

Introduction

This document sets out what business and others being regulated can expect from us and explains the Enforcement Policy of the Nottinghamshire County Council Trading Standards and Communities Service.

It provides information on:

1. The purpose of our Enforcement Policy
2. Our enforcement principles
3. Provision on business advice
4. Primary Authority Principles
5. Conduct of enforcement activity
6. Enforcement options available to us
7. Availability of policy
8. Commenting on this Policy and complaints

This Enforcement Policy is based on the principles of good regulation as provided by the Legislative and Regulatory Reform Act 2006, the Regulators' Code and the principles of good enforcement as set out in the Enforcement Concordat.

1. The Purpose of Our Enforcement Policy

Trading Standards exists to promote and maintain a fair and safe trading environment, promote health and wellbeing throughout the community and protect the interests of consumers and legitimate businesses. We enforce a wide range of business and consumer protection legislation relating to quality, quantity, safety, description and price of goods and services. We carry out our duties in various ways including inspection, sampling, test purchasing, testing, investigation and legal proceedings, but also by informing, advising and educating businesses and consumers.

The effectiveness of legislation in protecting consumers and businesses depends on the compliance of those regulated. We recognise that most businesses want to comply with the law.

2. Our Enforcement Principles:

Targeting

We aim to prioritise and direct our regulatory effort effectively. To achieve this, we will use comprehensive, intelligence led risk assessments to focus our resources to the areas of most need. The vast amount of our formal enforcement activities will be focused on those who are criminally intent, flout the law or act irresponsibly.

Proportionality

We will ensure that enforcement action is proportionate to all the circumstances surrounding a particular breach of legislation and that the sanctions applied are meaningful.

Accountability

We will be accountable for the efficiency and effectiveness of our activities, whilst remaining independent in the decisions we take.

Fairness and Consistency

We will treat all consumers and businesses fairly. No decision, response or action by the Service will be influenced by the race, gender, sexual orientation, religious beliefs or any other protected characteristics as defined by the Equalities Act 2010, of any suspected offender, complainant, witness or officer of this Service.

We will ensure that our enforcement practices are consistent; we will adopt a similar approach in similar circumstances to achieve similar ends.

Openness and Transparency

We are committed to the open provision of information and advice in a format that is accessible, easily understood and implemented. We will also ensure that there is always a clear distinction between those actions necessary to comply with the law and those which we recommend as best practice and are not compulsory.

We may use publicity to raise awareness of those acting against the law, to improve compliance and to assist the monitoring of trading practices.

3. Provision of business advice

We will look to protect consumers and promote a modern, vibrant economy by supporting well-meaning enterprises of all sizes. We will provide a range of advice to help businesses and others to meet their legal obligations. Where more complex advice is sought, we may make a charge.

If a business is found to be non-compliant this does not mean we will automatically take enforcement action against you, although consideration will need to be given in respect to the seriousness of the breach.

In appropriate circumstances we will use our statutory powers which permit official control bodies, such as this Service, to recoup any additional expenses incurred, where additional work or expenditure is required because of non-compliances and the resources required to deal with the non-compliances fall outside the authorities planned activities.

If there is a shared enforcement role with other agencies e.g. DEFRA, Food Standards Agency, Environmental Health and the Police, we will endeavour to coordinate with these agencies to minimise unnecessary overlaps or time delays and to maximise our overall effectiveness.

4. Primary Authority Principle

The Regulatory Enforcement and Sanctions Act 2008 introduced Primary Authority Partnerships. A Primary Authority is a local authority registered by The Office for Product Safety and Standards as having responsibility for providing advice and guidance to a particular business or organisation which is subject to regulation by more than one local authority.

We support the Primary Authority Partnerships Scheme and will enter into such agreements with businesses to promote good enforcement practice and reduce unnecessary burdens.

If we come to a decision to take enforcement action against a business that has a Primary Authority Partnership with another regulator, we will notify the Primary Authority of the action we propose to take or have taken.

The Primary Authority only has the right to object to our proposed action, where the legislative area is covered in the Regulatory Enforcement and Sanctions Act 2008 and they or we may refer the matter to The Office for Product Safety and Standards for their adjudication.

5. Conduct of Enforcement Activity

All enforcement activity will be undertaken with due regard to the provisions of the Police and Criminal Evidence Act 1984, the Criminal Procedure and Investigations Act 1996, the Regulation of Investigatory Powers Act 2000 and the Human Rights Act 1998.

