

THE CABINET reports as follows:-

1. Housing Standards and Neighbourhood Relations: Proposed Housing Renewal Enforcement Policy

That they have given consideration to a report of Health, housing and Adult Services (copy attached) on a statutory requirement to produce and publish a service specific enforcement policy and to seek approval for the proposed housing renewal enforcement policy which would act to serve statutory, strategic and operational aims in respect of the exercise of regulatory functions.

Accordingly the Cabinet recommends the Council to approve and adopt the Housing Renewal Enforcement Policy with immediate effect.

They also referred to the Regeneration and Community Review Committee for consideration and comment. The comments of the Review Committee will be reported to the meeting.

**HOUSING STANDARDS AND NEIGHBOURHOOD RELATIONS:
PROPOSED HOUSING RENEWAL ENFORCEMENT POLICY**

**REPORT OF THE DIRECTOR OF HEALTH, HOUSING AND ADULT
SERVICES**

1 PURPOSE OF THE REPORT

- 1.1 The purpose of the report is to inform Cabinet of the statutory requirement to produce and publish a service specific enforcement policy and to seek Cabinet approval for the proposed housing renewal enforcement policy which will act to serve statutory, strategic and operational aims.

2 DESCRIPTION OF DECISION

- 2.1 Cabinet is recommended to approve that the draft Housing Renewal Enforcement Policy be referred to Council for approval and adoption by the Council with immediate effect.

3 BACKGROUND

- 3.1 The Council implemented the Housing Renewal and Financial Assistance Policy with effect from 1 April 2003 following adoption by Cabinet on 15 January 2003 and from that time the enforcement policy has been an integral part of the overall policy subject to annual review until Cabinet approved a new Financial Assistance Policy in July 2008.

The introduction of the Housing Act 2004 provided a series of substantial new enforcement powers many of which came into force from 2006 and the Regulators' Compliance Code ("the Code") issued under section 22 of the Legislative and Regulatory Reform Act 2006 ("the Act") recommends that regulators publish an enforcement policy that takes account of the requirements of the Code. A copy of the Code is attached at Appendix 2 of this report.

4 CURRENT POSITION

- 4.1 The existing policy was developed having regard to the 1998 Enforcement Concordat and reflected the relevant housing legislation at that time, most of which originated in the Housing Act 1985. The Code is designed to complement the concordat but unlike the concordat that was voluntary, the Code **must** be taken into account by regulators such as local authorities when determining any general policy or principles about the exercising of specified regulatory functions or when exercising or giving guidance about those functions.

- 4.2 The existing policy has generally been found to apply reasonably well for the purpose for which it was developed. However, the introduction of new powers under the provisions of the Housing Act 2004 and the requirements of the Code means that the existing policy will no longer be fit for purpose.
- 4.3 In certain instances the Council may conclude that a provision of the Code is not relevant in the circumstances or is outweighed by another consideration. Any departure from the code will be required to be properly reasoned and based on material evidence that is documented.

5 ENFORCEMENT POLICY SUMMARY

- 5.1 In order to comply with the Regulator's Compliance Code, issued under the provisions of the 2006 Act, the Council is required to adopt and publish an enforcement policy designed to promote efficient and effective approaches to regulatory inspection and enforcement in order to improve regulatory outcomes without imposing unnecessary burdens on landlords and other businesses.
- 5.2 The policy applies to the enforcement activities of Sunderland City Council in exercising the statutory powers at its disposal in dealing with unfit, sub-standard or disused private sector housing and outlines the approach to be taken in the use of such powers including investigation, inspection, and dialogue with persons who may be affected by the enforcement activity largely vested in the Council's Housing Renewal Team. The policy also applies to the ancillary enforcement activities undertaken by the service in the residential sector to deal with matters such as accumulations of waste, statutory nuisances and blocked or defective drainage.
- 5.3 This policy document also sets out the role of the Housing Renewal Team in utilising powers given to the Council in the Crime and Disorder Act 1998 and the Police Reform Act 2002 in dealing with neighbourhood relations and anti-social behaviour. The policy was developed with a view to protecting the health, safety and welfare of tenants and occupiers of private housing and to encourage good standards in terms of maintenance and management of private rented homes. Further aims are to support the sustainability of the housing stock and the residential environment.

6 REASONS FOR DECISION

- 6.1 The Regulators' Compliance Code, which came into effect on 6 April 2008, stipulates that specified regulators must have regard to its provisions when determining policy, enforcing, setting standards and giving advice on legislative provisions. Housing enforcement is included in the regulatory functions prescribed by Order made under the Act. An explicit policy, specific to the service and complying with the requirements of the Code, must be reported to the Council with a view to adoption as official policy.

- 6.2 The proposed new enforcement policy is designed to promote efficient, effective and consistent approaches to regulatory inspection and enforcement in order to improve regulatory outcomes without imposing unnecessary burdens. This is in compliance with the Code.

7 ALTERNATIVE OPTIONS CONSIDERED

- 7.1 The alternative option considered and rejected was that the existing policy (which does not have regard to the provisions of the Code) be retained despite the introduction of new powers and legislative requirements and contrary to statutory guidance.

8 RELEVANT CONSIDERATIONS

- 8.1 Financial Implications – The City Treasurer has confirmed that there are no additional cost implications associated with this report. The costs associated with the implementation of the Housing Renewal Enforcement Policy will be met from existing resources.
- 8.2 Legal Implications – The City Solicitor has been consulted and his comments are incorporated in the report.
- 8.3 Risk Analysis – this proposal mitigates risk in terms of legal concerns and indemnity of officers' actions.

9 APPENDICES

- 9.1 Appendix 1 - Proposed document "Housing Renewal General Enforcement Policy"
- 9.2 Appendix 2 - Regulators' Compliance Code

10 BACKGROUND PAPERS

Housing Act 2004

Legislative and Regulatory reform Order 2006

Legislative and Regulatory Reform (Regulatory Functions) Order 2007

Cabinet Office Enforcement Concordat

Copies of the above documents are held by the Housing Renewal Team and can be viewed by arrangement. Contact Housing Renewal Team on 0191 561 1488.

Appendix 1

**Housing Renewal Team
General Enforcement Policy**

1. Introduction

The Council is provided with a wide range of powers in relation to standards of housing to enable it to protect individuals, families and the community as a whole. These powers have largely been consolidated into the Housing Act 2004 although some of the provisions of previous statutes including the Housing Act 1985(as amended) remain in force. The Housing Renewal Team within Health Housing and Adult Services has responsibility for exercising these powers in Sunderland. The team also has responsibilities on behalf of the Council for taking action to tackle anti-social behaviour and other crime related issues and in particular instances this is done in partnership with other agencies.

This policy applies to the enforcement activities of Sunderland City Council in exercising the statutory powers at its disposal in dealing with unfit, sub-standard or disused private sector housing and anti social behaviour and outlines the approach to be taken in the use of such powers including investigation, inspection, and dialogue with persons who may be affected by such enforcement activity. The policy also applies to the ancillary enforcement activities undertaken by the service in the residential sector to deal with matters such as statutory nuisances and blocked or defective drainage.

