



Portfolio Holder Decision
Making Session and date/time

19 September 2013

3 pm

Item

1

Public

Shropshire Council Better Regulation and Enforcement Policy

Responsible Officer Paul McGreary – 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 This report sets out the proposed Better Regulation and Enforcement Policy.

2. Recommendation

- 2.1 That the Portfolio Holder for Business Growth and Commissioning (North) agrees, with any necessary amendments, to the publication on the Council's website of the proposed Better Regulation and Enforcement Policy as detailed in **Appendix A** and requires the Head of Public Protection to consult with whomever he considers appropriate on the proposed policy and to bring the policy before Cabinet to enable consideration of any consultation responses prior to recommending that the Council adopts the policy with effect from 1 April 2014.

Reason for decision:

To permit the Council to commence a consultation process that will lead to the adoption of a Better Regulation and Enforcement Policy.

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 may 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** No legal duty is specifically placed on the Council to consult with respect to this policy. However, it is clearly good practice. To date, informal consultation has been carried out across relevant Council services and with officers from Telford and Wrekin Borough Council. Initial feedback has informed the proposed policy as it is currently set out in **Appendix A**. It is now proposed that a twelve week period of wider consultation will be undertaken before the end of December 2013.

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.

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- 5.4** The revised policy addresses the principle that individuals as well as businesses have a duty to comply with legislation.
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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.

7. Conclusions

- 7.1** There is no statutory duty placed on the Council to prepare, publish or consult prior to adopting a Better Regulation and Enforcement Policy. However, it is clearly good practice and beneficial to the Council and its stakeholders. The recommendation is not at variance with the Human Rights Act 1998 and is unlikely to result in any adverse Human Rights implications. There is no anticipated environmental impact associated with the

recommendation and no financial implications. The purpose of the recommendation is to commence a 12 week consultation period and ultimately to allow the Council to adopt the final version of the policy with effect from 1 April 2014.

<p>List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information):</p> <ol style="list-style-type: none"> 1. Regulators' Compliance Code 2. Current Public Protection Enforcement Policy 3. Regulators' Code 4. Enforcement Concordat: Good Practice Guide for England and Wales
<p>Key Decision: YES</p> <p>Included within Forward Plan: YES</p> <p>If a Key Decision and not included in the Forward Plan have the General Exception or Special Urgency Procedures been complied with: N/A</p>
<p>Name and Portfolio of Executive Member responsible for this area of responsibility: Cllr Steve Charmley</p>
<p>Local Member: Not applicable</p>
<p>Appendices: Appendix A – Proposed Shropshire Council Better Regulation and Enforcement Policy</p>

Declaration of Interest

- I have no interest to declare in respect of this report

Signed Date

NAME:

PORTFOLIO HOLDER FOR:

- I have to declare an interest in respect of this report

Signed Date

NAME:

PORTFOLIO HOLDER FOR:

(Note: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter.)

For the reasons set out in the report, I agree the recommendation in the report entitled “Shropshire Council Better Regulation and Enforcement Policy”.

Signed

Portfolio Holder for Business Growth and Commissioning (North)

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and pro-forma is returned to Democratic Services for processing.

Additional comment :

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Note: If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, Head of Legal and Democratic Services, Chief Executive and the Head of Finance, Governance and Assurance (S151 Officer) and, if there are staffing implications the Head of Human Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Portfolio Holder: Your decision will now be published and communicated to all Members of Council. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication.