

Appendix 1

**South Somerset District
Council Regulatory
Services Enforcement
Policy 2016 - 2020**

Incorporating the Regulators' Code

Status of Policy

The Regulators' Code came into statutory effect on 6 April 2014 under the Legislative and Regulatory Reform Act 2006, replacing the Regulators' Compliance Code. It provides a clear, flexible and principles-based framework for how regulators should engage with those they regulate.

All regulators, including local authorities and fire and rescue authorities, must have regard to it when developing policies and procedures that guide their regulatory activities

Section 6 of the Regulators' Code¹ sets out Government's expectation that local authorities will ensure that their approach to their regulatory activities is transparent and easily understood. The provisions of Section 6 includes an expectation that local authorities will publish a clear set of service standards, setting out what those they regulate should expect from them. This includes their enforcement policy, explaining how they respond to non-compliance.

The Regulators' Code requires that published service standards should be easily accessible, clearly signposted, and kept up-to-date. The Code expects that local authorities will engage with those they regulate in relation to the development of their service standards and SSDC regularly seeks to do this.

The framework of this enforcement policy and accompanying service standards has been developed from guidance provided by the Better Regulation Development Office and has been produced by the Somerset Heads of Regulatory Services Group in conjunction with SSDC's regulatory service managers and represents a common policy across the county. This common approach supports increased collaborative working to develop resilience across Somerset and provides a robust framework for enforcement within which authorised officers can work. This collaborative work will support a consistent approach that will assist businesses trading across Somerset as well as being relevant to all Somerset residents.

¹For further information on the Regulators' Code visit BRDO's website: www.gov.uk/government/publications/regulators-code

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1 Introduction

- 1.1 The regulatory services of South Somerset District Council (the Council or SSDC) seek to provide a first class service for our local businesses and residents. They seek to be recognised as efficient cost effective services that engage with our communities, businesses and partners, to continually improve public health, environmental and economic outcomes.
- 1.2 The following regulatory services are covered by this policy; Environmental Health, Licensing, Building control and Development Management (Planning). Please see Section 9 for further details on the areas of work they cover.
- 1.3 This policy seeks to communicate and explain the approach to dealing with non-compliance to businesses, residents, and others affected by our enforcement activities. Our officers are expected to follow this policy.
- 1.4 This policy has been developed following guidance issued by the Better Regulation Delivery Office and in consultation with stakeholders. It is influenced by good enforcement practice, current legislation, guidance and statutory codes of practice. SSDC aims to deliver the services above by avoiding unnecessary regulatory burdens and enforcement. Wherever possible SSDC will work closely with businesses and other organisations to assist them in meeting their legal obligations, without unnecessary expense. The council will only intervene where there is a clear case for action.
- 1.5 This Enforcement Policy is available via the Council's website www.southsomerset.gov.uk.
- 1.6 This document has been approved in accordance with the Council's Constitution and is effective from July 2016.
- 1.7 SSDC is signed up to the Better Business for All (BB4A) scheme that seeks to reduce the burdens on local businesses as part of the 'red tape challenge'. Good enforcement policy is a key part of this scheme. See www.gov.uk/.../better-regulation-delivery-office.

2 What is this policy for?

- 2.1 This document communicates the Council's policy in respect of its approach to dealing with non-compliance to:
 - those affected by its activities; and
 - officers of the local authority
- 2.2 All authorised officers concerned will act in accordance with the policy and refer to the policy when making enforcement decisions.
- 2.3 The policy must be read in conjunction with all relevant guidance on enforcement and regard must also be had to any internal procedures.

3 When does this policy apply?

- 3.1 The policy will apply to the regulatory service of SSDC specified at the front of this document. These services encompass numerous powers and duties that enable the control of behaviour of individuals and/or businesses in the interest of the public and environment.
- 3.2 Enforcement activities will include any action carried out in the exercise of statutory powers and duties. This is not limited to formal enforcement action such as prosecution or the issuing of Notices. It also includes the inspection of premises for the purpose of checking compliance with regulation or conditions and the investigation of complaints.
- 3.3 A departure from this policy must only be in exceptional circumstances and capable of justification. Any departure will first be considered by the service manager unless a delay in making such a decision will result in serious risk of personal injury, risk to public health or impact effective running of the service. All such decisions will be recorded in compliance with the Openness of Local Government Bodies Regulations 2014.

