RECOMMENDATION

That Cabinet approves the proposed revised Regeneration Compliance and Regulatory Policy.
REGENERATION ENFORCEMENT POLICY REVIEW

1. **PURPOSE**

1.1 The purpose of the report is to request Cabinet to approve the proposed revised and renamed Regeneration Compliance and Regulatory Policy as it applies to matters falling under the remit of the Council’s executive. The draft proposed policy is attached at Appendix A.

2. **BACKGROUND**

2.1 Regeneration sits within the Council's Education and Enterprise directorate and within its broad remit - which includes:

- Growing the economy & creating Jobs
- Maximising investment
- Strengthening economic development
- Regenerating the city and in particular the city centre
- Public protection

2.2 The service is responsible for discharging the majority of the Council's core regulatory functions. These are delivered, in varying degrees, by the Regulatory Services (Environmental Health, Trading Standards & Licensing), Planning (Development Control & Building Control), Housing (Private Sector) and Transportation (Highway Safety & Traffic Management) services. Responsibility for these services falls to both the executive and non-executive parts of the Council.

2.3 Regeneration seeks to ensure, through a fair and proportionate approach to compliance and enforcement that the highest levels of protection are afforded to the residents and visitors to the City of Wolverhampton in relation to public health, the built environment and public realm, housing, environmental protection, food safety, trading standards, historic environment and licensing.

2.4 Proportionate, risk based, consistent and supportive regulation, which is aimed at assisting good business with its compliance obligations, plays a key role in delivering, facilitating and complementing these broad aims whilst adequately protecting public and community safety, health and wellbeing. The targeting of resource to the small proportion of intractably non-compliant commercial operations within the city provides both protection to the public through the identification and elimination of risk and also assistance to the majority of good businesses who want to implement and operate at high levels of compliance.

2.5 The current Enforcement Policy which was last revised and updated in 2008 became due for review earlier this year so as to ensure it fully reflected both the Council’s strategic aims and vision and also its new delivery structures and governance arrangements, including the transfer of the public health function from the PCT to the Council. The new policy would also need to reflect the outcomes of recent systems thinking interventions in Planning, Food Safety and Licensing which have shifted the emphasis of regulatory activity more towards compliance assistance.

2.6 It was also important to ensure the policy recognised and appropriately responded to the impact of the economic climate on Wolverhampton’s commercial sector through
the correct balance of assistance to the trade and proportionate application of regulatory powers to address public health and safety risks.

2.7 The attached draft document was prepared by the Regulatory Services group who undertook a wide, stakeholder consultation exercise during the summer with the aim of securing political endorsement for a final policy in September 2012.

2.8 In order to assist consultees, a copy of the Regulators Compliance Code was included in the consultation pack. This code has been a central part of recent Governments’ better regulation agendas for some years now. Its aim is to embed a risk based, proportionate and targeted approach to regulatory inspection and enforcement.

2.9 The Code came into force on the 6 April 2008 and Regulatory Services has had full regard to it in developing and implementing its policies and guidance. A copy of the code is attached at Appendix B.

2.10 As responsibility for these services falls to both the executive and non-executive parts of the Council, approval for the revised policy will also be sought from Licensing Committee.

3. **CONSULTATION ARRANGEMENTS**

3.1 The consultation exercise aimed to observe best practice and be a fully transparent process. Views were sought from as wide a group of stakeholders as possible, on all aspects / content of the policy. In particular however, views on the following were requested:

- The title of the document (ie. should this reflect the Council's business support objective to a greater degree through a title such as 'Compliance Policy'?) This was felt to be crucial to the correct pitching and emphasis of the policy.

- The content and measures which are particularly related to business assistance activities (ie. are these sufficient and are they sufficiently well explained?) Further to the points made in section 2 above – the role of regulation in relation to compliance assistance needs to be correctly and appropriately established to balance and complement the risk based, public health/safety protection role.

3.2 Partners and stakeholders from both the private and public sectors including members of the business community and key statutory bodies have been consulted directly and the consultation was also published on the Council’s website.

3.3 As a key stakeholder in this process, the views and comments of the Sustainable Communities Scrutiny Panel were considered to be extremely valuable to the development and adoption of a 'fit for purpose' policy that properly balanced and met the needs of those requiring protection with those requiring support, guidance and assistance. Sustainable Communities Scrutiny Panel considered a report on the proposed policy at their meeting on 24 July 2012.

