

Trading Standards

Title INSPECTIONS AND INTERVENTIONS PROCEDURE

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1 Introduction

- 1.1 *This procedure provides guidance for officers involved in checking compliance of businesses for trading standards purposes and informs businesses and consumers of those procedures.*
- 1.2 *The procedure applies to all officers of Aberdeenshire Council's Trading Standards Service in the execution of their duties.*
- 1.3 *The procedure is published on the Aberdeenshire Council website. Copies can be obtained by contacting the Trading Standards Service, Gordon House, Blackhall Road, Inverurie AB51 3WA.*

2. General

- 2.1 *Officers should have regard to the provisions of the Regulators' Code, the Scottish Regulators' Strategic Code of Practice, the Enforcement Concordat, the Home Authority and Primary Authority Principles, the Trading Standards Enforcement Policy and any other relevant Codes of Good Practice or centrally issued guidance when preparing for and carrying out compliance checks. The Concordat, the Home Authority Principle and the Enforcement Policy have all been formally adopted by the Council.*
- 2.2 *By virtue of the Council's Scheme of Delegation the Director of Infrastructure Services and the Head of Service (Protective Services and Waste Management) can grant authorisations to officers of the service for performance of statutory functions. All enforcement officers in the trading standards section of the service are issued with warrants certifying their appointment and authorisation to exercise the powers in relation to the Acts of Parliament and subordinate legislation that are specified therein.*
- 2.3 *The main purpose of a trading standards intervention is to ascertain and secure compliance with the law. This involves identifying potential infringements and seeking to remedy them by appropriate means. In most cases advice and guidance will be sufficient, but where serious infringements have taken place, or advice is ignored, more stringent action may be necessary, and may include reporting to the Procurator Fiscal.*

2.4 Compliance can be checked by a number of methods, including:

- *observing a business*
- *test purchasing and sampling*
- *inspections of the premises and processes*
- *reviewing websites and documents*

2.5 Officers should be familiar with, and comply with the requirements of the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) and the related Aberdeenshire Council policy. The service document Monitoring and Enforcement of Internet Trade provides further guidance on directed surveillance and covert human intelligence source authorisations in relation to online activity.

2.6 The service's intervention programme is based on the current Trading Standards Risk Assessment Scheme, developed in 2013 and endorsed by the Society of Chief Officers of Trading Standards in Scotland (SCOTSS). This scheme takes due account of such factors as type and scale of the business, complexity of the product or service, quality control measures, past history and likelihood and consequences of things going wrong. The current recommended intervention frequency targets are-

High risk premises – once per year

Upper Medium risk premises – once every two years

Lower Medium risk premises – once every five years

Low risk premises – no recommended frequency.

2.7 Occasional checks will be made on low risk premises to ensure the risk rating remains accurate or where there is some indication there may be non-compliances.

2.8 All new businesses will be assessed and rated in accordance with the above scheme. This will determine the need for future interventions and the required frequency.

2.9 In addition to planned interventions, officers will carry out other activities in connection with:

- *safety alerts and reported incidents*
- *complaints and other intelligence*
- *special surveys*
- *referrals from other agencies*
- *special requests from businesses.*

3 Preparation for an Intervention.

3.1 Before carrying out a routine intervention with a business, officers will check the appropriate premises record on the database along with any relevant hard copy or electronic copy records, to view:

- *previous correspondence*

- *inspection history and outcomes*
 - *complaints registered*
 - *information requests or referrals from other authorities/agencies*
 - *any other relevant details pertinent to the particular business activity*
 - *if there is an “alarm” indicator on the premises record.*
- 3.2 *Officers with no prior knowledge of the business should seek further information from colleagues where necessary and ensure they are familiar with any applicable risk assessments and safe systems of work. Officers may on occasion find it necessary to carry out a prior, fact-finding visit, particularly in the case of new, larger industrial premises.*
- 3.3 *Officers will also establish if the business is in a primary authority relationship by checking the Primary Authority Register. They will take account of any inspection plan and other relevant information in preparing for an intervention. See Section 7 below for more details on the primary authority scheme and its implications.*
- 3.4 *In light of this information, officers will decide on the appropriate means of intervention and consider any consequential need for authorisations under RIPSA.*
- 3.5 *When required by the Consumer Rights Act 2015, officers will give a minimum of 48 hours’ notice of a routine inspection unless one of the following situations apply:*
- *Officers may choose to observe a business, acting as an ordinary consumer. This will not involve exercising a power of entry so they will not have access to parts of the premises not normally accessible to the public, unless the trader allows this and waives the requirement to provide 48 hours’ notice. Please note however if a breach of consumer law is identified the following bullet point applies and a power of entry may be exercised during the visit.*
 - *Where there is reason to suspect there is a breach of consumer law. This may be from previous visits where a breach was identified, from the receipt of complaints or other intelligence or from a breach identified during a visit to observe a business.*
 - *Where it is reasonably considered that giving notice would defeat the purpose of the entry. An example would be where it is believed evidence may be concealed or destroyed.*
 - *It is not reasonably practicable to give notice. This would include cases where there is an imminent risk to public health or safety and cases where it is impractical to give notice, such as short duration markets where stall holders cannot easily be identified in advance.*
 - *Entry is for market surveillance purposes to check products comply with certain European legislation.*
- 3.6 *In practical terms this means that officers should provide notice in the case of a routine inspection where a breach of law is not reasonably suspected. A revisit to check on a previous non-compliance on the other hand will normally be carried out without providing notice. The notice will be sent at least 1 week but not more than 4 weeks in advance of the expected date of the visit.*

- 3.7 *A new retail business may be visited without prior notice, to observe the business, but officers should generally introduce themselves to the proprietor and seek permission if required to access parts of the premises not normally accessible to the public.*
- 3.8 *Officers should strive to be as efficient as possible and in general decline any requests by traders to delay a routine inspection without good reason. There may however be occasions when this is considered justified and the visit can be rearranged to a mutually convenient time.*
- 3.9 *Officers will ensure that appropriate personnel and equipment are available for the inspection.*

4 Carrying out an Intervention

- 4.1 *Officers shall comply with the Council's Health and Safety Policy and any specific health and safety requirements pertinent to the business under inspection. The correct clothing shall be worn and the equipment used appropriately in the course of the inspection.*
- 4.2 *The inspection of premises is usually carried out during the normal trading hours of the business. It may be necessary in some cases to arrange access outwith these hours and this will be done by arranging an appointment with the proprietor or by statutory power of entry subject to the conditions outlined in paragraph 3.5 above.*
- 4.3 *Upon arrival, officers will introduce themselves to the proprietor or person in charge, showing their authorisation warrant. Business cards will normally be provided and be available on request. The way in which the inspection will be carried out will be explained verbally. Interference with the normal operation of the business should be kept to a minimum.*
- 4.4 *A written Notice of Powers and Rights will be provided unless this has been sent in advance. This notice is issued to comply with the Consumer Rights Act 2015 and the Code of Practice on Powers of Entry and will contain information on officers' powers, the rights of the trader and the offence of obstruction. It is required to be issued whether or not prior notice of inspection has been given.*
- 4.5 *Having explained the way in which an inspection will be carried out, officers will seek the consent of the occupier and record whether this was provided. If not provided, officers should explain the powers available to them and the obstruction offences and continue to conduct the inspection if possible.*
- 4.6 *In carrying out interventions, officers are entitled to exercise powers, including powers to do the following:*
- *Enter any premises not wholly or mainly used as a private dwelling*
 - *Observe the carrying on of a business*
 - *Make test purchases*
 - *Inspect products and procedures connected with production*
 - *Inspect and take copies of certain packaged goods records*

- *Test any weighing and measuring equipment in use for trade*
- *Require the production of documents;*
 - *to ascertain whether they may be required as evidence or*
 - *to ascertain compliance where there is reasonable suspicion of a breach or*
 - *where documents are legally required to be kept or*
 - *for market surveillance purposes*
- *Seize and detain goods where there is reasonable suspicion of a breach or if they may be required as evidence or are liable to forfeiture*
- *Seize and detain documents where it is reasonably suspected they may be required as evidence*
- *Break open any container or vending machine or access any electronic device in which information may be stored*

4.7 *Compliance of the business and systems in place shall be assessed against relevant trading standards legislation, Codes of Practice and legally prescribed standards.*

4.8 *When seizing or detaining goods or documents, officers will provide a written receipt at the time, or where this is not possible, within 5 working days. This receipt will detail the items taken and any right of appeal or right to access the goods or documents.*

