

THE CITY OF EDINBURGH COUNCIL

Trading Standards

Regulatory and Enforcement Policy

Effective From: April 2017

Trading Standards Regulatory and Enforcement Policy

1.0 Executive Summary

This regulatory and enforcement policy applies to the regulatory controls of:

1.1 Trading Standards

- Weights and Measures
- Consumer Product Safety
- Fair Trading & Enterprise Act
- Age Restricted Sales

Our services, although commonly termed as enforcement, have a regulatory approach to ensuring compliance with the legislation that we use to achieve our aims. We seek to be risk-based and proportionate, whilst minimising burdens on business where possible. Our regulatory operational approach is to educate, enable and enforce. This graduated approach is explained in this policy.

This policy sets out the key principles by which regulatory officers (sometimes referred to as 'enforcement officers') will seek to achieve compliance with relevant civil and criminal legislation.

The policy will help businesses and individuals better understand the objectives and methods for achieving compliance and the criteria considered when deciding what the most appropriate response is to a breach of legislation.

All decisions regarding the appropriate enforcement action will have regard to current statutory guidance, codes of practice, Crown Office guidance and the Human Rights Act 1998 and in the case of business regulation will also take account of the UK Regulators' Code and the Scottish Regulators' Strategic Code of Practice.

1. Introduction

The aim of Trading Standards is to:

**Ensure a fair and safe trading environment for residents, visitors and businesses.
This is achieved by supporting businesses, helping consumers and tackling unfair and unsafe trading practices.**

This policy is primarily to assist business as much of the work of Trading Standards is concerned with business regulation.

Our operational policies affecting regulation and enforcement comply with the spirit and requirements of the UK Regulators' Code (the Code) and the Scottish Regulator's Strategic Code of Practice (the COP). We administer and enforce both reserved and devolved legislation and in partnership with other UK and Scottish regulators.

The Code only applies to our enforcement of reserved matters i.e. legislation passed by the UK Parliament such as health and safety and weights and measures legislation. It exemplifies best practice and stresses the need for regulatory services to adopt a positive and proactive approach towards ensuring compliance by:

- Helping and encouraging businesses and individuals to understand and comply with the law.
- Responding proportionately to breaches of the law.
- Using comprehensive risk assessment and local/national intelligence sources to focus resources on the areas that need them most.

The COP only applies to our enforcement of devolved matters i.e. legislation passed by the Scottish Parliament e.g. food safety legislation, animal health and welfare and age related legislation for the sale of tobacco products. It works alongside the UK Regulators' Code without placing additional or contradictory burdens on either regulators or business and supports similar aims within a Scottish context.

Both Codes recognise the need for regulation to be applied in a way that allows and encourages good businesses to flourish. The UK code refers to 'regulators should carry out their activities in a way that supports those they regulate to comply and grow' and the Scottish code refers to 'regulators should adopt a positive enabling approach in pursuing outcomes that contribute to sustainable economic growth'.

The Service demonstrate this through the advice given to local businesses, particularly during start up, the adoption of a fair treatment policy, promoting good business practices rather than stifling entrepreneurial activities and protecting legitimate businesses from being undercut by non-compliant trading.

2. The Principles of Good Enforcement

We have adopted the following principles of good enforcement:

- **Openness** – we will provide information, as far as legislation permits, and advice in plain language and a format that is accessible and easily understood. We are open about how we carry out our function and take account of stakeholders' views, where possible. When communicating with businesses, we make sure that there is a clear distinction between actions necessary for compliance with the law and those actions that are recommendations as best practice. We may use publicity to raise public awareness, improve monitoring of trade practices and help improve compliance. We may also publicise the result of court cases, compliance visits and undertakings.
- **Targeting** – we aim to prioritise our regulatory work using information and intelligence available to us and any risk assessment. We will use risk assessment, considering the likelihood of non-compliance and the impact of non-compliance, to determine our work plans. We will use nationally agreed systems to determine frequency of visits to businesses, where appropriate. We will explain the rationale for such frequency upon request.
- **Helpfulness** – we believe in prevention of the law by working with businesses especially new, small and medium sized businesses, to advise and assist with compliance.
- **Proportionality** – we minimise the costs of compliance for businesses by ensuring that any action we require is proportionate to the risks. As far as the law allows, when considering action we will take account of the circumstances of the case, the attitude of the business and that the sanction taken is meaningful. We take particular care to work with small businesses

and voluntary/community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

- **Consistency** – we aim to carry out our duties in a fair, equitable and consistent manner. While officers are expected to exercise their professional judgement in individual cases, we have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement agencies using the 'Home Authority Principle'. We will also take into account of the advice given to businesses participating in the Primary Authority Scheme.
- **Accountability** – our service plans are published which inform others what our operational objectives are and how they fit with the Council's priorities. We publish our performance information which gives detail on how our services have performed against our service plans. We have a formal corporate complaints procedure for issues being raised about our enforcement actions. This is used where a legislative appeal process is not available.

