

## SEFTON METROPOLITAN BOROUGH COUNCIL

### REGULATORY ENFORCEMENT POLICY

*Note 1 - For the purpose of this policy 'business' means commercial activity, public sector bodies, charities and voluntary sector organisations that are subject to regulation.*

*Note 2 – This policy also applies to 'individual persons' who are also regulated by legislation.*

1. This policy applies to the discharge of the Councils regulatory duties and powers, commonly collectively referred to as environmental regulatory services. The activities include Environmental Health, Trading Standards, Licensing, Waste Regulation and other associated regulatory statutory activities.
2. Sefton Council is statutorily obliged to carry out environmental regulatory duties and in so doing must have regard to the Regulators Code made under the Legislative and Regulatory Reform Act 2006 (s23) and have regard to the Regulatory Outcome Objectives as issued by Her Majesty's Government's Department of Business, Innovation and Skills.

#### **The Priority National & Local Regulatory Outcome Objectives are:**

**Support economic growth especially in small businesses by ensuring a fair, responsible and Competitive trading environment**  
**Protect the environment for future generations including tackling the threats and impacts of climate change**  
**Improve quality of life and wellbeing by ensuring clean and safe neighbourhoods**  
**Help people to live healthier lives by preventing ill health and harm and promoting public health**  
**Ensure a safe, healthy and sustainable food chain for the benefits of consumers and the rural economy.**

3. These priority outcomes have been adopted by Sefton Council and this policy relates to how and when formal action will be taken in relation to the discharge of environmental regulatory activities to achieve them.

#### **Encouraging Compliance**

4. It is recognised that most businesses and individuals want to comply with the law and that the prevention of community or environmental harm is better than damage remediation and punishment. Sefton Council will therefore endeavour to help businesses and individuals to meet their legal obligations without unnecessary expense. The Council encourages business to seek advice and information from the Council or other competent parties and we will assist their compliance with statutory requirements which protect the public and the environment (including the trading environment) from harm.
5. We embrace the "Regulators Code" (published by BIS on July 2013), and have integrated the Code's standards into our regulatory culture and processes. This enforcement policy supports the principals of better regulation to promote efficient and effective approaches to regulatory inspection and enforcement that improve regulatory outcomes without imposing unnecessary burdens on business.

## **Impact on Economic Growth**

6. Sefton Council has an Economic Development Strategy aimed at stimulating and sustaining business growth. The Council's "Invest Sefton" service provides business support aimed at supporting new business start ups, business growth, and investment in Sefton. This includes working closely with the council's regulatory services providing assistance to businesses who are trying to comply with legislative requirements but appear to be struggling. In such cases regulatory officers will offer support through an automatic referral to the Council's business support service.
7. We will consider the impact that our regulatory interventions may have on economic growth, including consideration of the costs, effectiveness and perceptions of fairness of regulation. We will only adopt a particular compliance approach if the benefits justify the costs, (economic, social and environmental) and it entails the minimum burden compatible with achieving the regulatory outcome objectives.
8. Where the Council has discretion (i.e. where it is not itself regulated in the discharge of its statutory functions by Government agencies) we will review our regulatory activities and intervention approach with a view to removing or reducing any disproportionate regulatory burdens they may impose.
9. We will consider the impact that our regulatory interventions may have on small businesses or others, using reasonable endeavours to ensure that the burdens of our interventions fall fairly and proportionately on such businesses by giving consideration to the size of the businesses and the nature of their activities.
10. When we set standards or give guidance in relation to the exercise of our regulatory functions we will allow reasonable variations to meet other government priorities.

## **Risk Assessment**

11. To maximize the priority outcome effectiveness of our interventions we will consider the following:
12. We will ensure that the allocation of our regulatory efforts and resources are targeted to where they will be most effective in achieving the regulatory priority outcomes. We will also ensure that risk assessment precedes and informs all aspects of our approaches to regulatory activity, including:
  - Data collection and other information requirements;
  - Inspection programmes;
  - Advice and support programmes; and
  - Enforcement and sanctions.
13. We will ensure our risk assessments are based on all available relevant and good-quality data. Our assessments will include explicit consideration of the combined effect of the potential impact of non-compliance with the legislation enforced by the Council and the likelihood of non-compliance.
14. In evaluating the likelihood of non-compliance, we will give consideration to all relevant factors, including:

- Past compliance records and potential future risks;
- The existence of good systems for managing risks, in particular within regulated businesses or sites;
- evidence of recognised external accreditation; and
- Management competence and willingness to comply.

