

Renfrewshire Council  
Department of Environmental Services  
Trading Standards  
Enforcement Policy

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## 1. INTRODUCTION

### **Introduction**

The UK Government launched the Enforcement Concordat in 1998 and encouraged all enforcement agencies to adopt its principles. Most authorities have since signed-up to the Concordat which, in short, sets out fair policies and procedures to be adopted in enforcing legislation. The details of the Enforcement Concordat are set out in next Part of this document.

In Renfrewshire, the Trading Standards Service's Enforcement Policy embraces the principles the Enforcement Concordat and expands on them to show, in more detail, what level of enforcement can be expected by businesses.

### **Publication of information concerning enforcement policy**

In addition to being used as a reference document by all enforcement staff within this department, this full-length and comprehensive version of the Trading Standards Service's Enforcement Policy will be published and made available, on request, to all businesses in Renfrewshire; a copy will also be sent to all trade organisations and major businesses known to be operating within the area. The trade organisations will be requested to make all possible efforts to ensure that their membership is made aware of the policy's existence.

Additionally, a leaflet detailing the main provisions of this policy document will be given to each trader when they receive an enforcement visit. The leaflet will state that the comprehensive version of the Enforcement Policy is freely available to anyone requiring a copy (see Appendix 2 for contact details). The leaflet will tell traders how to make a complaint about departmental services and how to request a review of any enforcement action taken against them by an officer of this authority's Trading Standards service.

The Trading Standards service publishes a Service Delivery Plan in April each year. Copies of this plan will be distributed all known trade organisations in the relevant area. A copy will be made available to any person who makes a request. It will also be made available on the council's website.

### **Formulation of Enforcement Policy**

The enforcement policy will be reviewed periodically. In carrying out any such review cognisance will be taken of:

- The Enforcement Concordat;
- Statutory developments;
- Changes in working procedures;
- Changing patterns in the business environment;
- Feedback from traders and consumers.

Feedback from traders will be gathered in several ways, including by collating information gathered in the complaint and review processes described in this

document, and using traditional questionnaires. Trade Associations will be directly invited to input to reviews of the Enforcement Policy.

### **Policy**

The Trading Standards Service is committed to carrying out enforcement functions in an equitable, practical and consistent manner. We recognise that the effectiveness of legislation in protecting consumers depends on the compliance of those regulated. We recognise that most businesses want to comply with the law and, therefore, are committed to taking steps to help businesses, and others, to meet their legal obligations without unnecessary expense. We will take firm action against those who flout the law or act irresponsibly, including prosecution, when necessary.

By adopting the Enforcement Concordat, we have committed ourselves to the principles set out in Part 2.

### **Provision of guidance for small businesses**

It is recognised that small businesses will not have the same access to legal guidance on trading law as some large traders. Large businesses often employ legal staff at their Headquarters, or are members of Trade Associations which provide regular updates on current trading law. Often small businesses do not have access to such information.

To offset this, the department produces a variety of leaflets under the heading of 'Trader Information Service', which contain concise information on how to comply with particular elements of trading law. Similarly, as described more fully in the INFORMAL ACTION section of this document, a clear indication of any corrective action required will be given to the trader at the conclusion of any enforcement visit. Such visits seldom result in enforcement action more serious than a written warning.

## 2. THE ENFORCEMENT CONCORDAT

### **The Principles of Good Enforcement: Policy and Procedures**

This document sets out what business and others being regulated can expect from enforcement officers. It commits us to good enforcement policies and procedures. It shall be supplemented by additional statements of enforcement policy.

The primary function of central and local government enforcement work is to protect the public, the environment and groups such as consumers and workers. At the same time, carrying out enforcement functions in an equitable, practical and consistent manner helps to promote a thriving national and local economy. We are committed to these aims and to maintaining a fair and safe trading environment.

The effectiveness of legislation in protecting consumers or sectors in society depends crucially on the compliance of those regulated. We recognise that most businesses want to comply with the law. We will, therefore, take care to help business and others meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly. All citizens will reap the benefits of this policy through better information, choice and safety.

We have therefore adopted the central and local government Concordat on Good Enforcement. Included in the term “enforcement” are advisory visits and assisting with compliance as well as licensing and formal enforcement action. By adopting the concordat we commit ourselves to the following policies and procedures, which contribute to best value, and will provide information to show that we are observing them.

