

**East Renfrewshire Council
Trading Standards**

**REGULATORY &
ENFORCEMENT POLICY**

LAST REVIEWD 21ST JULY 2020

Contents

Executive Summary	2
1. Introduction	3
2. The Principles of Good Enforcement	4
3. General Principles.....	5
4. Enforcement Action.....	5
5. Who Decides What Enforcement Action is taken	7
6. Reporting to the Procurator Fiscal.....	7
7. Liaison with other Enforcement Agencies	8
8. Recovery of costs	8
9. Appeals.....	8
10. Review of the Regulatory and Enforcement Policy.....	9
11. Comments and Complaints.....	9
Annex 1 - Guidance and Codes	10
Annex 2 - Conduct of Investigations.....	11
Annex 3 – Legislation.....	12

Trading Standards Regulatory and Enforcement Policy

Executive Summary

Trading Standards is committed to the principles of good enforcement as set out in the Legislative and Reform Act, the Enforcement Concordat COSLA Enforcement Concordat Good Practice Guidance and the Regulators Codes which are detailed in Annex 1 of this policy. The approach taken by Trading Standards is also in some instances subject to external influences covering some specific regulatory activities. These include the Standard for Health and Safety Enforcing Authorities and the Feed Law Code of Practice.

This document sets out the enforcement policy for all Trading Standards regulatory activities and is published in accordance with Section 8.4 of the Legislative and Regulatory Reform Act 2006.

All Trading Standards personnel who take decisions relating to the use of any available enforcement powers, civil sanctions, applications to the court under the Enterprise Act or reporting of case to a pseudo judicial committee of the Council or to the Procurator Fiscal are required to follow this policy.

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

- Weights and Measures
- Consumer Product Safety
- Fair Trading & Enterprise Act 2002
 - Animal Health & Welfare and Agriculture
 - Age Restricted Sales
- Petroleum storage and retail sales and storage of fireworks

The range of legislation enforced by Trading Standards and to which this policy applies listed in Annex 3.

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 Trading Standards Officers (TSO's) will seek to achieve compliance with relevant civil and criminal legislation. The enforcement activities covered by the policy include the use of any statutory powers by officers during:-

- The inspection of premises and any other regulated activity undertaken by businesses, including e-commerce activities
- The sampling of goods for analysis and test
- The undertaking of test transactions of goods or services
- The investigation of any suspected illegal activity that has been identified as the result of a complaint or received intelligence

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. Annex 2 details the legislation which officers will have regard to during the conduct of investigations and inspections.

1. Introduction

In providing a this policy we are helping both businesses and others understand what we do to follow the principles of the UK Regulators' Code and the Scottish Regulators' Strategic Code of Practice.

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. In all cases the principles of good enforcement contained in this policy will be applied where applicable.

Our operational policies affecting regulation and enforcement comply with the spirit and requirements of the UK Regulators' Code (the UK Code) and the Scottish Regulators' 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 UK 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. feed 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'.

Trading Standards demonstrates 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 will 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 or an imminent product safety incident.

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 for 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 interests 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 compliant businesses that those that 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 to 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 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 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 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 products are not set aside during the appeal period; however, where a 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.

- (v) **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.

(vi) Seizure and Forfeiture:

On some occasions where the legislation allows 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.

(vii) Taking Animals into possession:

Under the Animal Health and Welfare (Scotland) Act 2006, an officer from Trading Standards may take such steps as appear to be immediately necessary to alleviate an animal's suffering. Any expenses reasonably incurred in consequence are to be reimbursed by the owner or any other person responsible for the animal concerned.

5. Who Decides What Enforcement Action is taken

Trading Standards Officers 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 continuous professional development.

Decisions about the most appropriate course of enforcement action to be taken are for example based upon professional judgement, legal guidelines, codes of practice, Crown Office guidance and any assigned Primary Authority, where an agreement exists under the Regulatory Enforcement and Sanctions Act 2008.