3. General Principles

This policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improves regulatory outcomes without imposing unnecessary burdens.

We use a variety of means to achieve our aims such as business support, raising public awareness, publicity and enforcement. Our graduated approach means enforcement is usually the last resort except where the circumstances demand that our graduated approach is not appropriate e.g. a rogue trader defrauding elderly residents.

Where we consider that enforcement action is necessary each case will be considered on its own merits. However, there are general principles that apply to the way each case will be approached. These are as follows:

- Enforcement decisions will be fair, independent and objective and will not be influenced by issues such as ethnicity or national origin, age, gender or

gender identity, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure or interference from any source.

- We will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance, in making the decision to take enforcement action.
- We are a public authority for the purposes of the Human Rights Act 1998. We will, therefore, apply the principles of the European Convention of the Protection of Human Rights and Fundamental Freedoms.
- We will communicate with businesses, individuals or witnesses in line with our service standards to ensure they are fully informed of any intended enforcement action unless this could impede an investigation, causes detriment to the economic interest of local residents and businesses or pose a safety risk to those concerned or the general public. Confidentiality will be maintained and personal information will be processed in accordance with the principles of the Data Protection Act 1998.
- We will publicise serious non-compliance to highlight risk, raise public awareness and to ensure public confidence that the regulatory system continues to be effective. This will also give reassurance to complaint businesses that those flout the law will not gain an economic advantage.

4. Enforcement Action

Where an infringement of Trading Standards legislation occurs, action is taken depending on the circumstances of the infringement. Enforcement action includes any action taken by duly authorised enforcement officers aimed at ensuring that businesses or individuals comply with the law. Any enforcement action is a graduated approach based on the infringement subject action. We will clearly explain, in all cases, what the issue is, the advice we are giving, what and why action is required, what action we will take and the consequence of not following our advice. We will always clearly explain whether the issue is a legal requirement or a recommendation.

The action can be:

- (i) **Informal Action:**
In certain circumstances where the regulatory officer considers that the detrimental impact is very low, the business will be given advice and guidance to help with compliance with the legislation.
- (ii) **Indirect Action:**
In certain circumstances, the regulatory officer may consider that the most appropriate action is to refer the matter to another agency or another authority.
- (iii) **Written Warning:**
In certain circumstances where it is considered not appropriate to submit a report for prosecution, a formal written warning may be issued which would be kept on record for any future infringement.
- (iv) **Fixed Penalties:**
Offences which are subject to the fixed penalty regime and in those circumstances where it is more appropriate to issue a fixed penalty, the infringement will be dealt with by issuing a fixed penalty notice which the regulatory officer may administer without the need to issue a warning first.

Where appropriate, failure to pay a fixed penalty notice and where the appeal or representation process is exhausted, civil proceedings will be instituted. This may also lead to expenses being granted against the accused who fails to pay for a fixed penalty notice.

- (v) **Statutory Notices:**
In certain circumstances where the legislation allows the officer may issue a statutory notice requiring the business / person to take a specific action or cease certain activities.

In general statutory notices can be broken down into two categories, those that seek improvement and those that prohibit immediately. The latter are generally used where serious immediate risk is evident and needs to be controlled to prevent injury or harm.

The notices seeking improvement will give a reasonable timeframe to comply and can only be used where there is a contravention of a law. A legal appeal process is attached to their use and the notice is usually suspended during any appeal period. Notices issued for unsafe consumer goods notice was wrongly issued the person against whom the notice was issued may be entitled to compensation for any loss suffered.

Notices that prohibit apply as soon as they are served on an individual or business. Again there is a legal appeal process but the notice usually remains in force until the appeal is heard.

(vi) Formal Undertakings:

If a trading practice falls within the provisions of the Enterprise Act 2002 where it is deemed to be harmful to the collective interests of consumers and the business offers a formal undertaking within the meaning of the Enterprise Act 2002 not to do or continue with the trading practice, Trading Standards will consider the offer of a formal undertaking.

