

WEST DUNBARTONSHIRE COUNCIL

Report by the Executive Director of Corporate Services

Corporate & Efficient Governance Committee: 27 January 2010

Subject: Enforcement Policy for Regulatory Services

1. Purpose

1.1 To seek approval for a single enforcement policy for Regulatory Services.

2. Background

2.1 Legal, Administrative & Regulatory Services (LARS) has responsibility for delivering the regulatory services of Environmental Health, Trading Standards, Taxi and other Civic Government licensing and for supporting the Licensing Board. The sections currently apply different enforcement policies. A separate report will be drafted seeking the approval of the Licensing Board to the same policy.

2.2 A single enforcement policy for regulatory services would result in more consistent decision making, and greater understanding of enforcement policy by those we protect and those whose activities we regulate.

2.3 In 2005 HM Treasury published a report containing eight principles for better regulation which came to be known as the Hampton Principles after its author, Sir Philip Hampton. The report was published in response to concerns about overzealous enforcement by some regulators.

2.4 Since 2007 local authorities in England have been under a statutory duty to act in a way which is transparent, accountable, proportionate, consistent and targeted and also to have regard to a Regulators' Compliance Code. In November 2009 these requirements were extended to apply to local authorities in Scotland. The requirements only apply to legislation which is reserved to Westminster (e.g. fair trading and health and safety at work) and not to devolved legislation (e.g. food safety).

3. Main Issues

3.1 The appendix contains the proposed enforcement policy which is designed to replace all existing enforcement policies in use by regulatory services. The proposed approach to enforcement is based on the Hampton Principles, the five principles of good regulation and the Regulators' Compliance Code referred to above. For simplicity, the policy is designed to apply to matters which are reserved and devolved.

3.2 The LARS regulatory services have always sought to apply the right balance between protecting the public and avoiding unnecessary burdens on

businesses which could stifle their ability to grow and create employment. The sections have also changed their methods over the years in line with government policy on better regulation. Therefore, although this new policy is worded differently from the ones it is designed to replace, in practice it is unlikely to result in a significantly softer or harsher attitude to enforcement.

- 3.3** The policy applies to all persons whose activities we regulate. This includes businesses, their employees, non-business organisations, private individuals, and also West Dunbartonshire Council itself.
- 3.4** The standards in the policy are grouped under the headings of helpfulness, openness, proportionality, consistency, fairness, and targeted action.
- 3.5** The policy places an emphasis on working with regulated persons to encourage compliance in a helpful manner, however where that goodwill is abused we can resort to formal enforcement action. In paragraph 3.4, the policy sets out eleven factors which will be used to determine the most appropriate course of action to take when discovering a breach of legislation. These include the seriousness of the breach, its impact on vulnerable people, the business's history of compliance, and evidence of fraudulent, deliberate or irresponsible behaviour.
- 3.6** Regulatory Services carried out a consultation on the draft policy in October 2009 by sending a brief questionnaire to over 160 businesses selected at random from the enforcement database, to various interested bodies, to the Council's Executive Directors, and placed the consultation on the Council's home web page. Only 5.5% of businesses responded but all were supportive of the policy. Only one body responded (Consumer Focus Scotland) which said the policy was a good example of the way regulatory services are developing. Two Executive Directors replied and supported the policy. Therefore no changes of substance have been made to the policy as a result of the consultation.
- 3.7** An equality impact assessment has been carried out with particular regard to race and ethnicity equality.

4. Personnel Issues

- 4.1** None.

5. Financial Implications

- 5.1** None

6. Risk Analysis

- 6.1** No risk assessment required.

7. Conclusions

7.1 The Council needs to formally update its approach to enforcement to ensure it meets new government requirements. This is an ideal opportunity to achieve greater consistency by creating a single enforcement policy for LARS regulatory services.

8. Recommendations

8.1 The committee is asked to approve the enforcement policy.

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Appendices: Enforcement Policy

Background Papers: Reducing administrative burdens: effective inspection and enforcement (HM Treasury, Sir Philip Hampton, March 2005)
Legislative and Regulatory Reform (Regulatory Functions) (Amendment) Order 2009
Regulators' Compliance Code (Department for Business, Innovation & Skills)
Equality Impact Assessment

Wards Affected: All