

 Executive 29th June 2016		Agenda Item No. 3
Title	Warwick District Council Enforcement Policy Appendix: Regulatory (Food Safety, Health and Safety and Licensing)	
For further information about this report please contact	Marianne Rolfe, Regulatory Manager Tel:01926 456320 Email: marianne.rolfe@warwickdc.gov.uk	
Wards of the District directly affected	All wards	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?	No	
Date and meeting when issue was last considered and relevant minute number	Executive 3rd September 2014	
Background Papers	The Enforcement policy as agreed on the 3 rd September 2014	

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	No
Included within the Forward Plan? (If yes include reference number)	No
Equality and Sustainability Impact Assessment Undertaken	Yes

Officer/Councillor Approval		
Officer Approval	Date	Name
Chief Executive/Deputy Chief Executive	07/06/16	Andrew Jones
Head of Service	30/03/16	Marianne Rolfe
CMT	07/06/16	
Section 151 Officer	07/06/16	
Monitoring Officer	31/03/16	Andrew Jones
Finance	07/06/16	
Portfolio Holder(s)	07/06/16	Moria-Ann Grainger
Warwickshire Legal Services	21/03/16	John Gregory
Consultation & Community Engagement		
Final Decision?	Yes	
Suggested next steps (if not final decision please set out below)		

1. **SUMMARY**

- 1.1 To seek the Council's adoption of an appendix to the enforcement policy which addresses matters which are specific to the Regulatory Team within the Health and Community Protection Service Area.

2. **RECOMMENDATION**

- 2.1 That Executive recommends to Council adoption of an appendix to Warwick District Council's Enforcement Policy as set out in Appendix 1.

3. **REASONS FOR THE RECOMMENDATION**

- 3.1 Local Authorities have a statutory duty to have regard to the Regulators' Code in developing the principles and policies which guide their regulatory activities. The Local Government Ombudsman will be using the Code as a point of reference when examining complaints about local regulatory services. Adopting this Enforcement Policy appendix will mitigate against the risk of successful challenge.
- 3.2 The proposed appendix to the Warwick District Council Enforcement Policy outlines the regulatory matters which are specific to the Regulatory Section of Health and Community Protection and are not covered in the main body of the WDC Enforcement Policy.

4. **POLICY FRAMEWORK**

- 4.1 **Policy Framework** – This appendix to the enforcement policy explains the specific powers and actions available to the Regulatory Section of Health and Community Protection which are not covered by the main body of the Enforcement Policy.
- 4.2 **Fit for the Future** – The enforcement appendix will ensure that there is consistent and proportionate enforcement action taken in line with an open and transparent policy. This will ensure that the service is delivered effectively and suitably targeted.
- 4.3 **Sustainable Community Strategy** – The effective targeting of regulatory activities contributes towards the Health & Wellbeing and Prosperity priority themes within the Sustainable Community Strategy. It will help everyone to enjoy a healthy and safe lifestyle and should encourage economic growth by giving commerce the confidence to know that we offer support for compliant businesses whilst targeting our regulatory services on non-compliance to ensure equality in business competition.

5. **BUDGETARY FRAMEWORK**

- 5.1 There are no budgetary implications associated with this report.

6. **RISKS**

- 6.1 Risk of not adopting the appendix is covered in the Reasons for Recommendations.

7. **ALTERNATIVE OPTION(S) CONSIDERED**

7.1 No alternative options were considered as adoption of the appendix will provide the Council with additional protection when undertaking its Regulatory activities.

8. **BACKGROUND**

- 8.1 The Department for Business, Innovation & Skills introduced a new Regulators' Code which came into force on 6 April 2014 and covers environmental protection, food safety, health and safety, licensing, private sector housing, public health, and waste. Its aim is to provide a regulatory framework that supports compliance and growth while enabling resources to be focussed where they are most needed. It sets out a framework for proportionate and accountable regulatory delivery and establishes principles of how local authorities should engage with businesses to avoid imposing unnecessary regulatory burdens.
- 8.2 The Government's Better Regulation Delivery Office (BRDO) has produced an example template to assist local authorities in drafting enforcement policies and this has been used to create the council's Enforcement Policy. This policy was designed to apply to all the Council's regulatory activities.
- 8.3 It was acknowledged during the introduction of the council Enforcement Policy that certain services may require additional explanation to be provided to outline the specific enforcement opportunities available to the subject area.
- 8.4 Appendix 1 outlines the specific enforcement areas for food safety, health and safety and licensing which are not covered in sufficient detail within the main enforcement policy body.

