

## **Summary Sheet**

### **Council Report**

Cabinet and Commissioners' Decision Making Meeting – 13 March 2017

### **Title**

General Enforcement Policy – Minor Amendments

### **Is this a Key Decision and has it been included on the Forward Plan?**

Yes

### **Strategic Director Approving Submission of the Report**

Damien Wilson, Strategic Director of Regeneration and Environment

### **Report Author(s)**

Karen Hanson, Assistant Director, Community Safety and Street Scene

### **Ward(s) Affected**

All

## **Summary**

The Council has had an adopted General Enforcement Policy in place in a range of formats for a number of years. This Policy has been reviewed and updated on a number of occasions, most recently in 2016.

Following work to strengthen the Council's enforcement functions, the General Enforcement Policy has been reviewed in order to ensure that the Policy remains up to date.

This report requests the approval of a number of minor amendments within the Policy which, together with enhanced clarity, reflects the Council's progress since the review and update of 2016.

## **Recommendation**

That the suggested amendments to strengthen the Council's General Enforcement Policy made at 4.2, 4.3 and 4.4 of this report be approved for adoption.

## **List of Appendices Included**

Appendix 1 – RMBC General Enforcement Policy – amended version containing text suggested at 4.2, 4.3 and 4.4 of this report

## **Background Papers**

The following documents have been considered when preparing this report:

- Legislative and Regulatory Reform Act 2006
- Department for Business Innovation and Skills: Better Regulation Delivery Office, Regulator's Code (April 2014)
- RMBC General Enforcement Policy – 12th September 2016
- RMBC General Enforcement Policy – June 2016

## **Consideration by any other Council Committee, Scrutiny or Advisory Panel**

None

## **Council Approval Required**

No

## **Exempt from the Press and Public**

No

## **General Enforcement Policy – Minor Amendments**

### **1. Recommendations**

- 1.1 That the suggested amendments to strengthen the General Enforcement Policy made at 4.2, 4.3 and 4.4 of this report are approved for adoption.

### **2. Background**

- 2.1 The Department for Business Innovation and Skills: Better Regulation Delivery Office's, *Regulator's Code* of April 2014 is a statutory guidance document that Councils must have regard to when developing policies and operational procedures that guide some of their regulatory activities. This applies to the Council's current General Enforcement Policy in relation to its regulatory and enforcement functions.
- 2.2 The General Enforcement Policy is underpinned by the statutory principles of good regulation, but also ensures the priority of protecting the public.
- 2.3 The Policy sets out the principles of transparency, consistency and proportionality to which the Council will adhere in its discharge of enforcement and regulatory functions.
- 2.4 The current General Enforcement Policy was reviewed during 2014/15 in accordance with the then new *Regulators' Code*. The updated General Enforcement Policy was approved and adopted at Commissioner Ney's meeting of 3rd June, 2015 (item 1).
- 2.5 Subsequently, an amendment to the General Enforcement Policy was made to the wording of Section C4, to include provisions for monetary penalties following on from legislative changes. This amendment was made by Cabinet and Commissioners' Decision Making Meeting, 12th September, 2016 (minute 68).

### **3. Key Issues**

- 3.1 The Council has undertaken a great deal of work to strengthen its enforcement and regulatory functions. Significantly, many of the Council's enforcement functions have been brought together within the Community Safety and Street Scene section of the Regeneration and Environment Directorate, which has ensured focus and consistency in the delivery of regulatory and enforcement duties.
- 3.2 Subsequently, the General Enforcement Policy, as the backbone of the Council's philosophy and approach to enforcement and regulation, has been reviewed in light of its clarity and to reflect this.
- 3.3 Importantly, the review has identified potential benefits to the Policy from clarification of the flexibility allowed by the Regulator's Code to allow the regulator not to be bound by the Code where other matters outweigh those provisions, for example where there might be unacceptable health and safety risks to officers.

#### **4. Options considered and recommended proposal**

- 4.1 Review of the General Enforcement Policy has highlighted the need to update a number of paragraphs following the Council's consolidation of a range of enforcement functions within Regeneration and Environment, and the re-establishment of the Council's decision making process in its role as Licensing Authority.

Update 1: Structural Changes

- 4.2 To ensure that the Policy remains relevant, it needs to reflect the structural arrangements within the Council. Consequently, Section 3.2 of the General Enforcement Policy should be amended to read:

The Enforcement Policy relates to those enforcement and regulatory functions discharged by the Council's Community Safety and Street Scene service within the Regeneration and Environment Directorate

Update 2: Restoration of Licensing powers to the Council

- 4.3 The Policy is a living document and should reflect any relevant developments that impact on the delivery of the Council's enforcement functions. Accordingly, Section C8 of the General Enforcement Policy which deals with the refusal, suspension and revocation of licences should be amended to read:

The Council issues a number of licences and permits. The Council also has a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run and public safety is assured. Breach of these conditions may lead to a review of the licence which may result in its revocation or amendment.

When considering future licence applications, the Council may take previous breaches and enforcement action into account and also other matters which, on the balance of probability, may influence the assessment of a person to be a fit and proper person to hold a licence.

Update 3: Clarification of the flexibility contained within the Regulator's Code which allows officers to vary from the Policy and enforce at a later date.

