
Better Regulation: Argyll and Bute Council Enforcement Policy

1.0 EXECUTIVE SUMMARY

- 1.1** Recognising the importance that regulation plays on contributing to a sustainable economy, the Scottish Government has published their Strategic Regulators Code outlining the principles of “better regulation”. The five key principles are that any enforcement is accountable, consistent, proportionate, targeted and transparent.
- 1.2** There is a duty on local authorities to develop an Enforcement Policy consistent with this Code and for their enforcement services, with the exception of development management, to work towards implementing these into their regulatory activities. This report proposes that the Council recognises its regulatory remit and develops an Argyll and Bute Council Enforcement Policy to demonstrate its commitment to meeting the Scottish Governments Regulatory Strategic Code.
- 1.3** It is recommended that Members
- Note the progress being made by services and the work planned for 2017 to adopt the principles of better regulation and sustainable economic growth,
 - Approve the attached Councils Enforcement Policy and recommend that it be forwarded for Policy and Resources Committee for further consideration,
 - Agree that all Council regulators, with the exception of development management, review their own enforcement arrangements against the Council Enforcement Policy and Regulatory Code to ensure that these are achieved. Areas for improvement should be detailed in an Improvement plan, together with timescales for completion within 6 months. These plans to be agreed by the appropriate Departmental Management Teams (DMT); and,
 - Agree that this report will form the basis of the Council's Annual Compliance Statement 2016/17 as required by the Code.

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2. INTRODUCTION

- 2.1** Recognising the importance that regulation plays on contributing to a sustainable economy, the Scottish Government has published their Strategic Regulators Code which outlines the principles of “better regulation”. The five key principles are that any enforcement is accountable, consistent, proportionate, targeted and transparent.
- 2.2** There is a duty on local authorities to develop an enforcement policy consistent with this Code and for their enforcement services, with the exception of development management, to work towards implementing these into their regulatory activities.
- 2.3** This report seeks Committee approval for the creation of an overarching Council Enforcement Policy which embeds key principles on how the Council's enforcement services deliver their business. The Council services which have been identified as having a regulatory role include Planning and Regulatory Services (environmental health, trading standards, licensing standards, animal health and welfare, and building standards), Governance and Law (licensing and antisocial behaviour), Roads and Amenity (amenity services and roads) and Social Work

3 Recommendations

- 3.1** It is recommended that Members
- Note the progress being made by services and the work planned for 2017 to adopt the principles of better regulation and sustainable economic growth
 - Approve the attached Councils Enforcement Policy and recommend that it be forwarded for Policy and Resources Committee for further consideration,
 - Agree that all Council regulators, with the exception of development management, review their own enforcement arrangements against the Council Enforcement Policy and Regulatory Code to ensure that these are achieved. Areas for improvement should be detailed in an Improvement plan, together with timescales for completion within 6 months. These plans to be agreed by the appropriate Departmental Management Teams (DMT); and
 - Agree that this report will form the basis of the Council's Annual Compliance Statement 2016/17 as required by the Code.

