will fulfil this role. The introduction of the new Single Use carrier Bags Charge (Scotland) Regulations 2014

requires Dundee City Council's Standing Orders to be amended in order to authorise officers from Trading Standards accordingly.

- 4.4.2 **The Petroleum (Consolidation) Regulations 2014** - The above regulations came into force on the 1st October 2014 and replaced the previous petroleum licensing system with Petroleum Storage Certificates. New certificates will be issued in Dundee when licences expire. Certificates are issued for the premises where the petrol is stored and dispensed, with no reference to person or company (previously known as licensees). Certificates do not have an expiry date and remain in force until either major changes take place or the site ceases to operate for more than 12 months.

Enforcement of this legislation rests with local authorities and the Trading Standards section within the Environmental Protection Division will fulfil this role, as it did with the previous licensing regime. The introduction of the new Regulations requires Dundee City Council's Standing Orders to be amended in order to authorise officers from Trading Standards accordingly.

5.0 POLICY IMPLICATIONS

- 5.1 This report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-poverty, Equality Impact Assessment and Risk Management. There are no major issues.

6.0 CONSULTATIONS

- 6.1 The Chief Executive, Director of Corporate Services and Head of Democratic and Legal Services have been consulted in the preparation of this report.

7.0 BACKGROUND PAPERS

- 7.1 None.

Ken Laing
Director of Environment

Kenny Kerr
Head of Environmental Protection

12th January 2015

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Version	1.0	Last reviewed - 14 January 2015

Environmental Protection Division

1 - Introduction

This Enforcement Policy outlines our approach to regulatory activity, how we expect to deal with businesses and individuals, and what happens when we find non compliance with legal requirements. For law enforcement to be fair it is important that we are open and clear about the basis on which we take action.

Dundee City Council is committed to maintaining a fair and safe environment for businesses and consumers, and protecting the environment and the public, particularly those who may be especially vulnerable. Our regulatory services include the following:

- Food and Feed Safety and Standards (including composition and labelling)
- Health and Safety (on commercial premises)
- Environmental Safety including storage of petroleum, explosives, and poisons
- Pollution control including noise, contaminated land, and air quality
- Public Health Nuisance
- Elements of antisocial behaviour for example littering and fly tipping
- Consumer Safety, including sales of age-restricted products, and tobacco control
- Control of dogs and dog fouling
- Fair Trading, including consumer fraud and deceptive trading practices
- Animal Health and Welfare
- Animal Feed quality, composition and labelling
- Licensing enforcement
- Weights and Measures.

We strive to use advice as the main method of ensuring that businesses and individuals comply with legal requirements. We carry out risk based inspections [or other appropriate interventions] of business premises, respond to complaints and enquiries, test products and equipment, make test purchases where appropriate, give talks to consumer and business groups, and publish a range of information on the internet, in the media and in leaflets. Where small businesses, and voluntary and community organisations, do not have sufficient resources to research and implement steps that are required to meet their legal obligations, then we will take particular care to support them into compliance.

2 - Regulatory framework

In our regulatory activities we are bound by several requirements, contained within a number of mandatory and voluntary codes, more details of which are contained in Appendix A below, but including:

- The Dundee City Council Customer's Charter
- The Enforcement Concordat
- The Regulators' Code
- Scottish Regulators' Strategic Code of Practice
- Food Law Code of Practice
- Health and Safety Enforcement Code.

3 - What you can expect from our staff

In our regulatory activities you are entitled to expect our staff:

- To be courteous and helpful
- To identify themselves by name and produce identification if requested
- To provide a contact point for any further dealings
- To give clear and simple advice
- To confirm advice in writing on request, explaining the action required and over what time-scale
- To clearly distinguish between what you must do to comply with the law and what is recommended as good practice
- To minimise the cost of compliance by requiring proportionate action
- To give you reasonable time to comply (unless immediate action is necessary in the interest of health and safety or to prevent evidence being lost)
- To notify you if the matter is to be reported for legal proceedings
- To advise you of the procedure for making a complaint or representations in cases of dispute about our actions
- To maintain confidentiality except where we have a legal obligation to disclose information.

4 - How we structure our regulatory activities

This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement which improve regulatory outcomes without imposing unnecessary burdens, either on businesses, individuals, or on public authorities.

Only officers, duly authorised by the Council, who meet current requirements for standards of competence commensurate with their enforcement responsibilities, will carry out the duties described in this Enforcement Policy Statement.

In planning and carrying out our activities we always have regard to the principles in the various codes and standards listed in this policy document.

In general however we will:

- Provide advice where practicable
- Keep our regulatory activities and interventions under review to reduce their burden on businesses, especially smaller ones, as much as possible
- Risk assess our regulatory activities so as to target our resources where they will have greatest effect
- Carry out inspections only where there is a reason for doing so, for example, as a response to intelligence or as part of our risk assessment process
- Develop 'home authority', 'lead authority' and/or 'primary authority' relationships, where appropriate, with businesses based within Dundee to provide advice and support
- Only require data and information from businesses when it is strictly necessary for us in carrying out our regulatory activities
- Consult with businesses in designing, reviewing and improving our risk methodology.

5 - Action we can take where non compliance is found

When we suspect that there may have been non compliance we will usually have to make some enquiries but, in the majority of cases, we can conclude the matter quickly by giving advice.

Where immediate enforcement action is necessary an explanation will be given at the time and confirmed in writing, usually within 5 working days, and always within 10 working days.

