

ENFORCEMENT POLICIES
**(Joint report by Heads of Environmental & Community Services and
Democratic & Central Services)**

1. INTRODUCTION

- 1.1 The purpose of this report is to inform Members about the implications of the Regulatory Enforcement and Sanctions Act 2008 which came into effect in October 2008. The implementation of the Act is partially incremental and some parts will come into effect in the next year. Details of the Act and regulations made under it can be viewed at <http://www.berr.gov.uk/whatwedo/bre/inspection-enforcement/implementing-principles/sanctions-bills/page44047.html>

2. BACKGROUND

- 2.1 The Government is committed to implementing the Hampton agenda on regulatory reform and reducing the burden on businesses. The Regulatory Enforcement and Sanctions Act 2008 is an important element in delivering that commitment. It seeks to advance Hampton's vision of a regulatory system, both nationally and locally, that is risk-based, consistent, proportionate and effective.
- 2.2 The Act delivers a number of distinct but related policy areas in four parts:
- Part 1 establishes the Local Better Regulation Office (LBRO) to promote adherence to the principles of better regulation amongst local authorities and greater co-ordination between them and central government. It aims to bring financial benefits to businesses through increased clarity and guidance to local authorities by helping them work together to keep the burdens of regulation on compliant businesses to a minimum.
 - Part 2 seeks to secure co-ordination and consistency of regulatory enforcement by local authorities by establishing a Primary Authority scheme. Businesses operating in more than one local authority area may choose to have a Primary Authority Partnership. The aim is to improve consistency of advice and enforcement across local authority trading standards, environmental health, licensing and fire and rescue services. It is recognised that this will be resource intensive for those Councils nominated by business to be their Primary Authority
 - Part 3 gives regulators an extended tool kit of alternative civil sanctions as a flexible response to cases of regulatory non-compliance normally dealt with in the criminal courts. These sanctions will be in addition to existing enforcement powers

- Part 4 creates a duty that requires regulators to review their functions, not to impose unnecessary burdens, and unless disproportionate or impracticable, to remove burdens that are found to be unnecessary. Regulators that are subject to the duty must report on progress annually. The duty applies to Gas and Electricity Markets Authority, the Office of Fair Trading, the Office of Rail Regulation, the Postal Services Commission and the Water Services Regulation Authority immediately. Ministers can apply the duty to other regulators by order where it will further the Government's better regulation agenda

3 IMPLICATIONS

- 3.1 Several of the Council's Divisions are required to have an enforcement policy with some having more than one to meet the specific requirements of national bodies, most notably Environmental and Community Health, which has discrete areas of enforcement such as food safety, private sector housing, health & safety and environmental protection. They are comprehensive but each policy will need to be reviewed and updated to reflect the requirements of the 2008 Act to ensure compliance.
- 3.2 The Council's existing enforcement policies are based on the principles contained in the Regulators' Compliance Code. A report was presented to Licensing and Protection Panel, Licensing Committee and Cabinet in February 2008 informing Members about the implications of the Code and authorisation was subsequently granted for enforcement policies to be reviewed by Heads of Service with specific regard to the Code after consultation with the relevant executive councillor or chairman.
- 3.3 As the current policies were approved previously by committee/Cabinet or form part of various statements of policy that the Council has to have regard to in complying with its statutory functions, it is proposed that they be reviewed further with regard to the implications of the 2008 Act and approved after consultation with the appropriate executive councillor or committee chairman.
- 3.4 There is a general requirement to consult those affected by the adoption of an enforcement policy but this has already been undertaken when the existing policies were formulated. The changes envisaged hopefully should not be extensive and any consultation required will be dealt with electronically through the medium of the Council's website

4. CONCLUSION

- 4.1 It will be necessary for relevant Heads of Service to update a range of enforcement policies to reflect the requirements of the 2008 Act which will be undertaken in consultation with the relevant executive councillors and chairmen.
- 4.2 It is inevitable that following the implementation of future enabling legislation and associated codes there will be an ongoing requirement for enforcement policies across the Council to be reviewed and updated where appropriate

5. RECOMMENDATIONS

5.1 It is therefore

RECOMMENDED

that the Panel/Committee/Cabinet

- (a) note the content of this report;
- (b) authorise Heads of Service to review enforcement policies having specific regard to the content of the Regulatory Enforcement and Sanctions Act 2008 and to introduce any necessary changes after consultation with the relevant executive councillor or chairman; and
- (c) authorise relevant Heads of Service to review their enforcement policies as and when appropriate following the implementation of future legislation or statutory codes and to approve any necessary changes after consultation with the relevant executive councillor or chairman;

BACKGROUND INFORMATION


The Regulatory Enforcement and Sanctions Act 2008
The Regulators Compliance Code
Reducing Administrative Burdens; Effective Inspection and Enforcement,
(Philip Hampton, March 2005)
Regulatory Justice: Making Sanctions Effective. Professor Richard Macrory

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