4 Our approach to dealing with non-compliance

- 4.1 Where we identify failure to meet legal obligations we will respond by ensuring that our activities are transparent, accountable, proportionate, consistent and targeted only at cases in which action is required
- 4.2 All enforcement action will be applied in accordance with the Equality Act 2010. Enforcement action taken against an individual, business or other duty holder will be consistent with the Council's commitment to equality and diversity. When making a decision to take enforcement action we aim to ensure that there is no judgement or discrimination against an individual regardless of age, armed forces status, disability, employment status, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, responsibilities for children or dependants, sex, sexual orientation, or unrelated criminal convictions.
- 4.3 We will deal proportionately with breaches of the law, including taking firm enforcement action when necessary.
- 4.4 We will encourage approaches from business or a regulated person and commit to providing opportunity for dialogue in relation to advice given, actions required or decisions taken in relation to non-compliance.
- 4.5 Those approaching the council requiring advice on non-compliance shall receive such advice on the understanding that where they are showing willingness to resolve the non-compliance the council will not directly trigger enforcement actions.
- 4.6 Officers have delegated authority to undertake investigation and follow guidance and internal procedures with regard to making decisions on taking enforcement action including the issue of simple cautions. Approval by a service manager will usually be required for the decision to prosecute.
- 4.7 The enforcement action that the local authority chooses to take will depend upon the particular circumstances and the approach of the business or regulated person to dealing with the breach. Although the general rule will be to use the minimum level of enforcement necessary to reach a satisfactory solution SSDC will deal firmly with those that deliberately or persistently fail to comply.
- 4.8 We will take account of the circumstances of small regulated businesses, including any difficulties they may have in complying and where appropriate, discuss options that will allow them to secure compliance.

We will have regard to the Primary Authority scheme when dealing with non-compliance and will discuss the circumstances of breaches with the local

authority representative within such partnerships. We will take these discussions into account when deciding on the best approach following the principles of the Primary Authority Scheme (see www.gov.uk/.../better-regulation-delivery-office for more information on Primary Authority scheme).

- 4.9 Where non-compliance has been dealt with by providing advice or guidance the Council will monitor that compliance in a variety of ways. For low risk low level non-compliance they will seek reassurance that compliance will be secured. For more serious non-compliance re-visits or further proactive monitoring may be undertaken.
- 4.10 In circumstance where non-compliance occurs involving more than one regulatory authority agencies should undertake collaborative working to seek the most effective regulatory outcome and least burdensome impact on the business or individual.
- 4.11 Non-compliance may be identified by other authorities. In these circumstances the Council will consider the information and if necessary carry out further investigation. Any enforcement action will be undertaken in accordance with this policy.
- 4.12 The Council will assess all complaints of non-compliance received.

5 Conduct of investigations

- 5.1 All investigations will be carried out following the requirements of the legislation listed below and in accordance with any associated guidance or codes of practice, in so far as they relate to the Council:
- The Police and Criminal Evidence Act 1984
 - The Criminal Procedure and Investigations Act 1996
 - The Regulation of Investigatory Powers Act 2000
 - The Criminal Justice and Police Act 2001
 - The Human Rights Act 1998(including the European Convention on Human Rights)
 - The Legislative & Regulatory Reform Act 2006
 - Legislative and Regulatory Reform (Regulatory Functions) Order 2007
 - Regulatory Enforcement and Sanctions Act 2008
 - Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009
 - Co-ordination of Regulatory Enforcement (Procedure for References to the LBRO) Order 2009.
 - Bribery Act 2010
 - Protection of Freedoms Act 2012
 - Regulators Code April 2014

- Anti-social Behaviour, Crime & Policing Act 2014.
- 5.2 These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.
 - 5.3 SSDC's authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.
 - 5.4 All authorised officers will carry an authorisation document identifying the legislation under which they are empowered to act.
 - 5.5 The authorisation document will certify that an officer is duly appointed as an officer of SSDC and that they are empowered to make inspections authorised under specific Acts of Parliament and any Regulations, Byelaws or Orders made under them and to exercise any:
 - powers of entry,
 - carry out any investigations
 - procure samples
 - seize equipment and documents
 - serve legal notices
 - apply for warrants
 - institute legal proceedings
 - 5.6 Obstructing an authorised officer of the Council carrying out duties as set out on their authorisation document is an offence. Obstruction may be physical or it may be the refusal to provide information or the giving of false information. If the officer believes that obstruction is occurring they will remind the offender of their powers and inform the person that they are committing an offence.
 - 5.7 In order to investigate some alleged or suspected offences interviews may be conducted. These may either be:
 - Informal interview where an offence may not have been committed but without further information compliance cannot be established
 - Interview under caution where evidence already exists that an offence has taken place
 - 5.8 Council officers will keep alleged offenders and witnesses informed of the progress of investigations.

