



Committee and Date

Cabinet

11 April 2018

Proposed Consultation on the Shropshire Council Better Regulation and Enforcement Policy

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1. Summary

- 1.1** The current Better Regulation and Enforcement Policy, adopted on 27 February 2014, has been updated and revised to better reflect the current Regulators' Code and regulatory practices / functions for which Shropshire Council has responsibility.
- 1.2** This report sets out a draft Better Regulation and Enforcement Policy upon which it is proposed a short consultation is undertaken.

2. Recommendation

- 2.1** That Cabinet agrees, with any necessary amendments, the draft Better Regulation and Enforcement Policy as detailed in **Appendix A** and instructs the Trading Standards and Licensing Operations Manager to undertake an eight week period of consultation and that the consultation feedback and a proposed policy is brought back before Cabinet for consideration prior to presentation to Council for adoption.

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' Code, issued in accordance with section 22 and 23 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

and allegations of 'abuse of process' to any civil and criminal proceedings instituted by the Council given the expectation to have such a policy. 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 Code.
- 3.4** An Equality and Social Inclusion Impact Assessment (ESIIA) has not been undertaken as the proposed policy is a minor revision of a policy that was previously adopted by Shropshire Council on 27 February 2014 and which took effect on 1 April 2014. 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. Initial feedback has informed the draft policy as it is currently set out in **Appendix A**. It is now proposed that an eight week period of wider external consultation be undertaken.

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 policy continues to recognise that this is achieved more effectively through cooperation with the community and individuals and forging closer links between regulators and businesses. It continues to emphasise 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 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.

5.5 The current Better Regulation and Enforcement policy was adopted by Council in February 2014 prior to the introduction of the new Regulators' Code. Whilst this policy was and continues to be compatible with the Regulators' Code, the proposed policy has been redrafted to better reflect this Code. It has also been updated to include a new sanction type, namely a 'Civil Penalty', but otherwise, the proposed policy principally remains the same and does not change the approach to be taken by the Council when considering or undertaking enforcement activity.

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.

<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. Current Better Regulation and Enforcement Policy https://shropshire.gov.uk/media/7021/better-regulation-and-enforcement-policy-aug-13.pdf2. Regulators' Code https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf
<p>Cabinet Member (Portfolio Holder) Cllr Robert Macey</p>
<p>Local Member County wide application</p>
<p>Appendices Appendix A – Draft Better Regulation and Enforcement Policy</p>