



## Revision History

<b>Version</b>	<b>Status</b>	<b>Reason and Changes</b>	<b>Author</b>	<b>Date</b>
1	Final	Agreed Final Version	Bob Charnley	07/12/21
2	Final	Removed reference to LGA S222. Added para re DPA & retention	Bob Charnley	11/04/23
3	Draft	Amended para 8.5 Added Para 8.14 Hyperlinks checked	Bob Charnley	03/01/24

Table of Contents		
1	<a href="#">Introduction</a>	Page 3
2	<a href="#">Policy Scope</a>	Page 3
3	<a href="#">General Principles</a>	Page 4
4	<a href="#">Risk</a>	Page 4
5	<a href="#">Advice and Guidance</a>	Page 5
6	<a href="#">Inspection</a>	Page 6
7	<a href="#">Information Requirements</a>	Page 6

8

8.1  
8.2

8.3  
8.4  
8.5  
8.6  
8.7  
8.8  
8.9  
8.10  
8.11  
8.12  
8.13  
8.14

# Worcestershire

- [Regulation of Investigatory Powers Act 2000](#) and the [Codes of Practice made thereunder](#)
- [Criminal Procedures Investigations Act 1996](#) and the [Codes of Practice made thereunder](#)
- [The Police and Criminal Evidence Act 1984](#) and the [Codes of Practice made thereunder](#)

We will comply with any statutory requirement placed upon us and seek to align our procedures with best practice.

The Policy applies to all the legislation enforced by the Service and any enforcement action taken to ensure compliance. Enforcement action is defined as any action taken by officers aimed at ensuring that individuals or businesses comply with the law.

### **3. General Principles**

We will take all reasonable steps to ensure that a business complies with the law, including offering advice and assistance, and access to Home Authority and Primary Authority Schemes. Where compliance cannot be achieved, we will consider what formal action is necessary. Each case will be considered on its own merits. However, there are general principles that apply to the way each case must be approached. These are set out in this Policy.

Enforcement decisions will be fair, independent, 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. Such decisions will not be affected by improper or undue pressure from any source. 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, and its significance, in making the decision to take formal action.

This enforcement policy helps to promot

We will use appropriate risk assessment schemes to inform any inspection programme, but, where these do not exist, we will consult and involve businesses and other interested parties in designing any risk methodologies that are created within the Authority, and publish the details. In the absence of other factors, when determining risk, we will consider:

- Compliance history and potential future risks
- The existence of effective management systems
- Evidence of recognised external accreditation
- Management competence and willingness to comply

We will also use intelligence to direct inspection-based projects, targeting goods or businesses where there are known issues. A complaint may also trigger a visit if that is the most appropriate response. We will review our approach to regulatory activities from time to time, to remove any unnecessary burdens from businesses.

## **5. Advice and Guidance**

We will provide general information, advice, and guidance to make it easier for businesses to understand and meet their obligations. This will be provided in clear, concise and accessible language, using appropriate formats and media. Information will cover all legal requirements relating to our regulatory activities, as well as changes to legal requirements. Where changes are of great significance, we will look at the best ways of informing businesses of those changes including leaflets, letters, bespoke advice packs, newsletters, press releases. Such information will, where appropriate, be available on our website.

We will provide practical advice during inspections and other visits and promote self service via our website. We will try to maximise the accessibility and effectiveness of advice to ensure efficient use of resources and we will involve businesses in developing both the content and style of regulatory guidance to help ensure that it meets their needs.

When offering advice, we will clearly distinguish between effective and efficient use

trading standards or fire safety through a single point of contact. This ensures start-ups get it right at the outset and enables all businesses to invest with confidence in products, practices, and procedures, knowing that the resources they devote to compliance are well spent.

We will publish our approach to business advice and engage with

- 2024

We will ensure that clear reasons for any formal enforcement action are given to the person or entity at the time the action is taken. These reasons will be confirmed in writing at the earliest opportunity. Complaints and relevant appeals procedures for redress will also be explained at the same time.

### **8.1 Covert Surveillance**

The Regulation of Investigatory Powers Act 2000 and Investigatory Powers Act 2016 provide a framework for certain public bodies, including local authorities, to use "covert surveillance" to gather information about individuals without their knowledge and to access Communications Data, for the purposes of undertaking statutory functions in connection with the prevention or detection of crime.

Communications data in communication but not the content i.e., what was said or written.

Covert surveillance pursuant to the Regulation of Investigatory Powers Act 2000 is used very infrequently in cases where it is important to obtain information to support potential criminal proceedings.

No officer may seek the acquisition of any form of communication data or conduct covert surveillance unless he is authorised to do and only where that information cannot be obtained by any other means.

Regulation of Investigatory Powers Act 2000 activity and authorisations are governed by [Codes of Practice and Guidance](#) and the [Investigatory Powers Commissioner's Office](#).

How the authority monitors the use of these powers can be found in the [corporate policy](#).

### **8.2 Deciding what enforcement action is appropriate**

In assessing what enforcement action is necessary and proportionate, consideration will be given to:

- The seriousness of compliance failure.
- The current practice.
- The risks being controlled.
- Legal, official, or professional guidance.

