



Environmental Health and Trading Standards

General Enforcement Policy

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Introduction

Orkney Islands Council's Environmental Health and Trading Standards services are responsible for ensuring that those persons who must comply with the laws that we enforce, do so. This includes compliance with any conditions attached to a licence granted by the Council.

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 Legislative and Regulatory Reform Act 2006, the Hampton Principles and the Scottish Regulators' Strategic Code of Practice .

This document also satisfies the Council's legal obligation to have enforcement policies which apply to food and feed safety and health and safety law.

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 Orkney Islands Council. We will not give the Council more or less 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.

Our aims

We aim to:

- Ensure that regulated persons take action immediately to deal with serious risks.
- By inspection, advice and guidance, promote and achieve sustained compliance with legal requirements by regulated persons.
- Treat all regulated persons fairly.
- Be helpful to regulated persons who wish to comply.
- Support those who comply by targeting those who don't, in particular by taking firm action against those who flout the law or act irresponsibly.
- Protect the public in a way which does not stifle enterprise, hinder economic progress, or place unnecessary burdens on businesses.
- Take formal action in accordance with this policy when it is the most appropriate way of dealing with the matter.
- Communicate this policy effectively to those people who are affected by it.

Principles

We will strive to achieve our aims by carrying out our work in the following ways:

Helpfulness

We firmly believe that prevention is better than cure and therefore we place a strong emphasis on the provision of advice to regulated persons. We will actively encourage them to seek advice from us at an early stage, especially new businesses or those expanding into a new area of activity.

Where possible, we will work with regulated persons to encourage compliance in a helpful manner in preference to taking formal action. However, where they abuse this goodwill we may need to adopt a more formal approach. We will be less likely to take formal action against anyone who regularly seeks advice from us and complies with any advice we give.

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.

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 and/or safety, or where an opportunity for discussion is likely to defeat the purpose of the proposed enforcement action, or to prevent evidence being destroyed).

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.

We will try to be considerate in the timing of our visits but we would ask regulated persons to understand that it would be neither practical nor effective to give advance notice of our visits except in limited circumstances. This may include visits out of normal office hours.

Openness

Occasionally, in order to find out how a regulated person would deal with an ordinary member of the public, visits may need to be conducted covertly with the officers posing as private individuals, or by accompanying other persons acting under the direction of an officer. However with the exception of these covert visits our officers will always identify themselves and as requested produce their written credentials (including their name and photographic identification) and will explain the purpose of their visit.

We will consult regulated persons generally about the way we go about our work and we will carry out regular satisfaction surveys of those which have been inspected and those which have been investigated in response to a complaint. We will publish the results of any surveys and explain what we will do in response to any comments or suggestions received.

This policy explains what regulated persons can expect from us. If you feel we have not complied with it, or if you are dissatisfied with any action we have taken, you can use the Council's complaints procedure to request that we carry out a formal review of that action. The procedure is available on our website; alternatively, please ask us for details. Complaints should include an explanation of why the regulated person is dissatisfied. The complaint should be made in writing unless the regulated person believes there is a need for an urgent review. The matter 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 you. If you remain dissatisfied we will tell you how to take your complaint further.

We will measure our performance against our standards and we will publish an annual performance report on the Council website and in our offices. We will aim to measure important outcomes (such as the percentage of businesses which are compliant), and not just numerical outputs (for example, the number of inspections carried out).

Proportionality

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.

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 (see below).

We will seek to impose the minimum burden compatible with ensuring compliance. Whilst we will encourage the adoption of good practice, we will always clearly distinguish between legal requirements and recommendations.

We will determine the most appropriate course of action, including formal action, this may include matters being reported to the Procurator Fiscal, by making a careful assessment of all of the following criteria with no one factor likely to be decisive on its own:

- A. Death as a result of a breach of legislation.
- B. The seriousness of the breach and in particular its impact or potential impact on the safety, health, or well-being of all those affected by it.
- C. The impact on people who are especially vulnerable, for example by reason of age, disability or any other impaired ability to protect themselves, and in particular whether such people were specifically targeted by the regulated person.
- D. The steps which the regulated person took, or the reasonable steps which they failed to take, to prevent the offence.
- E. 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.

F. The history of compliance and in particular whether there is a failure to comply with notices or any previous warnings which went unheeded.

G. Evidence of fraudulent, deliberate, irresponsible, reckless or negligent behaviour, or of officers having been intentionally obstructed in their duties and evidence of aggression or harassment.