### **Principles of Good Enforcement: Policy**

#### Standards

In consultation with business and other relevant interested parties, including technical experts where appropriate, we will draw up clear standards setting out the level of service and performance the public and business people can expect to receive. We will publish these standards and our annual performance against them. The standards will be made available to businesses and others who are regulated.

#### Openness

We will provide information and advice in plain language on the rules that we apply and will disseminate this as widely as possible. We will be open about how we set about our work, including any charges that we set, consulting business, voluntary organisations, charities, consumers and workforce representatives. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

## Helpfulness

We believe that prevention is better than cure and that our role therefore involves actively working with business, especially small and medium sized businesses, to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage business to seek advice/information from us. Applications for approval of establishments, licences, registrations, etc, will be dealt with efficiently and promptly. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

## Complaints about Service

We will provide well publicised, effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

## Proportionality

We will minimise the costs of compliance for business by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action. We will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

## Consistency

We will carry out our duties in a fair, equitable and consistent manner. While inspectors are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies through schemes such as those operated by the Local Authorities Coordinators of Regulatory Services (LACORS).

## Principles of Good Enforcement: Procedures

Advice from an officer will be put clearly and simply and will be confirmed in writing, on request, explaining why any remedial work is necessary and over what timescale, and making sure that legal requirements are clearly distinguished from best practice advice.

Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed). Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most cases within 5 working days and, in all cases, within 10 working days.

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 (whenever possible this advice will be issued with the enforcement notice).

### Human Rights

When carrying out our enforcement duties all considerations of the European Convention of Human Rights and the Human Rights Act 1998 are taken into account. Certain enforcement activities, for example surveillance, are only carried out with the prior approval of a manager. These decisions will be carefully reasoned and recorded in accordance with Scottish Executive and Home Office guidance.

### Prosecutions

The decision to prosecute represents a serious step. For this reason, before such action is taken, the enforcement officer will provide the business, which is the subject of an investigation involving an alleged offence, with an opportunity to discuss the circumstances of the case. This may, or may not, take the form of a formal tape recorded interview, depending on the circumstances of the case. Once the officer has completed his/her enquiries they submit a case report which is scrutinised with a view to determining the final outcome. In deciding on a suitable outcome we apply principles based on the Crown Office's guidance document: 'Reports to the Procurator Fiscal - a Guide for Non-Police Agencies; Fifth Edition, 2002'.

There are two stages in the decision making process. The first stage is to assess the *evidence*. We must satisfy ourselves that there is sufficient evidence to provide a realistic prospect of conviction. If this is not the case, the matter must not go ahead. If we determine that there is sufficient evidence we must then decide if a prosecution is in the *public interest*.

### The Evidence

By a 'realistic prospect of conviction' we mean that a Sheriff is more likely than not to convict the accused of the charge alleged.

In considering whether or not there is sufficient evidence we will ask the following questions:

- Can the evidence be used in Court?
- Is the evidence reliable?
- How is any statutory defence likely to affect the prosecution case?

### The Public Interest

The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. We will balance factors for and against prosecution carefully and fairly. Some factors may increase the need to prosecute whereas others may suggest that another course of action would be better. Listed below are some common public interest factors, both for and against prosecution. It should be stressed that this list is not exhaustive and we must decide how important each factor is in the circumstances of each case and go on to make an overall

assessment.

Some common public interest factors in favour of prosecution are:

- A conviction is likely to result in a significant sentence
- The offender was in a position of authority or trust
- There is evidence that the offence was premeditated
- The offence was motivated by discrimination.
- The product or service is aimed at a vulnerable group.
- The product or service has caused injury to the person or significant loss or harm; or has potential for so doing.
- The offender's previous convictions are relevant to the present offence.
- There is evidence that the offender accused had received previous advice from a regulatory agency on similar circumstances to the current offence.
- There are grounds for believing that the offence is likely to be continued or repeated if a prosecution is not brought.
- The offence is widespread.

*Some common public interest factors against prosecution are:*

- The court is likely to impose a very small or nominal penalty.
- The offence was committed as a result of a genuine mistake or misunderstanding (this must be balanced against the seriousness of the offence).
- The loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement.
- There has been a long delay between the offence taking place and the date of the trial unless the:
  - Offence is serious;
  - Delay has been caused in part by the offender;
  - Offence has only recently come to light;
  - Complexity of the offence meant that the investigation took a long time;
  - Offender is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated;
  - Offender has put right the loss or harm that was caused (but prosecution

will not be avoided simply by paying compensation);

- Offender is willing to prevent a recurrence of the problem.