Appendix 1:

**WARWICK DISTRICT COUNCIL'S
ENFORCEMENT POLICY
REGULATORY SERVICE (Food Safety, Occupational Safety and Health
and Licensing) APPENDIX
Revision 2 (2016)**

1. Introduction

- 1.1 This Regulatory Service Appendix is intended to be read in conjunction with Warwick District Council's published [Enforcement Policy](#). It will provide specific details that relate to the enforcement of matters with respect to food safety, occupational safety and health and licensing.

2. Background

- 2.1 As a **food authority** in the terms of the [Food Safety Act 1990](#), Warwick District Council has a duty to enforce food safety legislation, and a responsibility to follow associated [Codes of Practice](#) under the Act. It is required to enforce the legislation in pursuit of the particular interests of consumers within the authority's area including members of the public, employees and business owners by:

- § protecting public health, and
- § ensuring a fair trading environment for local businesses.

- 2.2 Hygiene inspections are targeted in accordance with the risk assessment parameters set by the Food Standards Agency and the corresponding inspection frequencies.
- 2.3 The Council has a shared enforcement role with the County Council in respect of food labelling requirements. This situation is managed by case by case communication between the two authorities and by regular meetings of the Warwickshire & Coventry Food Liaison Group.
- 2.4 Food safety and quality is determined on inspection or sampling and by the investigation of complaints made to the Department.
- 2.5 Local authorities have statutory responsibilities to make adequate arrangements for the enforcement of **health and safety** law in relation to specified work activities- including offices, shops, retail and wholesale distribution centres, leisure, hotel and catering premises. Health and Safety Executive (HSE) inspectors also enforce health and safety law in workplaces allocated to them.
- 2.6. The appropriate use of enforcement powers, including prosecution, is important, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failures to safeguard health, safety and welfare. In allocating resources, enforcing authorities should have regard to the principles set out below, the objectives published in the [National Enforcement Code](#), and the need to maintain a balance between

enforcement and other activities, including inspection.

- 2.7 HSE expects enforcing authorities to use discretion in deciding when to investigate or what enforcement action may be appropriate. The decision-making process which inspectors will follow when deciding on enforcement action will be set down in writing, and made publicly available. The judgements will be made in accordance with the principles of Philip Hampton's report '[Reducing administrative burdens: Effective Inspection and Enforcement](#)'.
- 2.8 The **Licensing** function of the Regulatory Team covers the following areas:-
- Licensing Act 2003
 - Gambling Act 2006
 - Sexual Entertainment Venues
 - Private Hire driver, vehicle and operator's licences
 - Hackney Carriage driver and vehicle licences
 - Street Trading Consents
 - Small lotteries
 - Street Collections
 - House to House collections
 - Scrap Metal Dealers
- 2.9 This policy should be read in conjunction with codes of practice and guidance issued by the following:- Food Safety Act 1990 [Code of Practice](#); [Approved Codes of Practice \(ACOPs\)](#); [Local Authorities Regulators of Regulatory Services \(LACORS\)](#); [HSE](#) and [HELA guidance](#); [Home Office](#), [Institute of Licensing](#), [National Association of Licensing Officers](#) and [Gambling Commission](#).
- 2.10 All actions will be taken only by duly authorised officers in accordance with the [Council's Scheme of Delegation](#).

3. Enforcement Options

- 3.1 In making a choice of action, the appropriate subject guidance below will be followed:- Food Safety Act 1990 [Code of Practice](#); [Approved Codes of Practice \(ACOPs\)](#); [Local Authorities Regulators of Regulatory Services \(LACORS\)](#); [HSE](#) and [HELA guidance](#); [Home Office](#), [Institute of Licensing](#), [National Association of Licensing Officers](#) and [Gambling Commission](#).
- 3.2 Any significant choice of action which might be considered to be inconsistent with such guidance, advice and views will be made in consultation with the Warwickshire & Coventry Food, Safety and Licensing Liaison Group, LACORS, the Food Standards Agency, HSE and the Primary Authority. It is recognised, however, that only the Courts can make decisions on matters of legal judgement.
- 3.3 In most instances no action will be taken where the offending circumstance has been occasioned by inadvertence and is proactively in the process of being remedied, however, each case will be considered individually.

