

POLICY AND RESOURCES COMMITTEE**Date 17 July 2024**

Report Title:	COUNCIL'S ENFORCEMENT POLICY
Report of:	DIRECTOR OF LAW AND CORPORATE SERVICES

REPORT SUMMARY

The purpose of this report is to seek Member approval of the updated Wirral Council Enforcement Policy found in Appendix 1. The Council's current Enforcement Policy was last amended in 2020 and therefore in line with governance and subsequent changes in legislation, it must be updated. The policy provides guidance to Members, officers, businesses, and the public, on the range of options that are available to achieve compliance with legislation enforced by the Council's various regulatory services. It is designed to help officers; businesses and the public understand our objectives and methods for achieving compliance and the criteria to be considered when deciding the appropriate response to a breach of legislation. The changes to the policy include the clarification that the Council will take proportionate enforcement action to tackle environmental crime and legislation breaches.

The revised Enforcement Policy provides the Council's regulatory and statutory services with a strategic framework and instrument to refer to. Each service is expected to use the Policy to establish plans, procedures, and resourcing to deliver the requirements of the Policy.

The Enforcement Policy supports the Council's commitment to uphold and protect the environment, as set out within the 'Sustainable Environment section of the Council's corporate plan.

This report affects all wards.

This is a key decision.

RECOMMENDATION

The Policy & Resources Committee are recommended to:

Approve the updated Wirral Council Enforcement Policy attached as Appendix 1 of this report.

SUPPORTING INFORMATION

1.0 REASONS FOR RECOMMENDATIONS

- 1.1 To ensure that the Council's regulatory services continue to operate under a Policy which has been regularly reviewed in line with legislation changes and the commitments set out in the Council's corporate plan.
- 1.2 To enable operational delivery models and methods to be developed and established to deliver effective and proportionate enforcement action. This will include arrangements for the facilitation of a pilot operation with a third-party operator to undertake enforcement activities on behalf of the Council for environmental crimes such as fly tipping, littering and dog fouling.
- 1.3 To continue to provide a range of regulatory services across the Council with a clear policy to ensure that enforcement action is conducted in a consistent, proportionate, and targeted fashion.

2.0 OTHER OPTIONS CONSIDERED

The Council could choose to not update the Enforcement Policy, however for the purposes of governance, reflecting the corporate plan, and to enable the facilitation of a pilot exercise for third party operator, the policy has been reviewed and updated.

3.0 BACKGROUND INFORMATION

- 3.1 The Council is required by the Regulator's Code to publish their Enforcement Policy explaining how they respond to non-compliance to legislation. The Policy is recognised as an important document for regulators in meeting their responsibility under the statutory principles of regulation, set out in Section 21 of The Legislative and Regulatory Reform Act 2006, to be accountable and transparent about their activities. The Regulator's Code sets out a series of key principles under which enforcement action should be considered. The principles encompass consistency, transparency, proportionality, and that actions are risk based. This methodology ensures a fair, effective, and justifiable approach linked to best practice. In addition, the code seeks to ensure that economic development is not unnecessarily stifled and that businesses are supported in their growth.
- 3.2 The Enforcement Policy was initially approved by Council's Cabinet in March 2016 and a subsequent update was approved in July 2020. The Policy provides a strategic framework and guidance on the range of options that are available to achieve compliance with legislation enforced by the following services:

Building Control

Community Patrol

Waste and Environment

Environmental Health & Trading Services

Housing Standards

Licensing

Planning Enforcement

Children's Services

- 3.3 The Policy is designed to help businesses and individuals understand the Council's objectives and methods for achieving compliance and the criteria considered when deciding the most appropriate response to a breach of legislation.
- 3.4 The key change in emphasis to the policy is the clarification that the Council will take action that is proportionate, to tackle anti-social behaviour and environmental crime, in line with the commitment to uphold and protect the environment. The revised Policy will enable the Council to establish a pilot exercise for enforcement action by a third-party operator. The pilot will be facilitated with prejudice by the Council and stakeholders, to determine longer term provision of such an operation.