***Who is responsible?***

The criteria set out above will be applied to the case file by the Trading Standards Manager, or a higher ranking officer, who will need to authorise it before it can be passed to the Procurator Fiscal with the recommendation that it be considered for prosecution. In Scotland, it is always the Procurator Fiscal who makes the final decision on which cases are presented to the court: the Trading Standards Service merely presents evidence to the Procurator Fiscal for his decision on the cases which we still consider to be appropriate after applying the criteria set out above.

### **3. DESCRIPTION OF AN ENFORCEMENT POLICY**

#### **What is an enforcement policy?**

The intention of this document is to assure traders that enforcement action taken by authorised officers of the Trading Standards Service is focused on matters which:

- Affect consumer safety; or
- Affect the rights of the consumer.

and focused on traders who are:

- Negligent of their obligations; or
- Intentionally infringing the law.

It can also be stressed that enforcement action will not constitute a punitive response to minor technical contraventions of legislation.

We intend to comply with the provisions of this enforcement policy in every instance unless it is considered that there is significant risk to the consumer (or other traders) in complying with this policy. Where there is to be any departure from the policy the circumstances must be:

- Exceptional;
- Capable of justification; and
- Fully considered by the Trading Standards Manager, or more senior officer.

#### **When will enforcement action be taken?**

Enforcement action will usually be taken by an authorised officer on completion of an inspection visit to a trader's premises when the inspection has revealed that the trader has contravened any of the legislation contained within Appendix 1 to this document. Such action can also result from other types of activity, including, for example, a complaint from a consumer found to be justified.

#### **What is enforcement action?**

Having considered all relevant information and evidence, the choices for enforcement action are to take:

- No action;
- Informal action;
- Formal action of reporting for prosecution; or
- Alternative formal action.

This document provides detailed guidance applicable to these options for enforcement action.

## 4. THE TRADING STANDARDS SERVICE

### Who are Trading Standards?

Renfrewshire Council's Trading Standards is a service division of the Environmental Services Department.

The Trading Standards Manager is under a statutory duty to ensure that suitable arrangements are in place for a local weights and measures authority. Trading Standards is simply the modern name for the service formerly called Weights and Measures or Consumer Protection. The remit of the department has widened very considerably and the Trading Standards name best reflects our modern stance of offering our assistance to consumers and traders alike.

The local authority employs other enforcement staff who may also visit you to carry out inspections under their remits. Examples of these are Environmental Health (Health and Safety, and Food Safety), Development Control and Building Control.

It is not possible to coordinate the work of the Trading Standards Service and other enforcement divisions within this council. Therefore, we cannot guarantee not to visit any particular premises at similar times to other enforcement division, such as Environmental Health.

### Corporate Objective

Renfrewshire Council's Corporate Statement contains the three principles which guide the way Renfrewshire Council works:

- Social inclusion - involving all members of society so they can take advantage of learning, working and leisure opportunities;
- Sustainable development - developing Renfrewshire in a way which achieves a balance between our social, economic and environmental aims; and
- Modernising government - delivering services in innovative ways.

More specifically, the Trading Standards Service's aims and objectives are to enhance economic welfare within Renfrewshire by improving and maintaining standards of fair trading in terms of quantity, quality, safety and price throughout the area. For that purpose to encourage honest, and discourage dishonest, trading so that all persons who live, or work, in or visit the area have confidence in commercial transactions so that Renfrewshire's high reputation in business transactions at home and abroad be preserved.

Departmental activities to meet this objective are geared to match with the Renfrewshire Council's Corporate Statement and the Renfrewshire Corporate Plan.

The activities undertaken are planned to:

- Maintain, and improve, trading standards in Renfrewshire;
- Ensure that the public receives value for money;
- Target resources towards the alleviation of the effects of poverty on the

deprived;

- Provide remedies for injustice in trade transactions, particularly towards disadvantaged consumers;
- Provide advice and assistance to commerce and industry;
- Retain flexibility with the ability to respond quickly to changes in the trading situation or in public demand; and
- Motivate staff by allowing a broad degree of initiative, to generate job satisfaction and create an awareness of the contribution of the individual towards attainment of the departmental objective.

## 5. INSPECTION VISITS

### What is an inspection visit?

This section describes what an inspection visit is, what the authorised officer can do during an inspection visit, and what the trader can expect from such a visit.