Officers have a variety of powers, including power to enter premises and inspect goods books and documents and to seize and detain such goods, books and documents which may be required for evidence. We will provide at least 48 hours' notice prior to inspection, unless such a notice will defeat the object of such a visit.

Officers may also take with them such other persons and/or equipment as may be necessary when exercising powers of entry. In certain cases, they may exercise an entry warrant issued by a Magistrate, in order to gain access into premises. If individuals or businesses obstruct officers, they may well be liable to prosecution for such obstruction.

6. Enforcement options available to us

Where there is a breach of legislation, we can take a variety of actions which include:

- **Indirect Action** – including referral to another authority or agency for information and/or action.
- **Verbal or written advice** – This may be used to help a business understand their legal obligations and ensure compliance with legislative requirements.
- **Verbal or written warning** – where an offence has been committed but it is not thought appropriate to take any further action. The suggestive corrective action and timescale will be given.

- **Statutory Notice** – these are notices which are prescribed by legislation and may only be issued in accordance with specific statutory provisions.
- **Fixed Penalty Notice** – these may be issued to deal with certain offences.
- **Undertaking / Assurance** – these may be sought to correct or prevent future breaches of the law, they may be on a voluntary basis or a statutory basis through the Civil Courts.
- **Civil Injunctions** – these will be sought to prevent breaches of the law.
- **Simple Cautions** – these may be offered as an alternative to prosecution only when all the criteria for a prosecution are fulfilled and:
 - There is sufficient evidence of an offender's guilt to give a realistic prospect of conviction.
 - The offender admits the offence.
 - The offender understands the significance of a caution and gives informed consent to being cautioned.
- **Enforcement Orders** – these are used to deal with breaches of criminal and/or civil breaches of law in accordance with the Enterprise Act 2002 and are sought through the Civil Courts. We may also apply to the court for Criminal Behaviour Orders to deal with particular offending.
- **Prosecution** – criminal breaches may be dealt with by prosecution, after having regard to the Service's Prosecution Policy and the Code for Crown Prosecutors.

In appropriate circumstances the Service, sometimes working in partnership with other agencies, will seek other penalties/sanctions such as:

- **Action under the Proceeds of Crime Act 2002 to:**
 - Disrupt criminal enterprises through the recovery of criminally derived assets.
 - promote the use of financial investigation as an integral part of criminal investigation.
 - pursue suitable cases with a view to applying to the courts for restraint and /or confiscation of criminally derived assets.
- **Victim compensation**
As part of any prosecution process or Proceeds of Crime investigation we can apply to the court to award suitable compensation to any injured party.
- **Revocation and review of licences**
Where there is a requirement for a business to be licenced eg Licensing Act, a review of the licence may be sought where the activities and/or fitness of the licence holder is in question.
- **Forfeiture of infringing goods**
We may ask for voluntary surrender on certain infringing items, if necessary, the legislation allows us to apply to the Courts to seek forfeiture of goods, either in conjunction with a prosecution or separately.

We will also ensure that when any of the above notices are served the appeals process is explained to the recipient.

7. Human Rights

Our enforcement role will take into account the European Convention on Human Rights and we recognise the obligations placed on this Council by the Human Rights Act 1998.

8. Availability of this Policy

This Enforcement Policy is made available to anyone and is published on the Nottinghamshire County Council website at www.nottinghamshire.gov.uk. The Service's Prosecution Policy is also available at www.nottinghamshire.gov.uk.

9. Commenting on this Policy and Complaints

Anyone wishing to make any comments about the content of this Policy or the manner of its application is invited to send them to us by any of the methods shown below.

These comments will assist us in the continual monitoring and annual review of this Policy. This is important to help ensure that the Policy remains up to date and reflects the views of our community and changes in legislative requirements.

Please contact us should you require any further information on how we can carry out our work or can be of any further assistance to you. If you have a complaint about the provision of our service please feel free to contact us.

If you remain dissatisfied or feel that you cannot talk to us you may wish to complain directly to Nottinghamshire County Council. You may do this by any of the methods shown at www.nottinghamshire.gov.uk.

Contacting us:

E-mail: trading.standards@nottscc.gov.uk
Telephone: 0115 8041147
Post: Trading Standards, PO Box 1889, Nottingham, NG2 9RU
Internet: www.nottinghamshire.gov.uk

This information can be made available in other languages and formats.

For further information please contact 0115 8041147.