



Development & Infrastructure Service

Trading Standards

Enforcement Policy

Revised Jan 2015

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Introduction

- 1.1. Trading Standards is an operational unit of the Highland Council, Development & Infrastructure Service.
- 1.2. Trading Standards is committed to the principles of good enforcement as set out in the Legislative and Regulatory Reform Act 2006, the Enforcement Concordat [COSLA Enforcement Concordat Good Practice Guidance](#)¹ the [UK Regulators Code](#)² and in relation to the enforcement of legislation reserved to the UK government the [Scottish Regulators' Strategic Code of Practice](#)³ made under the Regulatory Reform (Scotland) Act 2014. Links and extracts are contained in the appendices to this policy document.
- 1.3. The approach taken by Trading Standards to compliance and enforcement activity in addition to being reliant on the sources mentioned in paragraph 1.2 above is subject to a number of other external influences covering some specific regulatory activities. These include the [National Local Authority \(LA\) Enforcement Code](#)⁴ and the [Feed Law Code of Practice](#)⁵.
- 1.4. This policy has been approved by the Council and sets out the enforcement policy for all Trading Standards regulatory activities and is published by the Council in accordance with Section 8.4 of the Legislative and Regulatory Reform Act 2006 and in accordance with the aforementioned guidance.
- 1.5. All Highland Council Trading Standards personnel who take any decisions relating to the use of any available enforcement powers, civil sanctions, applications to the Court under the Enterprise Act 2002, or the reporting of cases to a pseudo judicial committee of the Council or to the Procurator Fiscal are required to follow this policy.
- 1.6. The various members of staff who will be taking these enforcement decisions, {e.g. Trading Standards Officers; Assistant Trading Standards Officers; Enforcement Officers; Team Leaders, Managers and Heads of Service}, unless being identified in relation to some specifically assigned function under the policy, are referred to in the policy from this point forwards as '**officers**'.
- 1.7. Those upon whom the law places a duty to comply, i.e. manufacturers (producers), importers, wholesalers, retailers, service providers, etc. and in a small number of limited circumstances the general public are referred to in this policy from this point forwards as '**dutyholders**'.

Our Aims

- 1.8. The Highland Council's overarching aims are: -
 - 1.8.1. Making the Highlands one of Europe's leading regions.
 - 1.8.2. Creating sustainable communities with more balanced population growth and economic development across the Highlands.
 - 1.8.3. Building a fairer and healthier Highlands.

¹ <http://www.cosla.gov.uk/sites/default/files/private/esbestprac.pdf>

² <https://www.gov.uk/government/publications/regulators-code>

³ http://www.scottish.parliament.uk/S4_EconomyEnergyandTourismCommittee/General%20Documents/Scottish_Regulators_Strategic_Code_of_Practice_7_January_2015.pdf

⁴ <http://www.hse.gov.uk/lau/la-enforcement-code.htm>

⁵ <http://www.food.gov.uk/multimedia/pdfs/feedcodeofpractice.pdf>

- 1.9. In the pursuit of those aims the Council's stated objective, which is of particular relevance to Trading Standards' regulatory activities is; the improvement of community safety by working to reduce crime and fear of crime.
- 1.10. In addressing this wider objective, Trading Standards' operational focus is on ensuring that trade in the Highlands is carried out in accordance with relevant statutory requirements and in so doing the safety and economic interests of consumers and other businesses are protected.
- 1.11. Trading Standards aims to work with dutyholders, assisting them wherever possible to understand and comply with often complex pieces of trading standards law, thereby allowing them to remain competitive and avoid the damaging costs associated with the taking of retrospective remedial action and/or being subject to civil and criminal penalty.
- 1.12. All interventions with dutyholders are targeted according to risk and on the basis of available intelligence and in so doing will minimise any unnecessary burden.
- 1.13. Where necessary however Trading Standards will confront and deal with activities by dutyholders that are identified as being detrimental to the safety and economic interests of consumers, other businesses and/or the general public, including the proportionate use of formal enforcement powers.

When does this policy apply?

- 1.14. The range of legislation enforced by Trading Standards and to which this policy applies is listed in [Annex D](#). This list is not intended to be comprehensive, but to provide an indication of the areas of regulation that are within the scope of Trading Standards at the time the policy was adopted.
- 1.15. The enforcement activities covered by the policy include the use of any statutory powers by officers during: -
 - 1.15.1. The inspection of premises and any other regulated activity undertaken by dutyholders, including e-commerce activities.
 - 1.15.2. The sampling of goods for analysis and test.
 - 1.15.3. The undertaking of test transactions of goods and services.
 - 1.15.4. The investigation of any suspected illegal activity that has been identified as the result of a complaint or received intelligence.
- 1.16. Any deviation from this policy must be authorised by the Trading Standards Manager and recorded along with the justification for doing so.