All traders are liable to be visited by an authorised officer to determine whether the law is being complied with (see appendix 1 for list of legislation covered). These visits will take place annually year for some traders but less often for low risk traders.

Traders will not generally be given advance notice that a visit is to take place.

The authorised officer will offer any assistance you require to meet your obligations, in addition to carrying out the appropriate enforcement work.

### What can the authorised officer do?

Authorised officers are given a wide range of statutory powers under a variety of statutes, including: entry to premises; inspection, and seizure. You should not attempt to stop an authorised officer who is properly exercising any of these powers as such action constitutes an offence.

In general an authorised officer can:

- Enter any premises at all reasonable hours;
- Inspect any goods;
- Take samples of any goods;
- Buy any goods;
- Inspect any documents, where an offence is suspected; and
- Seize and detain any goods and documents, when it is believed that an offence has been committed.

### What can the trader expect?

Traders should expect to be:

- Shown all due courtesy;
- Informed of the purpose of the visit;
- Informed of which department the officer is employed by;
- Informed of the potential visits by other officers (including those of other agencies);
- Shown identification, if desired;
- Given specific advice, if requested;
- Given feedback on compliance levels;
- Given guidance on what the law is;
- Given advice on any action required to remedy any points of non-compliance;
- Given reasonable time to take remedial action; and
- Informed of procedures for appealing against any enforcement action taken.

**What feedback will be given after an inspection visit?**

At the conclusion of each enforcement visit, the officer shall give the trader a copy of two documents, or forms. The first, the Record of Inspection form, shows what work has been undertaken and indicates where faults were found; the second, the Notification to Trader form, shows what remedial steps need to be taken.

## 6. INFORMAL ACTION

### What is informal action?

Informal action to ensure compliance with legislation includes issuing:

- Advice;
- Verbal warnings;
- Written warnings on-site; and
- Formal written warnings, by post.

### When will informal enforcement action be taken?

Informal action will be taken, rather than prosecution or other formal action, when all of the following circumstances apply:

- The contravention is not serious enough to warrant formal action;
- The trader is willing to take corrective action and his trading history indicates that informal action will achieve compliance;
- Confidence in the trader's management system is high;
- Non-compliance would not constitute a serious risk to the consumer's rights or safety;
- The trader has not intentionally caused the contravention; and
- The trader has not been informed of the corrective action required on a previous occasion.

There will be other instances when the guidelines given above can be relaxed even further. Examples include:

- Voluntary groups, churches or charity shops; and
- Certain new traders, who cannot yet demonstrate a good trading history

### What should informal warnings contain?

All instances of informal warnings shall detail the:

- Regulations contravened;
- Nature of the contravention;
- Methods of achieving compliance, detailing options available; and
- Further action likely to be taken by the authorised officer.

All advice or warnings issued will normally relate only to contraventions of legislation. We shall not issue advice or warnings regarding good practice unless the trader requests that we do so.

There are two types of informal warning letter which can be sent to a business following an inspection visit during which non-compliance has been found. The first, which is issued by the authorised officer, can usually be recognised as being mainly advisory and is standard practice in a situation where the non-compliance is neither serious nor intentional. The second type is less advisory, and more a serious

warning; this type of warning letter relates to circumstances where the authorised officer recommends that any future non-compliance be reported to the Procurator Fiscal with a view to prosecution.

## **7. FORMAL ACTION**

### **What is formal action?**

In the majority of cases where formal action is taken, the enforcement tool utilised is prosecution. On average about ten cases are reported to the Procurator Fiscal with a view to prosecution each year.

There are a few other types of formal action but those enforcement tools are utilised less frequently. These include Suspension Notices, Stop Now Orders, and Prohibition and Improvement Notices.

### **When will prosecution be considered appropriate?**

We have a preference for dealing with contraventions by means of advice and informal warnings. Prosecution will normally only be considered as an appropriate method of dealing with any contravention where the:

- Contravention seriously affects consumer safety;
- Contravention seriously affects consumer rights;
- Contravention is of sufficient importance to be made the subject of a criminal prosecution;
- Trader fails to act on any previously issued informal warning or advice, having been given reasonable opportunity to do so;
- Trading history shows similar contraventions by the trader;
- Trader is negligent or intentionally contravening the law; and
- Trader is unlikely to be able to establish a defence that they took all reasonable precautions and exercised all due diligence to avoid any contravention.

