

# Environment Development and Transport Committee

Item No.

<b>Report title:</b>	<b>Annual review of the Enforcement Policy</b>
<b>Date of meeting:</b>	<b>14 October 2016</b>
<b>Responsible Chief Officer:</b>	<b>Tom McCabe - Executive Director, Community and Environmental Services</b>
<b>Strategic impact</b> The Enforcement Policy provides a framework to ensure that we work in an equitable, practical and consistent manner in the way we deliver regulatory activities and law enforcement. Norfolk County Council is committed to the principles of better regulation, reducing burdens on business with proportionate responses and ensuring we act to protect and support residents, businesses and the environment.	

## Executive summary

The Community and Environmental Services (CES) Directorate is responsible for a range of regulatory functions, including Trading Standards, Planning enforcement (mineral and waste sites), Flood and Water (land drainage), Highways (networks, maintenance and blue badge enforcement) and Norfolk Fire and Rescue (fire safety). Each area of work operates under different legislation and each has its own framework of regulations, codes of practice and guidance.

The current Enforcement Policy was originally developed in 2013 in conjunction with a range of stakeholders, including business representatives, and is subject to annual review by members. CES services have reviewed the current policy and have proposed changes in some areas. A revised CES Enforcement Policy (appendix 1) has been produced to reflect these changes.

The main change this year is the proposed inclusion of the Norfolk Fire and Rescue Service (NFRS) Enforcement Policy Statement. Although still reflecting national requirements, the proposal is for this to be appended to the main Policy, recognising that fire safety enforcement is now a function of the CES Directorate. The main changes proposed this year are highlighted in appendix 1, and are summarised here as follows:

- Inclusion of the NFRS policy, as an appendix to the main policy (para 1.1 & annex 3)
- Clarification of the need to give notice for routine inspection visits unless unannounced visits are legally required/necessary (para 2.1.2)
- Confirmation of the support available for businesses via the Home and Primary Authority Principles as part of the Enforcement Policy, including the possibility of charging for interpretive or bespoke advice on a cost recovery basis (para 3)
- The inclusion of body worn video as part of investigations (para 4.6.4)
- Clarification that monetary penalties may be issued where there is a specific legal power or delegated authority to do so, with specific guidance to be produced for this as appropriate. Enforcement of Single Use Carrier Bags is a recent example (para 4.11)

**To confirm the revised CES Enforcement Policy (appendix 1) and its annex documents, prior to consideration by Communities Committee (the approval body for the Policy).**

## 1. **Proposal**

The current Enforcement Policy (the Policy) was first developed as a cross-departmental policy in 2013. The Policy covers a range of regulatory functions, including Trading Standards, Planning enforcement, Flood and Water and Highways. It does not try to capture all of the detailed, complex and often changing background to enforcement, but instead seeks to summarise the overall approach to the use of enforcement powers; whether that is criminal prosecution at one end of the spectrum or informal warnings and advice at the other. The policy is supported by detailed procedures for officers within each service area and, where necessary, additional protocols can be appended to the main policy. Currently there are two areas of work which appear as annex documents to the main policy; these relate to minerals and waste planning and flood and water management – see annex 1 and annex 2 to the Policy.

The main change this year is the proposed inclusion of the Norfolk Fire and Rescue Service (NFRS) Enforcement Policy Statement. Although still reflecting national requirements, the proposal is for this to be appended to the main Policy, recognising that fire safety enforcement is now a function of CES.

The current Enforcement Policy has also been reviewed jointly by CES regulatory services in the context of current government and other guidance and seeks to ensure that the application of any enforcement is:

- proportionate to the offence and risks, and mindful of previous transgressions
- transparent - in that any person affected understands what is expected of them, what they should expect from the local authority and the reasons for the action
- consistent with the Equality Act 2010 and the Council's Equalities Policies
- consistent in approach, and appropriate.

A revised CES Enforcement Policy (appendix 1) has been produced to reflect the proposed changes arising from this year's review. The main changes proposed this year are highlighted in appendix 1, and are summarised here as follows:

- Inclusion of the NFRS policy, as an appendix to the main policy (para 1.1 & annex 3)
- Clarification of the need to give notice for routine inspection visits unless unannounced visits are legally required/necessary (para 2.1.2)
- Confirmation of the support available for businesses via the Home and Primary Authority Principles as part of the Enforcement Policy, including the possibility of charging for interpretive or bespoke advice on a cost recovery basis (para 3)
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## 2. **Evidence**

A CES wide Enforcement Policy is considered to be the most effective way to demonstrate how CES intends to fulfil its regulatory/legal responsibilities. An alternative option would be for each service area within CES to produce its own enforcement policy. However as above there is need for consistency in overall approach; and (where necessary or appropriate to do so) the draft policy also

provides for additional (detailed) protocols.

### **3. Financial Implications**

There are no immediate resource implications as a result of this proposal although there is the recognition in the policy that enforcement resources are not limitless and need to be targeted at areas where risk is highest. Higher performing, more compliant businesses will bear less of a burden, with regulators focusing their efforts on rogue and higher-risk businesses.

### **4. Issues, risks and innovation**

There is a legal context to the deployment of enforcement powers. In 1998 the Cabinet Office published the “Enforcement Concordat” to help promote consistency in the UK regulatory enforcement regime. The Enforcement Concordat set out principles of good enforcement policy and, although a voluntary code of practice, it was adopted by 96% of all central and local government bodies, including Norfolk County Council.

The Enforcement Concordat has since been supplemented by a statutory code of practice, the Regulators’ Code (the Code). The Council has a legal obligation to have regard to the Code, including ensuring a consistent approach to enforcement policy and in setting out service standards.

In certain instances officers may conclude that a provision in the Code is either not relevant or is outweighed by another provision. Officers will ensure that any decision to depart from the Code is properly reasoned, based on material evidence and documented. The Code requires the Council to publish its Enforcement Policy.

The Council must also have regard to The Code for Crown Prosecutors (CPS) guidance which requires extensive consideration of the evidence (for example is it admissible, substantial and reliable) before a decision is made to institute legal proceedings; with any decision also considering whether it is in the public interest to prosecute. This CES Enforcement Policy provides a clear framework and mitigates any risk of legal challenge regarding the delivery of the regulatory enforcement function within the directorate.

#### **Human Rights**

In carrying out its enforcement role, the directorate has regard to the Freedom of Information Act 2000, the Data Protection Act 1998, Regulation of Investigatory Powers Act 2000 and the Human Rights Act 1998 (e.g. in the latter context the right to a fair trial, right to respect for private and family life, prohibition of discrimination and protection of property).

#### **Equality Impact Assessment (EqIA)**

An Equality Impact Assessment (EqIA) for this Policy was carried out in late 2013, in conjunction with the Departmental Equality Lead Officer. Actions arising from the original EqIA were reviewed in 2014 and agreed as completed. This year’s review proposes no significant changes to the Policy which would require a new EqIA at this stage.

Although this is now a Directorate-wide Enforcement Policy, Trading Standards continues to undertake the vast majority of formal enforcement action within the directorate. An Internal Audit of Trading Standards enforcement activity carried out in March 2016 found that the intelligence system in place is effective, that sound controls are in place and operating consistently, and the Service can demonstrate that decisions taken during investigations are equitable, unbiased and based on objective intelligence.

## Officer Contact

If you have any questions about matters contained in this paper or want to see copies of any assessments, e.g. equality impact assessment, please get in touch with:

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