

## 1. Introduction

- 1.1 Environmental Health and Waste Services are responsible for the enforcement of a wide range of legislation as set out in the Council's Scheme of Delegation.
- 1.2 This document sets out our enforcement policy and explains what regulated persons can expect from us. We have based our approach to enforcement on the Hampton Principles, the Legislative and Regulatory Reform Act 2006, the Regulatory Reform (Scotland) Act 2014, UK Regulators' Code and the Scottish Regulators' Strategic Code of Practice.
- 1.3 This document also satisfies our legal obligation to have enforcement policies which apply to food safety and health & safety law.
- 1.4 In this policy:
  - *regulated person* means anyone who must comply with the laws we enforce. Regulated persons will mainly be businesses and their employees but may also include non-business organisations, private individuals and the Highland Council. We will not give the Council more favourable treatment compared to other regulated persons.
  - *enforcement* includes all action taken by us following discovery of a breach of the law with the ultimate aim of ensuring that someone complies with the law. This may involve enforcement action, which can include advice, and the use of our investigatory powers (as defined in the Appendix).
  - *formal action* includes formal enforcement action and the use of formal investigatory powers (as defined in the Appendix) but does not include advice.

## 2. Our aims

- 2.1 We aim to:
  - a) follow the five principles of better regulation: regulation should be transparent, accountable, consistent, proportionate and targeted.
  - b) ensure that regulated persons take action immediately to deal with serious risks.
  - c) help and encourage businesses and individuals to understand and comply with the law
  - d) promote and achieve sustained compliance by regulated persons.
  - e) treat all regulated persons fairly.

- f) protect the public in a way which does not stifle enterprise, hinder economic progress or place unnecessary burdens on businesses.
- g) communicate this policy effectively to those people who are affected by it.
- h) Where appropriate, we will liaise with other authorities to ensure compliance (e.g. Police Scotland, Crown Office and Procurator Fiscal Service, SEPA, Health & Safety Executive, Revenue Scotland, HM Revenue & Customs, Scottish Fire and Rescue Service, DEFRA, APHA).

2.2 We apply the following principles when conducting our enforcement activities:

- proportionality in how we apply the law and secure compliance.
- targeting of our enforcement action.
- consistency of our approach.
- transparency about how we operate and what a regulated person can expect.
- accountability for our actions.

### **3. Proportionality**

- 3.1 Where we have discretion, when deciding what action to take we will act proportionately by balancing the risks to the public with the costs to the regulated person (in time and money) of implementing changes.
- 3.2 When deciding what action to take we will pay particular attention to our impact on smaller organisations. We will take reasonable steps to ensure that any action we take is proportionate to the size of the organisation unless that comes into conflict with the need for consistency.
- 3.3 We will seek to impose the minimum burden compatible with ensuring compliance. Where we encourage the adoption of good practice, we will always clearly distinguish between legal requirements and recommendations.
- 3.4 Where non-compliance has been identified, we will determine the most appropriate course of action to take by making a careful assessment of all of the following criteria with no one factor likely to be decisive on its own:
- 1) The seriousness of the breach and in particular its impact on the safety, health and well-being of all those affected by it;
  - 2) The steps which the regulated person took, or the reasonable steps which they failed to take to prevent the offence;
  - 3) The extent to which the regulated person has been proactive in seeking advice from us, and whether they have complied with any advice we have given;
  - 4) The history of compliance and in particular whether any previous warnings went unheeded;
  - 5) Evidence of fraudulent, deliberate, irresponsible, reckless or negligent behaviour, and evidence of aggression or harassment;
  - 6) The likelihood of the contravention happening again;
  - 7) The extent to which the regulated person accepts their responsibilities and is willing to heed advice;
  - 8) Whether the breach is rectified promptly;
  - 9) The need to deter future breaches;
  - 10) The nature of the evidence available to us.

#### **4. Targeting of our enforcement action**

- 4.1 We will use the principles of risk assessment by taking into consideration the likelihood of non-compliance and the impact of non-compliance and significance of risk related to the case. We will use these principles to determine the frequency of inspection, and we will consider those principles when arranging other visits, for example to take samples and carry out projects.
- 4.2 Where available, we will use standard risk assessment schemes such as those produced by Food Standards Scotland and the Health & Safety Executive. The assessment is usually based on the risk which the activity presents to the public or employees, the complexity of the legislation, the size and type of organisation, and the confidence which we have in the ability of the regulated person to comply based on our knowledge of their control systems and previous compliance levels. On request, we will explain to any regulated person why we have assigned them a particular risk rating.

#### **5. Consistency**

- 5.1 We will ensure that anyone who is regulated by us is treated consistently on each occasion, and consistently with other regulated persons. Consistency is not the same as uniformity; it means taking a similar approach in similar circumstances to achieve compliance with the law. We will do this by monitoring the enforcement action taken by our officers, and by training our officers.
- 5.2 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 from any source.
- 5.3 We fully support the 'home authority' and 'primary authority' principles as the means by which regulated persons trading across local authority boundaries are able to rely on one local authority as their main source of advice on compliance.
- 5.4 We will work with other local authorities throughout the UK to ensure consistent interpretation and application of the law. We will do this by playing an active part in working groups which range in scope from the North of Scotland to the whole of the UK as well as having regard to guidance from bodies such as Food Standards Scotland and the Health & Safety Executive.

#### **6. Transparency**

- 6.1 Where non-compliance has been identified, officers will clearly and promptly explain the decision taken, their reasons, and the actions required to achieve compliance. They will discuss reasonable timescales with the regulated person and explain what will happen if they fail to comply.
- 6.2 Before we take any formal action we will provide an opportunity to discuss the matter and if possible resolve points of difference. However this will not apply when immediate action is required (for example, to prevent or respond

to a serious breach, or where there is an imminent risk to health & safety, or where an opportunity for discussion is likely to defeat the purpose of the proposed enforcement action, or to prevent evidence being destroyed).

- 6.3 Our officers will explain in writing the reasons why they took a particular course of formal action. Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken.
- 6.4 We will give information and advice in clear, concise and accessible language. We will provide general information and advice to regulated persons in a range of appropriate formats and media. We will confirm specific advice in writing on request.
- 6.5 Officers will always provide proof of their identity (including their name, role and photographic identification) and will explain the purpose of their visit, unless undertaking covert investigation or where this would defeat the purpose of the investigation.

## **7. Accountability**

- 7.1 This policy explains what regulated persons can expect from us. If a regulated person feels we have not complied with it, or are dissatisfied with any action we have taken, they can use the Council's complaints procedure to request that we carry out a formal review of that action. The procedure is described on our website [here](#); alternatively, please ask us for details. Complaints should include an explanation of why the regulated person is dissatisfied. The request should be made in writing unless the regulated person believes there is a need for an urgent review. The action will be reviewed by a senior officer who was not involved in the original decision-making process. We will fully explain the reasons for our decision and, if we decide to vary the action, we will describe how that variation will impact on the regulated person. If the regulated person remains dissatisfied, we will explain how to take the complaint further.

Please note the Council's complaint procedure does not apply where a statutory right of appeal exists, for example in relation to notices.

- 7.2 Through reports to our Committee we will publish information on our performance on implementing legislation.
- 7.3 We will provide means to allow feedback on our performance and approach including clear contact channels, online feedback forms, and where appropriate, consultations on significant policy change and surveys of work undertaken.

## **8. Contact**

For any queries on the policy please contact:

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Communities and Place

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## 9. References

Hampton Principles - March 2005 by HM Treasury in a report by Sir Philip Hampton 'Reducing administrative burdens: effective inspection and enforcement.'  
<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmspeak/1069/106911.htm>

Legislative and Regulatory Reform Act 2006  
<http://www.legislation.gov.uk/ukpga/2006/51/contents>

Regulatory Reform (Scotland) Act 2014  
<http://www.legislation.gov.uk/asp/2014/3/contents>

UK Regulators' Code  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300126/14-705-regulators-code.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf)

Scottish Regulators' Strategic Code of Practice  
<http://www.gov.scot/Resource/0046/00467429.pdf>

The definition of 'enforcement'

Enforcement action	<p><i>Informal</i> enforcement action may include verbal and written advice, and written warnings and formal warnings which warn that further contraventions could result in formal enforcement action.</p> <p><i>Formal</i> enforcement action includes statutory notices (which require the recipient to do something specific such as prohibiting the use of a premises or process where there is a risk to health &amp; safety), fixed penalty notices, applications to a civil court for an enforcement order, and reports to the Procurator Fiscal recommending prosecution in a criminal court. It also includes any report by us to the licensing committee or the licensing board recommending that they suspend or revoke a licence.</p>
Investigatory Powers	<p>The statutory powers which officers can use to help them to check whether the law is being complied with and to investigate any breach of the law.</p> <p><i>Routine</i> investigatory powers usually include the power to:</p> <ul style="list-style-type: none"> <li>• inspect premises at any reasonable time</li> <li>• inspect goods</li> <li>• inspect documents where there is reason to suspect a breach has been committed</li> <li>• purchase goods to test whether the law is being complied with (called a 'test purchase')</li> <li>• take samples for analysis</li> </ul> <p><i>Formal</i> investigatory powers usually include the power to:</p> <ul style="list-style-type: none"> <li>• seize and detain goods and documents where there is reason to believe they are required as evidence</li> <li>• apply to a Sheriff for a warrant to enter premises by force if necessary or to take a constable to apprehend any serious obstruction in the execution of our duties</li> <li>• prohibit access to unsafe premises or equipment pending an investigation</li> </ul>