6 Decisions on enforcement action

The ranges of actions that are available to the local authority are set out in legislation. Those available to SSDC in Respect of Criminal and Civil breaches include:

6.1 Compliance Advice, Guidance and Support

SSDC uses compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified. We will clearly explain what the non-compliant item or activity is, the advice being offered, actions required or decisions taken, and the reasons for these². We will provide an opportunity for dialogue in relation to the advice with a view to ensuring that they are acting in a way that is proportionate and consistent. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter (sometimes called an 'informal caution/notice') will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence.

The Council recognises that where a business has entered into a partnership with a primary authority, the primary authority will provide compliance advice and support, and the Council will take such advice into account when considering the most appropriate enforcement action for it to take. It may discuss any need for compliance advice and support with the primary authority.

Where more formal enforcement action, such as a simple caution or prosecution, is taken, the Council recognises that there is likely to be an ongoing need for compliance advice and support, to prevent further breaches.

6.2 Voluntary Undertakings

The Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. The Council will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

6.3 Statutory (Legal) Notices

In respect of many breaches the Council has powers to issue statutory notices. These include: 'Stop Notices', 'Prohibition Notices', 'Emergency Prohibition Notices', 'Improvement Notices', 'Abatement Notices' and other Enforcement Notices. Such notices are legally binding. Failure to comply with

² Section 2.2, Regulators' Code

a statutory notice can be a criminal offence and may lead to prosecution and/or, where appropriate, the carrying out of work in default.

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.

6.4 Financial penalties

The Council has powers to issue fixed penalty notices in respect of some breaches. A fixed penalty notice is not a criminal fine, and does not appear on an individual's criminal record. If a fixed penalty is not paid, the Council may commence criminal proceedings or take other enforcement action in respect of the breach.

If a fixed penalty is paid in respect of a breach the Council will not take any further enforcement action in respect of that breach. Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches.

The Council is only able to issue fixed penalty notices where it has specific powers to do so. If fixed penalty notices are available, their issue is at the discretion of the Council. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice.

6.5 Injunctive Actions, Enforcement Orders etc.

In some circumstances the Council may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

The Council is required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, the Council will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

6.6 Simple Caution

The Council has the power to issue simple cautions (previously known as 'formal cautions') as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, the Council is likely to consider prosecution.

A simple caution will appear on the offender's criminal record. It is likely to influence how the Council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.

Simple cautions will be used in accordance with Home Office Circular 016/2008 and other relevant guidance.

6.7 Prosecution

The Council may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute the Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

Prosecution will only be considered where the Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s).

Before deciding that prosecution is appropriate, the Council will consider all relevant circumstances carefully and will have regard to the following public interest criteria:

- the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender;
- there has been a reckless disregard of regulatory requirements;
- there have been repeated breaches giving rise to significant risk, or persistent and significant poor compliance;
- there has been a failure to honour voluntary undertakings or comply with statutory notices; or there has been a repetition of a breach that was subject to a simple caution;
- false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk;

- authorised officers have been intentionally obstructed in the lawful course of their duties.

The Council will also consider prosecution where it is appropriate to draw attention to the need for compliance with the law and to deter others.

This is not an exhaustive list and the Council acknowledges that there may be occasions where the above factors may be present but where the public interest does not require a prosecution.

A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches a prison sentence. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.

6.8 Refusal/Suspension/Revocation of Licences

The Council issues a number of licences and permits. It also has a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a review of the licence which may result in its revocation, suspension or amendment.

When considering future licence applications, the Council may take previous breaches and enforcement action into account.

6.9 Explanation of how decisions are made on enforcement action

The principles set out in the McCrory Review, will influence the choice of enforcement action. In accordance with these principles the actions 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.

6.10 We will also ensure that risk assessment³ precedes and informs all aspects of our approaches to regulatory activity, including advice, support, enforcement and sanctions by assessing the risks to regulatory outcomes.

6.11 Our risk assessments framework will:

- be based on all available relevant and good-quality data.
- include explicit consideration of the combined effect of the potential impact of non-compliance on regulatory outcomes, and the likelihood of non-compliance.
- evaluate the likelihood of non-compliance, consider all relevant factors including, past compliance records and potential future risks, the existence of good systems for managing risks, evidence of recognised external accreditation, and management competence and willingness to comply.

6.12 Where national schemes or authoritative guidance for enforcement risk assessment exist we will base our assessments upon them where it is appropriate to do so:

- HSE's Enforcement Management Model

6.13 We will consult other organisations before taking enforcement decision, including consulting Primary Authorities where appropriate.

6.14 We will monitor and review decisions taken on enforcement action at:

- internal service meetings
- county/regional liaison meetings.