4 DETAIL

- 4.1 Section 5 of the Regulatory Reform (Scotland) Act 2014 has been used by Scottish Ministers to introduce the Scottish Regulators' Strategic Code of Practice. This Code places a duty on regulators to exercise their powers in accordance with the principles of better regulation (regulation should be **transparent, accountable, consistent, proportionate and targeted only where needed**) and to contribute to sustainable economic growth.
- 4.2 The Code applies to various devolved regulators and functions as well as the regulatory functions undertaken by local authorities. Regulators must take into account the Code's provisions, as well as regulator specific guidance including Codes of Practice/Frameworks, and give them due consideration when developing their policies or principles or in setting standards or giving guidance. Whilst the Scottish Government has specifically exempted development management function in the Code, the principles will be incorporated into their procedure, as appropriate.
- 4.3 The Code recognises that many regulators work with both devolved and reserved regulations and in partnership with UK Regulators e.g. Health and Safety Executive. The Code is intended to work alongside the UK Regulators' Code without additional burdens being placed on either regulators or business.
- 4.4 Laws and regulations also play an essential role in fostering a prosperous, fair and safe society. They provide essential rights and protections for citizens, consumers, workers, businesses, communities and the environment, can stimulate innovation and modernisation and support economic development. Often, achievement of regulatory outcomes delivers multiple benefits – for communities, the environment and the economy.
- 4.5 The Code suggests that all Regulators should adopt the following high level operational approaches:
- Adopt a positive enabling approach in pursuing outcomes that contribute to sustainable economic growth
 - Recognise, in their policies and practices, a commitment to the five principles of better regulation described in paragraph 4.1.
 - When fulfilling the core regulatory remit be alive to other interests, including relevant community and business interests; taking business factors appropriately and proportionately into account in their decision making processes; and protecting public health and safety
 - Adopt risk and evidence based protocols which help target action where it is needed and helps to ensure the achievement of measurable outcomes.
 - Develop effective relationships with those they regulate and have clear two-way communication in place
 - Tailor their approach depending on the nature of the sector they are

regulating and the desired outcomes. This includes a commitment to advising and supporting those who seek to comply, allied with robust and effective enforcement when justified

- Pursue continuous improvement in regulatory practice based on the principles of better regulation.

4.6 It is expected that regulators will have mechanisms in place for gaining stakeholder feedback on both service delivery and on alignment with the Code.

4.7 The Scottish Government is committed to making sure the Strategic Code is fully implemented. It is currently undertaking a review of the effectiveness and progress with embedding the Code, and the Council will contribute to this review.

5. Argyll and Bute Council Actions to Date

The Council services which have been identified as having a regulatory role include Planning and Regulatory Services (environmental health, trading standards, licensing standards, animal health and welfare, and building standards), Governance and Law (licensing and antisocial behaviour), Roads and Amenity (amenity services and roads) and Social Work. All have been asked to consider the Code and try to establish whether their existing policies and procedures are generally in line with the Code's principles.

Feedback has generally been positive and whilst it was evident that most followed the 5 key principles and many had enforcement policies in place, it was difficult to evidence this across all areas. The absence of any overarching Council Enforcement Policy was also identified as an issue.

In general terms there is some work to do and the starting point is to agree a Council Enforcement Policy and for each service to review their own procedures against this policy. Appendix 1 details the Council's first overarching Enforcement Policy for consideration and approval.

Thereafter, it is intended that each should develop an Improvement Plan outlining actions which will be required to demonstrate that they meet the Council's Enforcement Policy, and that best practice will be shared by a Group comprising of Officers from each regulatory service.

4.8 The Criminal Justice (Scotland) Act 2016 will introduce some key changes that will impact on police and non-police reporting agencies. Revised guidance is expected from the Crown Office later this year, and it is expected that "agencies", including the Council, will have to publish details of their "organisational arrangements" relating to enforcement. This Policy, together with the Council's Scheme of Delegation will form the basis of these arrangements although it is anticipated that further work will be necessary.

6.0 CONCLUSIONS

- 6.1** The Scottish Government wants all regulators to help achieve sustainable economic growth during regulatory activity. By complying with the Scottish Regulators' Strategic Code of Practice, the Council strategic priorities will also be met.
- 6.2** Better regulation plays a key role in supporting a sustainable economy as well as protecting public health and public safety. The Council has a responsibility to comply with the Scottish Government's Regulatory Strategic Code, and the approach advocated in this report, will ensure that it will have the framework to demonstrate this and deliver the necessary improvements.