Our approach to compliance and enforcement

- 1.17. The term 'enforcement' has a wide meaning and applies to all dealings between the enforcing authority and dutyholders.
- 1.18. The purpose of enforcement is to:
 - 1.18.1. Ensure that dutyholders take immediate action to deal with serious non-compliances;
 - 1.18.2. Promote and achieve sustained compliance with the law;
 - 1.18.3. Ensure that dutyholders, who breach legal requirements, including individual directors or managers who fail in their responsibilities, may be held to account.

- 1.19. The enforcing authority has a range of tools at their disposal in seeking to secure compliance with the law and to ensure a proportionate response to criminal offences and civil law breaches. Officers may offer dutyholders information, and advice, both face to face and in writing. This may include warning a dutyholder that in the opinion of the officer, they are failing to comply with the law.
- 1.20. Where appropriate, officers may also serve enforcement notices {e.g. suspending activities, suspending the supply of goods or requiring the dutyholder to remedy some non-compliance}; seeking an undertaking as to a dutyholder's future conduct; application to the Sheriff for an Order to desist; the application of a civil penalty; seeking the withdrawal of a licence or other permission granted; and to report an offender to the Procurator Fiscal with a view to prosecution.
- 1.21. In carrying out our work we will make every attempt to comply with the Enforcement Concordat and in doing so believe that prevention is better than cure and that our role therefore involves actively working with dutyholders, especially small and medium sized businesses, to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name.
- 1.22. We will provide a contact point and telephone number for further dealings with us and we will encourage dutyholders to seek advice /information from us. Applications for approval of establishments, licenses, registrations, etc, will be dealt with efficiently and promptly.
- 1.23. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.
- 1.24. We will provide well publicised, effective and timely complaints procedures easily accessible to dutyholders, the public and consumer groups who have cause to be unhappy about any Trading Standards enforcement activity. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.
- 1.25. We will minimise the costs of compliance for dutyholders by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the dutyholder when considering action.
- 1.26. We will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.
- 1.27. We will carry out our duties in a fair, equitable and consistent manner. While officers are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies through schemes such as those developed by the SCOTSS & ACTSO⁶; TSI⁷ and BRDO⁸
- 1.28. Advice from an officer will be put clearly and simply and will, on request, be confirmed in writing, explaining why any remedial work is necessary, over what time-scale and making sure those legal requirements are clearly distinguished from best practice advice.

⁶ Society of Chief Officers of Trading Standards in Scotland & Association of Chief Trading Standards Officers

⁷ [Trading Standards Institute](#)

⁸ [Better Regulation Delivery Office](#)

- 1.29. Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed).
- 1.30. Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most cases within 5 working days and, in all cases, within 10 working days.
- 1.31. 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 (whenever possible this advice will be issued with the enforcement notice or in the case of the intended imposition of any civil sanctions at the time of any formal meeting between the dutyholder and Trading Standards management).
- 1.32. In accordance with the Regulators' Compliance Code principles, Trading Standards targets its resources on those areas where intelligence or assessed risk merits intervention. The [Trading Standards Operational Plan](#)⁹ and [Performance Review](#)¹⁰ which has been approved by the Highland Council provides details of where our resources have been applied over the previous year and the basis upon which they are being routinely targeted for the current year.

Advising on the rules

- 1.33. We will always attempt to act in accordance with the Enforcement Concordat and Regulators Compliance Code principles, and in doing so we will: -
 - 1.33.1. Attempt to actively work with dutyholders, especially small and medium sized businesses, to advise on and assist with compliance, whilst by necessity targeting our resources in this area on the basis of risk assessment.
 - 1.33.2. Provide general information, advice and guidance to make it easier for regulated entities to understand and meet their regulatory obligations.
 - 1.33.3. Distinguish between statutory requirements and advice or guidance aimed at improvements above minimum standards.
 - 1.33.4. Provide information and advice in plain language and to confirm in writing, if requested, any advice or guidance provided.