4. Informal Action

- 4.1 Informal action is the issue of verbal advice (always confirmed in writing on the visit report or by letter), written advice with no date for action requested, written advice with a date specified for completion, and written warnings that future offences may result in prosecution.
- 4.2 Recommendations are necessary in order to assist the duty holder in taking all reasonable precautions and exercising all due diligence to avoid offences. Such recommendations will be clearly differentiated from legal requirements which will be identified by statute and regulation or section number.
- 4.3 Action Plans including timescales for completion are agreed by all parties including where necessary, the Licence Holder, Designated Premises Supervisor and other relevant Responsible Authorities (i.e. Police, WDC Environmental Health Officers and Planning Officers).

5. Statutory Notices

- 5.1 **Food - Hygiene Improvement Notices** will be served by authorised Inspectors and Officers in circumstances related to risk to health, in accord with [Code of Practice](#) and [Local Authorities Regulators of Regulatory Services \(LACORS\)](#) guidance, in one or more of the following circumstances:
 - i. There are such significant contraventions of the legislation that it is anticipated that a prosecution would be successful in the Magistrates' Court if the evidence were placed before them.
 - ii. There is a justifiable lack of confidence in the duty holder to respond to an informal approach.
 - iii. There is a history of non-compliance with informal action.
 - iv. Standards are generally poor with little duty holder awareness of statutory requirements.
 - v. The consequences of non-compliance could have negative implications for public health or fair trading.
 - vi. Although it is intended to prosecute, effective action also needs to be taken as quickly as possible to remedy continuing contraventions.
- 5.2 The time limit for compliance with the requirements of the notice will be made clear verbally with the duty holder, or appropriately negotiated. Regard will be had in the negotiations to consistency and feasibility. The duty holder will be advised that any unforeseen circumstances which arise in the time period, which may cause it to overrun, must be drawn immediately to the attention of the Food Safety Team. On written application, the originating officer will have regard to the following criteria in granting an extension of the time period, or otherwise:
 - i. The risk to public health associated with the fault if an extension was granted;
 - ii. The reason for the request;

- iii. The remedy involved;
- iv. The past record of compliance of the duty holder; and
- v. Any temporary action which the duty holder proposes to take to remedy the defect.

5.3 As a rule, failure to comply with a Hygiene Improvement Notice will be reported for prosecution. Only unavoidable circumstances, or mitigating information coming to light concerning factors outside the control of the duty holder, will justify a variation of this policy.

5.4 **Food - Hygiene Emergency Prohibition Notices** will be served by authorised Environmental Health Officers in one or more of the following circumstances:

- i. He/she is satisfied that there is an imminent risk of injury to health.
- ii. Not taking immediate and decisive action to protect public health is unjustifiable.
- iii. There is no confidence in the integrity of an offer made by a duty holder to close the premises voluntarily and to keep the premises closed until the risk is removed.

5.5 **Occupational Safety and Health – Improvement Notices**

- i. Paragraphs 5.1 I – vi and 5.2, apply.
- ii. As a rule, failure to comply with an Improvement Notice will be reported for prosecution. Only unavoidable circumstances, or mitigating information coming to light concerning factors outside the control of the duty holder, will justify a variation of this policy.

5.6 **Occupational Safety and Health – Prohibition Notices** will be served by authorised Environmental Health Officers when there is a requirement to stop work to prevent serious personal injury.

- i. Prohibition Notices will be issued to have immediate or deferred effect.
- ii. There does not have to be a breach of any statutory requirements before a prohibition notice is issued, but an officer who thinks there has been will specify it in the prohibition Notice.

5.7 Primary, Home and originating authorities will be notified of any statutory notices served.

6. Prosecution

6.1 The decision to prosecute rests with the Council and/or Duly Appointed Inspector (in the case of Health & Safety cases) and is delegated to the Head of

Health and Community Protection in consultation with the appropriate elected Member. See [Warwick District Council's Scheme of Delegations](#).