In relation the recent court cases and case law

6.15 Explanation of how decisions are communicated to those affected

When we decide to take enforcement action we will:

- Clearly explain any advice, actions required or decisions that we have taken
- Discuss and agree timescales that are acceptable to both you and us, in relation to any actions required
- Provide in writing details of how to appeal against any advice provided, actions required or decisions taken, including any statutory rights to appeal
- Explain what will happen next and offer practical information on the process involved
- Keep in touch with you, where required, until the matter is resolved

³ Section 3.2, [Regulators' Code](#)

7 Review of this policy

- 7.1 This policy will be reviewed regularly in response to feedback received. Minor amendments to the Policy will be approved by the Portfolio Holders for Environmental Health/Planning/building control and Licensing. If the Portfolio Holders believe the proposed amendments are not minor they will refer the matter to the District Executive. This policy will be reviewed in 2020.

8 Comments and Complaints

8.1 Complaints and appeals

Where we take enforcement action, there is often a statutory right to appeal. We will always tell those affected about this at the appropriate time. We are always willing to discuss with those affected the reasons why we have acted in a particular way, or asked them to act in a particular way. We manage complaints about our service, or about the conduct of our officers, through the Council's Corporate Complaints Policy.

Details can be found at www.southsomerset.gov.uk/contact-us/making-a-complaint or by telephone 01935 462462.

8.2 Feedback

We value input from you to help us ensure our services and policies are meeting your needs. We would like to hear from you whether your experience of us has been good or in need of improvement. This helps us to ensure we keep doing the right things and make changes where we need to. We use customer satisfaction surveys from time to time but we would welcome your feedback at any time. Any compliments, comments and complaints that we receive will be acknowledged, considered and responded to.

Details on how you can provide feedback to us can also be found at www.southsomerset.gov.uk/contact-us/making-a-complaint or by telephone 01935 462462

9 Regulatory services covered by this policy

The services listed below are covered by this policy. Explanations are given of what the services do. There are other services such as Revenues and Benefits who take action for non-compliance, such as for the non-payment of council tax but this is dealt with under separate legislation specific to that service and as such is not included here.

Development Management Team (Planning) deal with the following matters;

The Development Management Service discharges the Council's statutory duties under the Town & Country Planning Act 1990 (as amended), and subsequent and subordinate legislation. The Service plays a key role in managing the competing interests and pressures of its customers, to allow a viable community to thrive in South Somerset. The purpose of planning is to control the development and use of the land on behalf of the community, and there is often a balance to be struck between protecting our local environment, and allowing sufficient development to both house local people, and enable the economy to prosper and diversify.

The Planning Enforcement function of the Service monitors and investigates development and use of land to control breaches in planning legislation. In accordance with government guidance, the Council will, when appropriate, try to resolve the breach of control through negotiation. Enforcement is a discretionary power and action is only used when negotiations have failed to resolve the breach, or, the breach is so serious as to warrant immediate action in the public interest to protect the amenity of the environment or safety of the public.

Licensing Team deal with the following matters:

The Licensing Team provide a broad range of licensing, registration and consent services with the aim of protecting the public, the wider community and upholding high standards of animal welfare. This is achieved through a variety of means, including scheduled and ad-hoc inspections, joint working with partner agencies, information sharing, education, training and various types of enforcement.

Building Control Team deal with the following matters:

The Building control Team enforces the Building Control Regulations. The main purpose of the Building Control Regulations is to ensure the health and safety of people in and around a building. They are also concerned with energy conservation and access for disabled people to facilities in buildings. The Regulations could be regarded as 'constructional legislation', governed by

statutory regulations, approved documents, British Standards etc. The team takes enforcement action where there are breaches of the regulations.

The Environmental Health Service is split into three teams

Food and Safety Team, deal with the following matters;

- *Health & Safety enforcement*
- *Accident investigation*
- *Food Safety inspections*
- *Food complaints*
- *Infectious Disease Control*
- *Public Safety at Events*
- *Food hygiene rating scheme*
- *Food sampling*
- *Smoke-free Public Places*
- *Public Health & Wellbeing*
- *Support for Business Growth*

Environmental Protection Team, deal with the following matters;

- *Pollution reduction*
- *Contaminated land*
- *Air quality*
- *Noise and nuisance complaints*
- *Stray and dangerous dogs*
- *Dog fouling*
- *Planning consultations*
- *Environmental Permitting*
- *Pest control service*
- *Fly-tipping*
- *Litter and graffiti*
- *Abandoned vehicles*
- *Public health complaints*
- *Private water supply safety*
- *Licensing consultations*

Private Sector Housing Team, deal with the following matters;

- *HMO inspections*
- *HMO Licensing scheme*
- *Energy efficiency advice*
- *Private sector housing enforcement*
- *Empty property work*
- *Landlord accreditation scheme*
- *Provision of grants and loans*
- *Disabled facilities grants*