Checking compliance

- 1.34. The basis for all planned interventions is explained at section 4.16 above. The few remaining premises where routine cyclical inspection, outwith any intelligence led project or initiative, remains in place are those which have been assessed using an established risk assessment system¹¹ as presenting a high risk.
- 1.35. In undertaking any planned interventions cognisance is also given to any inspection plans published in accordance with [Primary Authority Guidance](#)¹², Sections 50 and

⁹ http://www.highland.gov.uk/download/meetings/id/65230/item_17_trading_standards_2014-15_operational_plan

¹⁰ http://www.highland.gov.uk/downloads/file/3029/trading_standards_annual_performance_review

¹¹ <http://www.rctcbc.gov.uk/en/relateddocuments/publications/tradingstandards/actsoftradingstandardsriskassessmentscheme2013.pdf>

¹² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263072/13-1191-primary-authority-statutory-guidance.pdf

51 of this guidance provide details about when deviation from a published inspection plan is appropriate.

Conduct of investigations

- 1.36. All investigations undertaken by officers will be conducted in accordance with the general requirements of the legislation listed in Annex B, together with any specific requirements imposed by the legislation that applies to the matter under investigation.
- 1.37. The general powers available to officers will vary according to the matter under investigation, but can include: -
 - 1.37.1. The power of entry to premises.
 - 1.37.2. The power to inspect goods (e.g. goods subject to product safety rules that are intended for supply)
 - 1.37.3. The power to inspect equipment (e.g. weighing & measuring equipment in use for trade)
 - 1.37.4. The power to require the production of documents and other records, including computer based data, relating to the supply or use of regulated goods and services.
- 1.38. Where the officer has reason to suspect that there has been a contravention the officer may also have the power to seize and detain goods and equipment for further examination and test; take copies of documents and to retain anything that may be required to be produced in evidence in any formal proceedings.
- 1.39. Dutyholders, their employees and others who are involved in any matter under investigation can however expect to be treated fairly throughout an investigation and given a clear explanation of what action an officer is taking and why. The majority of the legislation under which an officer will be conducting an investigation does however make any person who wilfully obstructs an officer who is exercising his legal authority subject to prosecution. Any dutyholder who continues to obstruct an investigation can also expect that the officer will summon the police and failure to co-operate can result in the arrest or detention of the individual involved.
- 1.40. In any case where any property is seized and detained, the person from whom it is seized and any person who has an interest in the property will receive written notification of what has been seized, the reasons for the action, together with details of who to contact should they wish to appeal against the action.
- 1.41. Any investigation involving a business that has entered into a Primary Authority Partnership agreement with an Enforcement Authority can also expect that the investigating officer will be in early communication with the Primary Authority contact to discuss the matter and that the procedures of the Regulatory Enforcement and Sanctions Act 2008 will be complied with before any further action is taken. Although not a legal requirement the early communication by the investigating officer with any designated Home Authority can also be expected.
- 1.42. The interview of dutyholders suspected of being involved in any offence or activity considered to be unlawful and subject to legal sanctions and any relevant witnesses will be conducted in accordance with the Scottish laws of evidence. Any suspect being interviewed will also be advised of their rights to have legal representation at any interview.

- 1.43. Statutory time limits for all statutory offences exist, within which any proceedings must be initiated. These vary according to the legislation involved and will be taken into account by the investigating officer in the making of any decision whether to pursue an investigation.

Decisions on enforcement action

- 1.44. Any decision concerning the course of action to be followed will be based upon a careful assessment of all of the following criteria with no one factor likely to be decisive on its own:

- The seriousness of the offence and in particular the degree to which consumers' interests have been harmed;
- The ease with which the offence could have been avoided;
- The procedures which are in place to prevent contraventions;
- The procedures which should be in place to prevent contraventions bearing in mind the size and nature of the business;
- Any history of contraventions and in particular whether any previous warnings went unheeded;
- The risk to the safety and well-being of persons generally;
- Evidence of fraudulent, deliberate, irresponsible, reckless or negligent behaviour;
- The likelihood of the contravention happening again;
- Whether the business accepts its responsibilities and is willing to heed advice;
- Whether the breach is rectified promptly;
- The nature of the evidence available.

- 8.2. In addition to the decision making criteria listed above cognisance will also be given to any advice which has properly been given to the dutyholder under the Primary Authority Partnership scheme or may have been provided by any designated Home Authority.

- 8.3. The following is a list of the sanctions available to officers. Further information on these is provided in [Annex C](#)

- 8.3.1. Compliance Advice and Support;
- 8.3.2. Formal Written Warnings;
- 8.3.3. Voluntary Undertakings;
- 8.3.4. Statutory Enforcement Notices;
- 8.3.5. Fixed Monetary Penalties;
- 8.3.6. Financial Penalties & other Civil Sanctions;
- 8.3.7. Injunctive Actions/ Application to the Sheriff for Enforcement Orders etc.;
- 8.3.8. Reports to the Procurator Fiscal with a view to Prosecution; and/or for forfeiture of non-compliant products
- 8.3.9. Reports to the relevant Council Committee to consider the Refusal/ Suspension/ Revocation of Licences and other permissions.

