



Approved on 26 February 2019 (Communities & Housing Committee)

COMHAIRLE NAN EILEAN SIAR

Consumer and Environmental Services Enforcement Policy

INTRODUCTION

- 1.1 The Comhairle's Consumer and Environmental Services are responsible for enforcing the terms of a significant body of legislation, much of which is aimed at protecting the interests of individuals and the public. This includes compliance with any conditions attached to licences and registrations.
- 1.2 This document sets out what businesses or other persons being regulated (*Regulated Persons*) can expect from us in relation to enforcement. It will be used as a reference document by all officers before deciding upon enforcement action. It covers all regulatory functions unless there is a specific policy in place (i.e. the [Planning Service](#)).
- 1.3 Our approach to enforcement is based upon the following the [Legislative and Regulatory Reform Act 2006](#) and the requirements of the [Regulators Code](#) (UK government legislation) and the [Regulatory Reform \(Scotland\) Act 2014](#) and the [Scottish Regulators' Strategic Code of Practice](#) (Scottish Government legislation).
- 1.4 This document also satisfies our legal obligation to have enforcement policies which apply to food safety and health & safety laws. In addition any enforcement action will also take into account any regulator specific standards or statutory codes of practice related to these functions.
- 1.5 In summary, we will conduct our regulatory role in a manner which is:
 - **Transparent** – when we take undertake our regulatory functions including enforcement action, we will explain the reasons why and any appeal procedures which are available.
 - **Accountable** – we will publish performance information to illustrate compliance with Service aims and standards.
 - **Consistent** – we will operate fairly, taking account of all relevant enforcement guidance, liaising with national and local partners to promote consistency of enforcement.
 - **Proportionate** – we will take enforcement action in a manner which is proportionate to the circumstances, considering the seriousness of the non-compliance, the due diligence and history of the business, the level of risk presented to consumers and competitors, and the need to secure future compliance.
 - **Targeted** – we will work on an intelligence led, risk assessed basis to ensure that resources are deployed where required and enforcement actions are necessary.
- 1.6 In our 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 Comhairle. We will not give the Comhairle 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. Therefore, for the purposes of this policy, the provision of compliance advice is regarded as a form of enforcement, albeit informal.
 - **Formal enforcement** action means all enforcement action except for the provision of compliance advice, or the issue of warnings. Formal enforcement action includes the issue of statutory notices, fixed penalties, applications to a civil court for an enforcement order, reports to the Procurator Fiscal recommending criminal proceedings, reports to Comhairle committees or licensing panels recommending that a licence/registration is suspended. Formal enforcement action also includes the use of non-routine investigatory powers, including the power to seize and detain goods and documents, the power to apply to a sheriff for a warrant to enter premises by force, or the power to prohibit access to unsafe premises or equipment pending an investigation.

OUR AIMS

2.1 We aim to:

- ensure that regulated persons take action immediately to deal with serious risks,
- promote and achieve sustained compliance 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,
- contribute to achieving sustainable economic growth by ensuring that we carry out our functions in a way that imposes the smallest burden on regulated persons that is compatible with our regulatory functions, and
- communicate this policy effectively to those people who are affected by it.

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

HELPFULNESS

- 3.1 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.
- 3.2 Where possible, we will work with regulated persons to encourage compliance in a helpful manner in preference to taking formal enforcement action. However, where they abuse this goodwill we may need to adopt a more formal approach.
- 3.3 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.
- 3.4 Before we take any enforcement 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).
- 3.5 When we find non-compliance, we will clearly explain what the non-compliance is, the advice being given or the actions required, and the reasons for these. We will confirm specific advice in writing on request. 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.
- 3.6 Where we have discretion we will ensure that our forms are simple, normally no more than two pages. We aim to minimise the amount and frequency of data collection.
- 3.7 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. We will comply with any legislative requirements for providing notice of inspections.
- 3.8 We aim to publish on our website clear information on:
- How we communicate with those we regulate and how we can be contacted;
 - Our approach to providing information, guidance and advice; our approach to checks on compliance including details of the risk assessment framework used to target those checks as well as protocols for their conduct, which clearly sets out what those we regulate should expect;
 - Our fees and charges;
 - How to comment or complain about the service provided and routes to appeal.
 - We also publish on our website details of our annual performance against our service standards.

