



# Borough of Oadby & Wigston

SERVICES COMMITTEE

10<sup>TH</sup> JUNE 2008

## Environmental Health and Licensing Law Enforcement Policy Update

Report of: Director of Community Services Report Number: 5 (d)  
Author: Mr. S.J. Bruce, Head of Environmental Health

### NON-EXEMPT

This report is likely to be considered while the meeting is open to press & public

### Summary:

This report requests Members' approval of updated policies for Environmental Health and Licensing law enforcement work.

### Recommendations:

- (1) That Members approve the policy attached as Appendix 1 to this report
- (2) That the policy runs until 30<sup>th</sup> June 2011, subject to (3) below
- (3) The policy is reviewed annually by officers to confirm it is still current, or more frequently where changes in legislation, guidance or good practice may require an update.
- (4) That any significant changes are brought back to Committee for consideration.
- (5) That delegated approval be given to the Heads of Environmental Health and Legal Services to make any amendments to the policy to reflect changes in legislation or guidance, where such amendments will have no effect on the strategic influence of the policy. These amendments will then be reported to Members via the Members Bulletin.

Level of delegation: (delegated to:)

Wards affected:

### Comments of Statutory Officers:

Head of Paid Service: None  
Proper Officer for Financial Affairs: None  
Monitoring Officer: None

### Appendices Attached:

Proposed Enforcement Policy for Oadby and Wigston

### Impact Assessments:

#### Health, Environment, Community Safety

These policies will help to determine appropriate action where there is a breach of environmental health or licensing law which could have an adverse effect on the health and safety of residents, workers or visitors to the borough, on the quality of the environment or on the safety of the community in general.

**Equal Opportunities:** The policy commits us to the principles of good enforcement which include openness, fairness and consistency

**Human Rights:** The policy seeks to ensure that the human rights of those enforced against or those whom officers are seeking to protect by applying enforcement action are all acknowledged and preserved.

**Risk Assessment:** Lack of an up to date enforcement policy acknowledging current guidance and good practice is a significant risk. Without such a policy in place, there is increased risk that our enforcement actions will be open to successful challenge.

### Commentary:

1. The Council's law enforcement policies for environmental health and licensing are due for review in 2008.
2. In order to simplify our enforcement policy documents, officers are recommending an alteration to the previous format and that Members approve one over-arching policy statement covering all environmental health and licensing enforcement work.
3. A small number of appendices will then be attached to this statement, to cover specific requirements for an individual enforcement service (one example of this is Health and Safety at Work enforcement, where additional statutory guidance produced by the Health and Safety Executive applies to this service only).
4. The policy and appendices will be supported by procedural guidance to officers, the aim of which is to ensure that (a) the policy is applied consistently, (b) the level of enforcement action that is chosen is appropriate to the risk presented by the breach of law and (c) officers are designated to take enforcement decisions according to their experience and seniority.
5. It will be the responsibility of the heads of environmental health and legal services to ensure the appendices and procedural documents are kept up to date.
6. Although no major changes in our approach to enforcement are proposed, there will be greater emphasis on supporting business, especially small and medium size business, with advice and information. This is in compliance with the new Regulators' Compliance Code which came into force on April 6<sup>th</sup> and which was reported in the Members Bulletin dated 30<sup>th</sup> April 2008.
7. In previous years we have issued a simple guide to our enforcement policy for the benefit of local businesses and if Members approve the new policy, the guide will be updated accordingly.

Background Papers referred to in compiling this report:- The Regulators' Compliance Code, published by the Department for Business, Enterprise and Regulatory Reform

## APPENDIX

### OADBY AND WIGSTON BOROUGH COUNCIL

#### ENFORCEMENT POLICY

One of Oadby and Wigston Borough Council's principal duties is the regulation of a number of activities, the purpose of which is to secure adequate protection of the public and the environment.

We do this by applying laws which we have either the power or a duty to enforce.

It is our intention to apply these laws in a fair and consistent way.

To help us do so, this enforcement policy is adopted as our commitment to the principles of good enforcement.

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This policy sets out what businesses and others who are regulated by Oadby and Wigston Borough Council can expect from our enforcement service. It commits us to –

- Protecting the public, the environment and groups such as consumers and workers
- Equitable and consistent enforcement actions
- Allowing and encouraging economic progress in our borough
- Taking care to help businesses and others meet their legal obligations
- Reducing unnecessary burdens on businesses
- Responding proportionately to regulatory breaches, including those of criminal behaviour which would have a damaging effect on legitimate business
- Taking firm action, including prosecution where appropriate, against those who persistently flout the law or act irresponsibly

By delivering these commitments, we believe we shall help to maintain a fair and safe trading environment and to promote the local economy.

