

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Portfolio Holder for Public Protection

To: Policy Development Panel Tuesday, 16 November 2021
Cabinet, 14th December 2021

(Author: Donna Hall Head of Public Protection)

Subject Corporate Enforcement Policy

Purpose: To seek approval of a revised corporate Enforcement Policy

Recommendations:

- 1) That the revised Corporate Enforcement Policy be considered by the Policy Development panel
- 2) That the revised Corporate Enforcement Policy be recommended to go to Cabinet for approval
- 3) That Head of Public Protection and the Assistant Director Regulatory be given delegated authority to make such amendments to this policy as may from time to time be required in order to (i) reference any links or amended links to other documents as may be required; and (ii) reflect any issues over which the Council has no discretion including, but not limited to, references to any legislative changes and amended guidance. Any material amendments to the policy will be subject to the usual approval process in line with the Constitution.
- 4) That all Service Managers responsible for enforcement action under this policy be given delegated authority to take, in exceptional circumstances, such action in departure from any part of this policy as they consider appropriate subject to (i) the reasons for such departure being documented; and (ii) consultation with the relevant portfolio holder or Committee Chairman.

1.0 BACKGROUND

- 1.1 The Council is responsible for enforcing a wide range of legislation, with powers of enforcement usually delegated to individual officers in the various service areas concerned. The decision to take (or not take) enforcement action is a serious one that may have implications for all involved. It is therefore important that there is a policy in place that ensures fairness, openness, and consistency.
- 1.2 Regulatory activities can take different forms including:
 - Inspecting premises, processes, equipment, vehicles, products
 - Investigating complaints about individuals and business
 - Providing advice about how to comply with the law
 - Taking action at Licensing Panels or undertaking Licensing Reviews
 - Issuing fixed penalty notices, statutory notices or taking prosecutions

- 1.3 Cabinet approved a revised Enforcement Policy in May 2018 which was significantly updated at that time to reflect the national Regulators' Code. The policy has now been refreshed as part of a three-yearly review.
- 1.4 The Regulators' Code remains in place but has not been updated since it came into statutory effect in 2014. It provides a clear flexible and principles-based framework for how regulators should engage with those they regulate. The Code however does not apply to the Town and Country Planning Act nor building regulation enforcement. The principles of the Code however are adopted through this policy across all areas. The revised policy continues to reflect these principles, which we are required to have regard to when developing policies and procedures that guide our regulatory activities.
- 1.5 The policy has been reviewed and updated in consultation with the following departments: Legal; Communities; Housing; Environmental Services; Public Protection; Revenue and Benefits; Planning and Building Control; Finance.
- 1.6 The amendments and additions to the policy are highlighted in yellow in the draft policy, which is attached at Appendix A to this report. In summary, there are no changes to the principles of the policy, but the following inclusions are being proposed:
- Footnotes and hyperlinks now included
 - Scope of the policy extended to include a deviation clause (section 3)
 - Updated legislation for investigations (section 5)
 - Reference to offence of obstruction (section 5.1)
 - New section on training and appointment of officers (section 5.3)
 - Further information on the refusal, suspension and revocation of licences (section 6.1 h)
 - New section on Proceeds of Crime Act (section 6.1 i)
 - New section on safeguarding (section 7.0)

2.0 **OPTIONS**

- 2.1 Provide feedback on the revised Enforcement Policy and agree it to go to Cabinet for approval with the recommended delegations
- 2.2 Provide feedback on the revised Enforcement Policy and agree it go to Cabinet without the recommended delegations
- 2.3 Do nothing and retain the previous 2018 version of the policy.

3.0 **REASONS FOR RECOMMENDATION(S)**

- 3.1 To ensure legal compliance and best practice, it is recommended that the policy is considered and taken to Cabinet for approval.

4.0 **EXPECTED BENEFITS**

- 4.1 The revised policy sets out the standards that will be applied across the Council when acting in its role as regulator. It also sets out what residents, businesses and workers can expect from South Holland.
- 4.2 The adoption of the revised policy helps to ensure that officers undertaking regulatory work will do so in a consistent and transparent way and in accordance with legal requirements.
- 4.3 An enforcement policy helps the Council to demonstrate it is working in accordance with the Regulators' Code and reduces the risk of challenge in the courts.

5.0 **IMPLICATIONS**

In preparing this report, the report author has considered the likely implications of the decision - particularly in terms of Carbon Footprint / Environmental Issues; Constitutional & Legal; Contracts; Corporate Priorities; Crime & Disorder; Data Protection; Equality & Diversity/Human Rights; Financial; Health & Wellbeing; Reputation; Risk Management; Safeguarding; Staffing; Stakeholders/Consultation/Timescales; Transformation Programme; Other. Where the report author considers that there may be implications under one or more of these headings, these are identified below.

5.1 **Constitutional & Legal**

- 5.1.1 The revised policy has been considered by Legal Services
- 5.1.2 Under the terms of the Constitution approval of this policy is a Cabinet function

5.2 **Corporate Priorities**

- 5.2.1 Enforcement supports the following Council priorities:
- Your Home;
 - Your Place;
 - Your Health and Wellbeing;
 - Your Opportunity; and Our Council.

5.3 **Crime and Disorder**

- 5.3.1 The report outlines the Councils approach to tackling crime and disorder. There are no implications arising from this report.

5.4 **Data Protection**

- 5.4.1 Data protection requirements and principles have been addressed within the policy, including the sharing of information with other agencies.

5.5 **Equality and Diversity / Human Rights**

- 5.5.1 The proposed amendments to the policy do not give rise to any equality, diversity, or human rights implications.

5.6 **Health & Wellbeing**

5.6.1 This report supports the regulatory work undertaken by the Council to promote health and wellbeing of residents, visitors and workers.

5.7 **Reputation**

5.7.1 The adoption of the revised policy supports the Council's approach to regulatory activity as being fair and proportionate, promoting a positive image of the Council and reducing the risk of reputational damage.

5.8 **Risk Management**

5.8.1 The adoption of the revised policy and adherence by officers should reduce the risk of the Council being open to legal challenge or judicial review.

5.9 **Stakeholders / Constitution / Timescales**

5.9.1 The policy has been revised following consultation with all service areas involved in regulatory work. The original policy was open to public and stakeholder consultation prior to it being adopted by Cabinet.

5.9.2 Public consultation on the amended policy was not considered appropriate as the amendments are not material.

6.0 **WARDS/COMMUNITIES AFFECTED**

6.1 All wards and communities within South Holland

Background papers:-

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Key Decision: Y

Exempt Decision: N

This report refers to a Mandatory Service

Appendices attached to this report:

Appendix A Draft Revised Corporate Enforcement Policy