This policy document also sets out the role of the Housing Renewal Team in utilising powers given to the Council in the Crime and Disorder Act 1998, the Police Reform Act 2002, the Criminal Justice and Immigration Act 2008 and the Anti Social Behaviour Act 2003 in dealing with neighbourhood relations and anti-social behaviour

This enforcement policy is designed to promote efficient, effective and consistent approaches to regulatory inspection and enforcement in order to improve regulatory outcomes without imposing unnecessary burdens. This is in compliance with the Regulators' Compliance Code ("the Code") issued under the provisions of the Legislative and Regulatory Reform Act 2006. In certain instances the Council may conclude that a provision of the Code is not relevant in the circumstances or is outweighed by another consideration. Any departure from the code will properly reasoned based on material evidence and documented.

The Council will have regard to the following factors in developing policy and making enforcement decisions:

Economic progress. Enforcement and interventional activities will be kept under review so as to minimise economic burdens whilst fulfilling the public protection role. Officers will consider the impact of interventions on economic progress and will adopt an approach where the requirements justify the costs incurred.

Risk assessments. Resources will be targeted on the basis of risk assessments and actions directed where they will be most effective.

Advice and Guidance. The Council has produced a range of information leaflets on private housing and neighbourhood relations matters. Further information and guidance is available on the Council's website "<http://www.sunderland.gov.uk>" selecting housing service under search. In the course of any enforcement action we will provide clear, concise and accessible information and guidance to help recipients meet their obligations.

Inspections and other visits. All visits and inspections will be justified and where appropriate joint inspections may be carried out with other regulators.

Information requirements. A balanced approach to information needs will be taken with a view to reducing burdens on businesses whilst meeting statutory requirements.

Compliance and enforcement actions. The basis of non-compliance will normally be raised informally before enforcement action is commenced except where this approach may compromise the action, where there is a serious breach of legislation or imminent serious risk to persons or property. A history of good compliance will be recognised. When enforcement action is considered reasons will be discussed whenever possible. Clear reasons will be stated for any action taken and the action will be proportionate to the nature of the breach of regulation.

Accountability and consultation. Sunderland City Council is an accountable body and considered actions shall be justifiable, transparent and in accordance with Council policy in the context of the legal and administrative framework set down for enforcement agencies. The Council will offer consultation and feedback opportunities to persons affected by enforcement activity

Legislation places responsibility on owners, landlords, tenants and occupiers of private housing and the Housing Renewal Team has been vested with the role of providing advice, guidance and assistance to enable persons to meet the statutory requirements. The purpose of this policy is to explain fully how the Housing Renewal Team will fulfil this role and sets down the enforcement approach to be taken with those who are not willing to comply with their legal responsibilities

It is recognised that use of formal enforcement procedures may be generally considered as a last resort action to be used appropriately where other approaches would be or have proven to be ineffective or where there is an imminent risk to health and safety of residents. The provision of information and advice and the engagement of owners, landlords, tenants and residents in constructive dialogue are seen as important means of encouraging the co-operation of owners to maintain their properties in good repair, ensure a high standard of management in the private rented sector and the prevention and early resolution of cases of anti-social behaviour.

2. Council Aims and Objectives

2.1 Sunderland City Council's strategic aims are laid down in the Sunderland Strategy 2008-2025, 'Sunderland - for a better future' and the Council incorporates its strategic aims and objectives in the Corporate Improvement Plan, Service Plans and Strategies that determine how the Council's corporate strategic objectives will be delivered. With regard to crime and disorder the Safer Sunderland Partnership establishes its priorities in the three-year Safer Sunderland Strategy. The Safer Sunderland Strategy 2008-2023 sets out key challenges and priorities for the future, this strategy is supported by a number of local sub-strategies one of these being the Anti-Social Behaviour Strategy. The work already undertaken by the Council through the 'Together' programme and RESPECT agenda will be embedded and progressed within the Citywide ASB strategy. It will progress the work already being achieved in tackling anti-social behaviour through prevention, early intervention, enforcement, support and rehabilitation. The Council's aims and objectives in respect of housing are laid down in the Housing Strategy 2006-2011 and the Private Sector Housing Strategy that set out the Council's vision for housing renewal and which prescribes the standards it wishes to see achieved in the private housing sector. These strategic aims and objectives are then translated into specific service plans that set out how delivery will be achieved.

2.2 For the Housing Renewal Team the principal aims of the service are to:

- Assist in the provision of safe, secure, warm and affordable decent housing.
- Assist in the creation of safe communities and increased resident confidence
- Deliver a high quality service to those who live here delivering a better environment for all and to work with our partners towards the achievement of the council's overall aims and objectives.
- Assist in delivering the Council's strategic aims in respect to Housing and Community Safety.

3. General Principles of Enforcement

3.1 In November 1998 Sunderland City Council formally agreed and adopted the principles of good enforcement in line with the Enforcement Concordat produced by the Government's Cabinet Office in conjunction with the Local Government Association. In considering the role of enforcement in the context of dealing with properties that have category 1 or 2 hazards as identified under the Housing Health and Safety Rating

System (“HHSRS”), the Housing Renewal Team is committed to carrying out enforcement action in an equitable, practical and consistent manner.

The Housing Renewal Team in conducting enforcement activities on behalf of the Council will endeavour to adhere to the principles of consistency, transparency and helpfulness as contained in the enforcement concordat.

In carrying out their investigatory and enforcement role officers will have regard to the provisions of the Human Rights Act 1998 and where relevant, activities will be conducted in line with the Criminal Proceedings and Investigations Act 1996, the Regulation of Investigatory Powers Act 2000 and Data Protection legislation. Information sharing with partners in order to tackle anti-social behaviour will take place in line with agreed protocols, the Safer Estates Agreement and in line with the provisions of Section 115 of the Crime and Disorder Act 1998.

The Council has a number of designated Housing Renewal Areas. These areas have been assessed as having some of the worst housing conditions across the city with a large proportion of empty properties and an oversupply of the private rented sector. Any enforcement actions in such areas will be undertaken in line with this policy and, in addition, any neighbourhood renewal plans, including Neighbourhood Renewal Assessments, Master plans and Area Action Plans and where necessary specific actions will be reported to the Councils Cabinet.

Enforcement action will be considered in proportion to the risk to health or safety of residents or on evaluation of the potential impact of sub-standard housing upon the local community and with due regard to the provisions of the Code. Action will be appropriate to circumstances, and will take into account the seriousness of any breach of statutory provisions and the needs and circumstances of tenants and owners. Council action to tackle anti-social behaviour will take account of the wishes of victims and will have protection of the victim or witness at heart, including respecting the confidentiality of complainants and where appropriate the protection of their identity.

Sunderland City Council's plans are drawn up in consultation with Members, the public and reflect the needs of Sunderland as identified through consultation, customer feedback and from the outcomes of the Council's actions.