3.4 The views of the Panel and the other consultees who considered the report were in full agreement with the emphasis on business support through compliance assistance and risk based targeting. Accordingly, substantive comments related only to those aspects of the proposed policy dealing with this matter. The main points raised in the consultation
are set out below. All were considered valid and have resulted in alterations being made to the wording of the policy:-

- A consistent theme within the responses was that in order to fully reflect the key aim of the policy, the title of the policy should include the word ‘Compliance’.

  These views have been reflected in the revised name of the draft policy attached which has been changed from ‘Enforcement Policy’ to ‘Compliance and Regulatory Policy.

- WV One suggested that an additional central principle should be added:-
  o Actions focussed on improving the environment and experience for residents, shoppers, visitors and businesses.

  This has been reflected in the revised introduction at section 1.1

- The Police suggested that the policy was made more explicit to reflect the fact that the Regulators Compliance Code (RCC) clearly states that the purpose/objective of ‘Advice and Guidance’ is to “improve compliance”.

  This has been reflected in revised sections 2.1 and 3.3

- The Police also suggested that because the RCC is explicit that compliance is to be facilitated through a “positive and proactive” approach by regulators to achieve “Higher Compliance Rates” this should be fully reflected in the proposed policy.

  Paragraph 5.1 has been amended to specifically include reference to a “positive and proactive approach to regulation”

4. FINANCIAL IMPLICATIONS

4.1 All costs associated with consultation arrangements and delivery of regulatory functions in accordance with the policy can be accommodated within approved Regeneration service revenue budgets. [JJ/10092012/R]

5. LEGAL IMPLICATIONS

5.1 No legal proceedings are instigated without the requisite consultation with Legal Services. Prosecutions are authorised by the Assistant Director; Regeneration in consultation with the Assistant Director; Governance or nominee who will have regard to the adopted enforcement policy in addition to the Code for Crown Prosecutors and other relevant guidance and legal issues [LC/11092012/A]

6. EQUAL OPPORTUNITIES IMPLICATIONS

6.1 The policy was subject to an equality impact assessment when last revised. It is considered that no significant alterations to the aims of the policy, that would change the anticipated impacts, have been made. The revised policy still aims to ensure an appropriate balance between levels of compliance and economic impact on local businesses and individuals without jeopardising public wellbeing, health and safety. For this reason, it was not necessary to revise the impact assessment at this time.
6.2 The policy aims to be proportionate, transparent consistent and risk based. It aims to remove or reduce any inequalities to acceptable levels and therefore is anticipated to have a positive impact on equalities.

6.3 All formal enforcement decisions are made in with regard to the requirements of the Code for Crown Prosecutors which focus on the admissibility of evidence and the public interest of bringing proceedings. Any adverse impacts on equality will be identified and dealt with at this stage.

6.4 The policy seeks to target long term non-compliance and provide compliance assistance where required. Both demands are often associated with the more deprived areas of the city. The policy therefore addresses the higher levels of risk these issues expose consumers from these areas to.

7. ENVIRONMENTAL IMPLICATIONS

7.1 A significant proportion of the activities and functions undertaken by Regeneration are intended to protect and enhance Wolverhampton’s natural, commercial and built environments.

7.2 As demonstrated through the recent area based initiatives ‘Bilston Big Tidy’ and ‘Park Village Project’ Proportionate, appropriate and focussed regulation can have significant positive impacts on the environmental amenity of buildings, land and entire neighbourhoods. The establishment of a bespoke city centre Regulatory team within the Environmental Health (Commercial) service, aims to ensure these principles are applied to the Wolverhampton’s city centre environment.

8. SCHEDULE OF BACKGROUND PAPERS

8.1 None.
### ReGeneration Compliance and Regulatory Policy

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1.0 INTRODUCTION

1.1 The Regeneration service group, which is part of the Education and Enterprise Directorate, has responsibility for protecting and enhancing many aspects of Wolverhampton’s natural, commercial and built environments. Effective regulation, through a balance of support and enforcement has a key contribution to local communities by protecting the public and supporting businesses. Regeneration’s regulatory focus, through it’s various compliance and consenting activities and functions, is based around four central principles:-

- Resources directed towards rogue / higher risk businesses
- Actions focussed on addressing risk and public safety / health issues
- Assisting business compliance through a joint approach towards identifying solutions
- Except in cases relating to the deliberately dishonest, legal action will be pursued as a last resort with a presumption against formal proceedings following requests for help and assistance.
- Actions focussed on improving the environment and experience for residents, shoppers, visitors and businesses.

