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Trading Standards Service

Enforcement Policy

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Introduction

The Trading Standards Service is committed to maintaining and developing a fair, safe and equitable trading environment.

Trading Standards Service objectives

- To educate, inform and advise businesses and consumers in Shetland on matters relating to trading standards and consumer protection.
- To carry out regular visits to trade premises, and to monitor trading practices for compliance with trading standards and consumer protection legislation.
- To investigate complaints concerning trading standards and consumer protection which are within our remit.
- To carry out the statutory duties assigned to the Service.
- To achieve consistent, balanced and fair enforcement of these statutory duties, and to co-operate as far as possible in helping businesses to comply with the law.
- To use plain language, and to be as open about our work as legislation allows.
- To ensure that any action we require a business to take is reasonable, proportionate to the risk(s) involved, and consistent with good practice.
- To ensure that we comply with legislation and Council policies governing human rights, equalities, data protection and the regulation of investigatory powers.

Enforcement Policy

The Trading Standards Service's enforcement policy is as set out in this document, but officers will also take account of Codes of Practice and Guidance made under the Health and Safety at Work Act and the Official Feed and Food Controls Regulations.

This document takes into account the principles of the 1998 *Enforcement Concordat* and those set out in Sir Philip Hampton's 2005 report *Reducing administrative burdens: effective inspection and enforcement*.

Only officers of the Service who are authorised to do so will undertake enforcement actions.

The Trading Standards Service will ensure that its authorised officers are adequately trained to carry through its objectives in a proper manner.

All such officers are expected to adhere to this enforcement policy. The effectiveness of this policy is monitored by the use of customer surveys, and by the investigation of any complaints, and is reviewed by management and elected members.

The Trading Standards Service is fully committed to following relevant guidance issued by the Crown Office, the Department for Business, Enterprise and Regulatory Reform (BERR) [*formerly DTI*], the Scottish Executive, the Office of Fair Trading (OFT), the National Weights and Measures Laboratory (NWML), the Health and Safety Executive (HSE), the Food Standards Agency (FSA), and the Local Authorities Coordinators of Regulatory Services (LACORS), and to the LACORS *Home Authority Principle*.

Enforcement actions

The Trading Standards Service is committed to achieving consistent, balanced and fair enforcement of trading standards and consumer protection legislation.

In coming to enforcement decisions, officers will carefully consider all relevant facts and circumstances.

The possible enforcement actions which an authorised officer can employ are as follows.

Informal actions

- No action required
- Oral advice
- Advisory letter

Formal actions

- Written warning
- Statutory notice
- Apply to the Sheriff Court for an emergency prohibition order
- Exercise powers to enter premises and to inspect and seize goods, equipment and documents

- Formal warning letter
- Report to another enforcement agency
- Seek an undertaking under the Enterprise Act
- Prepare interdict action under the Enterprise Act
- Report to the Procurator Fiscal for consideration of prosecution

An officer may investigate a case in a formal manner, to keep options open, but then deal with it in a less formal manner as the full circumstances become evident.

Before carrying out formal enforcement action, an officer will normally consult a more senior member of staff.

It may not be practicable or appropriate to seek prior consultation where the officer is issuing a written warning or statutory notice, where the officer is exercising his or her powers to enter premises and / or to inspect and / or seize goods, equipment and documents, or in an emergency situation.

Where appropriate, the officer will also consult one or more of the following bodies.

- The Home Authority
- An appropriate liaison group
- The Local Authorities Coordinators of Regulatory Services (LACORS)
- The Office of Fair Trading (OFT)
- The Health and Safety Executive (HSE)
- The Food Standards Agency (FSA)
- The National Weights and Measures Laboratory (NWML)
- The Department for Business, Enterprise and Regulatory Reform (BERR) *[formerly DTI]*
- The Scottish Executive
- The Council's Legal and Administration Service
- The Procurator Fiscal / Crown Office

Informal action

Informal action will be appropriate in circumstances where:

- an act or omission is not serious;
- past history and risk assessment data do not warrant more formal action;
- the officer has sufficient confidence that the matter(s) will be corrected without the need for more formal action;
- the consequences of non-compliance do not pose significant risks to consumers, employees or other members of the public.

The officer should make a note on the Trading Standards Service's record for the business of any advice given orally.

An advisory letter should:

- contain all the information necessary to enable the recipient to understand what is required and why it is necessary;
- indicate the legislation contravened (if any) and, if necessary, give guidance on compliance with legal requirements and the timescale required; and
- clearly indicate any instance where such guidance is only a recommendation or an example of good practice, rather than a legal obligation.

Formal action

Formal action will be appropriate in circumstances where there is or has been a breach of legislation and there is a risk of injury or nuisance to consumers, employees or other members of the public.

Written warnings

An authorised officer will issue a written warning in situations where the risk resulting from the non-compliance is not sufficiently imminent or serious to warrant a higher level of formal action at that time.

A written warning should:

- contain all the information necessary to enable the recipient to understand what is required and why it is necessary;
- indicate the legislation contravened and, if necessary, give guidance on compliance with legal requirements and the timescale required; and
- clearly indicate any instance where such guidance is only a recommendation or an example of good practice, rather than a legal obligation.

Officers will follow up any written warning which requires compliance with legal requirements within a stated timescale, in order to ensure where practicable that appropriate and effective remedial action has been taken.