4.9 *If goods are subjected to a test during formal enforcement action traders will be given the opportunity to have the goods tested where reasonably practical as long as this would not compromise any enforcement action.*

5 Completion of the Intervention

5.1 *Upon completion, officers will notify the person in charge of the results, including any statutory action that may be contemplated. Officers must clearly distinguish best practice advice from legal requirements.*

5.2 *In giving feedback on compliance, officers should aim to give clear guidance on what the law is and on any actions needed to remedy points of non-compliance. Where appropriate, businesses should be given a reasonable time in which to take remedial action.*

5.3 *In general an 'escalating' approach will be taken with informal means used wherever possible to resolve problems and secure compliance. However there will be occasions when immediate formal action is required.*

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

5.5 *Formal enforcement action includes statutory notices (including suspension notices, prohibition notices and improvement notices), fixed penalty notices and penalty charge notices, formal undertakings and applications to a civil court for an*

order under the Enterprise Act 2002, and reports to the Procurator Fiscal.

- 5.6 *In considering what enforcement actions are necessary, officers shall have regard to:*
- *seriousness of the breach and its impact on the health, safety and well-being of the public at large, and the vulnerable in particular where they have been specifically targeted by the regulated person*
 - *evidence of fraud, or reckless or negligent practice, evidence of harassment or aggression or significant economic detriment to consumers or other businesses*
 - *the means of remedying the contravention and the likelihood of it happening again*
 - *previous history of compliance and attitude of the operator, including steps taken or which they failed to take to prevent the breach and the extent to which they have cooperated with regulators and heeded advice in the past*
 - *compensation and restitution provided to those harmed by the non-compliance*
 - *confidence in the operator's management and quality assurance systems*
 - *the need to deter future breaches*
- 5.7 *To aid consistency officers should generally apply the guidance contained in the Appendix to this procedure in determining appropriate enforcement action.*
- 5.8 *Where written instructions or advice on corrective actions is deemed necessary, this will be provided within 10 working days of an inspection. This notice will include information on how you can appeal against this decision where such a right exists or ask for a review of this decision where no statutory right of appeal exists.*
- 5.9 *Where appropriate, officers shall liaise with the home or primary authority of a company whose premises have been inspected and offences detected which may be associated with the company's corporate policies and procedures.*
- 5.10 *Officers shall ensure that all relevant details of the intervention are entered on the database within 3 working days. Relevant details include:*
- *date of inspection and inspecting officer(s)*
 - *name of trader representative*
 - *determination of compliance with legal and other requirements*
 - *results of any test purchase/sampling carried out*
 - *details of any non-compliance found*
 - *details of action taken in instances of non-compliance*
- 5.11 *Information pertinent to the intervention that becomes available at a later date shall be recorded on the database within 3 working days of receipt. This would include for example, outcomes from prosecution reports, test results from laboratory analysis etc.*
- 5.12 *Computer and hard copy records shall be kept for six years, unless marked for longer retention.*
- 5.13 *Where officers have encountered hostile behaviour from the occupants of*

business premises in the course of an intervention, this will be reported to their Line Manager and recorded on the corporate database as a violent incident. If there is cause to believe that officers may face the same risk on subsequent visits to the premises, this information should be flagged on the premises record as an alarm.

6 Revisits

6.1 Some interventions will require a revisit to be made in order to determine whether non-compliances have been rectified. Decisions will generally be at the discretion of the inspecting officer however checks should always be carried out, whether by conducting revisits or by other means adequate to confirm non compliances have been rectified, in the following circumstances;

- where any formal enforcement action has been taken,*
- where a written warning has been issued or*
- where a letter has been issued advising on steps to be taken to rectify a non-compliance.*

7 Primary Authority Scheme

7.1 Officers should check the Primary Authority Register to determine whether a business has a primary authority before carrying out a pre-planned intervention. The primary authority may be in a 'Direct Partnership' with the business or in a 'Co-ordinated Partnership' with a trade association or franchisor for example. All members of a trade association or franchise will not necessarily be part of the primary authority scheme, but all those that have chosen to take part will be listed in the register.

