

Agenda Item	14.
Report No	CP/17/22

THE HIGHLAND COUNCIL

Committee: Communities and Place

Date: 17 August 2022

Report Title: Enforcement Policy for Environmental Health and Waste Services

Report By: Executive Chief Officer, Communities and Place

1. Purpose/Executive Summary

- 1.1 The Scottish Government's Better Regulation agenda aims to support the growth of Scotland's economy by championing the five principles of Better Regulation - Proportionate, Consistent, Accountable, Transparent and Targeted. The Regulator's Code of Practice issued under the Regulatory Reform (Scotland) Act 2014 requires the Council to commit to these principles in its approach to enforcement.
- 1.2 The existing enforcement policy to meet these requirements was approved in 2018. It has been reviewed to ensure that the team's activities continue to align with the Better Regulation principles of any regulation being transparent, accountable, proportionate, consistent and targeted.
- 1.3 The review did not identify any significant omissions and therefore minor changes made are recommended which are in respect of:
 - Format changed to improve alignment with the better regulation principles;
 - Added further information on working with other regulatory bodies;
 - Updates to complaints procedure, contacts and weblinks.**Appendix 1** contains the revised enforcement policy.

2. Recommendations

- 2.1 Members are asked to:
 - i. approve the updated Enforcement Policy for Environmental Health and Waste Services

3. Implications

- 3.1 **Resource** - there are no resource implications arising from this report.
- 3.2 **Legal** – The Council’s enforcement policy must demonstrate a commitment to the five principles of Better Regulation to comply with the Code of Practice issued under the Regulatory Reform (Scotland) Act 2014. The enforcement policy ensures enforcement action is carried out in accordance with legal requirements and minimises risks of complaints or legal action from regulated persons as a result of inappropriate enforcement actions.
- 3.3 **Community (Equality, Poverty, Rural and Island)** - there are no community implications arising from this report.
- 3.4 **Climate Change / Carbon Clever** - there are no climate change/carbon clever implications.
- 3.5 **Risk** – the policy minimises risks of legal action as a result of inappropriate enforcement actions.
- 3.6 **Gaelic** - there are no Gaelic implications.

4. Background

- 4.1 The Scottish Government's Better Regulation agenda aims to support the economic growth by championing the five principles of Better Regulation - *Proportionate, Consistent, Accountable, Transparent and Targeted*.
- 4.2 The *Better Regulation* agenda and the five principles have their roots in the 2005 HM Treasury Hampton report. This has been subsequently been given legal status by the Legislative and Regulatory Reform Act 2006, the Regulatory Reform (Scotland) Act 2014, UK Regulators’ Code and the Scottish Regulators’ Strategic Code of Practice.

The requirements apply to legislation which is reserved to Westminster (e.g. Health and Safety at Work) and devolved legislation (e.g. Food Safety).

5. Enforcement Policy for Environmental Health and Waste Services

- 5.1 The Environmental Health team has an extensive range of regulatory duties. This includes:
- Public Health Protection including Water Supplies, Nuisances, Smoking in public places, Port Health, Communicable disease investigation e.g. Food-borne / Waterborne disease, Legionnaires Disease;
 - Food Safety covering food hygiene, food labelling, and allergens;
 - Enforcement and advisory role for Health & Safety at Work legislation;
 - Private Sector Housing including sub-standard housing, improvement and repairs grants, closing and demolition orders, Houses in Multiple Occupation and housing defects;

- Pollution Control which includes Noise Control and local Air Quality management;
- Contaminated Land covering the regulatory role for contaminated land prevention through development control
- Animal Health & Welfare which can include dealing with Foot & Mouth disease, Anthrax, Avian Flu and Sheep scab;
- Licensing duties which covers:
 - A general enforcement role for activities licensed under the Civic Government legislation including the new regime for Short Term Lets
 - An administrative and enforcement role for licensing of caravan sites, venison dealers, animal establishments, pet sellers, zoos, cinemas, sports grounds and dangerous wild animals;
- Dog Control, Pest Control, Litter education & enforcement, fly-tipping, waste duty of care, abandoned vehicles;

5.2 Waste Services enforce duty of care provisions regarding waste under the Environmental Protection Act 1990.

5.3 Many of the roles and responsibilities of the Environmental Health team is preventative and has an important role in ensuring the Highlands maintains its reputation of a safe and healthy place in which to live, work and conduct business.

5.4 The team applies the Better Regulation Principles when undertaking a range of proactive work including:

- around 800 inspections of food businesses (focussed on those presenting highest risk).
- annual monitoring and risk assessment of over 1000 private water supplies including commercial premises and large water supplies.
- targeted interventions are carried out to check Health and Safety at Work standards. In line with national guidance this is focussed on those sectors and activities with the most serious risks or where the risks are least well-controlled. Initiatives have looked at fixed LPG installations, riding establishments, risk of infection at animal petting farms, nail bars and gas safety in commercial catering premises. Around 40-60 targeted inspections are carried out per year in addition to general awareness raising campaigns
- animal Health and Welfare Officers carry out proactive inspections of animal markets and other sales, to ensure compliance, in particular with biosecurity (vehicles, premises and people), livestock identification, welfare, transport, licensing and record keeping. Around 140 inspections are carried out per year.

The team apply the Better Regulation Principles to the wide range of service requests received which are around 10,000 per year. These cover complaints and enquiries on all the legislation as detailed in paragraph 5.1.

In many cases, where non-compliance is found following these interventions, the non-compliance is addressed by verbal and written advice, and written warnings and formal warnings which warn that further contraventions could result in formal enforcement action. In line with the current Enforcement Policy, where required enforcement action is escalated to e.g. to formal notices and if appropriate, prosecution reports.

- 5.5 A recent example of the environmental health team applying the Better Regulation Principles was the team's support provided to businesses on the legal restrictions during the Covid-19 pandemic lockdowns. Due to the frequent amendments to legislative provisions, the changing restrictions, and the evolving Covid-19 advice, this required a flexible and adaptable approach to be taken at all levels within each team as they reacted to the changes and rapidly adapting how the services were delivered. In their role as regulators, the team worked very closely with Police Scotland and shared the same national four E's enforcement approach (Engage, Explain, Encourage and Enforce). Weekly meetings with Senior Police Officers were held to ensure consistency in enforcement and the advice being provided. The team responded to over 430 complaints and 630 enquiries during the period of legal Covid-19 restrictions (March 2020 to April 2022) as well as proactively supplying updates to businesses.
- 5.6 As an example of ongoing improvement to our approach to enforcement, the environmental health team in conjunction with Housing Services has introduced the use of new digital technology/software to assist with noise nuisance investigations. The [Noise App](#) reduces the need to install noise monitoring equipment in complainants' properties and allows complainants to submit audio recordings via a secure platform for officers to assess. This provides the public with an easily accessible option to provide recordings as evidence rather than await the installation/availability of noise monitoring equipment. Since 1st April 2022, when use of the Noise App was introduced, the Environmental health team have received **418 noise complaints** to investigate. The use of the noise app has greatly assisted officers in assessing and prioritising these complaints, and significantly improved efficiency within the Service. The Service will continue to review our procedures for all aspects of work, and if similar technological options are available to improve current procedures these will be considered.
- 5.7 The [existing enforcement policy](#) was approved in 2018. It has been reviewed to ensure that the team's activities continue to align with the better regulation principles of any regulation being transparent, accountable, proportionate, consistent and targeted. **Appendix 1** contains the revised enforcement policy recommended for approval. The review did not identify any significant omissions and therefore minor changes made are recommended which are in respect of:
- Format changed to improve alignment with the better regulation principles;
 - Added further information on working with other regulatory bodies;
 - Updates to complaints procedure, contacts and weblinks.

Designation: Executive Chief Officer, Communities and Place

Date: 3 August 2022

Author: Alan Yates, Strategic Lead, Environmental Health and Bereavement Services

Background Papers:

- Scottish Government – better regulation
<https://www.gov.scot/policies/supporting-business/business-regulation/>
- Scottish Regulators' Strategic Code of Practice
<https://www.gov.scot/publications/scottish-regulators-strategic-code-of-practice>

APPENDIX 1



Communities and Place

Environmental Health and Waste Services

Ref: EAS/EP1
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1. Introduction

- 1.1 Environmental Health and Waste Services are responsible for the enforcement of a wide range of legislation as set out in the Council's Scheme of Delegation.
- 1.2 This document sets out our enforcement policy and explains what regulated persons can expect from us. We have based our approach to enforcement on the Hampton Principles, the Legislative and Regulatory Reform Act 2006, the Regulatory Reform (Scotland) Act 2014, UK Regulators' Code and the Scottish Regulators' Strategic Code of Practice.
- 1.3 This document also satisfies our legal obligation to have enforcement policies which apply to food safety and health & safety law.
- 1.4 In this policy:
 - *regulated person* means anyone who must comply with the laws we enforce. Regulated persons will mainly be businesses and their employees but may also include non-business organisations, private individuals and the Highland Council. We will not give the Council more favourable treatment compared to other regulated persons.
 - *enforcement* includes all action taken by us following discovery of a breach of the law with the ultimate aim of ensuring that someone complies with the law. This may involve enforcement action, which can include advice, and the use of our investigatory powers (as defined in the Appendix).
 - *formal action* includes formal enforcement action and the use of formal investigatory powers (as defined in the Appendix) but does not include advice.