Trading Standards may also seek a formal undertaking through an enforcement order of the court if the matter is considered to be serious or where the trader has breached the formal undertaking previously given.

A breach of an undertaking sought through the court would be reported to the court under the provisions of the Enterprise Act 2002.

Where an enforcement order is issued under the Enterprise Act 2002, breaching the order would lead to an application made to the court for a possible contempt of court. Expenses may also be granted against the person breaching the enforcement order in addition to any sanction applied by the court for the breach of the order.

(vii) Seizure and Forfeiture:

On some occasions where the legislation allows regulatory officers to seize goods, items, documents etc. the officers may request a voluntary surrender of the goods, items or documents etc.

However, on other occasions, officers may exercise their powers under the law to seize or detain goods, documents, items, etc as the legislation permits for the purposes of carrying out investigations, reporting to the court or to prevent public harm.

In these situations the officer will advise the person who surrendered the goods, documents, items etc of what has been seized or detained and where practicable will be issued with a note of what has been seized or detained.

In certain circumstances, Trading Standards may apply to court to have goods forfeited.

5. Who Decides What Enforcement Action is taken?

Officers of the Trading Standards Service are professionally trained to take the most appropriate course of action in cases of non-compliance with the law. They are also required to maintain their competence through regular training.

Decisions about the most appropriate course of enforcement action to be taken are for example based upon professional judgement, legal guidelines, codes of practice and Crown Office guidance.

Where appropriate, decisions about enforcement action will involve consultation between, or approval from:

- Regulatory Officer (s);
- Regulatory Managers and Team Leaders
- Solicitors from Legal Services

6. Reporting to the Procurator Fiscal

A decision to report a breach of legislation or offence to the Procurator Fiscal Service is made by the Team Leader or above. A report will only be submitted for prosecution where the evidential test is met with regard to the Crown Office Procurator Fiscal Service guidance.

A report to the Procurator Fiscal service will in general be submitted where on or more of the following criteria are met:

- Endangering the health, safety or wellbeing of people, cause harm to the environment or where the economic interests of consumers and businesses are affected.
- Deliberately, negligently, or persistently breaching legal obligations likely to cause material loss, harm or nuisance to others.

- Deliberately or persistently failing to act on, or comply with, previously issued advice, guidance, formal warnings or notices and having been given reasonable opportunity to do so.
- Previous breaches and/or previous convictions.
- Assault or obstruction of an enforcement officer in the course of their duties.
- Failure to comply with a statutory notice;
- Where the accused will unlikely be able to establish any relevant statutory defences.
- Where there is sufficient evidence that a criminal offence has been committed and the accused can be identified. Where the accused fails to pay for a fixed penalty notice and where any representation or appeal process is exhausted and the legislation allows for a report to be submitted recommending criminal proceedings.

7. Liaison with other Enforcement Agencies

Where appropriate, enforcement activities within the various regulatory services will be coordinated including intelligence sharing with other enforcement agencies and local authorities to maximise the effectiveness of any enforcement activities.

Where an enforcement matter concerns a business premises or person(s) out with the boundaries of The City of Edinburgh Council, or involves enforcement action by one or more other local authorities or agencies, where appropriate, all relevant authorities and agencies will be informed of the matter as soon as possible and all enforcement activity coordinated with them.

Trading Standards will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies within the scope of the Data Protection Act.

8. Recovery of cost

In certain circumstances where the law allows and where the consequences of enforcement activity leads to additional costs being incurred by The City of Edinburgh Council, the Council will seek to recover these costs as appropriate from the individual or business responsible. This can be for example failure to comply with an undertaking or enforcement order under the Enterprise Act 2002 etc.

9. Appeals

Appeals against most formal enforcement decision will be taken through the legal process specified within the legislation. This process will always be explained when

formal action is taken. In the case of a written warning the formal corporate complaints procedure will be used to assist in resolving disputes. Once this route is exhausted the dispute has not been resolved satisfactorily then there is recourse to the Ombudsman. There are not appeal mechanisms against a report made to the Crown Office Procurator Fiscal Service as the matter will be examined by the Procurator Fiscal and subsequently the court which will determine whether an offence has been committed.

10. Review of the Regulatory and Enforcement Policy

The enforcement policy will be reviewed by Trading Standards when external changes dictate and at intervals of not more than three years.