H. The likelihood of the contravention happening again.

I. The extent to which the regulated person accepts their responsibilities and is willing to heed advice.

J. Whether the breach is rectified promptly.

K. The need to deter future breaches.

L. The nature of the evidence available to us.

Consistency

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 similar ends. We will do this by monitoring the enforcement action taken by our officers, and by training our officers.

We operate within the former Local Government Regulation (LGR) 'Home Authority principle'. This seeks to promote consistency of enforcement across the UK by local Regulatory Services. Therefore if a business is based in Orkney, but its activities extend out with the islands, we will adopt formal or informal arrangements to provide it with relevant advice. We will also act as a single point of contact for other local authorities that wish to contact any trader based in Orkney on a regulatory issue.

In addition, Orkney Islands Council may operate as a "Primary Authority" for a local business. A primary authority has responsibility for providing the regulatory advice that a business requires in relation to specified areas of regulation. A primary authority may issue statutory advice to other local authorities and produce an inspection plan to which other enforcing authorities must have regard. In Scotland however, a local authority can only presently agree to act as primary authority for functions that remain the responsibility of the UK Government.

We will work with other local authorities in Scotland and throughout the UK to ensure consistent interpretation and application of the law. We will do this by playing an active part in cross-border working groups as well as by having regard to guidance from bodies such as Food Standards Scotland and the Health and Safety Executive.

Fairness and Equality

We will be fair in our dealings with regulated persons. Where we can exercise discretion, we will take into account the unique circumstances of each person and balance this fairly with the need for consistency.

We will investigate complaints in an independent, fair and even-handed manner and listen with an open mind to what everyone connected to the dispute has to say. Although we may give advice to the complainer, we will not act on their behalf. We will only form an opinion after examining the facts.

We will not measure ourselves by the quantity of enforcement action we take and we will not set targets. We will not take enforcement action specifically to assist with someone's civil claim.

We will aim to communicate effectively when providing information and advice, for example by providing an alternative format to suit the needs of the user. We will provide a language interpreting service during interviews where required.

We will gather data to monitor our impact on people with different needs and we will use it to improve the way we carry out our work. We will also monitor our enforcement actions to ensure that no person or group is unfairly treated.

We will take account of cultural issues and seek ways of developing our employees' capacity to deal with these effectively. We will take account of equalities needs during consultations.

Targeted action

We will use the principles of risk assessment by taking into consideration the likelihood of non-compliance and the impact of non-compliance. 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. We will normally investigate all formal incident notifications and all complaints from the public. However, in respect of any anonymous complaints, any investigation will be based on the potential seriousness of any regulatory breach and in particular its impact or potential impact on the safety, health or well-being of all those affected by it.

We will use standard widely-used risk assessment schemes such as those produced by Local Government Regulation, Convention of Scottish Local Authorities, Food Standards Scotland and Health and Safety Executive. Regulated persons will generally be assessed as being high, medium or low risk. 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.

Our data shows that lower risk entities do still fail to comply with the law. We will therefore carry out a small element of random inspection of such businesses but only after the burdens have been minimised.

We will conduct follow up visits generally within 30 days after the issue of a written warning or formal warning to check whether appropriate action has been taken.

Contact details

By post or in person to:

Environmental Health, Planning, Development and Regulatory Services, Orkney Islands Council, Council Offices, School Place, Kirkwall, Orkney KW15 1NY.

Email: env.health@orkney.gov.uk.

Or:

Trading Standards, Planning, Development and Regulatory Services, Orkney Islands Council, Council Offices, School Place, Kirkwall, Orkney KW15 1NY.

Email: trading.standards@orkney.gov.uk.

By telephone: 01856873535.

Opening hours:

09:00 – 17:00, Monday to Friday.

Website: www.orkney.gov.uk.

Appendix

The definition of 'enforcement'

Enforcement Action

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

Formal 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 and/or 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 sub-committee or the licensing board recommending that they review, suspend or revoke a licence.

Investigatory Powers

The following outlines 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.

"Routine" investigatory powers usually include the power to:

- Enter and inspect premises at any reasonable time.
- Inspect goods.
- Inspect documents where there is reason to suspect a breach has been committed.
- Purchase goods to test whether the law is being complied with (called a 'test purchase').
- Take samples for analysis

"Formal" investigatory powers usually include the power to:

- Seize and detain goods and documents where there is reason to believe they are required as evidence.
- Apply to a Sheriff for a warrant to enter premises by force if necessary or to take a constable to prevent any serious obstruction in the execution of our duties.
- Prohibit access to unsafe premises or equipment pending an investigation.
- Direct that premises or parts of premises or articles are left undisturbed for as long as reasonably necessary for examination or investigation.