4. Approach to Enforcement

Informal action

- 4.1 In dealing with requests for service or unsatisfactory housing conditions identified by other means the first option is for officers to take an informative and advisory approach to owners, occupiers, tenants and landlords alike and every effort will be made to resolve matters by informal means. Owners, occupiers, tenants and landlords may expect a written explanation of opinions if they so request.

Advisory letters will contain an explanation of what breaches of legislation have been identified, what remedial action is needed and what would be a reasonable timescale for compliance. The recipient will also be advised of what formal action may be pursued if remedial action is not forthcoming.

The Council is not precluded from taking immediate formal enforcement action where such action may be considered necessary and appropriate in the light of situations or circumstances. This will include situations where there is an imminent risk to the occupants of a property or members of the public or where an owner or landlord has previously failed to respond to an informal approach.

4.2 Securing Satisfactory Housing Conditions and Management Standards

The Council's Housing Renewal Team has a range of measures, interventions and enforcement powers that may be employed to ensure that compliance with housing legislation and good standards of management are achieved.

Officers may carry out inspections of premises on a routine programmed basis, or in response to complaints, enquiries or requests for service from the public. In some instances targets for inspections or actions are set by other agencies including government departments and the Audit Commission and where this is the case, the Housing Renewal Team aims to meet those targets fully. Where non-compliance with the law is discovered, the enforcement options that the Council may take to ensure compliance include:

- Informal action including giving advice or issuing warning letters allowing time to comply

- Formal action through the service of statutory notices and the prohibition of specified activities
- Issuing licences with conditions
- Revocation of licences or variation of licence conditions
- Issuing a formal caution
- Prosecution

Guidance for officers as to when these actions are appropriate in their service area is documented in operational procedures and are summarised in the table in Appendix 1 to this document. All actions will be monitored to ensure that they are taken in accordance with this Housing Renewal Enforcement Policy and operational procedures.

Landlords Accreditation Scheme

Sunderland has a long-established Private Landlords Forum set up in 2001 to promote dialogue between private landlords and the Council. Voluntary Landlord Accreditation Scheme largely arose out of this and is designed as a partnership arrangement between landlords and the Council to improve the quality of the private rented sector and the management standards. Landlords are invited and encouraged to sign up to agreed and prescribed standards and in turn gain an improved relationship and increased support from the Council. Accredited Landlords undertake to meet agreed standards without the need for formal enforcement intervention by the Council. This is proving a successful partnership and has enabled some positive joint actions to improve conditions in the private rented sector and also in tackling anti social behaviour and management issues.

In recognition of their co-operative working relationship with the Council, formal action will not normally be taken against accredited landlords in the first instance unless there is imminent danger to the occupiers of a property i.e. category 1 hazards. Where possible an informal approach will be taken, officers will consult with the accredited landlord and obtain written agreement for all necessary works to be carried within agreed timescales. If the landlord fails to comply with those arrangements the Council will serve the requisite legal notice and also charge the recipient the costs incurred in service of the notice. The accredited landlord will also be referred to the accreditation panel to reassess their suitability of being accredited.

Maintaining Property Standards - Enforcement Actions

Decisions by Sunderland City Council to use enforcement action will depend on how serious the offence is and the factors taken into consideration shall include:

- The risk that is posed to the safety, health or welfare of the public or to individuals
- If action was wilful or pre-meditated
- A formal notice or order has not been complied with
- There is a history of previous warnings or the person(s) concerned has previously committed similar offences
- The person concerned has attempted to stop an officer from carrying out his / her duties
- The person concerned has failed to disclose information or has made a false statement
- There has been aggressive behaviour towards the public or staff

All enforcement decisions are documented and, other than where emergency enforcement action is taken, Sunderland City Council will always inform owners and occupiers of the action it proposes to take. If there are concerns that the Council has made an unfair decision, any interested person can request that an appropriate senior manager review the decision. When formal enforcement action is taken the Council will always advise interested persons of the appeals process available to them.

Enforcement actions have to be taken within the context of the legal and policy framework set for all enforcement agencies. The Enforcement Concordat lays out the principles of good enforcement. These are:

- Drawing up clear standards
- Setting out the level of service and performance the public and business can expect to receive
- Dealing with the public and the business in an open and honest way
- Providing a courteous, efficient and helpful service
- Responding promptly and positively to complaints about the service
- Ensuring that enforcement action is proportionate to the risks to the public
- Carrying out duties in a fair, equitable and consistent manner

A full version of the Enforcement Concordat is available from the Housing Renewal Manager or by accessing the Cabinet Office's website at www.cabinet-office.gov.uk

5. Formal Housing Enforcement Actions

If the Council considers that a category 1 or category 2 hazard, as defined in the Housing Act 2004, exists on any residential premises they must take the appropriate action in relation to the hazard. This may range from:

5.1 **Improvement Notice** – Service of an Improvement Notice in accordance with sections 11 and 12 of the Housing Act 2004 ('the 2004 Act'). In deciding whether to serve an improvement notice officers of the Housing Renewal Team will consider whether this is the most appropriate enforcement action. The Council must also explain why it has used this action rather than use any other kind of enforcement measure available to them.

5.2 **Prohibition Order** – The 2004 Act permits the Council to serve a prohibition order on the owner of a dwelling in accordance with sections 20 and 21. This Order can prohibit part or all of the use of the premises. In reaching a decision officers will consider the following factors.

- Whether a category 1 or category 2 hazard exists on the premises.
- Whether there is an interim or final management order existing on the property.
- Consider the availability of local accommodation for the re-housing of any displaced occupants.

The Council must review the suspension of a prohibition order not less than one year after the order was made.

5.3 **Hazard Awareness Notices** - A hazard awareness notice under section 28 and 29 of the 2004 Act advises the person on whom it is served of the existence of category 1 or category 2 hazards in or on the residential premises concerned. The notice is designed to make the person with an interest in the property aware of the hazard which exists. This does not preclude the council from instigating further action at a later date.

5.4 **Emergency Remedial Action** – The 2004 Act enables the Council to take such action, as it considers immediately necessary in order to remove the risk of serious harm to the occupiers of the premises or to the occupiers of any other residential premises caused by a category 1 hazard. The Council may obtain a warrant from a magistrate and enter at any time (by force if need be) in order to carry out remedial action. The hazard must involve an imminent risk of serious harm to residential occupiers.

5.5 **Emergency Prohibition Order** - An emergency prohibition order imposes with immediate effect such prohibition or prohibitions as are specified on the use of any premises. The Council can only utilise such an order if there is a category 1 hazard and the hazard involves imminent risk of serious harm to the health and safety of any occupiers or visitors or those of other residential premises.

5.6 **Demolition Order** – In certain situations, A demolition order made under part 9 of the Housing Act 1985 (as amended) can be made in regard to properties where a category 1 hazard or category 2 hazard exists where this is considered to be the most appropriate course of action (unless the premises are a ‘listed’ building). In deciding whether to make a demolition order the Council should:

- Take into account the availability of local accommodation for rehousing the occupants
- Take into account the demand for, and sustainability of, the accommodation if the hazard was remedied.
- Consider the prospective use of the cleared site
- Consider the local environment, the suitability of the area for continued residential occupation and character of the neighbourhood.

