

**Wards Affected:**

All Wards

**ITEM 9****CABINET****25 JULY 2012****MILTON KEYNES COUNCIL ENFORCEMENT POLICY**

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**Executive Summary:**

To comply with the law and set out how we will enforce legislation, the authority must publish an enforcement policy. This policy supersedes all previous published enforcement policies and coincides with the formation of the Regulatory Unit.

The proposed enforcement policy sets out how the services responsible for ensuring compliance and its officers will conduct themselves and how other parties can expect to be treated as we discharge our key duties. An enforcement policy is required by law, it is integral to our performance management and it could be challenged by defence solicitors looking to make headway due to alleged non-adherence to its provisions. This will be the first time the authority will have one overarching enforcement policy covering all regulatory functions, if it is adopted.

Consultation was undertaken whereby an explanatory email was sent to all consultees together with a copy of the proposed policy. Responses were received from just a few stakeholders and where appropriate suggested amendments have been included in the final draft. (Annex).

**1. Recommendation(s)**

That Milton Keynes Council Enforcement policy be recommended to be adopted for all relevant council regulatory functions.

**2. Issues**

- 2.1 Cabinet must be satisfied that the revised policy takes account of issues such as recent legislative changes, that it covers the breadth of council regulatory functions, that it is proportionate and that it does not infringe legislation such as the Human Rights Act 1998.
- 2.2 Currently there are a number of enforcement policies across the authority but no one overriding policy.
- 2.3 By law, the authority has a duty to have regard to the Regulators' Compliance Code and must take into account the Code's provisions when developing policy.
- 2.4 The compliance areas covered by the regulatory code of practice include the enforcement functions carried out by Education Welfare Officers, Housing Officers, Transport & Highways Officers, as well as all officers in the Regulatory Unit.

2.5 A full 12 week consultation was undertaken with relevant officers, regulatory partners, ward members and parish/town councils along with private sector partners who are commonly in contact with the service. Responses were received from all categories of stakeholder and where possible have been included in the final draft.

2.6 The policy was taken to and agreed as relevant to their compliance areas:

- Regulatory Committee – 27 June 2012
- Licensing Committee – 27 June 2012
- Development Control Committee – 12 July 2012

An amendment was proposed by the Development Control Committee to include in section 6 of the policy the enforcement actions available to the planning enforcement officers. Following the meeting liaison took place with officers who advised that the enforcement actions available to planning enforcement are already listed in the policy so no amendments are necessary.

**3. Options**

3.1 The one alternative option is to keep the current disparate number of enforcement policies already in place for the service areas, though many of these have not been consulted on, have not been seen by Cabinet for approval and are not published.

This approach is not recommended as the policy should apply to the council as a whole and not differing policies for different enforcement areas because the overriding principles are the same. Furthermore, many of the other policies are not fully compliant with the legal requirements set out in the Regulatory Compliance Code.

**4. Implications**

4.1 Policy

The current Regulatory Services Enforcement Policy has been adapted to ensure it includes within its scope other enforcement policy requirements and functions.

4.2 Resources and Risk

There are no resource implications to agree this new policy, however, if the current enforcement policies are not fit for purpose, prosecution cases may be lost on a technicality and costs will have been incurred by Milton Keynes Council up to the point of the investigation folding.

N	Capital	Y	Revenue	N	Accommodation
N	IT	N	Medium Term Plan	N	Asset Management

#### 4.3 Carbon and Energy Management

It is not anticipated that the proposals will impact on the Carbon and Energy Management Policy.

#### 4.4 Legal

By virtue of the Regulatory Enforcement and Sanctions Act 2008, Legislative and Regulatory Reform Act 2006, and the Legislative and Regulatory Reform (Regulatory Functions) Order 2007 (as amended), the Regulators' Compliance Code was issued with parliamentary approval and specified regulators must have regard to the code when determining policies, setting standards, or giving guidance in relation to their duties.

As well as the enforcement functions normally carried out by trading standards and environmental health, the Order includes the local authority functions carried out under Part 2 of the Children and Young Persons Act 1963, the Housing Acts of 1985, 1996 and 2004, the Anti-social Behaviour Act 2003, as well as the Road Traffic Act 1988 and Transport Act 1981.

#### 4.5 Other Implications

An enforcement policy which is incompatible with key legislation such as the Human Rights Act 1998 could leave the council open to the challenge that their conduct is in breach of such legislation, which may result in formal proceedings being struck out.

This obviously has associated consequences not just in terms of costs for failed proceedings but also in terms of damage to council reputation and the likely corresponding adverse coverage in the media.

*Complete the boxes at the end of this section to indicate with a 'Y' if there are any implications and an 'N' if not. Where a 'Y' has been entered the implications should be addressed in the text.*

Y	Equalities/Diversity	N	Sustainability	Y	Human Rights
N	E-Government	N	Stakeholders	Y	Crime and Disorder

Background Papers: ANNEX – Milton Keynes Council enforcement policy