8.4. Any enforcement sanction will be applied with one or more of the following objectives: -

8.4.1. To aim to change the behaviour of the offender;

8.4.2. To aim to eliminate any financial gain or benefit from non-compliance;

8.4.3. To 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;

8.4.4. To be proportionate to the nature of the offence and the harm caused;

8.4.5. To aim to restore the harm caused by regulatory non-compliance, where appropriate;

AND

8.4.6. To aim to deter future non-compliance.

8.5. Any decision on the taking of enforcement action will be taken by officers in accordance with the Council's [Scheme of Delegation](#)¹³, with reference to any applicable decision making model e.g. HSE's Enforcement Management Model; The Highland Council Taxi & Private Hire Car penalty Points System¹⁴; to any legal requirement to consult with another organisation e.g. any assigned [Primary Authority](#)¹⁵, the Office of Fair Trading or the Secretary of State; and to the officer's current authorisation level assigned by the Trading Standards Manager.

8.6. Any decision to publicise enforcement action taken will be based on relevant legislative controls; current government guidance and on it being judged by the Trading Standards Manager as being in the public interest to do so. [All Trading Standards media releases](#)¹⁶ can be found on the Council website.

8.7. In order to ensure consistency of approach and compliance with this policy, the work of officers, including any enforcement action taken is subject to periodic audit and review.

¹³ http://www.highland.gov.uk/download/downloads/id/12127/scheme_of_delegation

¹⁴ Penalty Points System report to Civic Government Licensing Working Group approved by TECS Committee June 2006 (<http://www.highland.gov.uk/download/meetings/id/20445/item22civicgovernmentlicensingworkinggroup.pdf>) & subsequent amendment approved by TECS Committee Jan 2008 <http://www.highland.gov.uk/download/meetings/id/1086/Item20vCivicGovernmentLicensingWorkingGroupMinutesof6December2007.pdf>

¹⁵ <https://primaryauthorityregister.info/par/index.php/home>

¹⁶ http://www.highland.gov.uk/news/20000/trading_standards

Review of this policy

1.45. This policy will be reviewed at regular intervals not exceeding five years.

Comments and complaints

If a dutyholder has any complaint about the way that the service has acted this should in the first instance be raised with the officer concerned in the hope that the matter can be resolved amicably by discussion with the officer. However if this is not possible or practical then the dutyholder should contact the Trading Standards Manager at the following address:

Gordon Robb
Trading Standards Manager
Development & Infrastructure Service
38 Harbour Road
Inverness
IV1 1UF

If the dutyholder is not satisfied with the outcome the matter may be progressed using the [Council's Complaints procedure](#)¹⁷.

The Trading Standards Manager will also be pleased to receive any general comments about the service or about this document.

You can contact us on: Tel: 01463 228700 Fax: 01463 223723
Email: trading.standards@highland.gov.uk
Web: www.highland.gov.uk/tradingstandards

¹⁷ <http://www.highland.gov.uk/yourcouncil/contact/complaints.htm>

Annex A. Guidance and Codes that Influenced the Preparation of the Compliance and Enforcement Policy

1. Principles of Good Regulation

The [Legislative and Regulatory Reform Act 2006](#)¹⁸, Part 2, requires The Highland Council to have regard to the Principles of Good Regulation when exercising a specified regulatory function¹⁹. For local authorities, the specified functions include those carried out by our environmental health, trading standards and licensing services.

We recognise that our regulatory activities should be carried out in a way which is:

- proportionate,
- accountable,
- consistent,
- transparent, and
- targeted to situations which need action.

2. Regulators Code & the Scottish Regulators' Strategic Code of Practice

The Highland Council has had regard to the [Regulators Code](#)²⁰ for all UK legislation that is reserved to the UK Parliament and for those pieces of legislation e.g. relating to the control of tobacco, Civic Government Licensing, Home Reports and Feed to the [Scottish Regulators' Strategic Code of Practice](#)²¹ in the preparation of this policy.

In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. Any decision to depart from the Code will however be properly reasoned, based on material evidence and appropriately documented.

3. Enforcement Concordat (Cabinet Office and COSLA, 1998)

The Highland Council has adopted the Enforcement Concordat and the Principles of Good Enforcement as in relation to: Standards; Openness; Helpfulness; Complaints; Proportionality and Consistency.

4. Human Rights Act 1998

The Highland Council is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is paid to the right to a fair trial and the right to respect for private and family life, home and correspondence.

5. Data Protection Act 1998

Where there is a need for The Highland Council to share enforcement information with other agencies, we will have regard to the provisions of the Data Protection Act 1988.

6. Food Law Code of Practice

The Highland Council has responsibility for enforcement of food legislation (which includes Animal Feedstuff) and carries out its enforcement activities with regard to the provisions of the [Feed Law Enforcement Code of Practice](#)²² (Food Standards Agency, 2008).

¹⁸ <http://www.legislation.gov.uk/ukpga/2006/51/contents>

¹⁹ Specified by the Legislative and Regulatory Reform (Regulatory Functions) (Amendment) Order 2009
www.legislation.gov.uk/uksi/2009/2981

²⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf

²¹ [Scottish Regulators' Strategic Code of Practice](#)

²² <http://www.food.gov.uk/multimedia/pdfs/feedcodeofpractice.pdf>

7. **Standard for Health and Safety Enforcing Authorities**

The Highland Council has responsibility for enforcement of health and safety legislation and carries out its health and safety enforcement activities with regard to the provisions of the [National Local Authority \(LA\) Enforcement Code](#)²³ (Health and Safety Executive, 2013).

8. **Regulatory Enforcement and Sanctions Act 2008** ('the RES Act')

The [Regulatory Enforcement and Sanctions Act 2008](#)²⁴ established the Local Better Regulation Office now redesignated as the [Better Regulation Delivery Office](#)²⁵ (LBRO), which produces guidance for The Highland Council regulatory services. We are committed to following guidance produced by LBRO and will have regard to any list of enforcement priorities published by LBRO.

The Act also established the Primary Authority scheme. We will comply with the requirements of the Act when we are considering taking enforcement action against any business or organisation that has a registered Primary Authority partnership.

²³ <http://www.hse.gov.uk/la/la-enforcement-code.htm>

²⁴ <http://www.legislation.gov.uk/ukpga/2008/13/contents>

²⁵ <https://www.gov.uk/government/organisations/better-regulation-delivery-office>

Annex B Conduct of Investigations

All investigations will be carried out in accordance with Scottish Common law and where relevant the following legislation, any associated guidance or codes of practice and Council policy.

- [the **Criminal Procedure and Investigations Act 1996**](#)

- [**Criminal Justice and Licensing \(Scotland\) Act 2010**](#)

- [the **Human Rights Act 1998**](#)
 - [the **Regulation of Investigatory Powers Act 2000**](#)

 - [the **Regulation of Investigatory Powers \(Scotland\) Act 2000**](#)

These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential accused.

Officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.

Annex C. Enforcement Actions available to officers of The Highland Council Trading Standards in respect of Criminal and Civil Breaches

1. Compliance Advice and Support

- 1.1. Compliance advice and support would normally be seen as being outwith the definition of enforcement action, but is identified here as being by far the preferred and most common approach taken by officers to deal with anything other than a very serious or potentially dangerous non-compliance.
- 1.2. The provision of such advice, dependant on the nature and potential for any non-compliance to impact on the wellbeing and economic interests of the public and others who may be affected, may range from an officer simply speaking to a dutyholder; to the provision of detailed written advice accompanied by copies of published guidance, or details of where such guidance published can be obtained.
- 1.3. On request any advice or guidance initially provided orally will be provided in writing.

2. Written Warnings and Assurances

- 2.1. Where any non-compliance by a dutyholder fails to be resolved by the provision of advice and/or the incident is considered serious enough to warrant clear written direction being given to the dutyholder and/or an assurance being given by the dutyholder as to their future conduct; then prior to any formal enforcement action being considered the issue of a "Written warning" to a dutyholder, or a "Written Assurance" accepted from a dutyholder may be considered by the investigating officer.
- 2.2. Failure to heed such a warning or to adhere to any undertaking given, does not in itself constitute an offence in its own right, but will be used as evidence to justify any formal action taken as a result of any further non-compliance discovered.
- 2.3. Any "Written Warning" or "Written Assurance" will clearly state that the document is such a warning of assurance and will fully explain the circumstances that have led to its issue or acceptance and will provide details of what steps the dutyholder can take to appeal against the action taken.
- 2.4. All such "Written Warning" and "Written Assurances" will be issued or accepted by an officer senior to the investigating officer.

3. Voluntary Undertakings & Enforcement Undertakings

- 3.1. Where any non-compliance has been established and the dutyholder agrees to provide a voluntary undertaking or Enforcement Undertaking¹⁴ to the authority to desist from any future non-compliance, such an undertaking may be accepted, subject to any agreed conditions imposed by the authority, as an acceptable disposal of the case.
- 3.2. Failure to abide by any such voluntary undertaking will result in formal action being taken and dependant on the nature of the non-compliance and the applying legislation may result in an application to the Sheriff for an Order or a report to the Procurator Fiscal with a view to prosecution.

4. Statutory (Legal) Notices

4.1. There are many pieces of individual legislation that specify the use of Statutory Notices as a means by which officers authorised by the Council to use them can attempt to achieve compliance and/or control of a situation that has resulted from a suspected non-compliance. The range of the notices available includes, but is not restricted to: -

- **Improvement Notice**; (Health & Safety at Work Etc Act 1974)
- **Prohibition Notice**; (Health & Safety at Work Etc Act 1974)
- **Compliance Notice**; Consumer Protection Act 1987; General Product Safety Regulations 2005 & other relevant safety legislation
- **Suspension Notice**; Consumer Protection Act 1987; General Product Safety Regulations 2005 & other relevant safety legislation
- **Withdrawal Notice**; General Product Safety Regulations 2005 & other relevant safety legislation
- **Notice to Warn**; General Product Safety Regulations 2005 & other relevant safety legislation
- **Notice to Mark**; General Product Safety Regulations 2005 & other relevant safety legislation
- **Product Recall Notice**; General Product Safety Regulations 2005 & other relevant safety legislation
- **Compliance Notice**; Regulatory Enforcement and Sanctions Act 2008²⁴
- **Restoration Notice**; Regulatory Enforcement and Sanctions Act 2008²⁶
- **Stop Notice**; Regulatory Enforcement and Sanctions Act 2008²⁴
- **Suspension of Taxi or Private Hire Car Licence**; Civic Government (Scotland) Act 1982
- **Improvement Notice**; Feed Hygiene & Enforcement (Scotland) Regulations 2005 Regulations

4.2. The use by officers of each of the notices listed above and any others that are available are all subject to specific rules within the legislation that has enabled their use and to published guidance issued to enforcement authorities by the relevant government department or agency. Officers will comply with these requirements at all times.

4.3. The use of any of the above notices will be accompanied by a clear written explanation of its effect; why it has been served; what a dutyholder must do to comply with the notice and what steps are available to appeal against the notice.

5. Financial penalties

5.1. Financial penalties in the form of Fixed Penalty Notices; Fixed Monetary Penalties¹⁵ and Variable Monetary Penalties¹⁵ may be imposed by the authority on dutyholders where the applying legislation enables this. There are a number of such provisions, each of which has its own specific rules and effect.

²⁶ These Powers and penalties, described as “Civil Sanctions” have been created by the Regulatory Enforcement & Sanctions Act 2008 and will only be available subject to the Council being given specific authority by the Secretary of State in legislation. Full details of the application of such “Civil Sanctions” will be made available in due course.

5.2. Any financial penalty imposed on a dutyholder will be accompanied by full details of the reasons why it was imposed; the arrangements for payment; the consequences of failing to pay; and what steps the dutyholder can take to appeal against its imposition.

6. Injunctive Actions, Enforcement Orders etc.

6.1. Injunctive Actions or Enforcement Orders may be sought by officers by application to the Court where any non-compliance has been identified as being a relevant offence or civil breach for the purposes of either the Enterprise Act 2002 or the Regulatory Enforcement and Sanctions Act 2008.

6.2. The taking of such action by officers is subject to detailed rules and procedures and any dutyholder who is the subject of such action will in most cases have been made fully aware, through direct consultation with both the officer involved and with senior officers within Trading Standards of the issues that have led to an application being made.

6.3. Any dutyholder involved will normally have been provided with full written details of the procedure; the grounds for taking the action; and with details of what steps they can take to appeal against the action.

7. Prosecution

7.1. In Scotland the Procurator Fiscal decides whether to bring a prosecution. This may be on the basis of a recommendation by an enforcing authority; although the Procurator Fiscal may investigate the circumstances and institute proceedings independently of an enforcing authority.

7.2. Before prosecutions can be instituted, the Procurator Fiscal will need to be satisfied that there is sufficient evidence and that prosecution is in the public interest.

7.3. The decision by an officer to report a case to the Procurator Fiscal is subject to the decision making criteria listed in section 8 above; to the authorisation by a senior officer designated under the Council's scheme of delegation and to any relevant internal authorisation level assigned to officers by the Trading Standards Manager.