- 4.4 In addition it was recognised that certain paragraphs within the Policy would benefit from clarification. The text of three sections, namely 4.7, 4.9 and 6.6, should be amended to clarify the degree of flexibility that the *Regulator's Code* allows. For example where circumstances present an unacceptable health and safety risk, officers could enforce at a later date without the need to engage in discussion first, such that:

Section 4.7 would be altered to read:

Formal enforcement action will generally only be considered and taken in the first instance in cases where individuals have exposed the public or employees to unacceptable risk, compromised safety or welfare to the public/employees, environment or animal health and/or sought to obtain an unfair commercial advantage, or other such situations that are considered to be so serious as to warrant formal action, including immediate action (or action taken at the first possible safe opportunity).

Section 4.9 would similarly be changed to read:

Where there is non-compliance, the Council will clearly explain the non-compliance and provide opportunity for discussion, to ensure consistency and proportionality, unless there is a need for immediate enforcement action (or action taken at the first possible safe opportunity), in which case the Council will document its decision.

Lastly, Section 6.6 would be amended to read:

Before formal enforcement action is taken:

- Where appropriate, unless immediate action is required e.g. to prevent the destruction of evidence, or, there is an imminent risk to the public or employees to unacceptable risk, compromised safety or welfare to the public/employees, environment or animal health and/or sought to obtain an unfair commercial advantage, or another relevant consideration, there will be an opportunity to discuss the circumstances of the case. This discussion will usually follow an interview under caution if a prosecution is being considered

4.5 The text of the General Enforcement Policy could be left unaltered, however this would mean that the Policy remained outdated, and that key flexibility provided at page three of the *Regulator's Code* would be omitted.

4.6 The preferred option would be to amend the text of the General Enforcement Policy as described in 4.2, 4.3 and 4.4. The suggested amendments would ensure that the Policy is up to date whilst enhancing the transparency of the Policy by demonstrating clearly to the reader, that the Council has flexibility where the provisions are not applicable, or where other considerations outweigh the provisions contained within the Policy.

## **5. Consultation**

5.1 Whilst the General Enforcement Policy stipulates at Section 8, that where there is potentially significant impact from any changes to the Policy, then the Council will consult on those changes. In this case, the suggested changes to the policy are minor amendments to clarify the wording of the Policy with no subsequent impact. Consequently no formal consultation with the public has been undertaken in relation to the suggested amendments. The Cabinet Lead for Waste, Roads and Community Safety and appropriate Commissioner have been consulted.

## **6. Timetable and Accountability for Implementing this Decision**

6.1 If approved, the proposed amendments will be made at the beginning of the next calendar month from the Cabinet and Commissioners' Decision Making Meeting.

## **7. Financial Implications**

- 7.1 There are no financial implications arising from these proposals.

## **8. Legal Implications (including procurement)**

- 8.1 The Council is required by the Legislative and Regulatory Reform Act 2006 to have regard to the Regulators' Code when developing policies and operational procedures that guide its regulatory activities. This applies to the Council's General Enforcement Policy and any revisions its wishes to make to that Policy. The proposed revisions are consistent with the principles of the Regulators' Code.
- 8.2 The changes to the Policy are minor alterations to clarify the existing situation, or to deal with structural changes, namely the return of powers to The Council and changes to the titles of departments. Consequently there is no requirement to consult on these changes.

## **9. Human Resources Implications**

- 9.1 There are no Human Resource implications arising from these proposals.

## **10. Implications for Children and Young People and Vulnerable Adults**

- 10.1 There are no direct implications for Children and Young People and Vulnerable Adults arising from this report.

## **11 Equalities and Human Rights Implications**

- 11.1 There are no equalities and/or human rights implications anticipated arising from this report. The proposed enforcement would not discriminate against any residents or business.

## **12. Implications for Partners and Other Directorates**

- 12.1 The proposed amendments to the General Enforcement Policy will have relevance to the regulatory and enforcement functions with the Regeneration and Environment Directorate. In particular those functions relating to Safer Neighbourhoods/Community Protection, Business Regulation, Dog Control, Parking and Highways Services, will need to be informed of the amendments.
- 12.2 There are no implications anticipated for partners or other Directorates.

## **13. Risks and Mitigation**

- 13.1 The *Regulator's Code*, implemented locally by the General Enforcement Policy, is a statutory guidance document, and failure to comply with its requirements presents the risk of the Council being in contravention of its statutory duties.
- 13.2 Failure to discharge its regulatory function may compromise public safety.

13.3 Compliance with the General Enforcement Policy gives confidence to business and individuals of the transparency and fairness of the Council's approach to enforcement, without which the Council's reputation and growth agenda might be at risk.

13.4 The Policy does not cover the regulatory and enforcement functions delivered by Planning and Building Control Services; this is because their regulatory statutory powers are not scheduled with Part 3 of the 2007 Order. The extant list of regulations covered by the *Regulators' Code* is found within the schedule to the Legislative and Regulatory Reform (Regulatory Functions) Order 2007.

#### **14. Accountable Officers**

Karen Hanson Assistant Director, Community Safety and Street Scene  
Damien Wilson Strategic Director, Regeneration and Environment

Approvals Obtained from:-

Finance and Customer Services Directorate,  
Business Partnering – Regeneration & Environment – Jon Baggaley

Legal Services – Neil Concannon

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