5.7 **Clearance** - The Council can declare an area to be a Clearance Area if it is satisfied that each of the residential buildings in the area contains one or more category 1 hazards or (in certain cases) category 2 hazards and that the other buildings in the area (if any) are dangerous or harmful to the health or safety of the inhabitants. The Council will consider the desirability of clearance in the context of the proposals for the wider neighbourhood of which the dwelling forms part.

In deciding whether to declare a clearance area the following should be considered.

- The likely long-term demand for residential accommodation.
- The degree of concentration of dwellings containing serious hazards within the area.
- The overall availability of housing accommodation in the wider neighbourhood in relation to housing needs and demands.
- The proportion of dwellings free of hazards and other, non-residential, premises in sound condition, which would also need to be cleared to arrive at a suitable site.
- Whether it would be necessary to acquire land surrounding or adjoining the proposed clearance area; and whether land can be acquired by agreement with owners.

- The existence of any 'listed' building protected by notice pending listing. Protected buildings should only be included in a clearance area in exceptional circumstances and only when building consent has been given.
- The results of statutory consultations.
- The arrangements necessary for rehousing the displaced occupants and the extent to which occupants are satisfied with those arrangements.
- The impact of clearance on and the scope for relocating, commercial premises.
- The suitability of the proposed after-use of the site having regard to its shape and size the needs of the wider neighbourhood and the socio-economic benefits which the after use would bring, the degree of support by the local residents and the extent to which such use would attract private investment into the area.
- In those circumstances when the Council is considering declaration of a Clearance Area a Neighbourhood Renewal Assessment will be undertaken.

5.8 Compulsory Purchase Order - The Council can compulsorily purchase a property using powers under section 17 of the Housing Act 1985, as part of the policy of Neighbourhood Improvement to tackle issues in declining areas. Compulsory purchase would usually take place:

- Where a property has been vacant for at least 2 years and is a source of recurring problems and complaints from residents in the neighbourhood.
- Where it is known that the reoccupation or development is not imminent.
- Where attempts at persuasion and statutory action have failed to achieve a satisfactory solution.

Current practise is for the Council to dispose of the property to a registered social landlord, owner and / or occupier or to an accredited landlord.

5.9 Mandatory and Selective Licensing

The Housing Act 2004 imposes a duty upon the Council to licence all houses in multiple occupation (HMOs) of a prescribed description, that is, those with three storeys and above that are occupied by 5 or more residents not forming a single household. The 2004 Act also gives powers to introduce selective licensing of private landlords in areas of low housing demand, where they are poorly maintained and / or in cases of high incidents of persistent anti-social behaviour. Where the conditions of licences are not complied with the following actions can be taken.

5.10 Interim Management Order

The Council has been given powers and duties under section 102 of the 2004 Act to take over the management of certain privately rented properties if they are not being managed responsibly and the making of an Interim Management Order is necessary to protect the health, safety or welfare of the occupiers or others living in the vicinity. This action is on a short-term basis and lasts for a maximum of 12 months.

5.11 Final Management Order

The Council may make a Final Management Order in respect of a dwelling and such orders are designed to secure proper management of a house in the longer term as a replacement for the short-term interim management orders. The Final Management Order can last for a maximum of 5 years. The Council do not become the legal owners of the property and cannot sell the property.

5.12 Empty Property Management Orders

An Empty Property Management Order allows the Council to take control of an empty property to secure occupation and proper management of privately owned houses and flats and where the property has been empty for six months or longer. The Council do not become the legal owner of the property and cannot sell the property.

5.13 Service Contracts

Given that Sunderland City Council is no longer a social landlord, housing management services for properties subject to orders is intended to be procured by service level agreement with the Development and Regeneration Directorate for the management services required.

5.14 Charging for the Issue of Notices

The Council may make a reasonable charge under section 49 of the Housing Act 2004 as a means of recovering certain administrative and other expenses incurred in service. Appropriate charges will be set from time to time for the following:

- a) An Improvement Notice under section 11 or 12
- b) Making a Prohibition Order under section 20 or 21
- c) Serving a Hazard Awareness Notice under section 28 or 29
- d) Taking Emergency Remedial Action under section 40
- e) Making an Emergency Prohibition Order under section 43; or
- f) Making a Demolition Order under section 265 of the Housing Act 1985

The Director of Health, Housing and Adult Services has delegated powers in respect of fixing such charges.

5.15 Powers of entry

Section 239 of the 2004 Act allows officers of the Council to enter any premises to carry out a survey or examination of a property to determine whether any functions of the 2004 Act should be exercised.

5.16 Powers to require documents to be produced

Section 235 of the 2004 Act authorises the Council to serve notice on a relevant person requiring the production of any documents required by the Council for any purpose connected with the exercise of any functions under parts 1 to 4 of the 2004 Act or for the purpose of investigating whether any offence has been committed under those Parts.

5.17 Other Legislative Provisions

The Housing Renewal Business Unit administers a range of other provisions with relevance to residential accommodation. These powers range from use of the Building Act 1984 to deal with private foul drainage issues to the Environmental Protection Act 1990 to abate statutory nuisances arising from the state of residential premises. The same principles of enforcement and the approaches used therein apply to all statutory functions covered by the service. The issues dealt with and the legislative powers employed are listed in the table in Appendix 1 to this document.

6. Approaches To Enforcement – Tackling Anti-Social Behaviour

6.1 Anti-Social Behaviour Orders (ASBOs)

Provision is made in the Crime and Disorder Act 1998 (as amended) for the Council to apply to a Court for an Anti-Social Behaviour Order to be made where harassment, alarm or distress is caused to a person or persons not of the same household as the perpetrator.

Anti-Social Behaviour Orders (ASBOs) are civil orders made either in the Magistrates Court or County Court, which directly address the behaviour of the perpetrator. Breach of an Anti-Social Behaviour Order is a criminal offence which can result in imprisonment. Victims of anti-social behaviour often know the offender and probably live in the same street. It is recognised that unlike other forms of criminal activity therefore, officers in the Housing Renewal Team can act as Third Party witnesses for members of the community who do not wish to give evidence in Court.

Application for an ASBO may proceed within the terms of the ASBO protocol agreed between partners in the Safer Sunderland Partnership.

6.2 **Section 222 Injunctions**

This section of the Local Government Act 1972 allows the Council to apply for an injunction to protect the well being of the local community.

6.3 **Parenting Contracts and Parenting Orders**

The Government's "Respect" Agenda encourages Local Authorities to utilise the powers provided in the Anti Social Behaviour Act 2003 as amended by the Police and Justice Act 2006 to apply for the above orders. This includes officers employed by the Housing Renewal Team.