2. Our aims

- 2.1 We aim to:
 - a) follow the five principles of better regulation: regulation should be transparent, accountable, consistent, proportionate and targeted.
 - b) ensure that regulated persons take action immediately to deal with serious risks.
 - c) help and encourage businesses and individuals to understand and comply with the law
 - d) promote and achieve sustained compliance by regulated persons.
 - e) treat all regulated persons fairly.
 - f) protect the public in a way which does not stifle enterprise, hinder economic progress or place unnecessary burdens on businesses.
 - g) communicate this policy effectively to those people who are affected by it.

- h) Where appropriate, we will liaise with other authorities to ensure compliance (e.g. Police Scotland, Crown Office and Procurator Fiscal Service, SEPA, Health & Safety Executive, Revenue Scotland, HM Revenue & Customs, Scottish Fire and Rescue Service, DEFRA, APHA).

2.2 We apply the following principles when conducting our enforcement activities:

- proportionality in how we apply the law and secure compliance.
- targeting of our enforcement action.
- consistency of our approach.
- transparency about how we operate and what a regulated person can expect.
- accountability for our actions.

3. Proportionality

- 3.1 Where we have discretion, when deciding what action to take we will act proportionately by balancing the risks to the public with the costs to the regulated person (in time and money) of implementing changes.
- 3.2 When deciding what action to take we will pay particular attention to our impact on smaller organisations. We will take reasonable steps to ensure that any action we take is proportionate to the size of the organisation unless that comes into conflict with the need for consistency.
- 3.3 We will seek to impose the minimum burden compatible with ensuring compliance. Where we encourage the adoption of good practice, we will always clearly distinguish between legal requirements and recommendations.
- 3.4 Where non-compliance has been identified, we will determine the most appropriate course of action to take by making a careful assessment of all of the following criteria with no one factor likely to be decisive on its own:
- 1) The seriousness of the breach and in particular its impact on the safety, health and well-being of all those affected by it;
 - 2) The steps which the regulated person took, or the reasonable steps which they failed to take to prevent the offence;
 - 3) The extent to which the regulated person has been proactive in seeking advice from us, and whether they have complied with any advice we have given;
 - 4) The history of compliance and in particular whether any previous warnings went unheeded;
 - 5) Evidence of fraudulent, deliberate, irresponsible, reckless or negligent behaviour, and evidence of aggression or harassment;
 - 6) The likelihood of the contravention happening again;
 - 7) The extent to which the regulated person accepts their responsibilities and is willing to heed advice;
 - 8) Whether the breach is rectified promptly;
 - 9) The need to deter future breaches;
 - 10) The nature of the evidence available to us.

4. Targeting of our enforcement action

- 4.1 We will use the principles of risk assessment by taking into consideration the likelihood of non-compliance and the impact of non-compliance and significance of risk related to the case. We will use these principles to determine the frequency of inspection, and we will consider those principles when arranging other visits, for example to take samples and carry out projects.
- 4.2 Where available, we will use standard risk assessment schemes such as those produced by Food Standards Scotland and the Health & Safety Executive. The assessment is usually based on the risk which the activity presents to the public or employees, the complexity of the legislation, the size and type of organisation, and the confidence which we have in the ability of the regulated person to comply based on our knowledge of their control systems and previous compliance levels. On request, we will explain to any regulated person why we have assigned them a particular risk rating.

5. Consistency

- 5.1 We will ensure that anyone who is regulated by us is treated consistently on each occasion, and consistently with other regulated persons. Consistency is not the same as uniformity; it means taking a similar approach in similar circumstances to achieve compliance with the law. We will do this by monitoring the enforcement action taken by our officers, and by training our officers.
- 5.2 Enforcement decisions will be fair, independent and objective and will not be influenced by issues such as ethnicity or national origin, age, gender or gender identity, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.
- 5.3 We fully support the 'home authority' and 'primary authority' principles as the means by which regulated persons trading across local authority boundaries are able to rely on one local authority as their main source of advice on compliance.
- 5.4 We will work with other local authorities throughout the UK to ensure consistent interpretation and application of the law. We will do this by playing an active part in working groups which range in scope from the North of Scotland to the whole of the UK as well as having regard to guidance from bodies such as Food Standards Scotland and the Health & Safety Executive.