1.2 Regeneration delivers its regulatory responsibilities through four key service areas:

- Regulatory Services
  - Environmental Health (Commercial)
  - Environmental Health (Public Protection)
  - Trading Standards
  - Licensing
- Planning
  - Development Control
  - Building Control
- Housing
  - Private sector standards and management
  - Empty Homes
  - Area Renewal
- Transportation
  - Highway safety
  - Traffic Management

1.3 Regeneration seeks to ensure, through a fair and proportionate approach to compliance and enforcement, appropriate, focussed and timely support to business and effective partnership working, that the highest levels of protection are afforded to the residents and visitors to the City of Wolverhampton in relation to public health, the built environment and public realm, housing, environmental protection, food safety, trading standards, historic environment and licensing.

1.4 This Policy has been developed in conjunction with key stakeholders, including local business and enforcement partners. The Policy was originally developed in 1999 and
has been reviewed and updated to take account of the Human Rights Act 1998, Regulation of Investigatory Powers Act 2000, the Council’s duty to work in partnership to address crime and disorder and the ‘mainstreaming of equalities’ into service delivery. The Policy endorses the principles of fair and proportionate compliance and enforcement to guide all of Regeneration’s regulatory activities and was last, fully revised in 2008. This revision takes into account changes brought about by the 2011/12 restructures and the joining together, within Regeneration, of the Council’s main regulatory services.

1.5 Previous enforcement policies have comprised three tiers. Tier one being an overarching Divisional Policy supported by 2\textsuperscript{nd} tier service specific policies and 3\textsuperscript{rd} tier enforcement practice guidance notes.

1.6 This Policy seeks to simplify the previous approach by rationalising the three tiers down to two: - an overarching Service Group Policy supported by topic specific Compliance Enforcement Guidance relevant for certain areas of activity eg. dog fouling, juvenile enforcement etc.

2.0 PRINCIPLES OF COMPLIANCE AND ENFORCEMENT

2.1 The Policy endorses the principles of good regulatory practice, including high emphasis on the provision of advice and guidance, which will be used to ensure, fair, proportionate and consistent compliance and enforcement activity across all of Regenerations’ regulatory functions. The Legislative and Regulatory Reform Act 2006 details the principles of good enforcement:

- Targeted: - intelligence led and risk based.
- Proportionate: - use of powers and sanctions appropriate to address the issue
- Consistent: - use of similar measures in similar circumstances
- Transparent: - clear and understandable to the recipient
- Accountable: - in terms of officer and service ability to explain chosen actions

2.2 Although the above Act does not formally apply to all Regeneration’s activities (Development/Building Control for example) the principles of good regulatory practice are still applicable to those service areas in the execution of their compliance and enforcement approach.

3.0 REGULATORS’ COMPLIANCE CODE

3.1 The Regulators' Compliance Code has been a central part of recent Governments’ better regulation agendas for some years now. Its aim is to embed a risk based, proportionate and targeted approach to regulatory inspection and enforcement.

3.2 The Compliance Code came into force on the 6 April 2008 and Regeneration has full regard to it in developing and implementing its policies and guidance. The Compliance Code does not legally apply to some aspects of Regeneration regulatory activity although the provisions are still relevant.

3.3 A copy of the code is attached as an appendix to this document, however Regeneration’s interpretation of the provisions contained within the Code, are briefly summarised below:

- **Economic Progress** - Good regulation and its enforcement acts as an enabler for economic activity. Regeneration will not impose unnecessary burdens as this can
stifle enterprise and undermine economic progress.

- **Risk Assessment** – Regeneration will ensure that the allocation of its regulatory efforts and resources is targeted where they are most effective and risk is highest.

- **Advice and Guidance** – In order to improve compliance levels, Regeneration will provide general information, advice and guidance to help businesses understand and meet their regulatory obligations.