6.4 **Eviction for Anti-Social Behaviour**

Eviction of private tenants who are perpetrators of anti-social behaviour is seen as an action of last resort, as it does not address the behaviour of the perpetrator. However, eviction can on occasions be the only action that can bring relief to communities experiencing anti-social behaviour.

Given that the role of the Council's Neighbourhood Relation's Team is to tackle anti-social behaviour in the private housing sector, partnership working with private landlords is essential. To this end Sunderland City Council has developed a voluntary landlord accreditation scheme, which provides a model for joint working to ensure decent property standards and appropriate the management of tenants is maintained.

This agreement requires private landlords to work with the Housing Renewal Team if their tenants cause anti-social behaviour. This can mean carrying out visits to tenants with appropriate officers but in extreme cases can mean applying to evict their tenant.

The Police Reform Act 2002 introduced provision for anti-social behaviour orders to be granted "on the back" of possession proceedings. In the case of an application for possession by a private landlord, the Council could make an application to intervene in order to apply for the anti-social behaviour order.

As stated earlier in this document, provisions in the Housing Act 2004 require the Council to licence HMO's with 3 storeys and above comprising at least two households and housing not less than five persons. The 2004 Act also enables it to introduce Selective Licensing into areas of low demand, or where there is persistent anti-social behaviour. As set out above non-compliance with the terms of the licence can result in Interim and Final Management Orders being granted. This is a new tool that the Council can utilise to tackle poor landlords. Sunderland City Council, is however, still keen to promote

partnership working with the majority of those landlords who indicate a willingness to work with the Council.

Part 3 of the 2004 Act provided the City Council with the powers to licence private landlords in a designated area. Selective licensing is intended to address the impact that poor quality landlords and anti social tenants can impose on the wider community.

6.5 Closure of Premises

Section 118 and Schedule 20 of the Criminal Justice and Immigration Act 2008, have amended the Anti-Social Behaviour Act 2003 by introducing new powers for the courts to close, on a temporary basis, premises associated with significant and persistent disorder or persistent serious nuisance. Premises Closure Orders are tenure neutral and are designed to allow Local Authorities and Police Forces, working in consultation with each other to take rapid and effective action against activity that blights communities. Persistent serious anti-social behaviour has a negative impact on community life, regeneration etc so it is essential that support interventions are used with enforcement measures and that problems are tackled holistically. It is an order of last resort and will only be pursued after the full range of interventions have been tried without success.

7 Legal Proceedings

7.1 All enforcement action taken will be as set out above and in conjunction with the City Solicitor.

Sunderland City Council, in determining whether to prosecute an offender, will consider its decision after having regard to the guidance contained in the Code for Crown Prosecutors (which sets out the public interest and evidential considerations to be taken into account when considering whether proceedings should be instigated), the Enforcement Concordat and the Regulators' Compliance Code. The advice of the City Solicitor will be sought in all cases and all proceedings on behalf of Sunderland City Council will be initiated by the City Solicitor's office.

The Director of Health, Housing and Adult Services in conjunction with the City Solicitor, will select charges that reflect the seriousness of the offence, enable the case to be presented in a clear and simple way and for which the appropriate court has adequate sentencing powers.

7.2 Review of Legislative Provisions

The policy and range of enforcement actions to be employed may be subject to legislative changes and may need to be revised accordingly. The policy will be reviewed at least on an annual basis and at other such times as legislative changes come into immediate effect.

8. Authorisation of Officers

- 8.1 Only officers who the Council have determined as competent will be authorised to take enforcement action. They will hold appropriate qualifications or experience. Officers will also have sufficient training and understanding of this enforcement policy and in their area of work to ensure a consistent approach to their duties. We undertake to monitor officers' actions to ensure they are always in accordance with our policies.

All officers carry identification and an authorisation to show what legislation they are able to enforce. They are required to show these if asked.

All officers are required to carry out their duties in accordance with set procedures and protocols. These procedures vary depending on the area of work involved.

Delegation of Authority

- 8.2 The Director of Health, Housing and Adult Services has made delegations of authority to the Head of Housing Services and to the Housing Renewal Manager in respect to enforcement activity. These details can be found within the Directorate Delegation and Service Protocol Scheme

9. Consultation processes

- 9.1 The service employs a range of measures to engage landlords, tenants and other residents. Commercial landlords are surveyed in accordance with national indicator 182 to gauge impact of enforcement on businesses, tenants are subject to customer satisfaction surveys and the Council engages resident groups in renewal areas. The Private Landlords Forum continues to be held on a quarterly basis and Newsletters are distributed in areas of specific activity.

10. Openness and Helpfulness

Sunderland City Council aims to be open about the work it does and its Housing Renewal Team will be available to provide general advice, deal with specific cases and investigate complaints and other requests for service. The Council views formal enforcement as a last resort and prefers to work with our clients and customers to achieve compliance. The Council will also provide its customers with a case officer who will provide their contact details. If English is not their first spoken language, we can make arrangements to provide a translation and interpretation service.

11. Dissatisfaction and Complaints Procedure

If any person is dissatisfied with the action that an officer of the Council has taken, then a senior manager will investigate their concerns. Sunderland City Council aims to settle all areas of dissatisfaction quickly and smoothly, recognising that it is preferable to resolve complaints where they arise. Complainants are asked initially to make their complaint to the person dealing with their query or that person's line supervisor or manager. Many issues can be resolved promptly with an explanation, action or apology. All matters will be logged by the Complaint's Co-ordinator of the Health, Housing and Adult Services Directorate to ensure performance can be reviewed. However if the complaint cannot be resolved at this stage, or the complainant feels that more important issues are involved your complaint will be progressed to a senior officer or dealt with in accordance with the Councils formal complaints procedure.

12. Endorsement

This policy was endorsed and adopted by Sunderland City Council on _____ 2009. It is reviewed annually and the Council would be pleased to receive any comments on it.

Consultation and Review

This is a public document. Further copies of this and other documents mentioned above can be obtained from the Housing Renewal Manager, Housing Service, Health Housing and Adult Services, PO Box 102, Civic Centre, Sunderland, SR2 7DN. Many of the documents can also be found on our website – <http://www.sunderland.gov.uk>

Sunderland City Council invites your comments on this document, which will be reviewed on an annual basis.