15. We will follow current national guidance wherever possible and we will endeavour to consult and involve businesses and other interested parties in designing our own risk methodologies. We will provide details of these methodologies upon request.

16. We will periodically review and where appropriate, improve our risk methodologies. In doing so, we will take into account feedback and other information from businesses and other interested parties.

### **Advice & Guidance**

17. We will have regard to the following requirements when determining general policies or principles or when setting standards or giving general guidance:

18. We will endeavour to ensure that all legal requirements relating to our regulatory activities, as well as changes to those legal requirements, are promptly communicated or otherwise made available to relevant businesses / individuals.

19. We will provide general information, advice and guidance to make it easier for businesses / individuals to understand and meet their regulatory obligations. Such information, advice and guidance will be provided in clear, concise and accessible language, using a range of appropriate formats and media.

20. We will endeavour to involve businesses and others in developing both the content and style of our regulatory guidance. We will assess the effectiveness of our information and support services by monitoring businesses' awareness and understanding of legal requirements, including the extent to which those businesses / individuals incur additional costs obtaining external advice in order to understand and comply with legal requirements.

21. We will provide targeted and practical advice that meets the needs of business and others. Such advice may be provided in a range of formats, such as through face-to-face interactions, telephone helpline and online guidance. In determining the appropriate formats, we will seek to maximize the reach, accessibility and effectiveness of advice while ensuring efficient use of resources. There may remain a need for businesses with particularly complex practices to use specialist or professional advisors as appropriate.

22. When offering compliance advice, we will distinguish between statutory requirements and advice or guidance aimed at improvements above minimum standards. Advice will be confirmed in writing, if requested.

23. We will provide appropriate means to ensure that businesses and others can reasonably seek and access advice from ourselves without directly triggering enforcement action. In responding to such an approach, we will seek primarily to provide the advice and guidance necessary to help ensure compliance.

24. Advice services will generally be provided free of charge, but it may be appropriate for us to charge a reasonable fee for services beyond the basic advice and guidance necessary to help ensure compliance. We will, however, take account of the needs and circumstances of smaller businesses and others in need of help and support and reflect these considerations in reviewing locally determined schemes of fees and charges.

### **Inspection and other visits**

25. We will have regard to the following provisions when determining general policies or principles or when setting standards or giving general guidance on inspections:
26. We will ensure that proactive inspections and compliance visits to businesses only occur in accordance with a risk assessment methodology, except where visits are requested by businesses, or where we act on relevant intelligence, such as reasonable public complaints.
27. We will use a small element of random inspection in our programme to test our risk methodologies or the effectiveness of our interventions.
28. We will focus our greatest effort on businesses where risk assessment shows that both:
- A compliance breach or breaches would pose a serious risk to a regulatory outcome; and
  - There is high likelihood of non-compliance by businesses.
29. Where we visit or carry out inspections of businesses, we will give positive feedback to the business to encourage and reinforce good practice. We will also share amongst businesses, and with other regulators information about good practice.
30. Where two or more inspectors, whether from different regulators, or ourselves undertake planned inspections of the same business, we will endeavour to have arrangements for collaboration to minimise burdens on the business, for example, through joint or coordinated inspections and data sharing.

### **Information requirements**

31. We will have regard to the following provisions when determining general policies or principles or when setting standards or giving general guidance on data requirements:
32. When determining which data we require, we will undertake an analysis of the costs and benefits of data requests to businesses and others. We will give explicit consideration to reducing costs to businesses through:
- Varying data requests according to risk;
  - Limiting collection to specific regulated entities sectors/sub-sectors;
  - Reducing the frequency of data collection;
  - Obtaining data from other sources;
  - Allowing electronic submission; and
  - Requesting only data that is prescribed or justified by risk assessment.
33. If we require similar information to another regulator from the same businesses, we will endeavour to share data to avoid duplication of collection where this is practicable,

beneficial and cost effective. We will have regard to the views of the Information Commissioner when applying the Data Protection Act 1998 in order to avoid unnecessarily restricting the sharing of data.

34. We will endeavour to involve businesses and others in vetting data requirements and form design for clarity and simplification. We will seek to collect data in a way that is compatible with the processes of businesses and those of other regulators who collect similar data.

