

Report of: Head of Environmental Development

To: Licensing and Gambling Acts Committee
General Purpose Licensing Committee

Date: 3 June 2008 **Item No:**

Title of Report : Statutory Code of Practice for Regulators –
Implications for Licensing

Summary and Recommendations

Purpose of report: To advise on the introduction of the Statutory Code of Practice for Regulators.

Key decision: No

Portfolio Holder:

Scrutiny Responsibility: Environment

Ward(s) affected: All

Report Approved by:
Financial and Asset Management – Andy Collett
Legal and Democratic Services - Jeremy Franklin

Policy Framework:
Statement of Licensing Policy
Environmental Development Service's Enforcement Policy

Recommendation(s):

Committees are recommended:

- (a) To note the introduction of the Statutory Code of Practice for Regulators.
- (b) To note the amendment of the Environmental Development Service's Enforcement Policy to comply with its requirements.

In addition, Licensing and Gambling Acts Committee is recommended:

- (c) To receive a further report on the risk-based inspection programme for premises licensed under the Licensing Act 2003.

Introduction

1. The Legislative and Regulatory Reform Act 2006 places a duty on regulators to have regard to the Department of Business, Enterprise and Regulatory Reform (BERR) Statutory Code of Practice for Regulators: Regulators' Compliance Code ("the Code"). The Code was published by BERR on 17 December 2007, comes into effect on 6 April 2008 and applies to central and local government regulatory services. (Appendix 1.)
2. The Code is a central part of the Government's better regulation agenda and is based on the recommendations in the Government-commissioned report on effective enforcement and inspection by Philip Hampton in 2005. These recommendations, known as the 'Hampton Principles', are that regulatory functions should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed. The purpose of the better regulation agenda is to promote efficient and effective approaches to regulatory inspection and enforcement using these principles, resulting in improved regulatory outcomes without imposing unnecessary burdens.
3. The Code stresses the need for regulators, in carrying out their regulatory activities, to adopt a constructive and preventative approach towards ensuring compliance by:
 - helping and encouraging regulated entities to understand and meet regulatory requirements more easily; and
 - responding proportionately to regulatory breaches.
4. The Code does not detract from regulators' responsibility to deliver the desired outcomes nor relieve regulated entities of their responsibility to comply with their obligations under the law.
5. The Code supersedes the "Enforcement Concordat" which sets out principles of good enforcement policy, comprising: standard setting; openness; helpfulness; well-publicised effective and timely complaints procedures; proportionality and consistency. It was considered in the better regulation review that its implementation was patchy and inconsistent and that it did not place sufficient weight on risk-based enforcement. Hampton recommended a new approach to regulation, with the emphasis on "securing compliance" rather than routinely carrying out inspections. The need for risk-based regulation was stressed so that the burden of enforcement falls most on the highest risk businesses with records of compliance taken into account in assessing risk.
6. Regulators must have regard to the provisions of the Code when determining general policies or principles or when setting standards or giving general guidance about the exercise of general functions.

Response to the introduction of the Code

7. Executive Board has recently approved an update to the Environmental Development Service Enforcement Policy to take account of the Code. The new policy is appended to this Report. (Appendix 2.)
8. Licensing is a regulatory function and therefore the Code applies to this function. It should be emphasised that the Council already complies with many of the new requirements. The Environmental Development service provides advice to businesses, has service standards, and has policies of risk-based inspections, focusing on those businesses known to present the highest risk. In response to the introduction of the Code, officers will review the quality and range of licensing information available and how it is provided. Appropriate service standards will also be identified.
9. Oxford's Statement of Licensing Policy, Section 9.2 "Enforcement", states that the Council will adopt the principles of risk assessment and targeting, taking into account the nature of the licensed activities, the extent to which the licensing objectives are met, and the confidence in the management of the premises. The following table from the Policy sets out how the inspection regime will work.

Type of Premises	Frequency of planned inspections
High risk (e.g. night-clubs/pubs with regulated entertainment, open after midnight, cinemas, theatres, indoor sports entertainments)	According to risk rating to be determined at first inspection
Medium risk (e.g. pubs, pubs with regulated entertainment not open after midnight, registered members' clubs, 'off-licences' not part of a shop, late night refreshment premises)	According to risk rating to be determined at first inspection
Low risk (e.g. off-licences that are part of a shop) restaurants, Village/community halls	According to risk rating to be determined at first inspection
Temporary event notices (which last for a maximum of 96 hours)	Prior to event starting
Outdoor Concerts/Events involving Regulated Entertainment and/or sale of alcohol	Prior to event starting

10. Environmental Development has operated a risk rating scheme for programmed food inspections for a number of years. Initial work has commenced on establishing a risk based inspection programme for

licensed premises based on that for food premises. All premises will be given a 'desk top' risk rating which will determine the initial inspection frequency. The initial risk rating will be based on licensable activity, type of regulated entertainment, hours of operation, premises size / capacity and record of complaints. Premises will then be re-rated following inspection taking into account level of compliance and confidence in management control systems. The risk category may change following inspection and the proposed inspection frequency is:

High Risk	Every 6 months
Medium Risk	Every 12 months
Low Risk	Every 24 months

Visits are also made to premises in response to complaints or intelligence.

Financial Implications

11. The implications of the Regulator's Compliance Code will be managed within existing budgets.

Legal Implications

12. The Council has a duty to have regard to the Regulator's Compliance Code and must take into account the Code's provisions and give them due weight in developing policies or principles or setting standards or giving guidance.

Recommendations

13. Committees are recommended;
 - (a) To note the introduction of the Statutory Code of Practice for Regulators.
 - (b) To note the amendment of the Environmental Development Service's Enforcement Policy to comply with its requirements, and

In addition Licensing and Gambling Acts Committee is recommended:

- (c) To receive a further report the risk-based inspection programme for premises licensed under the Licensing Act 2003.

Name and contact details of author:

Tony Payne,
Tel: 01865 (25)2062,
Email: tpayne@oxford.gov.uk

Background papers: