

## Trading Standards

### Title ENFORCEMENT POLICY

Version:1.1

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Amendments: 1-26.9.17

#### 1 Introduction

- 1.1 *This policy provides guidance for officers involved in the enforcement of trading standards law and informs business and consumers of the enforcement approach of the service.*
- 1.2 *The policy applies to all officers of Aberdeenshire Council's Trading Standards Service in the execution of their duties.*
- 1.3 *It incorporates the better regulation principles of transparency, accountability, proportionality, consistency and targeted action required by the Legislative and Regulatory Reform Act 2006 and takes account of the Scottish Regulators' Strategic Code of Practice and the Regulators' Code.*
- 1.4 *As an authority with responsibility to enforce animal feed law and health and safety legislation, we also have regard to provisions in the Feed Law Code of Practice and the National Local Authority Enforcement Code.*
- 1.5 *The policy is supported by our Inspections and Interventions Procedures which provides more detail on how interventions will be conducted.*
- 1.6 *The policy has been approved by the Council and is published on the Aberdeenshire Council website. Copies can be obtained by contacting the Trading Standards Service, Gordon House, Blackhall Road, Inverurie AB51 3WA.*

#### 2 Our Aims

- 2.1 *The primary function of the service is to protect the safety and economic interests of the public through appropriate enforcement of consumer legislation. To achieve this we will:*
  - *Provide advice and support to those businesses who seek to comply and carry out proportionate and consistent enforcement when justified.*
  - *Seek to build effective working relationships with those we regulate, understand their regulatory challenges and encourage communication and appropriate dialogue.*
  - *Recognise the benefits successful, compliant businesses bring to our communities, and carry out our duties in a way that assists businesses*

- comply and grow sustainably.*
- *Be aware of wider community and business interests and give these factors due consideration in the decision making process without compromising the protection of the public.*
- *Ensure our interventions are targeted according to risk and on the basis of available intelligence and so minimise unnecessary burdens on compliant businesses.*
- *Pursue continuous improvement in regulatory practice.*

### **3 Our Approach to Compliance and Enforcement**

3.1 *Our first objective is to help prevent non compliances arising. We will provide advice and guidance to businesses through a variety of means, including the provision of advice leaflets and signposting to internet information but we encourage direct contact from businesses at an early stage so that advice provided takes account of their specific circumstances.*

3.2 *We will ensure compliance through appropriate, proportionate action. There will be occasions where immediate formal action will be required but in general we will seek to achieve compliance through escalating action as appropriate. It is however, the clear responsibility of business operators to be informed on trading standards legislation and to ensure compliance with it.*

### **3.3 Transparency**

3.3.1 *A Trading Standards Team Plan is prepared each year containing details of our priorities and actions for the forthcoming year. Information on our operational activities, performance indicators and customer satisfaction data for the previous year are reported in our Trading Standards Annual Review.*

3.3.2 *The Team Plan and the Review are published on Aberdeenshire Council's website. Copies can be obtained by contacting the Trading Standards Service, Gordon House, Blackhall Road, Inverurie AB51 3WA*

3.3.3 *Enforcement officers are given various powers of entry, inspection and seizure. These include powers to do the following:*

- *Enter any premises not wholly or mainly used as a private dwelling*
- *Observe the carrying on of a business*
- *Make test purchases*
- *Inspect products and procedures connected with production*
- *Inspect and take copies of certain packaged goods records*
- *Test any weighing and measuring equipment in use for trade*
- *Require the production of documents;*
  - *to ascertain whether they may be required as evidence or*
  - *to ascertain compliance where there is reasonable suspicion of a breach or*
  - *where documents are legally required to be kept or*
  - *for market surveillance purposes*
- *Seize and detain goods where there is reasonable suspicion of a breach or if they may be required as evidence or are liable to forfeiture*

- *Seize and detain documents where it is reasonably suspected they may be required as evidence*
- *Break open any container or vending machine or access any electronic device in which information may be stored*

3.3.4 *The powers are provided by statute and officers are authorised through the Council's scheme of delegation.*

3.3.5 *We will comply with the Consumer Rights Act 2015, giving no less than 48 hours advance warning of routine inspections when required. Notice will not generally be given in the following circumstances:*

- *Officers may choose to observe a business, acting as an ordinary consumer. This will not involve exercising a power of entry so they will not have access to parts of the premises not normally accessible to the public unless the trader allows this and waives the requirement to provide 48 hours' notice. Please note however if a breach of consumer law is identified the following paragraph applies and a power of entry may be exercised during the visit.*
- *Where there is reason to suspect there is a breach of consumer law. This may be from previous visits where a breach was identified, from the receipt of complaints or other intelligence or from a breach identified during a visit to observe a business.*
- *Where it is reasonably considered that giving notice would defeat the purpose of the entry. An example would be where it is believed evidence may be concealed or destroyed.*
- *It is not reasonably practicable to give notice. This would include cases where there is an imminent risk to public health or safety and cases where it is impractical to give notice, such as short duration markets where stall holders cannot easily be identified in advance.*
- *Entry is for market surveillance purposes to check products comply with certain European legislation.*

3.3.6 *While staff are aware of the need to work constructively with compliant businesses, the rural nature of Aberdeenshire may mean that any requests by traders seeking to delay a routine inspection, without good reason, may be declined in the interests of efficiency and cost.*

3.3.7 *We will take account of the Code of Practice on Powers of Entry, and provide a Notice of Powers and Rights to the occupier. This notice will include:*

- *whether the entry will be conducted with or without a warrant*
- *the powers of entry and associated powers used*
- *the occupier's rights*
- *any compensation or complaints procedure that exist*
- *where a copy of the Code of Practice may be found*

### **3.4 Targeting**

3.4.1 *The service bases its routine inspection programme on the Trading Standards Risk Assessment Scheme 2013, endorsed by the Society of Chief Officers of Trading*

## *Standards Scotland (SCOTSS).*

3.4.2 *In addition to planned general inspections, officers carry out other inspections in connection with:*

- *safety alerts and reported incidents*
- *complaints and other intelligence*
- *special surveys*
- *referrals from other agencies*
- *special requests from business*

3.4.3 *We target our resources at our priority areas, these being developed from complaints and intelligence data and taking into account national priorities where appropriate. Our priorities are published each year in the Trading Standards Team Plan.*

### **3.5 Proportionality**

3.5.1 *To achieve compliance the enforcement action will be proportionate to the risks and the seriousness of any breach. As far as the law allows due account will be taken of all the circumstances of the case, including the size and capacity of the business, and the attitude of the operator.*

3.5.2 *In general we will take an 'escalating' approach, with informal means used wherever possible to resolve problems and secure compliance. However there will be occasions when immediate formal action is required.*

3.5.3 *Informal enforcement action includes verbal and written advice, written warnings (issued by an investigating officer) and written warnings which warn that further contraventions could result in formal enforcement action (issued by a senior officer).*

3.5.4 *Formal enforcement action includes statutory notices (including suspension notices, prohibition notices and improvement notices), fixed penalty notices and penalty charge notices, formal undertakings and applications to a civil court for an order under the Enterprise Act 2002, and reports to the Procurator Fiscal.*

3.5.5 *The decision to embark on formal action and the type of action taken will take account of the following:*

- *seriousness of the breach and its impact on the health, safety and well-being of the public at large, and the vulnerable in particular where they have been specifically targeted by the regulated person*
- *evidence of fraud, or reckless or negligent practice, evidence of harassment or aggression or significant economic detriment to consumers or other businesses*
- *the means of remedying the contravention and the likelihood of it happening again*
- *previous history of compliance and attitude of the operator, including steps taken or which they failed to take to prevent the breach and the extent to which they have cooperated with regulators and heeded advice in the past*
- *compensation and restitution provided to those harmed by the non-compliance*

- *confidence in the operator's management and quality assurance systems*
- *the need to deter future breaches*

3.5.6 *We will tell businesses, in writing, why enforcement action is being taken against them. The letter or notice will clearly identify the contraventions and the actions necessary to rectify the situation, and will ensure that legal requirements are clearly distinguished from best practice advice or recommendations.*

### **3.6 Consistency**

3.6.1 *It is important that a consistent approach is taken to similar problems. We support the Home Authority and Primary Authority Schemes, which are designed to promote uniformity, reduce duplication and assist enterprises to comply with the law.*

3.6.2 *Officers will also have due regard to advice on policy and operational matters issued by such bodies as the Health and Safety Executive, Food Standards Scotland, Competition and Markets Authority, Department of Business, Energy & Industrial Strategy and the National Measurement and Regulation Office (part of Regulatory Delivery).*

3.6.3 *We actively participate in the work of local and regional co-ordination and liaison groups and have access to secure Internet sites for sharing information and experience.*

3.6.4 *We follow a policy of requiring enforcement officers to obtain formal qualifications to ensure they have the appropriate competencies to carry out their duties. Officers undergo an annual appraisal process to identify and address training needs.*

3.6.5 *Formal enforcement action is closely monitored by line managers. Where a prosecution report is contemplated this is conducted in accordance with the service document- Enforcement Guidelines- Reports to the Procurator Fiscal.*

### **3.7 Accountability**

3.7.1 *All staff are bound by the Aberdeenshire Council Equality Policy which prevents discrimination and promotes acceptable standards of behaviour.*

3.7.2 *Traders can expect:*

- *to be shown all due courtesy*
- *to be shown officer identification and be informed of the purpose of the visit*
- *to be given guidance on the law and feedback on their compliance level*
- *to be given advice on action necessary to remedy points of non-compliance*
- *to be given reasonable time to take remedial action where appropriate*
- *to be told of procedures for appealing against any enforcement action*
- *to be given access to seized goods and documents where appropriate*
- *to be given results of any tests leading to enforcement action*
- *to be given the right to have these goods tested where reasonably practicable*
- *compensation for loss or damage in certain circumstances*
- *to have commercially sensitive information kept confidential*

3.7.3 We will seek feedback on the way we go about our work on a regular basis and review our processes and procedures in light of this information. This information, along with results of our performance measures will be published in our Team Plan or Annual Review each year.

3.7.4 We will give businesses information on how they can formally appeal a regulatory decision where such a right exists or otherwise ask for a review of a regulatory decision where no statutory right of appeal exists.

#### 4.0 Monitoring and Review

4.1 Principal Officers will continually review the actions of enforcement officers to ensure compliance with the policy. Any deviation and the reasons for this will be recorded and reported to the Trading Standards Manager.

4.2 The Enforcement Policy will be reviewed annually.

#### 5.0 Comments and Complaints

5.1 Businesses who feel we have failed to comply with this policy or who are dissatisfied with any action we have taken can raise the matter with the officer concerned or their line manager. If this does not resolve the matter a formal complaint may be lodged using the Council's complaints procedure Have Your Say. Details are contained on the Council website at <http://www.aberdeenshire.gov.uk/haveyoursay/>.

5.2 We welcome feedback and anyone wishing to comment on this document or the trading standards service as a whole can contact us by the following methods.

By post or in person:	Trading Standards Gordon House Blackhall Road Inverurie AB51 3WA	Trading Standards Maconochie Road Fraserburgh AB43 8TH
By telephone:	01467 537222	01346 415888
By email:	<a href="mailto:trading_standards@aberdeenshire.gov.uk">trading_standards@aberdeenshire.gov.uk</a>	
Website:	<a href="http://www.aberdeenshire.gov.uk/business/trading-standards/">http://www.aberdeenshire.gov.uk/business/trading-standards/</a>	