

MEETING:	REGULATORY COMMITTEE
DATE:	21 FEBRUARY 2012
TITLE OF REPORT:	SINGLE ENFORCEMENT AND PROSECUTION POLICY
REPORT BY:	CHRIS CHAPMAN – ASSISTANT DIRECTOR LAW AND GOVERNANCE

CLASSIFICATION: Open

Wards Affected

County-wide

Purpose

To gain the Regulatory Committee's support for the adoption of a Single Enforcement and Prosecution Policy for all relevant activities undertaken by Herefordshire Council and to endorse same.

Recommendation(s)

THAT:

- (a) the principle of a Single Enforcement and Prosecution Policy is supported;**
- (b) the detail contained within a Single Enforcement and Prosecution Policy is supported**

Key Points Summary

- HPS has listed 'cutting bureaucracy' (inc. less regulation and red tape) as one of their 'principles for the future'
- Reducing bureaucracy, simplifying rules and regulations, and supporting business by being more 'business friendly' will benefit those who live and work in Herefordshire
- Enforcement policies and practices have a significant effect on the ways enforcement activities are undertaken across a varied range of services throughout the County
- Being transparent about how we approach enforcement and, where necessary, prosecute individuals and businesses is important in giving assurances to those who have duties to comply with the law and those who are protected by the law.
- Whilst there is a wide ranging spectrum of enforcement activities across the organisation, nevertheless there is a need to ensure that the principles that apply to all enforcement are visible and applied appropriately and consistently across the County.

- All of the Council's enforcement activities operating to and within one single policy is not only in line with good practice but will help boost confidence amongst the public, business and members.

Alternative Options

1. Do not support the principle i.e. continue to operate at least five separate policies, and/or amend the detail

Reasons for Recommendations

2. To give Cabinet a clear message that this Committee supports the principle and detail of a Single Policy.

Introduction and Background

3. The government set a clear aim: to leave office having reduced the overall burden of regulation. Furthermore they said, with more than 21,000 regulations active in the UK today, it was not going to be an easy task. They are determined to cut red tape.
4. Nationally, a number of steps to reduce regulatory burden have been started including:
 - The introduction of the Red Tape Challenge, which gives the public and business an opportunity to review the entire stock of regulations
 - The One-in One-out process and the Statement of New Regulation, both introduced to restrict the volume of new regulation
 - The creation of the Reducing Regulation Committee (RRC)
 - Commitment for the implementation of Lord Young's proposals to reform the enforcement of health and safety law
 - A consultation paper produced by the Department for Business, Innovation and Skills (BIS) on the subject of transforming regulatory enforcement.
5. Locally, Herefordshire Council has listed 'cutting bureaucracy' (inc. less regulation and red tape) as one of their 'principles for the future'.
6. Activity to underpin such a principle was the setting up of 'Reducing Red Tape' project in 2011. Its brief was:
 - a) To consider ways in which the regulatory burden for people and business in Herefordshire may be reduced and efficiency savings or other improvements may be made
 - b) To revisit enforcement practice across the authority and make recommendations for any changes required to introduce a "light touch" approach.
 - c) To recommend changes to existing byelaws and local legislation which eliminate obsolete provisions and produce a set of relevant provisions which are no more than are required to ensure the quality of life for Herefordshire residents, reflecting the principle of Reducing Red Tape.
 - d) To recommend any changes to how regulatory functions are currently managed across

the Council to improve co-ordination, communication and overall efficiency.

7. A report was presented to HPS Leadership Team in October 2011, and all recommendations were agreed.
8. In order to implement that recommendation relating to a Single Policy, the Policy itself should be brought before Regulatory Committee and Planning Committee before being signed off by Cabinet.
9. Most enforcement-related activity is undertaken by services that report to either the Regulatory Committee or Planning Committee. Both Committees have responsibilities with respect to the overseeing of enforcement-related activity and periodically receive reports on such activity.
10. Whilst Policy on enforcement is an Executive function, the governance of enforcement lies with the Committees and therefore it is appropriate to consult with these Committees and gain their support for the Policy. This report is also being presented to the Planning Committee.
11. The decision of these Committees will be reported to Cabinet when they consider the forthcoming recommendation to implement the Single Policy.