Statutory notices

Statutory notices are actions which are provided for in certain legislation, and include the following types of written instruction.

- Improvement and prohibition notices (under the Health and Safety at Work &c Act 1974)
- Suspension notices (under the Consumer Protection Act 1987)
- Suspension, withdrawal and recall notices, and requirement to mark and requirement to warn orders (under The General Product Safety Regulations 2005)
- Improvement and prohibition notices (under The Feed (Hygiene and Enforcement) (Scotland) Regulations 2005) [an application to the Sheriff Court for an order confirming an emergency prohibition notice is required within three days]
- Instructions to have weighing or measuring equipment corrected (under the Weights and Measures Act 1985)

It will be appropriate to issue a statutory notice where:

- there are significant contraventions of legislation; or
- there is a lack of confidence that informal action is likely to be effective; or
- there is a history of non-compliance; or
- there are poor standards of management and poor awareness of legal requirements; or
- the consequences of non-compliance could be potentially serious for consumers, employees or other members of the public; or
- effective and immediate action is required to remedy an unsafe situation.

Statutory notices should not normally be used for minor technical breaches (apart from, in some instances, the statutory time notice under the Weights and Measures Act 1985).

A statutory notice can be issued only by an officer duly authorised to do so.

Officers will follow up any statutory notice which requires compliance with legal requirements within a stated timescale, in order to ensure where practicable that appropriate and effective remedial action has been taken.

Exercising of powers to enter premises and to inspect and seize goods, equipment and documents

Certain legislation provides authorised officers with powers to enter premises and to inspect and seize goods, equipment and documents.

Officers are carefully trained in the use of these powers, which will be exercised only where they are reasonable, appropriate and proportionate to the risk(s) involved.

Formal written warning

It will be appropriate to issue a formal written warning where:

- informal action (and / or a lower level of formal action, such as a written warning issued by an officer) has been tried without success; or
- past history and risk assessment data warrant this type of action; or
- there is a lack of confidence that the business will correct the matter(s) without this type of action; or
- the consequences of non-compliance pose a significant risk (or collective risk) to consumers, employees or other members of the public.

A formal written warning should:

- contain all the information necessary to enable the recipient to understand what is required and why it is necessary;
- indicate the legislation contravened and, if necessary, give guidance on compliance with legal requirements and the timescale required; and
- clearly indicate any instance where such guidance is only a recommendation or an example of good practice, rather than a legal obligation.

Officers will follow up any formal written warning which requires compliance with legal requirements within a stated timescale, in order to ensure where practicable that appropriate and effective remedial action has been taken.

Report to another enforcement agency

A case will be reported to another enforcement agency if that agency is more appropriately placed to take effective action.

Action against Shetland Islands Council

Any criminal investigation concerning the Council should be conducted in exactly the same manner as it would against any other alleged offender.

Enterprise Act remedies / Reports to the Procurator Fiscal for consideration of prosecution

Authorised officers will, as soon as practicable, discuss with more senior staff events which may result in action through the courts.

Decisions on civil court action and / or reports to the Procurator Fiscal for consideration of prosecution will be taken by the Service Manager – Trading Standards (or, in his / her absence, the Trading Standards Officer) in conjunction with the Head of Environment & Building Services and / or the Executive Director – Infrastructure Services.

Reports for action in the courts will be appropriate where:

- alleged breaches of the law are such that consumers, employees or other members of the public are put at risk (whether individually or collectively); or
- alleged breaches are flagrant or continuing; or
- alleged breaches involve failures by the alleged offender to correct an identified serious situation, having been given a reasonable opportunity to comply with legislative requirements; or
- there is a history of similar breaches; or
- alleged breaches involve a failure to resolve a complaint (or complaints) and the circumstances justify such action; or
- alleged breaches of the law pose a significant risk (or collective risk), and / or have the effect of being materially and economically detrimental, to consumers, employees or other members of the public.

In the case of Enterprise Act (Part 8) breaches, the Council's Legal and Administration Service will be consulted at an early stage, especially if court action is contemplated. Appropriate entries on the Consumer Regulations Website (CRW) should also be made, and appropriate notification given to the Office of Fair Trading (OFT).

All relevant information must be considered to enable a consistent, fair and objective decision to be made; this includes explanations given by the alleged offender, his or her attitude, and any mitigating circumstances.

The person making the decision to proceed with court action must be satisfied that there is relevant, admissible, substantial and reliable evidence of the alleged breach(es), and should take into account any statutory defence likely to be available to the alleged offender.

Once a decision to proceed with court action has been taken, a formal report will be prepared and submitted without undue delay to the Council's Legal and Administration Service or direct to the Crown Office; and time-bar dates must be fully taken into account.

Complaints about the Trading Standards Service

Where any person or business has a complaint about the nature or standard of service provided by the Trading Standards Service, or in relation to actions covered by this policy, they can make a formal complaint. This can be done by either writing a letter or completing a Council complaint form, and sending it to the Chief Executive's Office, Shetland Islands Council, Office Headquarters, 8 North Ness Business Park, Lerwick, Shetland ZE1 0LZ.

This document is also available at www.shetland.gov.uk/tradingstandards

Do you require the services of an interpreter?

If you do, please contact **01595 744862** for assistance.

We will provide an interpreter, or we can supply the document in your choice of language.