### **Other considerations regarding reporting for prosecution**

Prosecution will be considered as the appropriate method of dealing with a contravention only on the grounds that:

- There is evidence to identify the offender being either an individual or a company;
- There is evidence to prove an offence has been committed and informal action is inappropriate;
- There is a realistic prospect of conviction;
- Any such trader has been formally cautioned, in person or by letter, to inform them that they are under suspicion and that they may take the opportunity to make a statement;
- The Trading Standards Manager, or more senior officer, is satisfied that the decision to report for prosecution is a fair, consistent and objective method of dealing with a contravention, after considering all relevant evidence;
- The Trading Standards Manager, or more senior officer, is satisfied that the evidence to support any proceedings in court is relevant, admissible, substantial and reliable; and
- A report is made to the Procurator Fiscal within four months of the date of any

contravention unless circumstances, such as complexity of the case, dictate a longer period.

## **FORMAL ACTION (cont)**

### **What other formal action can be taken?**

We can take several types of formal action other than prosecution. In particular there are three types of action which we can take: Suspension Notices under the Consumer Protection Act 1987; Court Orders (known as Stop Now Orders, Enforcement Orders or Interdicts) under the Enterprise Act 2002; passing information to the Office of Fair Trading to seek revocation of a Consumer Credit Licence under the Consumer Credit Act 1974.

### **Suspension notices**

We may on reasonable grounds serve a suspension notice on a trader which will:

- Prohibit the supply of any unsafe goods for a maximum period of six months;
- Require the trader to keep us informed of the whereabouts of the goods; and
- Notify the trader of their rights of appeal to the Sheriff Court.

If on expiry of any suspension notice, no prosecution has taken place or no forfeiture order has been made by the Court, then the trader may apply for compensation, the amount of which will be set by an Arbiter approved by the Sheriff.

The Trading Standards Manager, or a more senior officer, shall sign all Suspension Notices once he is satisfied that such action is appropriate, except where the authorised officer is of the opinion that any delay in signing or issuing a Suspension Notice would be ineffective or detrimental.

### **Stop Now Orders**

After obtaining clearance from the Office of Fair Trading, we can seek a court order, or interdict, under the Enterprise Act 2002 to prevent any business from carrying out any particular trading practice; this would normally be done after seeking written assurances from the business that they will refrain from trading in an unfair manner. Where it is considered necessary, the application for the court order can be made without first seeking written assurances.

The investigating officer will compile a report on the trading activities of any business so targeted. It will then be reviewed by the Trading Standards Manager and, if he is satisfied that it is necessary, pass the report to the council's Legal Services Section requesting that they submit an application for a Stop Now Order to the Sheriff Court.

### **Credit Licensing**

A report, concerning any trader we feel is not a fit person to hold a credit licence, may be sent to the Office of Fair Trading requesting that they take action to revoke that trader's consumer credit licence.

Such activity could be initiated when consumer complaint levels are high or prosecutions have been taken.

Where such a request is to be made to the Office of Fair Trading, it shall be approved by the Trading Standards Manager.

The trader will be given the opportunity to make representations to the Office of Fair Trading before they take any action to revoke the credit licence.

## FORMAL ACTION (cont)

### Other assurances regarding formal action

We shall ensure that we:

- Refer the details of the contravention to the relevant principal officer to ensure that a fair and balanced approach is taken;
- Liaise with any relevant home authority, or originating authority, at an early stage in any investigation;
- Notify any home authority in writing of our intention to take any formal action at an early stage;
- Notify the trader in writing of our intention to take formal action at an early stage;
- Shall, at the time of issuing notification that we intend to take formal action, inform the trader of their right to seek a review of the relevant circumstances; and
- Any such review will be completed and the findings issued to the trader in writing within 14 days of the trader requesting such a review.

## 8. LACORS' HOME AUTHORITY PRINCIPLE

### What is the Home Authority Principle?

The Home Authority Principle is designed to encourage efficiency, promote uniformity, reduce duplication and assist enterprises to comply with the law. It seeks to ensure that:

- Local authorities place special emphasis on the surveillance of goods and services originating in their areas;
- Enterprises are able to depend upon a specific home authority for preventative guidance and advice;
- Enforcing authorities liaise with the relevant home authority on issues which affect the policies of an enterprise; and
- Machinery exists for monitoring and resolving disputes in appropriate cases.

The principle applies to all trading standards issues, and commands the support of local and central government, industry, trade and professional enforcement bodies.

We are willing to offer this type of assistance to any trader who wishes to utilise our services at any time, free of charge.