There are many potential enforcement options. The level of the action taken varies from no action through to proceedings in Court. Examples of the main types of action that can be considered are shown below:

- No action.
- Informal Action and Advice.
- Fixed penalty Notice.
- Statutory Notice.



- Seizure of goods/equipment.
- Injunctive Actions.
- Refusal/revocation of a licence.
- Simple Caution.
- Prosecution.

### **8.3 No Action**

There will be circumstances where a contravention may not warrant action, or it may be inappropriate. Many minor contraventions can be dealt with via advice and/ or assistance.

### **8.4 Informal Action and Advice**

For minor breaches of the law we will give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable and take into account the seriousness of the contravention and the implications of the non-compliance. Where the advice required is detailed, or t

way of a Fixed Penalty Notice (FPN), we may choose to administer a FPN on a first occasion, without issuing a warning. They will be used in appropriate circumstances to give a fast and measured response to the situation.

### **8.7 Tobacco Restriction Orders**

Where an offender persistently breaks the law by selling tobacco products to young people, we may make a complaint to the court and apply for a restricted premises order or a restricted sale order. The effect of such an order is to prohibit a premise or a person from selling tobacco for a period up to one year.

### **8.8 Tenant Fees Act 2019**

The TFA 2019 prohibits the charging of fees in respect of a tenancy other than those which are specifically permitted.

The TFA 2019 provides that enforcement authorities may impose financial penalties of up to £30,000 depending on the breach as follows:

- In respect of Prohibited Payments under Sections 1 & 2 of the TFA 2019 a financial penalty not exceeding £5,000 for a first breach.
- Under section 12 of the TFA 2019 a second or subsequent breach within 5 years of the previous breach provides for a financial penalty not exceeding £30,000 and there is power to prosecute in the Magistrates Court where an unlimited fine may be imposed.

View the [full Government guidance](#).

More about how we will apply the Tenant Fees Act can be found in Policy and process for the legislation.

### **8.9 Instigation of Legal Proceedings**

Once an officer has completed his/ her enquiries, they will submit a case report to a senior officer who is independent of the investigation, the case will also be reviewed by Legal Services officer advocate. Both reviews will consider the two-stage test set out in the Crown Prosecution Service Code for Crown Prosecutors (as amended). The evidential test, if the case does not pass the evidential test, it must not go ahead, and the public interest test.

We will also take into account the views of any victim, Primary Authority, injured party or relevant person, to establish the nature and extent of any harm or loss, including potential harm and loss.

Before any legal action is taken, there will be an opportunity to discuss the case, although if we are considering a prosecution, it will usually be discussed as part of a formal PACE



Where the Service fails to gain written undertakings from the trader, or where such undertakings are breached, action to obtain an enforcement order through the civil courts will be considered, using a process similar to that described above for other formal actions.

### **8.13 Anti Social Behaviour**

Many of the provisions in the Anti-social Behaviour and Policing Act 2014 are not available to County Councils, however, where investigation reveals behaviour or activity that may be best addressed using the provisions of this legislation, the service will liaise with the relevant partner, be this the Police or relevant district council.

### **8.14 Disclosure of Evidence to HMRC**

The amendments to the Tobacco Products (Traceability and Security Features) Regulations 2019 were effective from 20 July 2023, giving officers of the local weights and measures authority the power to examine tobacco products for compliance with Reg.6(1). Where such product is found not to comply with Reg.6(1), those findings can be disclosed, by virtue of Reg.24(A)(2), to the Commissioners of Revenue and Customs ( HMRC ).

HMRC can then use the information referred by Trading Standards to apply the sanctions available under the legislation. Without this, many businesses would go unsanctioned. It also further enables HMRC to share with local Trading Standards services, information regarding those businesses that receive sanctions, to inform subsequent local enforcement activity.

## **9.0 Additional Information**

The Senior Managers involved in making the more serious decisions will also have regard to legal advice from the Head of Legal Services. Once the Service reaches a decision to prosecute, or to instigate civil proceedings, the Legal Services Department must authorise the action before implementation.

### **9.1 Standards and Accountability**

We will, in consultation with businesses and other interested parties, set and publish clear standards and targets for our service and performance. These will include:

- Regulatory outcomes (e.g., proportions of businesses that comply,

We will create effective consultation and feedback opportunities to ensure we have continuing cooperative relationships with businesses and other interested parties. We will ensure our officers provide courteous and efficient services to businesses. We will enable them to interpret and apply relevant legal requirements and ensure that they enforce requirements fairly and consistently between like-businesses in similar situations. We will take account of comments from businesses and other interested parties regarding the behaviour and activity of our staff.

## **9.2 Liaison with other regulatory bodies and enforcement agencies**

Where appropriate, enforcement activities within the Trading Standards Service will be coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.

Where an enforcement matter affects a wide geographical area beyond the County boundaries or involves enforcement by one or more other local authorities or organisations; where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.

The Trading Standards Service will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, and examples include:

- Government Agencies
- Police Forces
- Fire Authorities
- Other Statutory Bodies
- Local Aut

Anyone requiring further information on this policy should contact the Trading Standards Service by writing to:

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