

# Environmental Health and Trading Standards Enforcement Policy

We are committed to the principles of good enforcement. Within the context of this Policy, 'enforcement' includes any action taken by officers aimed at ensuring that businesses or individuals comply with the law – these actions may range from offering advice, information and issuing public warnings, to instituting legal proceedings / prosecutions.

Compliance with this Policy will ensure that we will strive to be fair, impartial and objective and will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Decisions will not be influenced by improper or undue pressure from any source.

## The Purpose of our Enforcement Policy

The purpose of our enforcement policy is to provide a framework to make sure that we work in an equitable, practical and consistent manner.

Environmental Health are at the forefront of public health as every aspect of environmental health is designed to improve the public's health and wellbeing. Trading Standards promote and maintain a fair and safe trading environment and thereby protect the interests of consumers and businesses. The teams enforce a wide range of business and consumer protection legislation.

We carry out our duties in various ways including: inspection, sampling, test purchasing, testing, investigation and prosecution, but also by informing, advising and educating businesses and the public.

We recognise that prevention is better than cure and that most businesses and the public want to comply with the law. We endeavour to help these businesses and others meet their legal obligations without unnecessary expense. When a business or individual does break the law, we consider all the surrounding circumstances before deciding whether formal action is appropriate. A prosecution will only be brought if it is in the public interest to do so.

## Our Principles of Inspection & Enforcement

### Targeting

We aim to prioritise and direct our regulatory effort effectively using intelligence and relevant risk assessment schemes where appropriate.

Such risk assessments will have regard to all available, relevant and good-quality data. We will give due consideration of the combined effect of the potential impact and likelihood of non-compliance – this approach enables us to focus our resources on the areas that need them most and to ensure that persistent offenders are identified quickly.

### Proportionality

We ensure that enforcement action is proportionate to the risks involved, and that the sanctions applied are meaningful.

## **Accountability**

We are accountable for the efficiency and effectiveness of our activities.

## **Fairness and Consistency**

We treat the public and businesses fairly.

We aim to give positive feedback to businesses where it is due.

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

We have regard to the Attorney Generals Guidelines.

## **Openness and Transparency**

We are committed to the open provision of information and advice in a format that is accessible and easily understood.

We 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 but which are not compulsory.

Where businesses have acted against the law we may use publicity in order to raise awareness, to increase compliance and to improve monitoring of trade practices.

We may also publish the results of court proceedings and certain undertakings.

## **Supporting the local economy**

We recognise that a key element of our activity is to facilitate and encourage economic progress against a background of protection.

Wherever possible, we work in partnership with businesses, particularly small traders and with voluntary/community organisations, to assist them with meeting their legal obligations without unnecessary expense.

## **Reducing enforcement burdens**

If there is a shared enforcement role with other agencies, e.g. Customs & Immigration, Health & Safety Inspectorate or the Police, we consider co-ordinating with these agencies to minimise unnecessary overlaps or time delays and to maximise our overall effectiveness.

## **Compliance with the Home / Primary Authority Principle**

The Home / Primary Authority Principle means that Jersey based businesses, where they trade or provide services that impact beyond Jersey, are able to get advice and support from us on matters such as legal requirements, changes to the law and so forth. This usually takes the form of a non-statutory relationship.

In Jersey, we support the Home / Primary Authority Principle, which has been developed to promote good enforcement practice and reduce burdens on business. The primary objective is to create a partnership, which will provide positive benefits to both parties.

We therefore:

- provide businesses for whom we are the 'home authority' with appropriate guidance and advice
- maintain records of our contacts with 'home authority' businesses to reduce the amount of information they have to provide to us
- support efficient liaison between other UK authorities (off Island)
- provide a system for the resolution of problems and disputes

For further information on Home Authority relationships, please go to

[www.businesscompanion.info](http://www.businesscompanion.info)

## **Our Enforcement Actions**

In deciding what enforcement action to take against an offender we have regard to the following aims:

- to change the behaviour of the offender
- to eliminate any financial gain or benefit from non-compliance
- to be responsive and consider what is the most appropriate sanction for the particular offender and the regulatory issue concerned
- for the action to be proportionate to the nature of the offence and the harm/potential harm caused
- to restore the harm caused by regulatory non-compliance, where appropriate
- to deter future non-compliance

The range of enforcement options available to us include the following:

### **a. No action**

- In certain circumstances e.g. where the detrimental impact on the community is small, contravention of the law may not warrant any action.

### **b. Indirect action**

- including referral to another authority or agency for information or action.