7.2 If a business has a primary authority and an inspection plan is in place, officers must follow the requirements of the inspection plan unless they obtain the prior agreement of the primary authority. If no inspection plan is in place, the visit is not affected, but the officer can choose to feedback inspection findings to the primary authority. Officers will report all significant non-compliances to the primary authority.

7.3 Where practicable, officers should make themselves aware of any published advice provided to the business which may impact on the areas covered by the officer's intervention. They must ensure they are aware of any relevant advice before taking enforcement action.

7.4 Where a non-compliance is discovered or a complaint is received about a business, officers should be aware of the role of the primary authority and contact them for information and assistance if appropriate.

7.5 Where an officer decides to take enforcement action against the business the primary authority must be notified. Enforcement action in this case includes:

- specified statutory notices*
- specified civil sanctions*
- reports to the Procurator Fiscal*
- imposition of any sanction*

- *administering a simple caution*
- *accepting an undertaking*
- *a written indication that any of the above actions will be taken unless the business acts or ceases to act in a specified manner by a specified deadline*

7.6 *Any formal communication with the primary authority must be undertaken via the Primary Authority Register.*

8 Monitoring and Review

8.1 *Intervention practices and procedures are subject to regular review and revision where necessary, especially in the light of new legislative requirements, changes to best practice or other guidance. The procedure will also be reviewed annually.*

8.2 *Responsibility for identifying a need to revise current practices and procedures rests with the lead officers for fair trading, product safety, metrology and quality standards.*

8.3 *Changes to existing practices and procedures will be agreed at the regular meetings of the Trading Standards Management Group, and communicated to staff thereafter.*

8.4 *Overall responsibility for ensuring conformance with this procedure shall be with the Trading Standards Manager.*

APPENDIX

| TYPE OF ENFORCEMENT ACTION | WHEN THIS ENFORCEMENT ACTION MAY BE CONSIDERED APPROPRIATE |
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| 1. Verbal advice, advisory letters, non-statutory notices and weights and measures statutory notices | <ul style="list-style-type: none"> a) Cases where the risk to the health and safety or economic interests of the public is not considered to be significant b) Cases where the trader/ business has no relevant history of significant non-compliance c) Cases where this approach can reasonably be expected to secure compliance d) Cases where the non-compliance is not serious enough to warrant formal action |
| 2. Other Statutory Notices, including Improvement Notices, Prohibition Notices, Suspension Notices, Notices to Mark, Formal Instructions under the Packaged Goods Regulations 2006 and Warning Letters | <ul style="list-style-type: none"> a) Cases where the use of an informal approach has not proven effective and further action is deemed necessary to achieve compliance b) Cases where there is no confidence in management systems and an informal approach cannot reasonably be expected to secure compliance c) Cases where there is significant non-compliance, or a significant risk to the health and safety or economic interests of the public but immediate report to the Procurator Fiscal is not deemed to be in the public interest d) Cases where a report to the Procurator Fiscal is contemplated but timely remedial action is also required to protect the public. e) Cases where a report to the Procurator Fiscal would be submitted but for insufficient evidence. |
| 3. Penalty Charge Notices, Fixed Penalty Notices and Reports to the Procurator Fiscal | <p>Penalty Charge Notices and Fixed Penalty Notices, where available, will general be used as an alternative to submitting a report to the Procurator Fiscal</p> <ul style="list-style-type: none"> a) Cases where action taken under 1 or 2 above has not proven effective and further action is deemed necessary to achieve compliance. In particular where there has been a failure to comply with a statutory notice. b) Cases where there is a significant risk to the health and safety or economic interests of the public in general and the vulnerable in particular where they have been specifically targeted c) Cases where there is evidence of fraud or |

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| | <p>reckless practice causing significant risk to the health and safety or economic interests of the public</p> <ul style="list-style-type: none"> d) Cases where the trader or business has demonstrated evidence of harassment or aggression towards consumers or non-cooperation with regulators' and there is a significant risk to the health and safety or economic interests of the public e) Cases where officers have been intentionally obstructed in the course of their duties f) Cases where a prosecution is deemed necessary as a deterrent. |
| <p>4. Enterprise Act Undertakings and Civil Enforcement Orders</p> | <p>Where there is evidence of domestic or community infringements harming the collective interests of consumers, Informal Undertakings, Formal Undertakings and Court Orders will be considered. This does not preclude the submission of a subsequent or concurrent prosecution report</p> |