



Delegated decision report

DECISION UNDER DELEGATED POWERS

DECISION CANNOT BE TAKEN BEFORE 22 AUGUST 2017

Title **REGULATORY AND COMMUNITY SAFETY SERVICES ENFORCEMENT POLICY**

Report to **REPORT TO THE CABINET MEMBER FOR COMMUNITY SAFETY AND PUBLIC PROTECTION**

EXECUTIVE SUMMARY

1. The current Regulatory Services Enforcement Policy 2013-2016 requires a review.
2. The main changes to the policy are as follows:
 - Background - Updated reference to the new code of practice (Regulators Code) and the six principles
 - Purpose and scope - Now includes officers within community safety; removes environment officers
 - Approach - Makes it clear that we will seek the most effective approach to enforcement by coordinating action between enforcement agencies; that we will take account of approved codes of practice or other guidance document (e.g. work related deaths protocol); liaise with the primary authority (if there is one); utilise the financial investigator in relation to financial confiscation.
 - Considerations - To add three additional considerations. Any obstruction on the part of the offender; existence of the primary authority agreement; sufficiency of the evidence.
 - Enforcement options – Additional options added. Referral to other agency (including Crown Prosecution Service (CPS) Care Quality Commission (CQC), primary or home authority); civil injunctions/community protection notices (new legislation); criminal behaviour order (new legislation); proceeds of crime application.
 - Equalities and human rights - New section to include Mental Capacity Act.
 - Appeals and complaints - New section.

BACKGROUND

3. Regulatory Services' (Licensing, Environmental Health and Trading Standards) primary function is to achieve regulatory compliance in order to protect the public, legitimate businesses, the environment and groups such as consumers and workers.
4. Community Safety also has responsibilities to protect the public and undertake appropriate action to reduce antisocial behaviour and crime.
5. An enforcement policy has been in place since 2008; the last review of the policy took place in 2013 and was approved by the Licensing Committee.
6. On 6 April 2014 the Regulators' Compliance Code was replaced by a new code of practice, the Regulators' Code.
7. The code provides a framework for how regulators should engage with those it regulates and regulators must have regard to the code when developing standards, policies or procedures that guide their regulatory activities.
8. There are six main principles, which are that regulators should:
 - I. Carry out their activities in a way that supports those they regulate to comply and grow;
 - II. Provide simple and straightforward ways to engage with those they regulate and hear their views;
 - III. Base their regulatory activities on risk;
 - IV. Share information about compliance and risk;
 - V. Ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply;
 - VI. ensure that their approach to their regulatory activities is transparent.
9. Principle six sets out the expectation that local authorities will ensure that their approach to regulatory activities is transparent. This means we will publish our policy as to how we intend to deliver regulation and what those affected can expect.
10. This revised Enforcement Policy provides guidance for officers of Regulatory Service and sets out clear enforcement powers and processes for those who may be subjected to enforcement action by any officer within the service.
11. It is intended that the policy will ensure that all enforcement action is undertaken in a fair, transparent and consistent manner.

STRATEGIC CONTEXT

12. With reference to the 2015-2017 Corporate Plan the Enforcement Policy supports a number of priorities, particularly the following:
 - Supporting the local economy, making the Island a better place and keeping it safe – the Enforcement Policy is around enforcing in a

proportionate, transparent and consistent way. This supports economic growth by ensuring that there is a level playing field for businesses. The policy also assists in keeping the Island safe by seeking criminal sanctions for those who deliberately flout the law for profit or those who target the most vulnerable in our society.

CONSULTATION

13. The policy was subject to a full public consultation between 28 November 2016 and 2 January 2017. This was publicised online at the iwight.com consultation page. Ward Councillors and Town/Parish Councils were directly emailed.
14. Three responses were received from town/parish councils. All three acknowledged the policy but had no further comments to make.
15. No other responses were received from the public, individuals or businesses.

FINANCIAL / BUDGET IMPLICATIONS

16. There are no cost implications as a result of this policy, however there may be costs associated with each individual enforcement action and any such costs will be found from within existing budgets and/or reclaimed through the court process in way of costs applications in successful cases.
17. The costs of deferring enforcement could lead to increased costs to the authority, for example in some cases the authority may be required to carry out works in default. In addition lack of enforcement could reduce the 'deterrent effect'.