7.0 IMPLICATIONS

7.1	Policy	This report is consistent with Council's strategic priorities and proposes a new Enforcement Policy
7.2	Financial	No financial or procurement implications associated with this report
7.3	Legal	This relates to regulatory services currently provided by the Council.
7.4	HR	No personnel related issues
7.5	Equalities	The initial screening indicates there are no equalities issues associated with this report or the amended enforcement policy which is presented for approval.
7.6	Risk	There is no risk at this stage but all parts of the Council will need to consider their policies and plans, staff training, gathering feedback etc. to ensure they are consistent with the Code and maintain the Councils reputation.
7.7	Customer Service	The enforcement policy is consistent with the Councils Customer Charter

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6th February 2017

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APPENDICES:

Appendix 1; ARGYLL AND BUTE COUNCILS ENFORCEMENT POLICY

Appendix 1

ARGYLL AND BUTE COUNCIL ENFORCEMENT POLICY

1 Introduction

1.1 Argyll and Bute Council have a range of statutory duties where it is responsible for ensuring compliance with legislation and statute using enforcement powers.

1.2 This document sets out Argyll and Bute Council's Enforcement Policy and explains what "regulated persons" can expect from us. We have based our approach to enforcement on the Legislative and Regulatory Reform Act 2006¹ and the Regulatory Reform (Scotland) Act 2014²

1.3 Definitions

Regulated person(s) means anyone who must comply with the laws we enforce.

Regulated persons will mainly be businesses and their employees but may also include non-business organisations, private individuals and Argyll and Bute Council. Any enforcement actions taken against the Council will follow the same enforcement principles.

than those used against other regulated persons.

- *enforcement* includes all action taken by us following discovery of a breach of the law with the ultimate aim of ensuring that someone complies with the law. Therefore, for the purposes of this policy, the provision of compliance advice is regarded as a form of enforcement, albeit informal.
- formal enforcement action means all enforcement action except for the provision of: compliance advice, or the issue of warnings. Formal enforcement action includes the issue of statutory notices, fixed penalties, applications to a civil court for an enforcement order, reports to the Procurator Fiscal recommending criminal proceedings, reports to the licensing committee or licensing board recommending that a licence is suspended, or Remedial Action Notices. Formal enforcement action also includes the use of non-routine investigatory powers, including the power to seize and detain goods and documents, the power to apply to a sheriff for a warrant to enter premises by force, or the power to prohibit access to unsafe premises or equipment pending an investigation.

2 Our aims

2.1 Good regulation plays a key role in protecting society and supporting a sustainable economy.

2.2 Any enforcement action taken by the Council will have regard to the 5 key principles namely that it is **transparent, accountable, consistent, proportionate and targeted only where needed**

- 2.3 The Act applies to regulatory functions that are devolved to the Scottish Government, including environmental health, trading standards; alcohol and taxi licensing. Section 4 requires regulators to contribute to achieving sustainable economic growth. Section 5 implements a Scottish Regulators' Strategic Code of Practice to which all regulators must have regard although the guidance specifies that it does not apply wholly to development management.

3 The Principles of Enforcement

- 3.1 Argyll and Bute Council is committed to firm but fair enforcement of health and safety law. The Council's approach is informed by the following principles:

Proportionality, which means that enforcement action relates to the risks, to the seriousness of any breach and to any actual or potential harm arising from a breach of the law.

Targeting, which means that the regulatory activities of the Council are directed primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled. Targeting also requires that action is focussed on the regulated person who is responsible for the risk and who are best placed to control it.

Consistency, which means taking a similar approach in similar circumstances to achieve similar ends. This is not the same as uniformity and requires the exercise of professional judgement and discretion by inspectors.

Transparency, which means helping regulated persons to understand what is expected of them and what they should expect from the Council as an enforcing authority. It also means making clear to regulated persons not only what they have to do, but where this is relevant, what they don't. This means distinguishing between statutory requirements and advice or guidance about what is good practice but not compulsory. Public transparency also requires that the Council shall publish enforcement policies, guidance and successful enforcement actions such as prosecutions.

Accountability, which means that the Council, as an enforcing authority, is accountable to the public for its actions. This means having a clear and accessible complaints procedure which is brought to the attention of those with whom inspectors come into contact.