We are dedicated to a policy of achieving and maintaining a consistent, fair and balanced approach to making all decisions which concern enforcement action, including issuing informal advice or warnings and formal action, including prosecution.

To maintain this consistency we shall consider, and follow where appropriate, any guidance contained within:

- The LACORS' Home Authority Principle;
- LACORS' Circulars; and
- Any current, or future, statutory codes of practice.

We support the use of guidance contained in any relevant statutory codes of practice and any guidance issued by LACORS, but reserve the right to challenge such guidance as described below.

Where we are considering any formal enforcement action which we know to be inconsistent with that adopted by other authorities, then the matter will be considered by the Trading Standards Manager, or more senior officer, who will decide what action to take. If they are in any doubt then they shall refer the matter to the Society of Chief Officers of Trading Standards in Scotland (SCOTSS) and attempt to reach a consensus view which we will accept as binding or refer the matter to the Local Authorities Coordinators of Regulatory Services (LACORS) to consider the issue to ensure consistent enforcement.

When we are considering any formal enforcement action which we believe to be contrary to any advice issued by a trader's Home Authority or Originating Authority then we shall discuss the matter with the relevant authority or authorities before taking action.

## **9. COMPETENCE OF AUTHORISED OFFICERS**

### **Competence of Authorised Officers**

All authorised officers employed within the Trading Standards Service have been considered to have reached a level of competence whereby they are permitted to initiate investigations without consultation with any other officer.

All authorised officers who may take enforcement action have been made fully aware of the department's enforcement policy contained within this document and have received, and will continue to receive, training to reinforce that this policy is understood and adhered to.

### **Monitoring of compliance with Enforcement Policy**

Surveys by means of posted questionnaires will be carried out by departmental staff, on a regular basis, to determine levels of staff compliance with the enforcement policy conditions. It has been recommended by some agencies that this monitoring should be performed by independent, external bodies. We shall not be utilising independent reviewers, or assessors, at this time, although consideration may be given to their use at a later stage.

Trade Associations and Business Forums will be requested to submit their perceptions of the levels of compliance achieved. This feedback will be sought every three years, the first two set for 2004 and 2007.

Additionally, it is likely that by issuing each trader with a leaflet explaining the concept of the enforcement policy, and the associated complaint and review processes, there will be potential for using the data supplied by these traders to measure levels of compliance with the policy.

## **10. APPROVAL SYSTEMS FOR TAKING FORMAL ENFORCEMENT ACTION**

### **Approval Systems**

At the early stages of any investigation which is likely to result in formal action being taken, each authorised officer shall inform their Team Leader (higher ranked Trading Standards Officer) of their involvement in any such investigation.

The Team Leader shall at this stage consider the facts of the case in question and authorise continued investigation, or alternatively instruct the authorised officer to cease the investigation and take informal action rather than formal action.

Officers of Team Leader status, or above, being more experienced, shall determine on their own behalf whether an investigation should be continued. They may wish, in contentious cases, to solicit the opinion of the Trading Standards Manager, or more senior officer.

In any case, the Trading Standards Manager, or a more senior officer, shall, once he has satisfied himself of the merits of the case, be required to authorise and sign any report, which an authorised officer recommends should be sent to the Procurator Fiscal with a view to prosecution.

The Director of Environmental Services or the Head of Consumer Services, having satisfied himself that it is appropriate to do so, shall sign the correspondence which accompanies any report submitted to the Procurator Fiscal.

## 11. REVIEW PROCESS

### What is the review process?

Traders can seek a review of any enforcement decision or action taken by any officer of this department. It may seem that any trader seeking a review of enforcement action taken against them is also making a complaint against the department, but that is not the case. A trader may be admitting to having committed a breach of the law: but wishes to request that a less severe form of enforcement action is taken.

Such a trader would not be considered to be making a complaint against the department, but would be seeking a review of the enforcement action taken. The procedures for requesting reviews and making complaints are the same, so traders do not need to bother about the distinction.

The review process is designed to be:

- Clear;
- Simple;
- Effective;
- Speedy; and
- Fair and equitable.

Such a review may be requested for any reason although in the majority of cases it is expected that the reasons associated with enforcement action listed below will apply:

- Allegations of misuse of power;
- Lack of discretion;
- Poor professional judgement or conduct;
- Disputes over points of fact; and
- Disputes over points of law.

### Who carries out the review?

In the first instance, all reviews will be carried out internally without recourse to outside agencies. Normally the review will be undertaken by the Trading Standards Manager who may seek assistance from the Team Leaders or any other personnel.