LEGAL IMPLICATIONS

18. The Regulators' Code came into statutory effect on 6 April 2014 under the Legislative and Regulatory Reform Act 2006 and provides a clear, flexible and principle-based framework for how regulators should engage with those they regulate.
19. The regulators and regulatory functions to which the code applies are specified in the Legislative and Regulatory Reform (Regulatory Functions) order 2007 as amended in 2014. Nearly all regulators, including local authorities must have regard to it when developing policies and procedures that guide their regulatory activities.
20. The policy has been reviewed to ensure that it remains compliant with the Regulators' Code. It states that all enforcement activities, including investigations and formal actions, will be conducted in compliance with the statutory powers of the officer and all other relevant legislation. Including but not limited to:
 - The Police and Crime Evidence Act 1984
 - The Criminal Procedure and Investigations Act 1996
 - The Human Rights Act 1998
 - The Regulation of Investigatory Powers Act 2000
 - The Criminal Justice and Police Act 2001
 - Any formal procedures and codes of practice made under this legislation in so far as they relate to enforcement powers and responsibilities

EQUALITY AND DIVERSITY

21. The council as a public body is required to meet its statutory obligations under the Equality Act 2010 to have due regard to eliminate unlawful discrimination, promote equal opportunities between people from different groups and to foster good relations between people who share a protected characteristic and people who do not share it. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
22. An equality impact assessment has been completed which indicates that the policy has a potentially positive effect on the protected characteristics.
23. The policy advocates that all enforcement decisions will be fair, independent and objective. They will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.

SECTION 17 CRIME AND DISORDER ACT 1998

24. Section 17 of the Crime And Disorder Act 1998 (as amended by Police and Justice Act 2006) provides that: ‘...it shall be the duty of each authority ... to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all it reasonably can to prevent, crime, disorder, anti-social behaviour adversely affecting the environment, and substance misuse in its area’.
25. This policy directly assists the local authority in meeting its statutory duty under section 17 in the determining further enforcement action to achieve compliance and reduce criminal behaviour.

OPTIONS

26. Option 1 - To adopt the Regulatory and Community Safety Service Enforcement Policy at Appendix A.
27. Option 2 - To adopt the Regulatory and Community Safety Service Enforcement Policy at Appendix A with amendments.
28. Option 3 - Not adopt the Regulatory and Community Safety Service Enforcement Policy at Appendix A.

RISK MANAGEMENT

29. The current enforcement policy requires a review to be fully compliant with the Regulators’ Code under the Legislative and Regulatory Reform Act 2006. This legislation places a duty on the Isle of Wight Council as a regulator to have regard to the principles specified in the legislation.

30. To not have a compliant enforcement policy would put the council at a reputational risk and potential legal challenges in either civil or criminal cases. A poorly written policy could undermine the clearest of enforcement cases.
31. In the application of the previous policy, some investigations have shown that there need to be revisions to ensure consistency in application of the policy and specific guidance to the individual investigating officers in applying the policy. To not make these changes may also result in reputational issues or challenges in civil or criminal cases.

EVALUATION

32. The review focused on a number of changes to ensure consistency in enforcement (arisen in some investigations/cases), compliance with the Regulators Code and an update on equality and diversity issues. These main changes were:
 - Background - Updated reference to the new code of practice (Regulators Code) and the 6 principles
 - Purpose and scope - Now includes officers within community safety; removes environment officers
 - Approach - Makes it clear that we will seek the most effective approach to enforcement by coordinating action between enforcement agencies; that we will take account of approved codes of practice or other guidance document (e.g. work related deaths protocol); liaise with the primary authority (if there is one); utilise the financial investigator in relation to financial confiscation.
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 - Equalities and Human Rights - New section to include mental capacity act.
 - Appeals and complaints - New section
33. Although there were three responses to the consultation none of those responses had any particular concerns or issues with the proposed policy.

RECOMMENDATION

34. Option One. To adopt the Regulatory and Community Safety Service Enforcement Policy at Appendix A.

APPENDICES ATTACHED

[Appendix A](#) – Regulatory and Community Safety Enforcement Policy 2017-2020

BACKGROUND PAPERS

- Regulatory Service Enforcement Policy 2013 -2016 / Regulators Code, Better Regulation Delivery Office:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf
- [Equality Impact Assessment](#)

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WENDY PERERA
Head of Place

COUNCILLOR GARY PEACE
*Cabinet Member for Community Safety
and Public Protection*

Decision

Signed

Date