TRANSPARENCY AND ACCOUNTABILITY

- 4.1 Occasionally, in order to find out how a regulated person would deal with a member of the public, visits may need to be conducted covertly with the officers posing as private individuals. However with the exception of these covert visits our officers will always produce their written credentials (including their name and photographic identification) and will explain the purpose of their visit. Any covert investigations would be done in accordance with the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) and the Comhairle's own RIPSA policies and procedures.
- 4.2 We will consult regulated persons generally about the way we go about our work and we will carry out satisfaction surveys of those which have been inspected and those which have been investigated in response to a complaint from the public. We will publish any significant results of feedback and explain what we will do in response.
- 4.3 We will provide an independent, impartial and transparent right of appeal against any action we have taken where any regulated person:
- believes we have not complied with this enforcement policy,
 - believes we have not complied with the UK Regulators' Code or the Scottish Regulators' Strategic Code of Practice, or
 - objects to any regulatory decision we have taken
- 4.4 Alternatively, instead of exercising a formal right of appeal, a regulated person may ask for a meeting with an officer or a manager to discuss and receive advice about decisions we have taken.
- 4.5 Where we are required to do so, the right of appeal will be clearly explained at the time the enforcement action is taken. In other cases, the right of appeal will be clearly explained at any time when one of our employees is made aware of any dissatisfaction that would give rise to a right of appeal.
- 4.6 Unless the appeal route is already specified in the formal documentation accompanying any formal action, a request to appeal an action should be addressed to the relevant service manager. The manager will ensure that the action is reviewed by someone who was not involved in the original decision-making process.
- 4.7 If any regulated person is dissatisfied with any aspect of our service that is not covered by the right of appeal above, they can use the [Comhairle's complaints procedure](#).
- 4.8 If a regulated person makes a complaint which is linked to the formal action where there is an external right of appeal, the complaint investigation will normally be suspended until the outcome of the appeal has been determined.
- 4.9 We will set service standards and we will measure our performance against them, and we will publish an annual performance report. 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).
- 4.10 We will not charge fees for carrying out our core work such as providing advice or carrying out inspections. We may charge fees for carrying out specific activities, and the fees will be published on our website. These activities include processing applications for licences and registrations and providing export certificates. We would also charge fees as part of any 'primary authority' agreement we enter into with a business. Where the Comhairle has discretion to set its own fee, the fee will normally be based on recovering the costs of carrying out the activity.
- 4.11 We will consider the possible financial and resource implications of taking formal action on the Comhairle; however these considerations will not outweigh any identified need to take action in the interests of protection of the public health or animal welfare.

PROPORTIONALITY

- 5.1 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.

- 5.2 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 (see below).
- 5.3 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.
- 5.4 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 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
 3. The steps which the regulated person took, or the reasonable steps which they failed to take to prevent the offence
 4. 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
 5. The history of compliance and in particular whether any previous warnings went unheeded
 6. Evidence of fraudulent, deliberate, irresponsible, reckless or negligent behaviour, and evidence of aggression or harassment
 7. The likelihood of the contravention happening again
 8. The extent to which the regulated person accepts their responsibilities and is willing to heed advice
 9. Whether the breach is rectified promptly
 10. The need to deter future breaches
 11. The nature of the evidence available to us
 12. The cost and resource implications to the Comhairle.

CONSISTENCY

- 6.1 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 similar ends. We will do this by monitoring the enforcement action taken by our officers, and by training our officers.
- 6.2 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.
- 6.3 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 & Safety Executive.
- 6.4 We will work collaboratively with other regulators to minimise the risk of different regulators acting inconsistently. Where the law allows, we will share information with other regulators to help target resources and minimize duplication.
- 6.5 We will bring any serious breaches of legislation resulting from Comhairle operations to the attention of the Chief Executive.

FAIRNESS AND EQUALITY

- 7.1 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.

- 7.2 When investigating complaints we will carry out all investigations in an independent, fair and even-handed manner by listening 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.
- 7.3 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 and we will ensure that breaches with both criminal and civil elements are investigated by different officers.
- 7.4 We will comply with any national or sector specific guidance when providing information and advice to people from minority ethnic groups and to disabled people, for example by providing it in an alternative format to suit the needs of the user. We will provide a language interpreting service during interviews where required.
- 7.5 We will 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.
- 7.6 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

- 8.1 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 complaints from the public.
- 8.2 We will use standard widely-used risk assessment schemes such as those produced by the Society of Chief Officers of Trading Standards in Scotland, CoSLA, Food Standards Scotland and Health & Safety Executive. The risk 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.