Offence / Incident	Priority / Category	Legislation	Initial action	Secondary action	Formal action.	Non-compliance
Empty property open access	Medium	Sec. 29 (6), Local Govt (Misc) Act 1982.	Land registry	Contact owner(s)	Notice to secure premises.	WID/recover costs.,
Empty property imminent risk.	High	Sec. 29, (8a), Local Govt (Misc) Act 1982.	Emergency powers	Trace owners	Recover costs.	Enforced sale or CPO.
Disrepair (accred. landlord).	High Cat.1	Sec. 28 or sec. 11, Housing Act 2004.	Phone call	Fax/e-mail	Hazard awareness/Improvement notice.	WID and/or prosecution.
Disrepair (non-accred).	High Cat. 1	Sec. 11 or sec. 20, Housing Act 2004.	Fax/e-mail	Warning letter	Improvement notice or prohibition order.	WID and/or prosecution.
Disrepair (accred. landlord).	Medium Cat.2	Sec. 28, Housing Act 2004.	Phone call	Fax/e-mail	Hazard awareness.	WID and/or prosecution.
Imminent risk to occupant(s).	High	Sec. 40 or sec. 43, Housing Act 2004.	Phone call	Fax/e-mail	Emergency remedial action or emergency prohibition.	WID and/or prosecution.
Non-repairable at cost.	High Cat.1	Sec. 46 or sec. 47, Housing Act 2004.	Fax/e-mail	Meeting with owner	Demolition order/clearance.	Non-repairable at cost.
HMO licensing	Medium	Sec. 63, Housing Act 2004.	Prelim.	Pack to owners	Warning letter.	Prosecution.
Ownership details.	Low	Sec. 16, Local Govt (Misc) Act 1976	Requisition info.	Reminder	Final warning	Prosecution
Choked drain.	Medium	Sec. 35, Local Govt (Misc) Act 1976.	Advice	Letter	Notice to clear drain.	WID.
Statutory nuisance.	Medium	Sec. 80, Env. Protection Act 1990.	Phone call	Fax/e-mail	Abatement notice.	WID and/or prosecution.
Noise Nuisance	Medium	Environmental Protection Act 1980	Referral to Environmental Health			
Filthy/verminous premises	Medium	Sec. 83, Public Health Act 1936	Advice	Site visit/letter	Notice to cleanse premises.	WID.
Collapsed/broken private sewer	Medium	Sec. 59, Building Act 1984.	Advice	Site visit/letter	Notice to carry out works of repair.	WID.

Low level nuisance, ball games etc.	Low		Letter/ Ball games advisory leaflet	Visit will be considered	Exceptional circumstances only will further action be considered	Exceptional circumstances only will further action be considered
Rowdy and Nuisance Behaviour	High	Crime and Disorder Act 1998 Anti Social Behaviour Act 2003	Warning letter	Visit / continuing correspondence	Acceptable Behaviour Agreements Parenting Contract Referral to intervention project such as Targeted Youth Support, Family Intervention etc.	Anti Social Behaviour Order Parenting Orders
Violence, abuse and threat of violence	High	S 222 Local Government Act 1972 (as amended by the Police and Justice Act 2006 Crime and Disorder Act 1998 Anti Social Behaviour Act 2003	Warning Letter	Visit / continuing correspondence	Final Warning	Section 222 Injunction Anti Social Behaviour Order
Persistent serious Anti-Social Behaviour in the community arising from a property	High	Part 1A Anti Social Behaviour Act 2003	Investigation Warning Letter	Evidence gathering, consultation with police and other necessary partners/agencies	Premises closure order	
Neighbour Disputes	Medium		Visit	Letter	Mediation	

- Whilst the above measures lay down a common methodology each case will need to be assessed with respect to the individual circumstances presented. Where there is greater risk or where there is a history of non-compliance formal action may be considered as a first action.
- WID means work in default

BERR | Department for Business
Enterprise & Regulatory Reform

REGULATORS' COMPLIANCE CODE

Statutory Code of Practice
for Regulators

17 DECEMBER 2007

BRE
BETTER
REGULATION
EXECUTIVE

Contents

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Foreword

The Regulators' Compliance Code is a central part of the Government's better regulation agenda. Its aim is to embed a risk-based, proportionate and targeted approach to regulatory inspection and enforcement among the regulators it applies to.

Our expectation is that as regulators integrate the Code's standards into their regulatory culture and processes, they will become more efficient and effective in their work. They will be able to use their resources in a way that gets the most value out of the effort that they make, whilst delivering significant benefits to low risk and compliant businesses through better-focused inspection activity, increased use of advice for businesses, and lower compliance costs.

The Compliance Code has been issued with parliamentary approval, following a wide and lengthy consultation process, and comes into force on 6 April 2008 by virtue of the Legislative and Regulatory Reform Code of Practice (Appointed Day) Order 2007.

I believe that the application of the Code can make a difference on the ground to the regulators, those they regulate, and society in general.



Pat McFadden MP
Minister of State
Department for Business, Enterprise
and Regulatory Reform
(BERR)

Part 1

General introduction

1. Purpose of the Code

- 1.1** Effective and well-targeted regulation is essential in promoting fairness and protection from harm. However, the Government believes that, in achieving these and other legitimate objectives, regulation and its enforcement should be proportionate and flexible enough to allow or even encourage economic progress.
- 1.2** This Code supports the Government's better regulation agenda and is based on the recommendations in the Hampton Report¹. Its purpose is to promote efficient and effective approaches to regulatory inspection and enforcement which improve regulatory outcomes² without imposing unnecessary burdens on business, the Third Sector³ and other regulated entities⁴.
- 1.3** The Code stresses the need for regulators⁵ to adopt a positive and proactive approach towards ensuring compliance by:
- helping and encouraging regulated entities to understand and meet regulatory requirements more easily; and
 - responding proportionately to regulatory breaches.
- 1.4** The Code supports regulators' responsibility to deliver desirable regulatory outcomes. This includes having effective policies to deal proportionately with criminal behaviour which would have a damaging effect on legitimate businesses and desirable regulatory outcomes. The Code does not relieve regulated entities of their responsibility to comply with their obligations under the law.

¹ *Reducing Administrative Burdens: Effective Inspection and Enforcement*, Philip Hampton, March 2005.

² Throughout this Code, the term 'regulatory outcomes' means the 'end purpose' of regulatory activity (for example, reduction in accidents/disease, less pollution).

³ This is defined as non-governmental organisations that include voluntary and community organisations, charities, social enterprises, cooperatives and mutuals.

⁴ Throughout this Code, the term 'regulated entities' includes businesses, public sector bodies, charities and voluntary sector organisations that are subject to regulation.

⁵ The term 'regulator' is used in this code to refer to any organisation that exercises a regulatory function.

2. Background and scope

- 2.1 This Code has been laid before Parliament by the Minister for the Cabinet Office and has been approved by both Houses of Parliament in accordance with section 23 of the Legislative and Regulatory Reform Act 2006 ("the Act"), after having consulted persons appearing to him to be representative of persons exercising regulatory functions and such other persons as he considered appropriate. In preparing the draft, the Minister has sought to secure that the Code is consistent with the Principles of Good Regulation specified in section 21(2) of the Act.⁶
- 2.2 The Minister issues the Code under section 22(1) of the Act on 17 December 2007.
- 2.3 The Code only applies to those regulatory functions specified by order made under section 24(2) of the Act. Any regulator whose functions are so specified **must have regard to** this Code:
- (a) when determining any general policy or principles about the exercise of those specified functions (section 22(2)); or
 - (b) when exercising a specified regulatory function which is itself a function of setting standards or giving general guidance about other regulatory functions (whether their own functions or someone else's functions)(section 22(3)).
- 2.4 The duties to have regard to the Code under section 22(2) and (3) of the Act **do not** apply to the exercise by a regulator or its staff of any specified regulatory function in individual cases. This means, for example, that while an inspector or investigator should operate in accordance with a regulator's general policy or guidance on inspections, investigations and enforcement activities, the Code does not apply directly to the work of that inspector or investigator in carrying out any of these activities in individual cases.
- 2.5 The duty on a regulator to "have regard to" the Code means that the regulator **must** take into account the Code's provisions and give them due weight in developing their policies or principles or in setting standards or giving guidance.
- 2.6 The regulator is not bound to follow a provision of the Code if they *properly* conclude that the provision is either not relevant or is outweighed by another relevant consideration. They should ensure that any decision to depart from any provision of the Code is properly reasoned and based on material evidence. Where there are no such relevant considerations, regulators should follow the Code.
- 2.7 Section 22(4) of the Act provides that the duty to have regard to the Code is subject to any other legal requirement affecting the exercise of the regulatory function, including EC law obligations.