We recognise that most businesses want to comply with the law and it is our commitment to help and encourage them to do so.

The policy is supported by appendices in which we have set out additional measures that will be adopted to enforce certain legislation, where specific guidance applies. This includes legislation relating to health and safety at work and food safety.

The policy and its appendices are based on advice and guidance from government departments (including the statutory Regulators' Compliance Code and the Enforcement Concordat), the Health and Safety Executive and its local authority unit, the Local Authorities Co-ordinators on Regulatory Services (LACORS) the Chartered Institute of Environmental Health, current best practice and the Crown for Code Prosecutors.

## **Aim and Application of this Policy**

The aim of this policy is to ensure that all enforcement action we take is **proportionate, consistent, transparent, targeted and accountable**.

In applying this policy we will –

- Enforce only within our areas of responsibility
- Work with employers, businesses and/or proprietors to achieve compliance with the law through education, the provision of advice and information and inspection
- Apply a risk based approach that is proportionate, targeted and flexible
- Adopt the principles of good enforcement (see Appendix A)
- Set clear guidance for officers to follow
- Provide adequate resources to enable the policy to be carried out

## **Action under this policy**

The Council recognises and will use a variety of actions to carry out its enforcement policy. These include –

- Informal action i.e. advice, assistance and education
- Issuing of a statutory notice – the type of statutory notice will be specified by individual laws. For the purposes of this policy, a statutory notice includes a fixed penalty notices
- Issuing of a formal caution
- Prosecution

Supporting guidance will be developed to identify officers who have sufficient training, knowledge and experience to make enforcement decisions (i.e. to determine which action is most appropriate).

When making enforcement decisions all officers who are authorised under this policy will abide by its requirements, its appendices and all supporting guidance.

Any departure from the policy will be exceptional, capable of justification and fully considered by the senior manager of the service before any decision is taken, unless it is considered that delaying the decision will cause significant and unacceptable risk to the public or the environment.

## **Competency of Enforcement Officers**

The council recognises that only appropriately authorised officers may carry out enforcement work and that authorised officers must have a competency level that is appropriate to the level at which they expected to enforce.

We therefore undertake to authorise officers both in accordance with our Constitution and the requirements of any specific legislation and guidance that may apply.

We will set guidelines to ensure that only officers with an appropriate level of competency are authorised, and that authorisation of an individual will reflect their level of competency.

We believe that competency may be demonstrated by a mix of training, qualification and experience and in order to maintain, develop and improve the competency of our enforcement officers, we will support the continuing professional development that is necessary to enable them to deliver this policy within the law and guidance that applies.

It is the responsibility of individual officers to keep a record of their own training and professional development, which will form part of the authority's record of ongoing training.

All authorised officers will be made aware of the requirements of this policy, where they are relevant to their operational duties. Initial training on recruitment and periodic refresher training of officers will be undertaken as necessary and their activities will be monitored to ensure compliance with this policy. This will be through regular management supervision.

### **Working with others**

The council recognises that many enforcement activities require an inter agency approach. In cases where this is necessary and appropriate, enforcement officers shall ensure that liaison is made with other interested bodies, in accordance with national and local guidelines.

### **Indemnification**

The council will indemnify officers that it has authorised against the whole of any damages or costs which may be involved, if it is satisfied that the officer honestly believed that the act or omission complained of was within their powers, that their duty as an officer entitled them to do it and that their action was appropriate given the information they had available at the time their decision was made.

Indemnification does not include any officer acting wilfully against instructions

Officers will be fully acquainted with the requirements of this policy and the procedures to carry it out and will carry out their duties at all times in support of and in compliance with this policy.

### **Review of Policy**

The policy will be reviewed regularly and developed to reflect changes in legislation or guidance. Reviews will also take into account improvements to the service and the particular interest in our authority of business owners and others that we regulate, their employees and the public.

In particular we will review the regulatory activity and interventions we carry out under this policy and consider the degree to which we may remove or reduce the regulatory burdens they impose.

Examples of when review will be undertaken include when a change in legislation or guidance, a significant enforcement enquiry or dispute and as a result of feedback or consultation from businesses.

The next major review of this policy will be no later than 30<sup>th</sup> June 2011.

### **Complaints Procedure**

The council is committed to providing an easy way for anyone wishing to challenge or complain about our enforcement action. Any complaints about this policy or its application will be dealt with in accordance with our formal complaints procedure, a copy of which is available on request.