

EDT Committee

Item No.

Report title:	Annual review of the Enforcement Policy
Date of meeting:	20 October 2017
Responsible Chief Officer:	Tom McCabe - Executive Director, Community and Environmental Services
Strategic impact 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), Norfolk Fire and Rescue (fire safety) and Highways (networks, maintenance and blue badge enforcement). Each area of work uses different legislation to secure its aims 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 been asked to review the current policy and have proposed changes in some areas. A revised CES Enforcement Policy (Appendix 1) has been produced to implement these changes.

All changes proposed this year are highlighted in yellow in Appendix 1; with the key changes summarised below:

- Inclusion of provision for food seizure and detention by Trading Standards (page 11) and immediate action for failure of food safety requirements (page 9)
- Greater emphasis on Primary Authority Partnerships, insofar as these relate to enforcement policy (page 6)
- Clarification that court outcomes will be routinely publicised and that other practices/incidents may also be publicised, subject to legal considerations (page 5)
- Addition of 'other legislation' under the 'Taking animals into possession/banning orders' section, to allow for situations where we might need to consider this (page 12)
- Clarification that we may look to local authorities outside Norfolk to assist with conflict of interest matters (the Policy currently refers only to local authorities in Norfolk, which may be a constraint in certain situations) (page 14)
- Annex 4 has been added, which details the Highways Enforcement Protocol.

Recommendations:

To confirm the revised CES Enforcement Policy (Appendix 1) and its annex documents meet the requirements of EDT services, prior to consideration by Communities Committee (the approval body for the Policy).

1. Proposal

- 1.1. 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 (mineral and waste sites), Flood and Water (land drainage), Norfolk Fire and Rescue (fire safety) and Highways (networks, maintenance and blue badge enforcement). 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. There are now four areas of work which appear as annex documents to the main policy; these relate to minerals and waste planning, flood and water management, the Norfolk Fire and Rescue Service and Highways Enforcement- see Annexes 1, 2, 3 and 4 to the main Policy.

The current Enforcement Policy has been reviewed 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 implement the proposed changes arising from this year's review. The main changes proposed this year are highlighted in Appendix 1, and are now summarised here as follows:

- Inclusion of provision for food seizure and detention by Trading Standards (page 11) and immediate action for failure of food safety requirements (page 9)
- Greater emphasis on Primary Authority Partnerships, insofar as these relate to enforcement policy (page 6)
- Clarification that court outcomes will be routinely publicised and that other practices/incidents may also be publicised, subject to legal considerations (page 5)
- Addition of 'other legislation' under the 'Taking animals into possession/banning orders' section, to allow for situations where we might need to consider this (page 12)
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2. Evidence

- 2.1. 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 a 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

- 3.1. 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 require less resource, with regulators focusing their efforts on rogue and higher-risk businesses.

4. Issues, risks and innovation

- 4.1. 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.

Risks

This policy provides a clear framework and mitigates any risk of legal challenge regarding the delivery of the regulatory enforcement function within CES.

Health and Safety Implications

There are no health and safety implications of which to take account.

Environmental Implications

There are no direct environmental implications to take into account as part of this report. However the Policy does provide for consideration of formal enforcement action where there is a significant risk to infrastructure or the environment. The Policy also includes a specific enforcement protocol for Flood and Water Management.

Section 17 – Crime and Disorder Act

CES through its public protection and regulatory functions has an important role to play dealing with crime and disorder. This Policy will support the directorate in protecting the public and the environment in a consistent, fair and transparent way, in line with both local and national priorities and legal requirements.

5. Background

- 5.1. CES regulatory activities are aimed at protecting the economic wellbeing and safety of Norfolk's residents and businesses and protecting the environment. How we carry out regulatory activities is key to supporting this aim.
- 5.2. Experience in regulatory enforcement shows that, in most cases, businesses and individuals comply with the law. Failure to do so generally stems from ignorance or carelessness, but sometimes from wilfulness or malice. A range of enforcement options is available to the Council but there is a need to discharge these in a consistent, fair and transparent way, as well as ensuring that the public or environment is adequately protected.
- 5.3. This Policy, once adopted, will be published via the NCC web pages.

Officer Contact

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

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