

Decision Maker: Public Protection & Safety PDS Committee

Date: 25 October 2011

Decision Type: Non-Urgent Executive Non-Key

Title: Enforcement Policy for Environmental Services

Contact Officer: Paul Lehane, Head of Food Safety. Occupational Safety & Licensing
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Chief Officer: Nigel Davies - Director of Environmental Services

Ward: All

1. Reason for report

To seek Members views on an Enforcement Policy for the Environmental Services Directorate.

To reaffirm the Council's indemnification of officers appointed as 'Inspectors' under the Health & Safety at work etc Act 1974.

2. **RECOMMENDATION(S)**

Members are asked to

- 1. Recommend that the Portfolio Holder endorse the Enforcement Policy for the Environmental Services Directorate as set out in Appendix A.**
- 2. Refer the Enforcement Policy to the Environment PDS for consideration.**
- 3. Recommend that all Officers authorised under the Health and Safety At Work etc Act be Indemnified as set out in Appendix B**

Corporate Policy

1. Policy Status: Existing policy. Health and Safety Enforcemnt Policy adopted 2003.
 2. BBB Priority: Safer Bromley. Vibrant thriving Town Centres & An Excellent Council
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Financial

1. Cost of proposal: Estimated cost No Cost
 2. Ongoing costs: Non-recurring cost. N/A
 3. Budget head/performance centre: Public Protection & Safety Portfolio Holder budget
 4. Total current budget for this head: £3.7m
 5. Source of funding: Exisiting revenue budget 2011/12
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Staff

1. Number of staff (current and additional): 59
 2. If from existing staff resources, number of staff hours:
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Legal

1. Legal Requirement: Non-statutory - Government guidance.
 2. Call-in: Call-in is applicable Yes
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): All businesses and residents
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? N/A.
2. Summary of Ward Councillors comments:

3. COMMENTARY

- 3.1 The Government is keen to ensure that businesses are not burdened by compliance with unnecessary regulatory requirements and are pursuing a 'deregulatory approach' when appropriate.

For its part the Council wishes to reassure residents and businesses who trade within the Borough that where regulations exist which affect them, we will adopt a consistent and measured approach to enforcement.

Environmental Services Enforcement Policy

- 3.2 Regulations relating to the work of Environmental Services have all been introduced with a view to ensuring the health, safety or well being of people, animals or the environment, and the Council has to balance the business interests against its wider responsibilities on behalf of the residents, other local businesses and visitors.

- 3.3 Each regulatory requirement placed on a business or person is designed to provide protection against some form of harm or loss

- 3.4 Officers in the Directorate have a wide range of responsibilities including

1. Public Health – noise nuisance, Fly tipping and accumulations, pest control
2. Pollution Control – air, land and water.
3. Trading Standards – Rouge traders, underage sales and counterfeiting
4. Food Safety, Health & Safety and Licensing
5. Nuisance vehicles
6. Markets and Street Trading
7. Littering and dog control
8. Highways matters

- 3.5 Members will be aware of the nature and extent of the Divisions' enforcement actions through the six monthly Enforcement Reports. This level of enforcement activity only represents a small proportion of the total work undertaken by the Division as the vast majority is aimed at securing a resolution of a complaint or compliance with a requirement through informal approaches.

Only where these informal approaches fail to secure the desired results will the more formal approaches be considered.

- 3.6 The attached Enforcement Policy seeks to set out how the Council will approach its enforcement responsibilities.(See Appendix A Enforcement Policy)

Health and Safety Enforcement Policy

- 3.7 Appendix B to the main Enforcement Policy contains a revised Health and Safety Enforcement Policy originally published in 2003. This has been reviewed In light of the Government's aim to reduce regulatory burdens on businesses and the changing approach to Health & Safety inspection and enforcement adopted by the Health and Safety Executive.

- 3.8 Uniquely under the Health and Safety at Work etc Act 1974 Officers are authorised to act in a personal capacity. The Council has previously agreed to indemnify Officers appointed under the Act. In light of the review of the Enforcement Policy it is timely to seek Members agreement to continue to indemnify officers and for new letters of indemnification to be issued.

3.9 Local Authorities are enforcing authorities for the Health and Safety at Work etc Act 1974 and have a duty to discharge their functions in accordance with standards published in 2008 by the HSE under Section 18 of the Act

3.10 These standards require the Council to:

- Have an enforcement policy and procedures
- Undertake inspections based on prioritised risk assessments
- Produce and publish a service plan.
- Under go periodic audits
- Have trained and competent inspectors
- Support the Primary / Lead Authority Partnership Scheme when dealing with certain businesses.

3.11 The policy sets out how we will undertake our health and safety enforcement role and includes how we will address the 4 enforcement principles of **proportionality, targeting, transparency and accountability**. In particular it sets out our approach to the investigation of complaints and accidents and contains guidance on how we will use the various enforcement options available to us (prosecution, formal cautions, prohibition / improvement notices or informal warnings).

3.12 There are over 4000 businesses in the Borough for which the Council has a duty towards under the Health and Safety at Work etc Act 1974. The business sectors covered by the team are

- a. Retail sale
- b. wholesale and warehousing
- c. Consumer services
- d. Leisure services

4. POLICY IMPLICATIONS

The Health and Safety Enforcement Policy is being reviewed and incorporated with a new general Enforcement Policy for the Environmental Services Directorate .

5. LEGAL IMPLICATIONS

The Enforcement Policies set out the Council's approach to enforcement and guides enforcement related decisions. In establishing these it is required to follow the Regulator's Compliance Code and the regulatory principles set out in the Legislative and Regulatory Reform Act 2006. Failure to follow the policy could enable a challenge to be made to subsequent decisions or actions. Any actions taken in accordance with the Policies will take account of the Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000, The Police and Criminal Evidence Act 1984 and associated Codes of Practice, the Criminal Procedure and Investigations Act 1996 .

Non-Applicable Sections:	FINANCIAL AND PERSONNEL IMPLICATIONS.
Background Documents: (Access via Contact Officer)	Health and safety Enforcement Policy 2003.