⁶ *These principles are that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent; and that regulatory activities should be targeted only at cases in which action is needed.*

2.8 In accordance with section 24(3) of the Act, this Code does not apply to:

- regulatory functions so far as exercisable in Scotland to the extent that the functions relate to matters which are not reserved matters;
- regulatory functions so far as exercisable in Northern Ireland to the extent that the functions relate to transferred matters; or
- regulatory functions exercisable only in or as regards Wales.

Part 2

Specific obligations of the Code

This part outlines the Hampton Principles on which this Code is based, and sets out the specific provisions that elaborate these principles. The Hampton Principles and the italicised statement at the start of each numbered section do not form part of the Code's requirements, but set the context in which the specific obligations set out in the numbered paragraphs should be interpreted.

3. Economic progress

Hampton Principle: *Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.*

Good regulation and its enforcement act as an enabler to economic activity. However, regulation that imposes unnecessary burdens can stifle enterprise and undermine economic progress. To allow or encourage economic progress, regulators must have regard to the following provisions when determining general policies or principles or when setting standards or giving general guidance about the exercise of regulatory functions.

- 3.1 Regulators should consider the impact that their regulatory interventions may have on economic progress, including through consideration of the costs, effectiveness and perceptions of fairness of regulation. They should only adopt a particular approach if the benefits justify the costs⁷ and it entails the minimum burden compatible with achieving their objectives.
- 3.2 Regulators should keep under review their regulatory activities and interventions with a view to considering the extent to which it would be appropriate to remove or reduce the regulatory burdens they impose.

⁷ Costs and benefits include economic, social and environmental costs and benefits.

- 3.3 Regulators should consider the impact that their regulatory interventions may have on small regulated entities, using reasonable endeavours to ensure that the burdens of their interventions fall fairly and proportionately on such entities, by giving consideration to the size of the regulated entities and the nature of their activities.
- 3.4 When regulators set standards or give guidance in relation to the exercise of their own or other regulatory functions (including the functions of local authorities), they should allow for reasonable variations to meet local government priorities, as well as those of the devolved administrations.

4. Risk Assessment

Hampton Principle: *Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources in the areas that need them most.*

Risk assessment involves the identification and measurement of capacity to harm and, if such capacity exists, an evaluation of the likelihood of the occurrence of the harm. By basing their regulatory work on an assessment of the risks to regulatory outcomes, regulators are able to target their resources where they will be most effective and where risk is highest. As such, in order to carry out comprehensive and effective risk assessment, regulators must have regard to the following provisions when determining general policies or principles or when setting standards or giving general guidance about the exercise of regulatory functions.

- 4.1 Regulators should ensure that the allocation of their regulatory efforts and resources is targeted where they would be most effective by assessing the risks to their regulatory outcomes. They should also ensure that risk assessment precedes and informs all aspects of their approaches to regulatory activity, including:
- data collection and other information requirements;
 - inspection programmes;
 - advice and support programmes; and
 - enforcement and sanctions.
- 4.2 Risk assessment should be based on all available relevant and good-quality data⁸. It should include explicit consideration of the combined effect of:
- the potential impact of non-compliance on regulatory outcomes; and
 - the likelihood of non-compliance.

⁸ An example of risk methodology, which the Hampton Review recognised as “best practice” (see *Hampton Report*, at page 32) is the Environmental Protection – Operator & Pollution Risk Appraisal scheme (EP OPRA).

- 4.3 In evaluating the likelihood of non-compliance, regulators should 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 entities or sites
 - evidence of recognised external accreditation; and
 - management competence and willingness to comply.
- 4.4 Regulators should consult and involve regulated entities and other interested parties in designing their risk methodologies, and publish details of the methodologies.
- 4.5 Regulators should regularly review and, where appropriate, improve their risk methodologies. In doing so, they should take into account feedback and other information from regulated entities and other interested parties.

5. Advice and Guidance

Hampton Principle: *Regulators should provide authoritative, accessible advice easily and cheaply.*

*Without knowing or understanding relevant legal requirements, regulated entities will find it difficult to comply. Regulators can, however, improve compliance through greater focus on support and advice. Regulators must, therefore, have regard to the following requirements **when determining general policies or principles or when setting standards or giving general guidance on advice and information services.***

- 5.1 Regulators should ensure that all legal requirements relating to their regulatory activities, as well as changes to those legal requirements⁹, are promptly communicated or otherwise made available to relevant regulated entities.
- 5.2 Regulators should provide general information, advice and guidance to make it easier for regulated entities to understand and meet their regulatory obligations. Such information, advice and guidance should be provided in clear, concise and accessible language, using a range of appropriate formats and media¹⁰.
- 5.3 Regulators should involve regulated entities in developing both the content and style of regulatory guidance. They should assess the effectiveness of their information and support services by monitoring regulated entities' awareness and understanding of legal requirements, including the extent to which those entities incur additional costs obtaining external advice in order to understand and comply with legal requirements.

⁹ This includes when a regulatory requirement has been removed and considered no longer relevant or applicable.

¹⁰ A good example of online advice is the Environment Agency's NetRegs (www.netregs.gov.uk) an internet based plain language guidance system for business.

- 5.4 Regulators should provide targeted and practical advice that meets the needs of regulated entities. 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, regulators should seek to maximise the reach, accessibility and effectiveness of advice while ensuring efficient use of resources. There may remain a need for regulated entities with particularly complex practices to use specialist or professional advisors as appropriate.
- 5.5 When offering compliance advice, regulators should distinguish between statutory requirements and advice or guidance aimed at improvements above minimum standards. Advice should be confirmed in writing, if requested.
- 5.6 Regulators should provide appropriate means to ensure that regulated entities can reasonably seek and access advice from the regulator without directly triggering an enforcement action. In responding to such an approach, the regulator should seek primarily to provide the advice and guidance necessary to help ensure compliance.
- 5.7 Advice services should generally be provided free of charge, but it may be appropriate for regulators to charge a reasonable fee for services beyond basic advice and guidance necessary to help ensure compliance. Regulators should, however, take account of the needs and circumstances of smaller regulated entities and others in need of help and support.

