

Birmingham City Council
Report to Cabinet Member - The Leader
22 June 2022



Subject: Regulation and Enforcement, Enforcement Policy Review

Report of: Rob James, Strategic Director , City Operations

Relevant Cabinet Member: Councillor Ian Ward - Leader

Relevant O &S Chair(s): Sir Albert Bore – Co-ordinating Overview and Scrutiny Committee

Report author: Sajeela Naseer
Head of Licensing, Markets, Registration Services and Private Sector Housing
07766924955
Email: sajeela.naseer@birmingham.gov.uk

Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, add Forward Plan Reference:		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, state which appendix is exempt, and provide exempt information paragraph number or reason if confidential :		

1 Executive Summary

- 1.1 On 6 April 2014 the Regulators Code came into force which had implications for all Local Authority Enforcement Policies. On 17 June 2015 a revised Regulation and Enforcement enforcement policy was agreed following consultation and an equality impact assessment. Further reviews, of the policy, were conducted in 2017 and 2019.

- 1.2 The Council is required to keep our Enforcement Policy under regular review. The attached report has been updated and revised to include the Private Rented Sector service area that now sits within Regulation and Enforcement, and further additions to enforcement tools as well as clarifications in light of case law or policy development. An addendum has been added to the Policy to ensure there is transparency, consistency and clarity in relation to enforcement connected with activities during the Commonwealth Games.
- 1.3 This enforcement policy supersedes the “Enforcement Policy for the Regulation of Housing Standards in the Private Rented Sector and for the Licensing of Houses in Multiple Occupation” which was agreed by Cabinet on 22 January 2019 and the Regulation and Enforcement Division’s Enforcement Policy that was agreed by the Leader as a Cabinet member report on 10 June 2020. Whilst the proposal in this report affects all Wards, given previous decisions, it is not felt the changes affect all Wards significantly.

2 Recommendations

- 2.1 That the Enforcement Policy which is attached at Appendix A be approved.

3 Background

- 3.1 The Regulation and Enforcement Division’s Enforcement Policy is a document that provides officers with guidance in respect of enforcement decisions. It is as important for officers as it is for those against whom enforcement action might be taken as it helps to provide clarity and encourages consistency in the decision making process. As a Local Authority regulator, the Council is obligated to publish a policy by the Regulator’s Code. It requires the Council to have regard to certain principles when constructing its policy, which are repeated for convenience below.
- 3.2 The Regulators’ Code seeks to improve the way regulation is delivered at the front line. It sets out a framework for transparent and accountable regulatory delivery and establishes principles for how local authorities should interact with those they are regulating. The Code is underpinned by the statutory principles of good regulation, which provide that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent and should be targeted only at cases in which action is needed.

4 Options considered and Recommended Proposal

- 4.1 Adoption and publication of the Regulation and Enforcement’s enforcement policy is a legal requirement.

5 Consultation

- 5.1 This policy review seeks to ensure that all service areas which fall within the responsibility to the Licensing and Public Protection Committee are consistent in their approach to enforcement and are compliant with legislation and appropriate guidance when making enforcement decisions. Changes that are proposed to the policy are uncontentious in nature (the addition of a service area, clarification of existing approaches and addition of pre-existing enforcement tools utilised by the service areas). It remains consistent with the current policy which since its adoption has not been subject to formal complaints or concerns about its the interpretation or application. Given these facts formal consultation is not considered as necessary.
- 5.2 The Commonwealth Games addendum to the Policy has been shared with the Joint Authorities Regulatory Services group and it has been agreed that all local authorities hosting the Commonwealth Games should consider its adoption.

6 Risk Management

- 6.1 Failure to publish an enforcement policy in conjunction with requirements under the Regulators Code could result in a legal challenge.
- 6.2 The policy provides a transparent and proportionate approach to enforcement. It will reduce the risk of any action relating to allegations of inappropriate or inconsistent enforcement action by the council. The policy also reiterates action will be taken where appropriate and provides a framework for this action.
- 6.3 The policy and criteria sets a framework for fair, consistent and transparent decision making when considering enforcement action and disposal.
- 6.4 The policy and criteria will demonstrate the Council's compliance with statutory guidance.
- 6.5 The policy will be reviewed on an ongoing basis by the Regulation and Enforcement division, to ensure the policy represents best practice.

7 Compliance Issues:

- 7.1 The issues addressed in this report underpin the City Council Vision, Birmingham is an entrepreneurial city to learn, work and invest in, Birmingham is an aspirational city to grow up in, Birmingham is a great city to live, Birmingham is a fulfilling city to age well in.
 - 7.1.1 Further Regulation and Enforcement will be a key service in ensuring Birmingham residents gain the maximum benefit from hosting the Commonwealth Games by supporting legitimate business and tackling rogue traders looking to take advantage of opportunities that arise within the ghost market.
 - 7.1.2 They also support the Regulation and Enforcement Mission Statement: Locally accountable and responsive fair regulation for all – achieving a safe, clean, green and fair trading city for residents, business and visitors.

7.2 Legal Implications

- 7.2.1 Under the Legislative and Regulatory Reform Act 2006, regulators (such as the Council's Regulation and Enforcement Division) are required to comply with any codes of practice produced by central government. The Regulators Code, published by the Department for Business Energy and Industrial Strategy (formerly BIS) in April 2014, states that regulators should ensure that their approach to regulation is transparent. By publishing the policy the City Council is meeting its obligations.

7.3 Financial Implications

- 7.3.1 The revised policy will be administered by the Regulation and Enforcement Division within existing resources and budgets. There are no financial implications arising from this report.

7.4 Procurement Implications (if required)

None identified.

7.5 Human Resources Implications (if required)

N/A.

7.6 Public Sector Equality Duty

- 7.6.1 The proposed revised policy applies to all businesses residents and staff and will not have a significant impact on any with different protected characteristics.
- 7.6.2 An initial Equality Assessment has been carried out to consider any implications from this review. It is found at appendix 4 of this report. No negative impacts on people with protected characteristics have been identified.
- 7.6.3 One of the benefits of an enforcement policy is to ensure consistency and fairness of enforcement throughout all communities and the commercial sector in Birmingham. The purpose of this Policy is to ensure that decisions are made transparently and to eliminate unfair or inequitable decisions. By its nature it should not have an adverse impact on anyone with protected characteristics.

8. Appendices

Appendix A - Enforcement Policy
Appendix 1- Enforcement Policy Risk Matrix
Appendix 2 – Civil Penalty Charging Policy
Appendix 3 - Birmingham Commonwealth Games 2022 Venue Authorities
Enforcement Policy
Appendix 4 - Equality Assessment