Key Considerations

12. Part of the second task of the 'Reducing Red Tape Project' was to gain understanding of enforcement practice. It was evident that there were a number of policies followed in various parts of the organisation that whilst not necessarily inconsistent, made it confusing to the public and business.
13. The following is taken from the Project Report:

"Any 'enforcement' should be targeted, proportionate, risk-based, transparent, and consistent. It should aim at achieving the following: Helping Businesses and Others to Compliance thus Supporting Economic Progress; Openness through Clear Accessible Advice and Guidance, and Helpfulness through Clear Accessible Guidance. This can be better achieved by Working with Other Enforcement Agencies, and Adopting Good Enforcement Procedures

Council service areas which are responsible for enforcement activities frequently need to demonstrate that the actions they take are consistent with legal requirements, public interest and government guidance. Enforcement Policies have been used to provide a decision making framework that enables officers to consider issues in an effective way.

Guidance on prosecution such as the Code for Crown Prosecutors has existed for some time. Successive governments and their various departments have produced more and more guidance for regulatory and enforcement services to follow, particularly those dealing with businesses. The Enforcement Concordat and Regulatory Code are examples of these.

Latterly, the Department for Business, Innovation and Skills (BIS) has proposed drawing any separate policies together and removing the duplicated information. This has the advantage of simplicity, consistency and easier management.

Within the Council each individual service area has historically had its own enforcement policy. This was primarily driven by the need of each service area to demonstrate to its stakeholders that the issue had been addressed. This has resulted in a total of six area specific enforcement policies being used by the Council - Planning Enforcement, Building Control, Private sector housing, Public rights of way, Environmental Health & Trading Standards (inc. Community Protection), and Housing & Council Tax Benefit.

The opportunity now therefore exists for a single Herefordshire Enforcement and Prosecution Policy containing, where necessary, service specific appendices to give service area specific information and guidance where required. By introducing an overall enforcement and prosecution policy it is felt that consistency in enforcement within service areas and across the different service areas will improve."

14. A single, overarching Enforcement and Prosecution Policy would not only bring this organisation into line with most other local authorities and mean that we are following best practice, but give the public and business a clearer view of the principles that underpin our decision making as it relates to enforcement and prosecution. The Policy is at Appendix 1.
15. Visibility and understanding of the Policy is key to assisting the Committee in discharging some of its responsibilities with respect to 'regulation'. Consistency and fairness across all enforcement activities whether the responsibility of this or any other Committee, is essential.
16. Whilst the Single Policy will be a more condensed and thorough document than its predecessors nevertheless it is recognised that a further simplified summary document aimed at the public would be helpful and, to that end, a summary will be published and available.

Community Impact

17. It is envisaged that greater openness will result from the adoption of a single, more transparent approach. In addition, any such improvement in openness should facilitate greater adherence to a better 'level playing field' environment for business regulation and support. This supports many of the issues highlighted as being in need of change to reduce burden but improve regulation when it is needed.

Equality and Human Rights

18. Adopting a Single Policy improves transparency, constancy and will reduce the risk of not fulfilling our public sector equality duty.

Financial Implications

19. Any costs associated with the adoption and implementation of a single Enforcement and Prosecution Policy will be insignificant and will be part of 'business as usual'.

Legal Implications

20. Any changes from current Enforcement and/or Prosecution Policies to a consolidated single Policy will need to be supported by changes (if any) to processes and procedures followed by the various parts of the organisation.

Risk Management

21. No risks associated with supporting the recommendations have been identified.

Consultees

22. The Policy was formulated with the help of and is supported by senior officers who sat on the working group that looked at "reducing red Tape".
23. At the conclusion of the 'reducing red tape' project a report was submitted to HPS Leadership Team where the support for a single enforcement and prosecution policy was noted.

24. In December 2011 the single enforcement and prosecution policy was submitted to the Councils consultation team. The policy was circulated to the readers panel to ensure that it was clear and precise. The policy was also hosted on the Council's e-consult pages to enable the public an opportunity to comment on the policy based on the following criteria:
- Is the Enforcement and Prosecution Policy easy to understand?
 - Does the Policy appear to reflect a fair approach?
 - Does the Enforcement and Prosecution Policy make sense when linked to the service specific policies?
 - Does it help manage expectations for those initiating enforcement (e.g. complainants) and those who are the subject of enforcement?
 - Do you think there is anything we can do to make the policy better?
25. Other agencies that are responsible for regulation/enforcement in the County have had the opportunity to consider and comment upon the Policy.

Appendices

26. Appendix 1 - The Single Enforcement and Prosecution Policy

Background Papers

Report to HPS Leadership Team, 12th October 2011

20111011 - Cutting Red Tape in Herefordshire – Report