### Initial Complaint Submissions

Any trader who is seeking a review of any enforcement action taken by an officer of this department should make their request in writing to the Trading Standards Manager. Any trader who does not wish to put their request in writing should ask to speak to the relevant Team Leader (Enforcement or Specialist Services). If that officer is not available then the trader should speak to the highest ranking officer available at the time, who will record the details of the request and pass it for the attention of the Trading Standards Manager, or, in his absence, the Customer Services Manager.

Officers other than the Trading Standards Manager are not authorised to pass any

comment on the matter which forms the subject of the request; only the Trading Standards Manager is authorised to comment on staff performance.

## **REVIEW PROCESS (cont)**

Normally, the Trading Standards Manager will review the case, carrying out interviews with the trader and staff, where necessary, in addition to inspecting any work records kept by the investigating officers.

### **Special situations**

Where the Trading Standards Manager has had any direct involvement in the matter being reviewed, the review shall be referred to the Head of Consumer Services for investigation.

Reviews regarding the performance of the Trading Standards Manager in writing to the Head of Consumer Services, Environmental Services Department, Renfrewshire Council, South Building, Cotton Street, Paisley, PA1 1UG.

### **Notification of review outcome**

Unless the person registering the request for a review has already spoken with him, the Trading Standards Manager shall acknowledge the request, in writing, within 3 working days of receiving the request.

Reviews shall be carried out as quickly as possible and the decision reached conveyed, in writing, to the trader within a further 10 working days. If it is not possible to reach a decision within this timetable then the person registering the request shall be informed of the extension in writing and kept up-to-date periodically.

The letter which conveys the decision reached after the review has been carried out shall intimate, where the trader's request has failed to overturn the original decision, that a further appeal to the Head of Consumer Services is available, in addition to informing the trader that appeals to other named agencies may be available.

Any decision reached on appeal to the Head of Consumer Services will be considered as final; with no further internal appeal process available, although the trader can still appeal to any relevant external agencies.

## **12. COMPLAINT PROCESS**

### **Initial Complaint Submissions**

Any trader who is dissatisfied, for any reason, with the services provided by this department should make their complaint in writing to the Trading Standards Manager. Any trader who does not wish to put their complaint in writing should ask to speak to the relevant Team Leader (Enforcement or Specialist Services). If that officer is not available then the trader should speak to the highest ranking officer available at the time, who will record the details of the complaint and pass it for the attention of the Trading Standards Manager or, in his absence, the Customer Services Manager.

Officers other than the Trading Standards Manager are not authorised to pass any comment on the matter which forms the subject of the complaint; only the Trading Standards Manager is authorised to comment on staff performance.

Normally, the Trading Standards Manager will investigate the case, carrying out interviews with the trader and staff, where necessary, in addition to inspecting any work records kept by the investigating officers.

### **Special situations**

Where the Trading Standards Manager has had any direct involvement in the matter which forms the subject of the complaint, the complaint shall be referred to the Head of Consumer Services for investigation.

Complaints regarding the performance of the Trading Standards Manager in writing to the Head of Consumer Services, Environmental Services Department, Renfrewshire Council, South Building, Cotton Street, Paisley, PA1 1UG.

### **Notification of complaint outcome**

Unless the person registering the complaint has already spoken with him, the Trading Standards Manager shall acknowledge receipt of the complaint, in writing, within 3 working days of receiving the complaint.

Complaints shall be investigated as quickly as possible and the decision reached conveyed, in writing, to the trader within a further 10 working days. If it is not possible to reach a decision within this timetable then the person making the complaint shall be informed of the extension in writing and kept up-to-date periodically.

The letter which conveys the decision reached after investigation of the complaint has been carried out shall intimate, where the trader's complaint is not found to be justified, that a further appeal to the Head of Consumer Services is available, in addition to informing the trader that appeals to other named agencies may be available.

Any decision reached on appeal to the Head of Consumer Services will be considered as final; with no further internal appeal process available, although the trader can still appeal to any relevant external agencies.