There may be serious cases where we have to make more extensive enquiries and which can only be effectively concluded in a formal enforcement manner. When investigating the most serious offences we may also make financial enquires, or refer such matters to partner agencies, as the courts could order the confiscation of assets where these are considered to be the proceeds of crime.

Dependant upon the provisions of the particular legislation, we are able to take a variety of enforcement actions, including:

- Verbal or written warning
- Issue of Fixed Penalty Charge Notice
- Report to the Licensing Board/Committee
- Suspension, seizure or voluntary surrender of goods
- Improvement, prohibition or other enforcement notices
- Remedial Action notice
- Default works
- Enforcement Order
- An Assurance or Undertaking which is legally binding
- Report to COPFS [Crown Office & Procurator Fiscal Service]

Some of the above actions provide for appeal and review processes before or following their imposition. When this is the case the affected business will receive full written details of their rights.

In some instances we may share an enforcement role with other agencies e.g. Health & Safety Executive and Police Scotland, and in such situations we will share information on our activities with our partner organisations.

6 - How we decide on legal action

Before any enforcement action is taken there will usually be opportunity for businesses to discuss the case with us. In particular with regard to reserved legislation, where firms have a Primary Authority relationship with another local authority, we will consult with them before taking any enforcement action. [Where devolved legislation is concerned we may take cognisance of any Primary Authority Assured Advice.]

To ensure any action we take is proportionate and targeted only at cases in which action is needed, a number of factors will be taken into consideration, including

- The seriousness of any alleged offence
- The value involved
- The age and vulnerability of consumers affected
- The previous history of the business
- Any statutory defence available
- Action taken to prevent any recurrence
- Any explanation offered and, as far as the law allows, the circumstances and attitude of the business towards compliance and the investigators
- What course of action will best serve the public interest.

Prosecution is much more likely in cases which involve

- serious offences affecting the health, safety or economic interests of the public
- serious offences relating to animal health and welfare
- serious offences involving fraud
- continued or gross negligence, obstruction or wilful non-compliance,
- deceptive or dishonest claims or actions
- targeting or financial abuse of vulnerable people
- breaking statutory prohibitions or court orders
- where national policies or priorities dictate a course of action.

7 – Complaints about our service

All our staff are bound by this policy to ensure we take a consistent approach to our work. Any complaints about our service should be directed through the Dundee City Council complaints procedure which can be found at:

https://www.dundee.gov.uk/forms/dcc_complaint.php

If you have any comments on this Enforcement Policy or would like further information then please contact us.

APPENDIX A

The Dundee City Council Customer's Charter

We will:

- be open and honest and explain our decisions
- deal with your enquiry promptly and explain reasons for any delay
- provide choices around how you access our services
- give you the information you need about our services
- listen to what you have to say
- treat you with respect and courtesy
- aim to get things right first time
- apologise to you when we get things wrong and then put things right

The Enforcement Concordat

The Government introduced the Enforcement Concordat in 1998 in collaboration with business and local and national regulators. The aim is to promote good enforcement that brings benefits to business, enforcers and consumers. The Enforcement Concordat encourages partnership working between enforcers and businesses, and sets out the Principles of Good Enforcement which enforcers should apply in order to achieve higher levels of voluntary compliance. The principles are:

- Standards: setting clear standards
- Openness: clear and open provision of information
- Helpfulness: helping business by advising on and assisting with compliance
- Complaints: having a clear complaints procedure
- Proportionality: ensuring that enforcement action is proportionate to the risks involved
- Consistency: ensuring consistent enforcement practice.

Dundee City Council is a signatory to the Enforcement Concordat

The Regulators' Code

The Regulators' Code is a statutory code made under the Legislative and Regulatory Reform Act 2006. It was introduced on 6 April 2014 and aims to improve the way regulation is delivered at the front line. It sets out a clear framework for transparent and accountable regulatory delivery and establishes clear principles for how local authorities should interact with those they are regulating. The Code is underpinned by the statutory principles of good regulation, which provide 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. The Regulators' Code applies to reserved legislation.

Scottish Regulators' Strategic Code of Practice

The Regulatory Reform (Scotland) Act 2014 seeks to promote consistent, proportionate and effective regulation and places a statutory duty on listed regulators to exercise functions in a way which contributes to achieving sustainable economic growth. This empowers regulators to align their activities and approach with the Government's purpose of sustainable economic growth, and take economic factors appropriately into account. The Scottish Regulators' Strategic Code of Practice, made under the 2014 Act, requires regulatory functions to be exercised in accordance with the principles of better regulation, this includes advice, guidance, licensing, permissions and consent, inspections, monitoring and enforcement. The Code is predicated on existing good practice and supports the outcome-based approach which is integral to the Government's National Performance Framework. The Code also promotes an approach whereby regulators seek to understand those they regulate, including taking into account economic and business factors appropriately. The Code was laid before Parliament on 12 January 2015 and applies to devolved legislation only.

In addition there are sector specific codes of practice such as the:

Food Law Code of Practice [including animal feed]

This Code of Practice issued by the FSA sets out instructions and criteria to which local food authorities should have regard to when engaged in the enforcement of food and feed law. Food authorities must follow and implement the provisions of the code that apply to them and they include the EU Food Hygiene and Official Feed and Food Controls Regulations and the national implementing regulations relating to Scotland. Dundee City Council follows the FSA framework agreement on local authority food law enforcement.

Health and Safety Enforcement Code

Dundee City Council has responsibility for enforcement of Health and Safety legislation and carries out its activities in accordance with the HSE 'Standard for Health and Safety Enforcing Authorities' and Regulators' Code.