4 Purpose and Methods of Enforcement

- 4.1 The purpose of enforcement is to:

- Ensure that regulated persons take action to deal immediately with serious risks; Promote and achieve sustained compliance with minimum legal standards;
- Ensure that regulated persons who breach minimum legal requirements, and directors or managers who fail in their responsibilities, may be held to account, which may include recommending prosecution. The methods of enforcement are:
- Giving information and advice, either verbally or in writing;
- Serving improvement or prohibition notices;

- Making a recommendation of prosecution to the Procurator Fiscal.
- In addition to the methods of enforcement set out above, inspectors have powers under section 20 of the Act to deal with causes of immediate danger in the workplace.

4.2 In doing so we aim to ensure that any enforcement decision seeks to:

- ensure that any regulated persons take action immediately to remove serious risks,
- promote and achieve sustained compliance by regulated persons
- treat all regulated persons fairly, and be helpful to regulated persons who wish to comply,
- support those who comply by targeting those who don't, in particular by taking firm action against those who flout the law or act irresponsibly,
- contribute to achieving sustainable economic growth by ensuring that we carry out our duties and our function in a way that we minimise the burden on regulated persons that is compatible with our regulatory functions, and
- communicate this policy effectively to those people who are affected by it.

4.3 Regulatory functions include advice, guidance, licensing, permissions and consent, inspections, monitoring and enforcement.

5 Enforcement Decisions

5.1 Enforcement decisions shall be taken having regard to Council's Enforcement Policy, Crown Office Guidance for non-police reporting agencies and other specific Regulators professional guidance. Regulator-specific standards, guidance or codes of practice should provide more detailed operational policy to reflect regulator's own Circumstances and specific regulatory functions.

5.2 Enforcement decisions shall be made in accordance with the principles set out at section 3 of this policy, and considering the following criteria:

- (i) The seriousness of the breach and in particular its impact on the safety, health and well-being of all those affected by it
- (ii) The impact on people who are especially vulnerable, for example by reason of age, disability or any other impaired ability to protect themselves, and in particular whether such people were specifically targeted by the regulated person
- (iii) The steps which the regulated person took, or the reasonable steps which they failed to take to prevent the offence
- (iv) The history of compliance and in particular whether any previous warnings went unheeded
- (v) Evidence of fraudulent, deliberate, irresponsible, reckless or negligent behaviour, or evidence of aggression or harassment
- (vi) The extent to which the regulated persons accepts their responsibilities and is willing to respond to advice
- (vii) Whether the non-compliance has been rectified
- (viii) The need to prevent further breaches and the confidence that the

- relevant person will do so
- (ix) The nature of the evidence available

- 5.3 We will work collaboratively with other regulators to minimise the risk of different regulators acting inconsistently. Where the law allows, we will share information with other regulators to help target resources and minimise duplication.

6 Enforcement in premises in which Argyll and Bute Council may have an interest

- 6.1 A potential conflict of interest may occur where Argyll and Bute Council is the relevant enforcing authority in relation to premises in which it also has an ownership or management interest. A conflict of interest can either be an actual or a perceived conflict of interest.
- 6.2 Argyll and Bute Council shall otherwise carry out its enforcement policy and practice in exactly the same way that it does for all other premises and regulated persons.

7 Appointment of Inspectors

The Councils Scheme of Delegations provides the framework to appointment of authorised enforcement officers.

8 Appeal Provisions

- 8.1 The Council will advise regulated persons of any appeal provisions which may be available to them in the event of formal enforcement action.
- 8.2 If any regulated person is dissatisfied with any aspect of our service that is not covered by the right of appeal in para 2.3 above, they can use the Council's complaints procedure. This will consider whether we have not complied with the Council's Enforcement Policy or the Regulators Strategic Code of Practice.

9 Review

This policy will be reviewed a minimum of every 2 years.