4.0 FINANCIAL IMPLICATIONS

- 4.1 Fees and charges associated with enforcement action are reviewed and published annually. Such charges make up a proportion of the overall list of charges and typically relate to the costs associated with the service of legal notices and enforcement action taken thereafter as specified under the individual pieces of legislation. Such reviews take account of changes in the costs of such enforcement.
- 4.3 Financial penalties upon successful conviction can vary significantly. Some areas of legislation are subject to specific sentencing guidelines and as such can significantly influence any penalty, fine and the costs awarded to the Council.
- 4.4 The pilot operation with a third-party operator for environmental crime will generate income from fixed penalty notices (FPNs) and successful convictions. The income generated will be administered by the Council through the pilot arrangement.

5.0 LEGAL IMPLICATIONS

- 5.1 The Council is required by the Regulator's Code to publish their Enforcement Policy explaining how they respond to non-compliance in line with the principles set out in Section 21 of The Legislative and Regulatory Reform Act 2006. In that regulatory activities should be carried out in a way which is transparent, accountable, proportionate, consistent and risk based.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 6.1 The Enforcement Policy provides services with a strategic framework to develop and establish operational plans and resourcing to deliver the requirements of the Policy. Such plans should set out arrangements and provisions for staffing, required IT and assets.

7.0 RELEVANT RISKS

- 7.1 By publishing an enforcement policy, officers and those who act on the Council's behalf, may be subject to legal challenge if the reasons for such action could not be justified. For example, should an officer choose to deviate from a graduated enforcement approach or other principle, this decision must be clearly documented, and that information appropriately retained along with the associated evidence that supports it. Service area procedures must include this important provision and guidance for staff.
- 7.2 The clarification and emphasis that the Council will take proportionate enforcement action may generate criticism from some quarters. However, the Council is committed to protecting the environment and therefore tackling environment crime and breaches of legislation is an important factor of this commitment. Consideration of a pilot enforcement operation involving third party will be undertaken with stakeholder engagement and consultation.

8.0 ENGAGEMENT/CONSULTATION

- 8.1 Officers from each of the services were consulted and contributed to the policy update, having reviewed legislation, and were satisfied that it reflected the provisions for regulation within their service.
- 8.2 The draft policy was subject to an online Public Consultation during November and December of 2018. Responses were mainly concerned with the historical use of third-party enforcement operators.

9.0 EQUALITY IMPLICATIONS

- 9.1 Whilst there are no implications arising directly from this report, officers when undertaking their statutory duties must have all due regard to the relevant equalities legislation and guiding principles. For example, when considering whether to issue a fixed penalty notice or to require building works to be undertaken, the individual circumstances surrounding the alleged offence and critically the defendant's ability and capacity to comply must be considered on a case-by-case basis.
- 9.2 The Equality Impact Assessment can be found here:

<https://www.wirral.gov.uk/communities-and-neighbourhoods/equality-impactassessments/equality-impact-assessments-2017/delivery>.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

- 10.1 There are no direct implications, however powers available to some officers support the improvement of local air quality, for example through enforcement of the Clean

Air Act 1993, which governs Smoke Control Areas including smoke from chimneys and the Environmental Protection Act 1990 which provides a legal basis and enforcement mechanism for other smoke and atmospheric issues to be controlled.

10.2 The regulation of specific commercial installations capable of emitting pollutants to the atmosphere also provide relevant authorised officers with powers to take enforcement action where specific atmospheric pollutant limits are breached.

10.3 This policy does not directly contribute to tackling climate change, however there is no known enforcement activity conducted under it which could act to the contrary.

11.0 COMMUNITY WEALTH IMPLICATIONS

11.1 Effective and proportionate enforcement generates community confidence and supports place creation and environmental protection. These are important aspects of local economic development.

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APPENDICES

1. Wirral Council Enforcement Policy 2024

BACKGROUND PAPERS

The Regulator's Code – BRDO – 2014

Wirral Council Enforcement Policy 2016

Wirral Council Enforcement Policy 2020

TERMS OF REFERENCE

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Cabinet – Enforcement Policy	7 March 2016
Cabinet – Enforcement Policy	27 July 2020