### **Compliance and Enforcement Actions**

35. We will have regard to the following points when determining policies, standards or giving guidance relating to compliance and enforcement functions:
36. We will seek to reward those businesses / individuals that have consistently achieved good levels of compliance through positive incentives, such as lighter inspections and reporting requirements where risk assessment justifies this. We will also take account of the circumstances of small businesses / individuals, including any difficulties they may have in achieving compliance.
37. When considering formal enforcement action, we will, where appropriate, discuss the circumstances with those suspected of a breach and take new information into account when deciding on the best approach. This would not apply where immediate action is required to prevent or respond to a serious breach or where to do so is likely to defeat the purpose of the enforcement intervention, such as removing an immediate significant risk of significant harm.
38. We will ensure that the application of our sanctions and penalties are consistent with the principles set out in the Regulators Code. This means that our sanctions and penalties will:
- Aim to change the behaviour of the offender;
  - Aim to eliminate any financial gain or benefit from non-compliance;
  - Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
  - Be proportionate to the nature of the offence and the harm or risk caused;
  - Aim to restore the harm caused by regulatory non-compliance, where appropriate;
  - Aim to deter future non-compliance.
39. In accordance with the Regulators Code characteristics, we will also:
- Publish an enforcement policy (this document);
  - Where possible, measure outcomes not just outputs;
  - Justify our enforcement actions year on year to interested parties
  - Follow-up enforcement actions where appropriate;
  - Enforce in a transparent manner;
  - Be transparent in the way in which we apply and determine penalties; and
  - Avoid perverse incentives that might influence the choice of sanctioning response.
40. We will ensure that clear reasons for any formal enforcement action are given at the time the action is taken. These reasons will be confirmed in writing at the earliest opportunity.

The Council's Corporate Complaints Procedure and relevant legal appeals procedures will also be explained.

41. We will ensure the professional competence of authorized inspectors and enforcement officers to interpret and apply relevant legal requirements and enforcement policies fairly and consistently between like-regulated entities in similar situations and apply enforcement approaches consistently and fairly.

#### **Investigation techniques and use of covert surveillance.**

42. Authorized officers will use whatever investigation methodology is appropriate for the investigation of an offence. Officers will be proportionate to the seriousness of the offence and wider public interest in the amount of time given to the investigation of a case. Covert investigation techniques may be used to prevent or detect criminal offences that are punishable by a maximum term of at least 6 months imprisonment or for underage sales of alcohol or tobacco, but only after obtaining an Order from a Justice of the Peace. Intrusive covert surveillance will not be used.

#### **Actions and Sanctions for Resolving Non-Compliance –**

43. Where a breach of legislation is found we may:
44. **Take Informal Action** – If in the opinion of an authorized officer the statutory breach is of a minor nature and verbal or written advice/warning would achieve the necessary outcome, this should be the appropriate course of action.
45. **Prior to formal action**, authorized officers will provide an opportunity to discuss the circumstances of the case and if possible resolve points of difference to ensure legal compliance. Where formal action is necessary, an explanation will be given at the time and will be confirmed in writing.

Competent officers are individually authorized and may (as the specific legislation allows):

46. **Issue a Fixed Penalty Notice** - Some strict liability offences (offences for which there is no lawful excuse) allow for the issue of a fixed penalty fine. Fixed Penalty notices will be issued consistently for all similar cases. (see annex 1)
47. **Issue an Improvement or Rectification Notice** - When issued, the notice will state what needs to be done, by when and why. Further legal action or prosecution may result if the notice is not complied with in the specified time.
48. **Issue a Prohibition / Stop Notice** - Where the activity involves a risk of personal injury, serious risk of harm or pollution, stopping the activity immediately and not allowing it to be resumed until the problem is rectified or appropriate official checks and permissions have been obtained.
49. **Issue an Abatement Notice** - An officer may (and sometimes must), serve an abatement notice when unsatisfactory conditions such as a public health hazard, nuisance, or public safety risk are found to exist. A notice may be served in advance if a problem is believed likely to occur or may reoccur. The notice may either require that the activity stops or that works be carried out.

50. **Carry out works in default** - If a statutory notice is not complied with or physical action is urgent to protect the public, a contractor may be appointed to undertake the work in default and the costs of doing so may be recovered from the responsible party.
51. **Seek a closure order to for unfit / unsafe premises** – an authorized officer may seek an order to close unfit, unsafe or insanitary premises.
52. **Seize goods or equipment** – an authorized officer may seize unfit food, counterfeit or unsafe goods, unsafe tools or equipment, noise making equipment or vehicles used in fly tipping etc.
53. **Issue a Caution** - A caution in lieu of prosecution will be considered to deal quickly and simply with less serious offences, to divert less serious offences away from Court and to reduce the chances of repeat offences. A caution will appear on a criminal record, a subject access request and may be disclosed for employment/licensing purposes.
54. **Initiate Prosecution** - In serious cases of direct breach of the law or where there is non-compliance with a notice and there is, or has been, a risk of harm, prosecution may be pursued.
55. **Seek Costs, Proceeds of Crime or Property Forfeiture** – on conviction we will seek reimbursement of our actual costs in bringing the prosecution and in appropriate circumstances may seek the payment of proceeds of crime or the forfeiture of confiscated property.

