

REPORT FOR DECISION

Agenda Item	
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DECISION OF:	Cabinet
DATE:	19th December 2012
SUBJECT:	Environmental Services- Enforcement Policy
REPORT FROM:	Cllr Gill Campbell – Cabinet Member Neighbourhoods and Regeneration
CONTACT OFFICER:	Lorraine Chamberlin Head of Environmental Protection
TYPE OF DECISION:	KEY DECISION
FREEDOM OF INFORMATION/STATUS:	This paper is within the public domain
SUMMARY:	<p>This report seeks approval to adopt a revised and updated Environmental Services Enforcement Policy with immediate effect which covers the enforcement and regulation carried out under the remit of Bury Council’s Environmental Health, Licensing and Trading Standards services and replaces earlier enforcement policies. Approval is also sought to delegate authority to the Executive Director of EDS after consultation with the Executive Member for Neighbourhoods and Regeneration and Assistant Director - Legal and Democratic Services to make amendments to the policy if there are legislative or national guidance changes.</p>
OPTIONS & RECOMMENDED OPTION	<ol style="list-style-type: none"> 1. Approve the updated Environmental Services Enforcement Policy as set out in Annex 1 (recommended). 2. Approve the updated Environmental Services Enforcement Policy as set out in Annex 1 but with specific amendments. 3. Refuse to adopt the updated Environmental Services Enforcement Policy as set out in Annex 1 (not recommended).

IMPLICATIONS:	
Corporate Aims/Policy Framework:	Do the proposals accord with the Policy Framework? Yes
Statement by the S151 Officer: Financial Implications and Risk Considerations:	<p>The purpose of the policy is to ensure compliance with the law and with regulations. Whilst there may be some income from the issue of penalties it is difficult to estimate the total receivable. It is not planned to introduce additional budget targets following the introduction of the policy.</p> <p>The cost of any enforcement, preventative or remedial action will be met from existing budgets, primarily those for the staff involved in the activities. Resources in kind will also be available from the partner organisations that work with the Council on enforcing the policy. Legal costs may be incurred for cases taken to prosecution, though these may be recoverable from the defendant.</p> <p>The risks are identified in para 2.5 of the report; the main concern is that having an outdated policy could result in legal challenges to the Council's enforcement and regulatory regimes. Adoption of the policy will mitigate this risk</p>
Statement by Executive Director of Resources:	Introduction of the policy and coordinated work with partner agencies will reduce the Council's exposure to risk and aims to make the most effective use of limited resources. To protect its finances the Council will seek to recover the full cost of remedial works & legal costs from those responsible for breaching regulations.
Equality/Diversity implications:	No
Considered by Monitoring Officer:	<p>Yes</p> <p>The Council is responsible for enforcing a wide range of legal obligations many of which carry criminal sanctions for non compliance. Enforcement should be seen as part of the "toolbox" to fulfil any statutory duties and to achieve the Council's strategic priorities and outcomes. It should also be proportionate and risk based. To this end, the Enforcement Policy sets out general principles the Council would follow in relation to regulation of environmental issues falling within the remit of Environmental Services.</p>

Wards Affected:	All Wards
Scrutiny Interest:	

TRACKING/PROCESS

DIRECTOR: EDS

Chief Executive/ Strategic Leadership Team	Cabinet Member/Chair	Ward Members	Partners
	26 th November 2012		
Scrutiny Committee	Cabinet/Committee	Council	
	19 th December 2012		

1.0 BACKGROUND

1.1 Fair and effective regulation and enforcement is essential to protect the health and safety of the public, the economic interests of businesses and the environment in the Bury Council area. It is recognised that decisions about enforcement action, and in particular the decision to prosecute, can have serious implications for all involved. The Environmental Services enforcement policy seeks to ensure that enforcement action is fair, proportionate and consistent and that everyone understands the principles which are applied when enforcement action is considered.

2.0 ISSUES

2.1 The updated Environmental Services Enforcement Policy will contribute to many of the Council’s Corporate objectives including making Bury a better place to live, putting residents needs first and operating in an open and transparent way. It will also help promote greater individual, personal and corporate responsibility in the Borough.

2.2 The existing Environmental Services Enforcement policy is several years old and requires updating to take account of new guidance, the increasing availability of disposal by way of fixed penalty and best practice identified by Bury Council’s enforcement officers and legal officers.

2.3 The policy will be published on the Council’s website so that residents, businesses and those who visit the Bury Council area will know what to expect from the Council’s Environmental Health, Trading Standards and Licensing services in an open and transparent way.

3.0 REVIEW

3.1 The policy will be reviewed every 2 years unless circumstances such as changes in legislation or Government guidance require it to be carried out at an

earlier date. Review may also take place through audit of those service areas accredited to ISO 9001 : 2008.

- 3.2 It is proposed that amendments to the policy resulting from changes in legislation or guidance can be made in consultation with the relevant Cabinet Member, Director of Environment and Development Services and Assistant Director – Legal and Democratic Services

4.0 RISK MANAGEMENT

- 4.1 The risks to the Council from not having an updated policy are:

Legal challenge on decisions to take enforcement action if there is no enforcement policy in place; or if there are omissions in an old policy. This may weaken local regulation and may result in a deterioration of environmental standards or business compliance and may pose a risk to the public's health and safety.

Financial penalty to the Council in the form of costs or damages awarded where cases are challenged in Court for not following current guidelines and policy

Undermining of local environmental improvement campaigns. The new policy clarifies the position with regard to issuing fixed penalty notices in the first instance without the need for prior warning or an opportunity to make amends. This will assist the Council to follow up cases of non payment with prosecution.

Reputational damage if the Council does not act in a consistent, transparent, fair and equitable manner as defined in the updated Environmental Services Enforcement policy

5.0 EQUALITY AND DIVERSITY

- 5.1 An Equality Analysis was carried out during the development of the enforcement policy and this concluded that the effect of the policy on equality was neutral and that there would be no impact on cohesion. Therefore we propose to proceed with the updated Environmental Services Enforcement policy subject to Cabinet approval

- 5.2 Officers completing the Equality Analysis:

Lorraine Chamberlin - Head of Environmental Protection
l.chamberlin@bury.gov.uk

Tina Murray – Unit Manager Clean Neighbourhoods t.murray@bury.gov.uk

Equalities Representative consulted – Natasha Franklin – Unit Manager Health and Safety n.franklin@bury.gov.uk

6.0 CONSULTATION

Officers from all of the services covered by the policy have been involved in the writing of the policy document. Legal Services officers have been consulted throughout the policy development and the policy has been benchmarked against other public body enforcement policies and national guidelines.

7.0 CONCLUSION

The Cabinet is asked to adopt the updated Environmental Services Enforcement policy in the form outlined in Option 1 above.

Annex 1

Updated Environmental Services Enforcement policy



Q:\Secretariat - PAs'
Directorate\T.Thomas

Background Papers

Existing Environmental Enforcement Policy on Bury Council Website

<http://www.bury.gov.uk/CHttpHandler.ashx?id=1573&p=0>

Contact Details:-

Lorraine Chamberlin
Head of Environmental Protection
0161 253 5519
l.chamberlin@bury.gov.uk