



<u>Committee and Date</u>
Council
27 February 2014

Item
<b>14</b>
Public

## SHROPSHIRE COUNCIL BETTER REGULATION AND ENFORCEMENT POLICY

**Responsible Officer** Paul McCreary – Head of Public Protection

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### 1. Summary

- 1.1 The current Public Protection Enforcement Policy, adopted in 2009, requires updating to better reflect regulatory practices within Public Protection and to broaden the scope of the policy to cover all regulatory functions for which Shropshire Council has responsibility.
- 1.2 In accordance with the decision made by the Portfolio Holder for Business Growth and Commissioning (North) on 19 September 2013 and Cabinet's recommendation on the 15 January 2014, this report sets out the proposed Regulation and Enforcement Policy.

### 2. Recommendation

- 2.1 That Council agrees, with any necessary amendments, the proposed Better Regulation and Enforcement Policy as set out in **Appendix A** (a hard copy of Appendix A is in the Members Library and has been circulated electronically to members) and that the policy is adopted from the 1 April 2014.

## REPORT

### 3. Risk Assessment and Opportunities Appraisal

- 3.1** The preparation and publishing of the policy is not in itself a legal requirement. However, the Regulators' Compliance Code, issued in accordance with section 22 of the Legislative and Regulatory Reform Act 2006, requires regulators to have regard to this Code. The policy is considered best working practice and will assist Shropshire Council to demonstrate that it has regard to the Code.
- 3.2** If the Council fails to prepare and publish such a policy the Council will be open to criticism; in particular from those parties whom the Council seeks regulatory compliance. The Council will face greater difficulty in justifying regulatory action and responding to challenges about the way it has reached regulatory decisions. This may lead to a failure to achieve compliance, service complaints to the Local Government Ombudsman, judicial review and an increased risk of legal challenge to any civil and criminal proceedings instituted by the Council. The reputation and professionalism of the Council would clearly be at risk.
- 3.3** Conversely, by preparing and publishing a policy, the Council demonstrates that it takes its regulator role seriously and that it will work with businesses and the community to secure compliance. It creates transparency for all stakeholders providing the manner in which the Council intends to operate through promoting consistency and proportionality in all aspects of regulation. It further provides the Council with a basis for a robust defence to any challenges that may be encountered and demonstrates commitment to compliance with the Regulators' Compliance Code.
- 3.4** An Equalities Impact Needs Assessment has not been undertaken as the proposed policy is a revision of a policy that was previously adopted by Shropshire Council. It will replace other service area policies if fully adopted. The proposed policy is consistent with national guidance on regulation.

- 3.5** There is no anticipated environmental impact associated with the recommendation in this report.
- 3.6** The recommendation is not at variance with the Human Rights Act 1998 and is unlikely to result in any adverse Human Rights Act implications.
- 3.7** Whilst there is no legal duty specifically placed on the Council to consult with respect to this policy, it is clearly good practice to do so. Informal consultation was carried out across relevant Council services and with officers from Telford and Wrekin Borough Council and initial feedback informed the proposed policy development. A formal twelve week period of wider consultation was then undertaken between 30 September 2013 and 22 December 2013.
- 3.8** The Council's intention to consult was published on the Council's 'Have your say' webpage and a press release was issued on the 30 September 2013. In addition, relevant national and regional organisations/agencies, together with solicitors practising in Shropshire were also consulted. Evidence of the consultation processes and those parties consulted are set out at **Appendix B**. Two responses were received as a result of the consultation and these are set out at **Appendix C** (hard copies of Appendices B and C are in the Members Library and have been circulated electronically to members). The draft policy, published for the purposes of the consultation, was not amended as a result of the responses received.

#### **4. Financial Implications**

- 4.1** There are no financial implications associated with the recommendation.

#### **5. Background**

- 5.1** Shropshire Council is responsible for the regulation and enforcement of a wide range of legislation covering a broad spectrum of functions and service areas.

- 5.2** The proposed policy sets out the Council's approach to regulation across all functions and service areas and explains the principles aimed at securing compliance. The emphasis is on advice and guidance with escalation to informal and formal enforcement sanctions dependent on each individual situation. The policy identifies and explains these sanctions.
- 5.3** It is recognised that achieving compliance at any cost is not acceptable. However, effective regulation promotes economic growth and prosperity and protects individuals, the community and the environment from harm. The revised policy recognises that this is achieved more effectively through cooperation with the community and individuals and forging closer links between regulators and businesses. It emphasises the need to target regulatory activity and resources away from those who are considered largely compliant towards those who give rise to the highest risk and cause the greatest detriment and harm.
- 5.4** The revised policy addresses the principle that individuals as well as businesses have a duty to comply with legislation.
- 5.5** It is accepted that on rare occasions the Council may need to deviate from the proposed policy. Where this is the case, it must be clearly justified, authorised by a senior manager and fully documented.

## **6. Additional Information**

- 6.1** The policy is not subject to a legal review period. It will be monitored on an on-going basis to ensure it remains fit for purpose. Where it becomes clear that this is no longer the position appropriate steps will be taken to revise it accordingly.
- 6.2** It is anticipated that the Regulators' Compliance Code will be replaced by the Regulators' Code in Spring 2014. The proposed policy will be compatible with the new Code.

**List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)**

1. Regulators' Compliance Code
2. Current Public Protection Enforcement Policy
3. Draft Regulators' Code
4. Enforcement Concordat: Good Practice Guide for England and Wales
5. Portfolio Holder for Business Growth & Commissioning (North) Decision: Better Regulation and Enforcement Policy Report – 19 September 2013

**Cabinet Member (Portfolio Holder)**

Cllr Steve Charmley

**Local Member**

Not applicable

**Appendices**

**A hard copy of all Appendices have been placed in the Members Library and circulated electronically to members**

1. **Appendix A** – Proposed Shropshire Council Better Regulation and Enforcement Policy
2. **Appendix B** – Details evidencing consultation process
3. **Appendix C** – Responses to the formal consultation from interested parties