7.4. In addition to reporting a case to the Procurator Fiscal for his/her consideration, applications can also be made in certain cases independently of any prosecution case, for the forfeiture of non-complaint goods. Consideration may also be given to the initiation of proceedings under the Proceeds of Crime Act 2002 or application made under the Companies Act 2006 for an officer of a limited company to be disqualified.

8. Refusal/ Suspension/ Revocation of Licences

8.1. Those activities that are delegated to Trading Standards to enforce that are subject to any licensing or other permissioning scheme; e.g. the Storage of Petrol on a Filling Station; the Storage of Explosives; the Operation of taxis etc. are conducted in accordance with any specific rules that exist within the enabling legislation and to any specific guidance issued by the relevant government department or agency.

8.2. Generally where the conduct of any person who is operating under such a licensing or permissioning scheme is considered to be in breach of the legislation and/or conditions applicable to the licence or permission in question, they may be reported to the relevant Council Committee for consideration as to whether the licence or other permission should be revoked, suspended or its renewal refused.

- 8.3. In any case where such action is being considered, the licensee or person to whom any permission has been granted will be provided in writing with a clear explanation of the circumstances that have led to this action being considered; given an opportunity to respond to allegations made; and what steps they can take to appeal against such action being taken.
- 8.4. Once any report has been submitted to the relevant Council Committee, any person involved will be provided with details of how the matter will be dealt with and how any appeal against the decision of the Committee to suspend, revoke or refuse to renew any licence or other permission can be made.

Annex D Listing of Legislation²⁷

SAFETY -

CS :(Consumer Safety)

Including: -

Consumer Safety Acts and Regulations
Consumer Protection Act 1987 (Parts II & IV)
Poisons Act 1972
Medicines Act 1968 (sections 53, 54 & 66)
Children & Young Persons (Protection From Tobacco) Act 1991 -duty to enforce Children & Young Persons (Scotland) Act 1937
Tobacco Advertising and Promotion Act 2002
Fireworks Act 2003
Fireworks Act 2003 - Fireworks Regulations 2004
Fireworks (Scotland) Regulations 2004 (Made jointly under Fireworks Act 2003/Consumer Protection Act 1987)
Antisocial Behaviour (Scotland) Act 2004
European Communities Act 1972 (Section 2)
General Product Safety Regulations 2005
Construction Products Regulations 1991
Chemicals (Hazard Information and Packaging for Supply) Regulations 2009
Gas Appliances (Safety) Regulations 1995
REACH Enforcement Regulations 2008
Supply of Machinery (Safety) Regulations 2008
Electromagnetic Compatibility Regulations 2005
Personal Protective Equipment (EC Directive) Regulations 1992
Recreational Craft Regulations 2004
Simple Pressure Vessels (Safety) Regulations 1991
Medical Devices Regulations 2002.
Pressure Equipment Regulations 1999.
Radio Equipment and Telecommunications Terminal Equipment Regulations 2000
Biocidal Products Regulations 2001 (made jointly under HASAWA)
Food and Environment Protection Act 1985
Pesticides (Fees & Enforcement) Act 1989
Tobacco Products Duty Act 1979 (by virtue of the Commissioners of Revenue and Customs Act 2005)
Road Traffic Act 1972 (Section 33 - Safety of Crash Helmets and Eye Protectors)
Road Traffic Act 1988 (Sections 17 & 18 - Protective Helmets & head-worn appliances for use on motor-cycles)
Tobacco and Primary Medical Services (Scotland) Act 2010

PET :(Petroleum)

Including:-

Petroleum & Explosives Acts and Regulations
Health and Safety at Work etc. Act 1974 - Petroleum (Consolidation) Regulations 2014
Civic Government (Scotland) Act 1982 (Section 94) - Disused petrol tanks
Health and Safety at Work etc. Act 1974 (Sections 19,20,21,22 and 25)
Health and Safety at Work etc. Act 1974 - Dangerous Substances & Explosive Atmospheres Regulations 2002

EX: (Explosives)

Including: -

Explosives Acts and Regulations
Health and Safety at Work etc. Act 1974 (Sections 19,20,21,22 and 25)
Health and Safety at Work etc. Act 1974 - Dangerous Substances & Explosive Atmospheres Regulations 2002

²⁷ This list is not intended to be definitive but to provide an indication of the range of legislation that is within the scope of Trading Standards at the time the policy was adopted.