6. Inspections and other visits

Hampton Principle: *No inspection should take place without a reason.*

*Inspections can be an effective approach to achieving compliance, but are likely to be most effective when they are justified and targeted on the basis of an assessment of risk. In order to ensure the effectiveness of their inspection programmes, regulators must have regard to the following provisions **when determining general policies or principles or when setting standards or giving general guidance on inspections.***

- 6.1 Regulators should ensure that inspections and other visits, such as compliance or advice visits, to regulated entities only occur in accordance with a risk assessment methodology (see paragraphs 4.2. and 4.3), except where visits are requested by regulated entities, or where a regulator acts on relevant intelligence.
- 6.2 Regulators should use only a small element of random inspection in their programme to test their risk methodologies or the effectiveness of their interventions.
- 6.3 Regulators should focus their **greatest** inspection effort on regulated entities 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 regulated entities.

- 6.4 Where regulators visit or carry out inspections of regulated entities, they should give positive feedback to the regulated entities to encourage and reinforce good practices. Regulators should also share amongst regulated entities, and with other regulators, information about good practice.
- 6.5 Where two or more inspectors, whether from the same or different regulators, undertake planned inspections of the same regulated entity, regulators should have arrangements for collaboration to minimise burdens on the regulated entity, for example, through joint or coordinated inspections and data sharing.

7. Information requirements

Hampton Principle: *Businesses should not have to give unnecessary information or give the same piece of information twice.*

Effective regulatory work, including risk assessment, requires accurate information. However, there are costs to its collection both to the regulator and to regulated entities. It is important to balance the need for information with the burdens that entails for regulated entities. As such, regulators must have regard to the following provisions when determining general policies or principles or when setting standards or giving general guidance on data requirements.

- 7.1 When determining which data they may require, regulators should undertake an analysis of the costs and benefits of data requests to regulated entities. Regulators should give explicit consideration to reducing costs to regulated entities through:
- varying data requests according to risk, as set out in paragraph 4.3;
 - 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 which is justified by risk assessment.
- 7.2 If two or more regulators require the same information from the same regulated entities, they should share data to avoid duplication of collection where this is practicable, beneficial and cost effective. Regulators should note the content of the Information Commissioner's letter¹¹ when applying the Data Protection Act 1998¹² in order to avoid unnecessarily restricting the sharing of data.
- 7.3 Regulators should involve regulated entities in vetting data requirements and form design for clarity and simplification. They should seek to collect data in a way that is compatible with the processes of regulated entities and those of other regulators who collect similar data.

¹¹ A letter from the Information Commissioner (22/01/07) giving advice on "data protection and the sharing of regulatory data on businesses" is available at: <http://bre.berr.gov.uk/regulation/documents/data/pdf/letter.pdf>

¹² 1998 c 29.

8. Compliance and enforcement actions

Hampton Principle: *The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions.*

By facilitating compliance through a positive and proactive approach, regulators can achieve higher compliance rates and reduce the need for reactive enforcement actions. However, regulators should be able to target those who deliberately or persistently breach the law. To ensure that they respond proportionately to regulatory breaches, regulators must have regard to the following provisions when determining general policies or principles or when setting standards or giving general guidance on the exercise of compliance and enforcement functions.

- 8.1** Regulators should seek to reward those regulated entities that have consistently achieved good levels of compliance through positive incentives, such as lighter inspections and reporting requirements where risk assessment justifies this. Regulators should also take account of the circumstances of small regulated entities, including any difficulties they may have in achieving compliance.
- 8.2** When considering formal enforcement action, regulators should, where appropriate, discuss the circumstances with those suspected of a breach and take these into account when deciding on the best approach. This paragraph does 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 proposed enforcement action.
- 8.3** Regulators should ensure that their sanctions and penalties policies are consistent with the principles set out in the Macrory Review¹³. This means that their sanctions and penalties policies should:
- 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 caused;
 - aim to restore the harm caused by regulatory non-compliance, where appropriate;
 - and
 - aim to deter future non-compliance.

¹³ The report of the Macrory Review, which the Government has accepted, is available at: http://bre.berr.gov.uk/REGULATION/reviewing_regulation/penalties/index.asp .

8.4 In accordance with the Macrory characteristics, regulators should also:

- publish an enforcement policy;
- measure outcomes not just outputs;
- justify their choice of 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 they apply and determine penalties; and
- avoid perverse incentives that might influence the choice of sanctioning response.

8.5 Regulators should ensure that clear reasons for any formal enforcement action are given to the person or entity against whom any enforcement action is being taken at the time the action is taken. These reasons should be confirmed in writing at the earliest opportunity. Complaints and relevant appeals procedures for redress should also be explained at the same time.

8.6 Regulators should enable inspectors and enforcement officers to interpret and apply relevant legal requirements and enforcement policies fairly and consistently between like-regulated entities in similar situations. Regulators should also ensure that their own inspectors and enforcement staff interpret and apply their legal requirements and enforcement policies consistently and fairly.

9. Accountability

Hampton Principle: Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.

By establishing effective accountability and transparency structures regulators will make their activities accessible and open to scrutiny. This should increase the legitimacy of regulatory activities and enable regulators and regulated entities to work together to achieve regulatory compliance. Regulators must have regard to the following provisions when determining general policies or principles or when setting standards or giving general guidance on the exercise of regulatory functions.

9.1 Regulators should create effective consultation and feedback opportunities to enable continuing cooperative relationships with regulated entities and other interested parties.

- 9.2** Regulators should identify and explain the principal risks against which they are acting. They should, in consultation with regulated entities and other interested parties, set and publish clear standards and targets for their service and performance. These standards should include:
- regulatory outcomes¹⁴ (capturing the principal risks);
 - costs to regulated entities of regulatory interventions; and
 - perceptions of regulated entities and other interested parties about the proportionality and effectiveness of regulatory approach and costs.
- 9.3** Regulators should measure their performance against the standards in paragraph 9.2 and regularly publish the results. To aid understanding, regulators should also explain how they measure their performance.
- 9.4** Local authorities and fire and rescue authorities are exempt from the requirements of paragraphs 9.2 and 9.3.
- 9.5** Regulators should ensure that their employees provide courteous and efficient services to regulated entities and others. They should take account of comments from regulated entities and other interested parties regarding the behaviour and activity of inspectors and other enforcement staff.
- 9.6** Regulators should provide effective and timely complaints procedures (including for matters in this Code) that are easily accessible to regulated entities and other interested parties. They should publicise their complaints procedures, with details of the process and likely timescale for resolution.
- 9.7** Complaints procedures should include a final stage to an independent, external, person. Where there is a relevant Ombudsman or Tribunal with powers to decide on matters in this Code, the final stage should allow referral to that body. However, where no such person exists, a regulator should, in consultation with interested parties, provide for further complaint or appeal to another independent person, for example, an independent professional body.

¹⁴ As defined in footnote 2 above.

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