

Classification: Open	Decision Type: Key
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Report to:	Cabinet	Date: 10 January 2024
Subject:	Adoption of Public Protection Enforcement Policy	
Report of	Cabinet Member for Culture, Economy and Skills	
Report of	Cabinet Member for Environment, Climate Change and Operations	
Report of	Cabinet Member for Housing Services	

1.0 Summary

- 1.1 This report outlines the need for updating the enforcement policy within the Public Protection Service of the council. Recognising the dynamic nature of regulatory landscapes and the evolving challenges faced by the public, this update aims to strengthen the council's ability to safeguard public interests, enhance compliance, and ensure the effective enforcement of regulations.
- 1.2 The purpose of this report is to seek member approval of the attached Bury Council Public Protection Enforcement Policy found in Appendix 1. This new Enforcement Policy supersedes previous versions ensuring practices are in line with good governance and reflects recent changes in legislation, regulation, and enforcement options.
- 1.3 The policy provides guidance to officers, businesses and the general public on the range of options that are available to achieve compliance with legislation enforced by the Council's various regulatory services. It is designed to help officers; businesses and the general public understand our objectives and methods for achieving compliance and the criteria we consider when deciding the most appropriate response to a breach of legislation.
- 1.4 The policy document has been updated and changed to expand the scope of the policy to include all areas of Public Protection and to reflect the current structure of the Council. This matter affects all wards within the Borough.
- 1.5 This matter is a key decision.

2.0 Recommendation(s)

2.1 Council is requested to approve the adoption of the revised enforcement policy found in Appendix 1 which will ensure fair and transparent use of enforcement action and activities through existing delegated powers arrangements to officers in their statutory and non statutory enforcement activities.

3.0 Reasons for recommendation(s)

3.1 The revised enforcement policy is an essential requirement to ensure that the Council adopts a consistent and fair approach to enforcement and the current enforcement policy no longer reflects recent changes to enforcement strategies and regulatory enforcement options available to the Council.

3.2 The revised enforcement policy will ensure that the Council's regulatory services operate under a Policy which has been reviewed in line with good governance.

3.3 The revised enforcement policy will provide a number of regulatory services across the Council with a clear policy to ensure that enforcement, when absolutely required, is conducted in a consistent, proportionate, transparent and targeted fashion.

4.0 Alternative options considered and rejected

4.1 Not updating the policy could be considered an option, however for the purposes of good governance, best practice and to reflect the changes in legislation, regulation and enforcement options available to Council enforcement officers to ensure the policy reflects current operational practices and enforcement options.

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Background

5.0 BACKGROUND

5.1 The Council has a key role to play in establishing an environment that assists in supporting and facilitating the growth of business and supporting local economic prosperity. At the same time there is the equally important role in protecting public health and safety and promoting community health

and well-being and protecting the environment. Fair and effective enforcement underpins this and ensures that we protect health, safety and quality of life for all those who live, visit and work in Bury and ensures that those businesses and individuals who undertake regulated activities do so lawfully.

5.1 The Regulatory Enforcement and Sanctions Act 2008 established The Local Better Regulation Office (LBRO). Over time this evolved into the Better Regulation Delivery Office (BRDO) which then became Regulatory Delivery (RD). The Office for Product Safety and Standards (OPS&S) succeeds the former Regulatory Delivery and works with local authorities and others to take forward its responsibilities, including Primary Authority and Better Business for All. It is part of the Department for Business, Energy and Industrial Strategy (BEIS).

5.2 The Act also imposed upon Public Protection a duty to:

- a) have regard to any guidance given to a Local Authority by OPS&S,
- b) a duty to comply with guidance where we are directed to do so by OPS&S, and
- c) a duty to have regard to any list of enforcement priorities published by OPS&S.

We are committed to doing so.

5.3 The Regulators Code (RC) provides a set of principles for Regulators to consider,

- a) Regulators should carry out their activities in a way that supports those they regulate to comply and grow.
- b) Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views.
- c) Regulators should base their regulatory activities on risk.
- d) Regulators should share information about compliance and risk.
- e) Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.
- f) Regulators should ensure that their approach to their regulatory activities is transparent.

5.4 Section 6 of the Regulators' Code sets out an expectation that local authorities will ensure that their approach to their regulatory activities is transparent. This means we will publish our policy on how we intend to deliver regulation and what those affected can expect. We believe that our enforcement policy is clear, concise, transparent and fit for purpose. Included in our enforcement policy is the way we will deal with issues and what those regulated can expect.

5.5 The RC indicates that it is for each local authority to determine an approach to service standards that will work best for those it regulates and itself.