### **c. Verbal/written advice or warning**

- where an alleged offence has been committed but is not thought appropriate to take any further action, in which case the suggested corrective action and a timescale will be given.

### **d. Statutory Notice**

- these are used as appropriate in accordance with relevant legislation (they usually require offenders to take specific action or to cease certain activities).

## **e. Seizure**

- Some legislation permits our Officers to seize goods and documents that may be required as evidence
- When we seize goods, we will give an appropriate receipt to the person from who they are taken
- On some occasions, we may ask the person to voluntarily surrender the goods.

## **f. Forfeiture**

- Some legislation allows us to apply to the court to seek forfeiture of goods, either in conjunction with a prosecution, or separately.

## **g. Undertakings**

The range of statutory and non-statutory actions may include the following:

- informal undertakings
- formal undertakings
- interim injunctions
- court orders
- contempt proceedings

## **h. Prosecution**

Where it is necessary to carry out a full investigation, the case will be progressed without undue delay. All investigations into alleged breaches of legislation are conducted in compliance with statutory powers and have regard to the

- Police and Criminal Evidence (Codes of Practice) (Jersey) Order 2004

As part of the investigation process, persons suspected of breaching legal requirements will, wherever possible,

- be formally interviewed in accordance with the Code
- be given the opportunity to demonstrate that a statutory defence is available (if provided for within the legislation)
- have the opportunity to give an explanation or make any additional comments about the alleged breach.

The alleged offence(s) will be fully investigated, a report compiled by the investigating officer and reviewed by the Head of Service. They will make a recommendation to the Group Director of Regulation who will then consider the case in light of guidance issued by the Attorney General, including whether or not the case should be submitted to the Minister for consideration and finally a decision and / or reported to the Attorney General.

We will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, including potential harm and loss and its significance in making the decision.

### **i. Proceeds of Crime Actions**

The purpose is to recover the financial benefit that the offender has obtained from his criminal conduct. Applications may be made under the Proceeds of Crime (Jersey) Law 1999.

Finally, we will continually review our position regarding the use of enforcement options and additional sanctions.

## **What You Can Expect of Us**

- In the case of calls that could involve a high risk to consumer safety we aim to respond within one working day.
- We respond to all requests for **consumer or public advice** within 3 working days of receiving your enquiry.
- **We are not able to investigate all complaints reported to us.** If we are able to investigate your complaint we will contact you for further information within 5 working days of receiving your complaint.
- We respond to requests for **business advice** within 3 working days. If your enquiry requires a detailed response this can take longer. If we are not able to resolve your enquiry within 20 working days we will contact you to advise of the date by which you can reasonably expect a response.

You are entitled to expect our staff to:

- be courteous and helpful
- identify themselves by name and produce identification if requested
- provide a contact point for any further dealings
- give clear and simple advice
- confirm advice in writing on request, explaining why action is required and over what time-scale
- clearly distinguish between what you must do to comply with the law and what is recommended as best practice
- minimise the cost of compliance by requiring proportionate action
- give you reasonable time to comply (unless immediate action is necessary in the interest of health, safety or to prevent evidence being lost)
- notify you if the matter is to be reported for legal proceedings
- advise you of the procedure for making a complaint or representations in cases of dispute
- maintain confidentiality (subject to exchange of information with our enforcement partners)

## Officers' Powers

Our Officers have a wide variety of powers which may include the power to enter premises, inspect and take samples, to require the production of books, documents or records and, when necessary, the power to seize and detain such goods, books and documents that they believe may be required as evidence.

Officers may also take with them such other persons and equipment as may be necessary when exercising powers of entry, where permitted within the legislation.

In certain cases, they may exercise an entry warrant issued by the Bailiff in order to gain access to premises.

If individuals or businesses obstruct Officers, they may be liable to prosecution.

## Legal Action

Before any legal action is taken there will be an opportunity to discuss the case, although if we are considering a prosecution it will be a formal interview under caution.

Where a right of appeal against a formal action exists other than through the courts, advice on the appeal mechanism will be clearly set out in writing at the time the action was taken.

## Contacting Us

### Our contact details:

By post:

Environmental Health and Trading Standards, PO Box 228, Jersey JE4 9SS

Phone: Environmental Health 445808 or Trading Standards 448160

e-mail: [environmentalhealth@gov.je](mailto:environmentalhealth@gov.je) or [tradingstandards@gov.je](mailto:tradingstandards@gov.je)

*As we are continually seeking to improve our standards, this policy is subject to regular review.*