6. Transparency

- 6.1 Where non-compliance has been identified, officers will clearly and promptly explain the decision taken, their reasons, and the actions required to achieve compliance. They will discuss reasonable timescales with the regulated person and explain what will happen if they fail to comply.
- 6.2 Before we take any formal action we will provide an opportunity to discuss the matter and if possible resolve points of difference. However this will not apply when immediate action is required (for example, to prevent or respond to a serious breach, or where there is an imminent risk to health & safety, or where an opportunity for discussion is likely to defeat the purpose of the proposed enforcement action, or to prevent evidence being destroyed).

- 6.3 Our officers will explain in writing the reasons why they took a particular course of formal action. Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken.
- 6.4 We will give information and advice in clear, concise and accessible language. We will provide general information and advice to regulated persons in a range of appropriate formats and media. We will confirm specific advice in writing on request.
- 6.5 Officers will always provide proof of their identity (including their name, role and photographic identification) and will explain the purpose of their visit, unless undertaking covert investigation or where this would defeat the purpose of the investigation.

7. Accountability

- 7.1 This policy explains what regulated persons can expect from us. If a regulated person feels we have not complied with it, or are dissatisfied with any action we have taken, they can use the Council's complaints procedure to request that we carry out a formal review of that action. The procedure is described on our website [here](#); alternatively, please ask us for details. Complaints should include an explanation of why the regulated person is dissatisfied. The request should be made in writing unless the regulated person believes there is a need for an urgent review. The action will be reviewed by a senior officer who was not involved in the original decision-making process. We will fully explain the reasons for our decision and, if we decide to vary the action, we will describe how that variation will impact on the regulated person. If the regulated person remains dissatisfied, we will explain how to take the complaint further.

Please note the Council's complaint procedure does not apply where a statutory right of appeal exists, for example in relation to notices.

- 7.2 Through reports to our Committee we will publish information on our performance on implementing legislation.
- 7.3 We will provide means to allow feedback on our performance and approach including clear contact channels, online feedback forms, and where appropriate, consultations on significant policy change and surveys of work undertaken.

8. Contact

For any queries on the policy please contact:

Alan Yates, Strategic Lead - Environmental Health & Bereavement Services
Communities and Place

The Highland Council, 38 Harbour Road, Inverness. IV1 1UF

Tel: 01349 886603

Email: envhealth@highland.gov.uk

9. References

Hampton Principles - March 2005 by HM Treasury in a report by Sir Philip Hampton 'Reducing administrative burdens: effective inspection and enforcement.'

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmspeak/1069/106911.htm>

Legislative and Regulatory Reform Act 2006
<http://www.legislation.gov.uk/ukpga/2006/51/contents>

Regulatory Reform (Scotland) Act 2014
<http://www.legislation.gov.uk/asp/2014/3/contents>

UK Regulators' Code
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf

Scottish Regulators' Strategic Code of Practice
<http://www.gov.scot/Resource/0046/00467429.pdf>

The definition of 'enforcement'

Enforcement action	<p><i>Informal</i> enforcement action may include verbal and written advice, and written warnings and formal warnings which warn that further contraventions could result in formal enforcement action.</p> <p><i>Formal</i> enforcement action includes statutory notices (which require the recipient to do something specific such as prohibiting the use of a premises or process where there is a risk to health & safety), fixed penalty notices, applications to a civil court for an enforcement order, and reports to the Procurator Fiscal recommending prosecution in a criminal court. It also includes any report by us to the licensing committee or the licensing board recommending that they suspend or revoke a licence.</p>
Investigatory Powers	<p>The statutory powers which officers can use to help them to check whether the law is being complied with and to investigate any breach of the law.</p> <p><i>Routine</i> investigatory powers usually include the power to:</p> <ul style="list-style-type: none">• inspect premises at any reasonable time• inspect goods• inspect documents where there is reason to suspect a breach has been committed• purchase goods to test whether the law is being complied with (called a 'test purchase')• take samples for analysis <p><i>Formal</i> investigatory powers usually include the power to:</p> <ul style="list-style-type: none">• seize and detain goods and documents where there is reason to believe they are required as evidence• apply to a Sheriff for a warrant to enter premises by force if necessary or to take a constable to apprehend any serious obstruction in the execution of our duties• prohibit access to unsafe premises or equipment pending an investigation