
Meeting of the Executive Member for Neighbourhood Services and Advisory Panel

19 March 2008

Report of the Director of Neighbourhood Services

Revised Enforcement Policy for Environmental Health, Trading Standards and Licensing Services

Summary

1. The purpose of this report is to inform members of the government's new 'Statutory Code of Practice for Regulators' and to seek executive member approval of a revised enforcement policy for environmental health, trading standards and licensing services which is consistent with the principles laid down within the code.

Background

2. From 1st April 2008, all regulatory services (including environmental health, trading standards and licensing services) must have regard to the 'Statutory Code of Practice for Regulators' published by the Department for Enterprise and Regulatory Reform (the code) in determining how they go about their functions. The revised enforcement policy, attached at Annex 1, sets out the environmental health, trading standards and licensing services commitment to following the principles set out in the code. It also gives details of the key considerations that officers will have regard to, in seeking to ensure that businesses and individuals comply with the laws they enforce.
3. The revised enforcement policy is drafted under headings contained in the code. The key requirement under each heading is summarised in paragraphs 4 to 11 below and changes from the current enforcement policy are highlighted.
4. Economic Progress

The code requires that regulators will consider the impact that their activities may have on their businesses including consideration of costs, effectiveness and perceptions of fairness. There is no significant difference to the current policy in this respect, officers are already committed officers to working with businesses to meet their legal obligations without unnecessary expense, and states that action taken by officers would be proportionate to the risk and effect on the local community and consumers.

5. Risk Assessment

The code requires that resources will be allocated where they will be most effective by assessing the risks due to non-compliance with the law. Although in practice this is done at present, and reflected in the customer contract for environmental health, trading standards and licensing services, this commitment is formally introduced for the first time in the revised enforcement policy.

6. Advice and Guidance

The code requires that regulators will recognise that most businesses and individuals wish to comply with the law and that officers should actively work to advise on, and assist with, compliance with the law. This requirement is contained in the current enforcement policy.

7. Inspections and Other Visits

The code requires that there will be no inspection or other visit to a business unless there is a good reason, e.g. risk/intelligence/government guidance, and states that, where practical, inspections will be co-ordinated to minimise the burden on business. This is a new requirement.

8. Information Requirements

The code requires that businesses will only be asked for information that is necessary after considering the cost and benefit to obtaining the information, and steps will be taken to try to ensure that businesses do not have to provide information more than once. This is a new requirement.

9. Compliance and Enforcement Actions

The code requires that regulators recognise that most businesses wish to comply with the law, but also that firm action will be taken against those who flout the law or who act irresponsibly. The revised enforcement policy contains an updated list of circumstances in which 'formal enforcement action' may be considered in the first instance against a business or an individual. This list has been extended to incorporate cases involving 'unfair commercial practices' as defined by the Consumer Protection from Unfair Trading Regulations 2008. In addition, the definition of formal enforcement action has been extended to include the issuing of fixed penalty notices, the seeking of an injunction and the suspension or revocation of a licence.

10. Accountability

Officers will be accountable for the efficiency and effectiveness of their regulatory activities. There is no change to the current enforcement policy in this respect.

11. Application and review of the enforcement policy

Officers will have regard to the document when making enforcement decisions and the policy should be subject to annual review. There is no change to the current enforcement policy in this respect.

Consultation

12. There is no consultation associated with this report.

Options

13. Option 1. To approve the revised enforcement policy to ensure that officers enforcement actions are consistent with the code.
14. Option 2. Maintain the existing enforcement policy as the applicable guidance to officers.

Analysis

15. Option 1. Will mean that officers can carry out their regulatory activities and seek to ensure legal compliance with direct regard to the provisions in the code. The City of York Council will comply with its legal duties and enforcement actions are less likely to be exposed to a legal challenge.
16. Option 2. Will mean that enforcement action may be open to legal challenge in any of the respects in which it does not expressly meet the code.

Corporate Priorities

17. Option 1 would contribute towards the corporate priority to reduce the actual and perceived impact of violent, aggressive and nuisance behaviour on the people in York.

Implications

Financial

18. There are no financial implications associated with this report.

Human Resources (HR)

19. There are no human resources implications associated with this report

Equalities

20. There are no legal implications associated with this report.

Legal

21. The City of York Council has a duty to adopt an enforcement policy, which is consistent with the principles in the code.

Crime and Disorder

22. There are no crime and disorder implications associated with this report.

Information Technology (IT)

23. There are no IT implications associated with this report

Property

24. There are no property implications associated with this report.

Other

25. There are no other implications associated with this report.

Risk Management

26. In compliance with the Council's risk management strategy. There are no risks associated with the recommendations of this report

Recommendations

27. That the Advisory Panel advise the Executive Member to approve Option 1.

Reason: To ensure that environmental health, trading standards and licensing services conduct their enforcement activities under an enforcement policy that complies with the code.

Contact Details

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Report Approved

Date 18/2/08

Specialist Implications Officer(s) *None*

Wards Affected:

All

For further information please contact the author of the report

Background Papers:

- EMAP report on Environmental Health, Trading Standards and Licensing Enforcement Policy – September 2005 (approval of current policy)
- Statutory Code of Practice for Regulators published by the Department for Business Enterprise and Regulatory Reform – 17th December 2007
- EMAP report on the implications of the Unfair Commercial Practices Directive – 19 March 2008

Annexes: Annex One: Revised enforcement policy for environmental health, trading standards and licensing services.