### **13. ALTERNATIVE ROUTES FOR RECORDING COMPLAINTS**

#### **Who else can traders complain to?**

Traders always have the right to complaint about the authority's services to the following persons or agencies:

- Councillors
- Members of Scottish, UK and European parliaments (MPs, MSPs and MEPs)
- Scottish Public Services Ombudsman

## Appendix 1 - LIST OF STATUTES

### Part 1 Statutes conferring enforcement duties:

Agricultural Produce (Grading and Marking) Acts 1928 and 1931  
Agriculture Act 1970  
Animal Health Act 1981  
Children and Young Persons (Protection From Tobacco) Act 1991  
Civic Government (Scotland) Act 1982  
Clean Air Act 1993  
Consumer Credit Act 1974  
Consumer Protection Act 1987  
Control of Pollution Act 1974  
Courts and Legal Services Act 1990  
Development of Tourism Act 1969 (*Accommodation Price Displays*)  
Education Reform Act 1988  
Energy Act 1976  
Energy Conservation Act 1981  
Enterprise Act 2002  
Environment and Safety Information Act 1988  
Estate Agents Act 1979  
European Communities Act 1972  
Explosives Acts 1875 & 1923  
Fair Trading Act 1973  
Fireworks Act 2003  
Food and Environment Protection Act 1985  
Food Safety Act 1990 (*Animal Medicines' records*)  
Hallmarking Act 1973  
Health and Safety at Work etc. Act 1974 (*Petroleum; Explosives; Packaging & Labelling of Dangerous Substances*)  
Medicines Act 1968 (Medicated Animal Feeding Stuffs)  
Motor Cycle Noise Act 1987  
Pesticides (Fees and Enforcement) Act 1989  
Petroleum (Regulation) Acts 1928 & 1936  
Poisons Act 1972  
Prices Act 1974  
Property Misdescriptions Act 1991  
Telecommunications Act 1984  
Timeshare Act 1992  
Tobacco Advertising and Promotion Act 2002  
Trade Descriptions Act 1968  
Trade Marks Act 1994  
Video Recordings Acts 1984 & 1993  
Weights and Measures Acts 1976 & 1985

## Appendix 1 - LIST OF STATUTES

### Part 2 Other statutes affecting consumer protection:

Agriculture and Horticulture Act 1964  
Agriculture Act 1967  
Business Names Act 1985  
Children and Young Persons Act 1937  
Companies Act 1985  
Company Directors Disqualification Act 1986  
Competition Acts 1980 & 1998  
Consumer Arbitration Agreements Act 1988  
Copyright Acts 1956 - 1983  
Copyright Designs and Patents Act 1988  
Criminal Justice (Scotland) Act 1980 (*Compensation Orders*)  
Emergency Laws (Re-enactments and Repeals) Act 1964  
Environmental Protection Act 1990  
Farm and Garden Chemicals Act 1967  
Financial Services Act 1986  
Fireworks Acts 1951 and 1964  
Hire Purchase Act 1964  
Law Reform (Miscellaneous Provisions) (Scotland) Act 1990  
Mock Auctions Act 1961  
Plant Varieties and Seeds Act 1964  
Protection of Animals (Scotland) Act 1912  
Road Traffic Act 1988 (*Safety of Crash Helmets*)  
Sale and Supply of Goods Act 1994  
Sale of Goods Act 1979  
Sale of Goods (Amendment) Act 1994  
Supply of Goods and Services Act 1982  
Supply of Goods (Implied Terms) Act 1973  
Trading Representations (Disabled Persons) Act 1958  
Trading Representations (Disabled Persons) Amendment Act 1972  
Trading Stamps Act 1964  
Unfair Contract Terms Act 1977  
Unsolicited Goods and Services Act 1971  
Unsolicited Goods and Services (Amendment) Act 1975

## **Appendix 2 - CONTACT DETAILS**

### **ADDRESS OF MAIN OFFICE**

Any trader wishing to contact us: to ask for advice; to suggest changes to our working practices; or to record a complaint about any aspect of our work or conduct; or to request a review of any enforcement action taken should contact the Trading Standards Manager at the address given below:

**Environmental Services Department  
Renfrewshire Council  
South Building  
Cotton Street  
Paisley PA1 1UG**

### **INTERNET**

You can also find out more about our services by logging on to the Council's website, which also includes facilities for registering dissatisfaction with Council services [click on the "Help us to help you" hypertext]. The website address is:

**[www.renfrewshire.gov.uk](http://www.renfrewshire.gov.uk)**

### **OTHER MEANS OF CONTACT**

**Telephone : 0141 840 3184 (24 hour answerphone)  
Email: [ts.es@renfrewshire.gov.uk](mailto:ts.es@renfrewshire.gov.uk)  
Fax: 0141 840 3233**