- **Inspections and Other Visits** – Regeneration will focus its inspection effort on businesses where risk assessment shows that both:
  
  o a compliance breach or breaches would pose a serious risk and
  o there is a high likelihood of non-compliance by businesses.

- **Information Requirements** – Regeneration will not require unnecessary information from businesses or ask for the same information twice (unless the information is required as part of an enforcement process and has not been forthcoming).

- **Compliance and Enforcement Actions** – Regeneration will apply a balanced approach to regulation. It will ensure that those businesses which breach the law persistently will face proportionate and meaningful sanctions.

- **Accountability** – Regeneration will be accountable for the efficiency and effectiveness of its actions.

3.4 In certain instances Regeneration may conclude that full compliance with a provision in the Code is outweighed by another significant factor. It will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

4.0 **DEVELOPMENT CONTROL**

4.1 Development Control will have regard to the National Planning Policy Framework and Circular 10/97 “Enforcing Planning Control – legislative provisions and procedural requirements” in the development of their service specific enforcement policy.

5.0 **ENFORCEMENT OPTIONS & COMPLIANCE MEASURES**

5.1 Regeneration is committed to ensuring an adequate level of public and business protection within the City via a positive and proactive approach to compliance based on advice, education and support with formal action only being taken in appropriate circumstances, usually when all reasonable attempts to secure compliance through assistance and support have been exhausted and/or the case concerns deliberate dishonesty.

5.2 Enforcement action will generally reflect a significant severity of offence or worsening compliance history. Action must adequately protect the public interest and provide an appropriate deterrent to offending. Each case will however, be considered on its own merits in determining the course of action to be taken.
5.3 The range of compliance measures and/or enforcement actions together with a brief description of the circumstances in which they would generally be considered, is set out below.

- **Advice**: A range of general, authoritative information, advice and guidance through a variety of channels will be made available to assist compliance.

- **Written Warnings**: Generally used for minor offences.

- **Enforcement Notices**: Issued in relation to significant breaches of legislative requirements or where significant risks to health exist or used in conjunction with other action as appropriate.

- **Fixed Penalty Notices**: Used where there is either a local or current need to address a particular issue through their deterrent effect.

- **Simple Cautions**: May be used as an alternative to prosecution in respect of less serious offences:
  - where it is considered unnecessary to involve the courts
  - where the offender’s approach makes repeat offending unlikely
  - where the offender’s age or health make it appropriate
  - where offenders have adequately demonstrated improvement since the initial offence(s)

Simple Cautions may only be issued where the offender makes a clear and reliable admission of guilt and understands the significance of accepting a caution.

- **Legal Proceedings**: Regeneration will consider prosecution where there has been a breach of legal requirements such that individual or public safety, health or economic or physical well being or the environment or environmental amenity is adversely affected. The Evidential and Public Interest Tests in the Code for Crown Prosecutions must be met by all prosecution cases.

However, in addition to the paragraph above other circumstances which may justify prosecution are:
  - failure to comply with an Enforcement Notice
  - the offer of a Simple Caution has been declined
  - continued, premeditated or reckless non-compliance
  - failure to pay a fixed penalty
  - acts of obstruction or threats of physical harm
  - deliberate non-compliance to secure economic advantage over competitors

- **Injunctions**: Regeneration will pursue injunctive action as a means of preventing an activity or course of action likely to result in continued harm to public safety, economic harm to businesses or the public or an adverse impact on environmental amenity.

- **Licensing Reviews**: In addition to or as an alternative to the above, Regeneration may also use powers available in its capacity as a Licensing Authority and/or a ‘responsible authority’ in the cases of Environmental health and Trading Standards to
apply for review of a licence where an offence or breach of a licence is identified. Under the provisions of the Licensing Act 2003 reviews of Premises Licences can be undertaken in appropriate circumstances. Situations that would normally result in a review application would include for example, under age sales of alcohol and persistent or significant breaches of licence conditions.

- **Seizure**: The seizure of articles, vehicles and/or equipment will be considered where there is an immediate need to resolve a current, recurring or foreseeable event which is impacting or likely to impact on the public health or well being of a person or community.