6. Reporting to the Procurator Fiscal

A decision to report a breach of legislation or offence to the Procurator Fiscal Service is made by a Service Manager or above, as specified by the Council's Scheme of Delegation. 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 one or more of the following criteria are met:

Endangering the health, safety, wellbeing of people, animals, causing 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 co-ordinated 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 East Renfrewshire 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 co-ordinated 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 costs

In certain circumstances where the law allows and where the consequences of enforcement activity leads to additional costs being incurred by East Renfrewshire Council, East Renfrewshire Council will seek to recover these costs as appropriate from the individual or business responsible. This can be for example, the result of failure to comply with certain fixed penalty notices for littering for example or for 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 and the dispute has not been resolved satisfactorily then there is recourse to the Ombudsman or in the case of health

and safety legislation the [Independent Regulatory Challenge Panel](#). There are no 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 five years.

11. Comments and Complaints

If a business 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 practicable then the business should contact the Prevention Services Manager (Trading Standards) at the following address:-

Prevention Services Manager (Trading Standards)
East Renfrewshire Council
Environment Dept.
Thornliebank Depot
Carnwadric Road
Glasgow
G46 8HR

If the affected person is not satisfied with the outcome the matter may be progressed using the Council's Complaints procedure.

The Prevention Services Manager (Trading Standards) is always happy to receive any general comments about the service or this document. You can contact us on:

Tel: 0141 577 8586
Email: trading.standards@eastrenfrewshire.gov.uk

Annex 1 - Guidance and Codes

A. Principles of Good Regulation

The Legislative and Regulatory Reform Act 2006, Part 2, requires the Council to have regard to the Principles of Good Regulation when exercising a specified regulatory function. Our activities should be carried out in a way that is proportionate, accountable, consistent, transparent, and targeted.

B. Regulators Code

Regard to the Code has been made in the preparation of this policy. In certain circumstances we may conclude that a provision in the code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the code is properly reasoned, recorded and based on material evidence.

C. Enforcement Concordat

East Renfrewshire Council has adopted the Enforcement Concordat and the Principles of Good Enforcement as in relation to: Openness, Helpfulness, Complaints, Proportionality, and Consistency.

D. Human Rights Act 1998

This policy and all associated enforcement decisions take into account 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.

E. Data Protection Act 1988

Where there is a need for East Renfrewshire Council to share enforcement information with other agencies, we will have regard to the provisions of the Data Protection Act 1988. This will be superseded by the General Data Protection Regulations 2018 which come into force on 25 May 2018.

F. Food Law Code of Practice

East Renfrewshire Council has responsibility for enforcement of food legislation (which includes animal feedstuff) and carries out its enforcement activities with regard to the Feed Law Enforcement Code of Practice.

G. Standard for Health and Safety Enforcing Authorities

East Renfrewshire Council has responsibility for enforcement of health and Safety legislation and carries out its enforcement activities with regard to the provisions of the Making a Difference – Standard for Health and Safety Enforcing Authorities.

H. Regulatory Enforcement and Sanctions Act 2008

The Regulatory Enforcement and Sanctions Act 2008 established the Better Regulation Office, which produces guidance for regulatory services. We are committed to following guidance produced by LBRO and will have regard to any list of enforcement priorities published. 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 a registered business.

Annex 2 - Conduct of Investigations

All investigations will be carried out in accordance with Scottish Common law and where relevant the following legislation and any associated guidance or codes of practice, in so far as they relate to East Renfrewshire Council.

The Criminal Procedure and Investigations Act
1996 Consumer Rights Act 2015 Schedule 5
The Regulation of Investigatory Powers Act 2000
The Regulation of investigatory Powers (Scotland) Act
2000 Criminal Justice and Licensing (Scotland) Act 2010
The Human Rights Act 1998
Criminal Justice (Scotland) Act 2016

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 3 – Legislation

Authorised Officers East Renfrewshire Council Trading Standards Service

A full list of powers that employees of East Renfrewshire Council are authorised to exercise (including the powers of entry, inspection and sampling where authorised by statute) and to carry out can be found in our list of Authorised Legislation on Trading Standards website.