- 6.2 The recommendation to prosecute, based on the available evidence and professional judgement, comes from the Regulatory Manager by way of formal report to the Head of Health and Community Protection and in consultation with a Solicitor of the Legal Services Unit.
- 6.3 Prosecutions will be related to risk and will not be used as a punitive response to minor breaches of legislation.
- 6.4 The objectives of any prosecution must be:
- i. To concentrate the mind of the duty holder on the necessity to be duly diligent and to take all reasonable precautions to ensure food safety and hygiene;
 - ii. To demonstrate to the public that their interests are being protected; and
 - iii. To demonstrate to other duty holders that the law is being evenly applied.
 - iv. To enable the Courts to decide the appropriate punishment.
- 6.5 **Before deciding whether a prosecution should be taken one or more of the following factors will be considered:**
- i. The seriousness of the alleged offence.
 - ii. Whether death or personal injury resulted from the alleged offence.
 - iii. The gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it.
 - ii. The previous history of the party concerned.
 - iii. The likelihood of the defendant being able to establish a due diligence defence (food safety only).
 - iv. The availability of any important witnesses and their willingness to cooperate.
 - v. The willingness of the party to prevent a recurrence of the problem.
 - vi. The probable public benefit of a prosecution, the importance of the case (eg. whether it might establish a legal precedent) and satisfaction of the tests in the [Code for Crown Prosecutors](#).
 - vii. Whether other action, such as issuing a simple caution in accordance with [Home Office Circular 16/2008](#), or a Hygiene Improvement Notice (H.I.N.), Improvement Notice (I.N.) or imposing a prohibition, would be more appropriate or effective.

- viii. Any explanation offered by the affected company.
- vix. False information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to a significant risk.
- x. Inspectors have been intentionally obstructed in the lawful course of their duties.

These considerations will be detailed in all reports recommending prosecution.

- 6.6 Before a decision is made to prosecute, the duty holder will be invited to an interview under the [Police and Criminal Evidence Act 1984](#) in order to make representations before a decision is made as to the appropriate course of action to be taken. The duty holder will have an opportunity to be accompanied by a legal representative at the interview. This is the duty holder's opportunity to present any facts or views he considers pertinent to the decision-making process.
- 6.7 The circumstances where prosecution is warranted are one or more of the following:
- i. The offence involves a flagrant breach of the law such that public health, safety or well-being is or has been put at risk, or fair trading is prejudiced.
 - ii. The offence involves a failure to correct an identified serious potential risk to food safety having been given a reasonable opportunity to comply with requirements.
 - iii. The offence involves a failure to comply with a statutory notice.
 - iv. There is a history of similar offences.
- 6.8 If it is then considered by the Regulatory Manager that prosecution is appropriate the file of evidence will be presented to the Head of Health and Community Protection with a Report by the Regulatory Manager recommending prosecution. If the Head of Health and Community Protection agrees with the recommendation in the report, it will be presented to the Council's Solicitor for review, and, if the evidence is considered sufficient for there to be a realistic prospect of conviction, and the public interest test is satisfied, then legal proceedings will normally be instigated.
- 6.9 Where there is a risk of injury to health the Solicitor will, in the course of the hearing, draw the Court's attention to its duty to impose a Prohibition Order.
- 6.10 Primary, Home and originating authorities will be notified of the results of prosecutions.

7. Simple Cautions

- 7.1 Simple Cautions in accordance with [Home Office Circular 16/2008](#) will only be issued by the Council in the following circumstances:
- i. There is evidence sufficient to give a realistic prospect of conviction;
 - ii. The duty holder admits the offence;

iii. The duty holder understands the significance of the simple caution and gives informed consent; and

7.2 If a duty holder refuses the offer of a Simple Caution then a prosecution will be instituted.

7.3 Primary, Home and originating authorities will be notified of Simple Cautions issued. The Caution will be cited in any subsequent proceedings as a previous offence.

8. Revocation of Approvals/Licenses/Permits/Consents & Registrations

8.1 Premises, people and vehicles can be approved and/or licensed by the Council. The Council will exercise its power of revocation, suspension or refusal to grant in the circumstances dictated by the appropriate regulations, and where it has not been possible to secure compliance by less draconian means.