- **Works in Default**: In certain circumstances, when work required by a duty holder to comply with a formal notice is not completed, it will be appropriate for the Council to undertake those works directly and recover the costs at a later date via a local land charge process or as otherwise prescribed in the relevant provisions. Works in default will be considered when the alternative sanction of prosecution will still not rectify the defect or adequately deal with the issue the notice was originally intended to address. Undertaking Work in Default will not preclude the Council also taking other legal actions.

5.4 To ensure that proposed legal proceedings are subject to a robust evaluation before a decision is taken to prosecute. Regeneration has established a Cases Panel to evaluate each potential case. In accordance with the Council’s constitution, the Assistant Director for Regeneration in consultation with the Chief Legal Officer (or nominee) will determine legal action based on the salient aspects of each case, in particular a rigorous public interest assessment of the proposed action, identified by the relevant Manager and a Legal Services Officer.

6.0 COMPLAINTS AND APPEALS

6.1 Service users who express dissatisfaction with enforcement action should be invited to:

- contact the relevant Service Manager or
- contact the relevant Head of Service
- use the Council’s Complaints and Compliments Procedure.

6.2 Where legislation provides a formal appeals procedure to challenge enforcement action, written notice of the appeals procedure shall be provided at the time action is taken.

7.0 EQUAL OPPORTUNITIES

7.1 Regeneration is committed to delivering its operational activities in accordance with the Council’s Equal Opportunities Policy and the Council’s commitment to Equalities. Officers are also committed to work flexibly to meet service user’s needs as far as practicable, particularly where those users are from a disadvantaged or vulnerable group.

7.2 This revised Enforcement Policy has been subject to an Equality Analysis in accordance with the Council’s guidelines. Since the analysis, no significant alterations to the aims of the policy, that would change the anticipated impacts, have been made. The revised policy still aims to ensure an appropriate balance between levels of compliance and economic impact on local businesses and individuals without jeopardising public
wellbeing, health and safety. All decisions made against the policy will be monitored from equalities perspectives.

8.0 **HUMAN RIGHTS ACT 1998**

8.1 The Human Rights Act 1998 allows enforcement actions to be directly challenged in the UK courts, where it is alleged that rights enshrined in the Human Rights Convention of 1951 have been infringed. The rights most commonly involved would be:

- Article 6: Right to a fair trial
- Article 8: Right to respect for private and family life
- Protocol 1 Article 1: Protection of property

8.2. The right to a fair trial is an absolute right that may not be infringed. The rights expressed in Article 8 and Article 1 of Protocol 1 are conditional rights that may be infringed where it is necessary and proportionate to protect public and community rights. The service protects that right in through compliance with the Police and Criminal Evidence Act 1984, Regulation of Investigatory Powers Act 2000 and all other statutory provisions relating to criminal and evidential procedure and relevant guidance from time to time.

9.0 **SHARED ENFORCEMENT ROLE**

9.1 Regeneration will work in partnership with other enforcement agencies with a shared enforcement role under legislation such as the Environmental Protection Act 1990, Enterprise Act 2002, Licensing Act 2003, Food Safety Act 1990 and Gambling Act 2005. The service is also committed to partnership working to address community safety, crime and disorder, public health and community cohesion issues together with the Police, the LNPs, voluntary sector and other central and local government partners.

10.0 **MONITORING AND REVIEW**

10.1 All proposed enforcement actions shall be assessed against this policy by the investigating officers concerned in conjunction with line or the service manager where appropriate.

10.2 Effective implementation of the Policy will be monitored by the Regeneration Management Team.
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Minister of State
Department for Business, Enterprise and Regulatory Reform (BERR) 5

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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 Report. Its purpose is to promote efficient and effective approaches to regulatory inspection and enforcement which improve regulatory outcomes without imposing unnecessary burdens on business, the Third Sector and other regulated entities.

1.3 The Code stresses the need for regulators 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.

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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.

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\(^6\) 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 those 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 costs\(^7\) 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 data. 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.

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6 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 requirements, 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 media.

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.

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5 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 businesses.
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 letter\(^{11}\) when applying the Data Protection Act 1998\(^{12}\) 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.

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\(^{11}\) 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://tinyurl.com/…](http://tinyurl.com/…)

\(^{12}\) 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 Review. 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.

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 outcomes\(^\text{14}\) (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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