### **Primary Authority Relationships**

56. Where a primary authority relationship exists between a business and a lead regulating authority we will consult and take into account the views and direction of the Primary Authority when considering the appropriate local enforcement sanction.

### **57. Accountability**

58. We will publish an annual account of our enforcement activities and will undertake consultation and provide feedback opportunities to enable continuing cooperative relationships with businesses and other interested parties.

### **Human Rights**

59. In interpreting the legislation we have a duty to enforce, we will have regard to the overriding requirements of the Human Rights Act 1998. Any formal decision to act otherwise will take account of the human rights impacts. Any decision to breach the statutory human rights detailed in the Act will be justified and will be proportional to the overriding regulatory outcome we aim to achieve.

### **The Regulatory Enforcement & Sanctions Act**

60. We will have regard to the requirements and guidance made under the Act and published policy statements in relation to any new powers and sanctions made available to us, as appropriate.

## Supporting Procedures

61. This Enforcement Policy is supported by operational procedures that are open to public inspection.

### Annex 1 Additional information relating to the issue of fixed penalty notices

#### Fixed Penalty Notices for Environmental Offences (primarily littering and dog fouling)

Fixed Penalty Notices (FPNs) may be issued to persons observed dropping litter or allowing their dog to foul and not immediately removing the faeces. Offenders will be issued with a Fixed Penalty Notice or subsequent letter informing them they will be sent a Fixed Penalty Notice.

A FPN may be issued to an offender on sufficient evidence being provided by a member of the public.

Where a fixed penalty notice is not paid within the specified time the matter will proceed to prosecution.

Where there are persistent offenders who have previously received Fixed Penalty Notices the matter will proceed direct to prosecution.

There is the potential for aggression or even violence towards the officers issuing FPNs. Merseyside Police may be called upon to assist in an emergency situation. Police officers have the power to require personal details and will be able to assist where an offender fails to give information or is obstructive.

Similar procedures will be adopted in relation to other environmental offences where FPNs are a permitted sanction.

#### Serving Fixed Penalty Notices

Where a person is seen dropping litter or allowing a dog to foul within the Borough, personal details will be taken. This will include full name, full address and date of birth. A FPN (or letter informing them they will be sent a FPN) will be issued. They will be advised that on receipt of the FPN that they have 14 days to pay and the consequences of failing to pay. Details of how to pay will be included with the notice. If a person refuses to take the letter or FPN, the matter will proceed to prosecution and the lack of co-operation brought to the Court's attention. Where a person is seen dropping litter from a vehicle the officer will make contemporaneous notes of the following; vehicle registration number, make, colour; any identifying features of the vehicle and or driver; location and time. Keeper's registration details will be obtained from the DVLA and a Fixed Penalty Notice sent to the registered keeper. Persistent offenders will be treated as previously described above.

#### Juveniles & FPNs

The name, address, age and date of birth of the young person should be obtained, together with the name and address of his or her parents or legal guardian. The young person should also be informed that this information will be shared with their local Youth Offending Team for the administration of justice in accordance with the Data Protection Act 1998.

#### 16 or 17 year old

Once the age of the person has been ascertained, fixed penalty notices can be issued to this

age group using the same procedure as for adults. If there are doubts as to whether the offender is 16 or 17, the procedures for 10 to 15 year olds will be followed. A FPN will not be considered where the young person is suffering from a mental disability or where a young person appears to be mentally distressed or confused, or from another vulnerability that impairs his or her understanding of what goes on (including substance abuse).

### **10 – 15 year olds**

In straightforward cases, for example where the officer knows the child, or where agreement has been reached with a school to issue Fixed Penalty Notices to pupils dropping litter during their lunch hour or immediately before or after school a FPN may be issued on the spot. In such cases the parents, legal guardian or school must be notified as soon as possible.

If there is any doubt, a FPN will not be issued. The officer will obtain the child's details, and the name of their parents or legal guardian. If on enquiry it is decided that FPN is suitable, the FPN will be issued to the offender personally with a parent or legal guardian present. If for any reason it is issued in writing, a responsible adult will be notified at the same time.

In all other cases the local authority will discuss with the Youth Offending Team and other children's service authorities for the area what steps should be taken.

In deciding whether a FPN is appropriate consideration will be given to whether the person has received a Fixed Penalty previously, his or her family circumstances and whether he or she suffers from other vulnerabilities.