ENV: (Environment)

Including: -

Environmental Acts and Regulations
Clean Air Act 1993
Motor Cycle Noise Act 1987
Environment Act 1995
Energy Efficiency Regulations 1997 - 2001 (Various individual specific regulations)
Energy Information Regulations 1994 - 2005 (Various individual specific regulations)
Packaging (Essential Requirements) Regulations 2003
Energy Conservation Act 1981

METROLOGY

W&M:(Weights & Measures)

Including:-

Metrology Acts and Regulations
Weights & Measures Act 1985
Weights & Measures Act 1985 - Non-automatic Weighing Instruments Regulations 2000
Weights and Measures Act 1976
European Communities Act 1972 (Section 2)
Measuring Instruments (Automatic Discontinuous Totalisers) Regulations 2006
Measuring instrument (Automatic Catchweighers) Regulations 2006
Measuring Instruments (Automatic Gravimetric Filling Instruments) Regulations 2006
Measuring Instruments (Automatic Rail-Weighbridges) Regulations 2006
Measuring Instruments (Beltweighers) Regulations 2006
Measuring Instruments (Capacity Serving Measures) Regulations 2006
Measuring Instruments (Liquid Fuel and Lubricants) Regulations 2006
Measuring Instruments (Material Measures of Length) Regulations 2006
Measuring Instruments (Cold-water Meters) Regulations 2006
Measuring Instruments (Liquid Fuel delivered from Road Tankers) Regulations 2006

FAIR TRADING

FT:(Fair Trading)

Including: -

Fair Trading Acts and Regulations
Trade Descriptions Act 1968
Trade Marks Act 1994
Copyright, Designs & Patents Act 1988
Prices Act 1974 <i>Usually cited together with 1975 amending act as Prices Acts 1974 & 1975</i>
Price Commission Act 1977
Video Recordings Act 1984 (as re-enacted by the provisions of the Video Recordings Act 2010)
Housing (Scotland) Act 2006 (Part 3)
Energy Act 1976
Education Reform Act 1988 (Sections 214 to 216)
Fair Trading Act 1973
Hallmarking Act 1973
European Communities Act 1972 (Section 2)
Consumer Protection from Unfair Trading Regulations 2008
Business Protection from Misleading Marketing Regulations 2008
Textile Products (Indication of Fibre Content) Regulations 1986
Footwear (Indication of Composition) Labelling Regulations 1995.
Money Laundering Regulations 2007
Business Names Act 1985
Companies Act 2006 (Parts 5 & 41)
Olympic Symbol etc (Protection) Act 1995
Energy Act 1976
Civic Government (Scotland) Act 1982
Estate Agents Act 1979
Consumers, Estate Agents and Redress Act 2007
Property Misdescriptions Act 1991
Timeshare Act 1992
Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010
The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013
Package Travel, Package Holidays and Package Tours Regulations 1992

CC:(Consumer Credit

Including:

Credit Acts and Regulations
Consumer Credit Act 1974 (as amended by Consumer Credit Act 2006)

CEF: (Civil Enforcement)

Including:-

Civil Law
Enterprise Act 2002
Sale of Goods Act 1979
Supply of Goods (Implied Terms) Act 1973
The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013
Electronic Commerce (EC Directive) Regulations 2002
Unfair Contract Terms Act 1977
Unfair Terms in Consumer Contracts Regulations 1999
Provision of Services Regulations 2009
Financial Services (Distance Marketing) Regulations 2004
Sale and Supply of Goods to Consumers Regulations 2002 (Regulation 15)
Common law of Scotland as to the supply of services
Common law of Scotland of delict of negligence

LICENSING

LC:(Licensing{C.G(S) Act)

Including: -

Civic Government Licensing Legislation
Civic Government (Scotland) Act 1982 {Those parts of the Act that relate to the enforcement of licensable activities delegated by Highland Council to Trading Standards; currently including Taxi & PHC operation, the sale of knives and second-hand motor vehicle dealers}.

AGRICULTURE

AH:(Animal Health)

Including: -

Animal Health Acts and Regs
Animal Health Act 1981
Animal By-Products (Scotland) Regulations 2003

AG:(Agriculture)

Including: -

Agriculture Acts and Regs
Agriculture Act 1970
Agriculture (Miscellaneous Provisions) Act 1968
Agricultural Produce (Grading and Marking) Acts 1928/1931
Medicines Act 1968
European Communities Act 1972 (Section 2)
The Animal Feed (Scotland) Regulations 2010
The Feed (Hygiene and Enforcement) (Scotland) Regulations 2005
The Official Feed and Food Controls (Scotland) Regulations 2007