- 5.6 This policy commits Bury Council's Public Protection Service to good enforcement practice with effective procedures and clear policies. The Service includes the Environmental Crime, Environmental Health, Environmental Protection, Licensing, Trading Standards and Private Sector Housing.
- 5.7 This document has been prepared with regard to the current principal legislation and statutory guidance including:
- The Regulatory Enforcement and Sanctions Act 2008 (The RES Act).
 - Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 SI665/2009 (The CRE Enforcement Order).
 - Co-ordination of Regulatory Enforcement (Procedure for References to RD) Order 2009 SI670/2009 (The CRE BRDO Order).
 - Legislative and Regulatory Reform Act 2006 (LRRRA).
 - Legislative and Regulatory Reform (Regulatory Functions) Order 2007 Regulators' Code (RC).
- 5.8 The document has also been prepared having regard to:
- The Enforcement Concordat: Good Practice Guide for England and Wales and the Principles of Good Enforcement: Standards; Openness; Helpfulness; Complaints; Proportionality and Consistency; the Human Rights Act 1988 and the Code for Crown Prosecutors.
 - The LRRRA Part 2 requires us also to have regard to the Principles of Good Regulation. We recognise that our regulatory activities should be carried out in a way which is proportionate, accountable, consistent, transparent, and targeted.
- 5.9 The primary function is to achieve regulatory compliance in order to protect the public, legitimate business, the environment, and groups such as consumers and workers. However, we reserve the right to take enforcement action in some cases after compliance has been achieved if it is in the public interest to do so. We will retain the discretion to depart from national guidelines where doing so will better meet local priorities and circumstances.

6.0 Scope and meaning of 'enforcement'

- 6.1 This Policy applies to all the legislation delegated to Public Protection Service and enforced by authorised officers with delegated enforcement powers employed by the Council. The delegated powers are listed and reproduced within the Council's constitution.
- 6.2 'Enforcement' includes any criminal or civil action taken by Enforcement Officers aimed at ensuring that individuals or businesses comply with the law.
- 6.3 For the purposes of The RES Act the term 'enforcement action' has been given a general statutory definition, which is:

- (a) action to secure compliance with a restriction, requirement, or condition in relation to a breach or supposed breach;
- (b) action taken in connection with imposing a sanction for an act or omission; and
- (c) action taken in connection with a statutory remedy for an act or omission.

7.0 Engagement/Consultation

- 7.1 Officers from each of the services were consulted and contributed to the policy and were satisfied that it reflected the provisions for regulation within their service.

Links with the Corporate Priorities:

- 8.0 The approval of the enforcement policy aligns itself to the 'Let's do it' principles, as will ensure a strategic and consistent approach to enforcement linked to improving outcomes in the Local communities in Bury. The enforcement policy will be used to ensure a clear open and transparent approach to enforcement which will strengthen and protect our local economy promoting Enterprise. The enforcement policy will ensure a fair and consistent approach to enforcement ensuring regulatory enforcement activities and regulators work consistently Together. The policy will enable the continuation of Strength based approach to regulatory enforcement and strengthen existing collaborative working across the Council, department and service.

Equality Impact and Considerations:

- 9.0 Whilst there are no implications arising directly from this report, officers when undertaking their statutory duties must have all due regard to the relevant Equalities legislation and guiding principles. For example, when considering whether to issue a fixed penalty notice or to require building works to be undertaken, the individual circumstances surrounding the alleged offence and critically the defendant's ability and capacity to comply must be considered on a case by case basis.
- 9.1 The EIA can be found in Appendix 2.

Environmental Impact and Considerations:

- 10.0 The effective and proper enforcement of regulatory services within Public Protection is essential to protect the local environment and the interests of residents, visitors and businesses in the borough from the harmful effects of environmental and public protection offences. The updated policy will help to ensure this remains the case.

- 10.1 There are no direct implications, however powers available to some officers support the improvement of local air quality, for example through enforcement of Clean Air legislation, which governs Smoke Control Areas including smoke from chimneys and the Environmental Protection Act 1990 which provides a legal basis and enforcement mechanism for other smoke and atmospheric issues to be controlled.
- 10.2 The regulation of specific commercial installations capable of emitting pollutants to the atmosphere also provide relevant authorised officers with powers to take enforcement action where specific atmospheric pollutant limits are breached.
- 10.3 This policy does not directly contribute to tackling climate change, however there is no known enforcement activity conducted under it which could act to the contrary.

Assessment and Mitigation of Risk:

Risk / opportunity	Mitigation
The risks identified are of not implementing the updated enforcement policy. There is a risk of legal challenge should the policy or the actions taken as a result of it, not be compliant with the legislation around which it is based.	All risks are fully mitigated through consultation with the Trading Standards North West Legal group and local legal advice on policy content

Legal Implications:

- 11 Under section 6 of the Human Rights Act 1998 the Council must not act in a way that is incompatible with the rights enshrined in the European Convention of Human Rights. In addition, section 146 of the Equality Act 2010 public sector equality duty requires equality considerations to be reflected in the design of policies and the delivery of services.
- 12 The Public Protection Enforcement Policy gives due regard to the provisions of the Human Rights Act 1998 and the Equality Act 2010 on how statutory and non-statutory enforcement activities and decisions under the Policy will impact and affect persons protected under the law.

Financial Implications:

- 13 There are no additional costs associated with this report. The income raised through civil penalties forms part of the budget framework and is reported through revenue budget setting and monitoring reports.
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Appendices:

Appendix 1 – Proposed Public Protection Enforcement Policy

Appendix 2 – Equality Impact Assessment

Background papers:

None

Please include a glossary of terms, abbreviations and acronyms used in this report.

Term	Meaning
RES	Regulatory Enforcement Sanctions Act
BEIS	Business, Energy and Industrial Strategy
BRDO	Better Regulation Delivery Office
CRE	Co-ordination of Regulatory Enforcement
LBRO	Better Regulation Delivery Office
OPS&S	Office for Product Safety and Standards
RC	Regulators Code