

### Trading standards: powers, enforcement and penalties

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#### This guidance is for Scotland

People working for trading standards services are employees of your local authority (council) and are authorised to carry out their functions to enforce trading standards laws. Job titles and qualifications vary between different local authorities and between different functions, but for the purposes of this guide they are referred to as trading standards officers, or TSOs.

Trading standards services enforce the law across a range of subject areas, including:

- age restricted products
- agriculture
- animal health and welfare
- fair trading, which includes:
  - pricing
  - descriptions of goods, digital content and services
  - terms and conditions
- petrol and fireworks storage
- intellectual property (for example, counterfeiting)

- product safety
- weights and measures

## **Why are they visiting me?**

Trading standards services visit business premises for a number of reasons, but the underlying purpose of a visit is generally to check and ensure that the business is complying with the law as well as to address or investigate any non-compliance. Trading standards services follow an intelligence-led approach, where the decisions about enforcement activities are informed by the analysis of information from many sources, including complaints and a business's previous history. Trading standards officers can also carry out inspections of premises on a routine basis - for example, in accordance with an annual programme of inspections.

## **What powers do they have?**

In most cases, TSOs have powers under Schedule 5 to the Consumer Rights Act 2015. Depending on the legislation they are enforcing, they may have additional powers or powers that are slightly different. A TSO's main powers include the power to enter premises, powers of inspection and powers to secure or seize material that might be required in evidence:

- a TSO can at any reasonable time enter premises to observe the carrying on of a business, to inspect goods or documents, to test weighing or measuring equipment, or to make a test purchase. Refusal of entry could be viewed as obstructing an officer, which is a criminal offence
- a TSO can enter your home, or any other premises used solely or mainly as a dwelling, but only with a warrant issued by a court. A TSO can also obtain a warrant to enter any premises by force if necessary, and this might be done, for example, where it is expected that entry will be refused or obstructed
- if the entry is for a routine inspection then the TSO must give you two days' written notice of the inspection before entering your premises. However, notice is not needed if:
  - you have waived the need for it to be given to you
  - the TSO has reasonable suspicion that you have broken the law
  - giving notice would defeat the purpose of the visit
  - it is not practicable to give you notice (for example, there is an imminent risk to public health or safety)
  - the entry is for the purposes of market surveillance activities under certain European safety legislation
- where a breach of trading standards law is suspected, a TSO can seize goods and documents

## **How will I know that they are genuine?**

Genuine TSOs will always carry photographic identification, which will usually show their name, department and the local authority they work for. If you have any doubts then call your local authority right away.

## **Can they close businesses down?**

No. Trading standards services have no direct powers to order you to stop trading. However, they can apply to the courts for orders, which may restrict your activities.

# What can trading standards services do to stop businesses that break the law?

There are a wide range of options available, although the precise options vary depending on the nature of the breach of trading standards law.

In most cases, businesses are keen to comply with the law and to avoid the risks and expenses of formal enforcement action. Many breaches of trading standards law are resolved through advice and agreed remedial actions by the business (which might include changing products, systems, labelling or advertising and/or arranging redress for customers who have been affected by a breach).

However, trading standards services always have formal enforcement options available to them. The decision to take formal action lies with the local authority, but it is likely that formal action will be taken in cases where there is a serious breach (in terms of the detriment to customers or to other businesses through unfair competitive advantage) or where the business has failed to respond to or engage with informal attempts to secure compliance.

## Formal enforcement & penalties

Each trading standards service has an enforcement policy, which explains how they seek to ensure that the action they take is fair and proportionate. This can be requested from your local authority.

The main formal enforcement options include the following.

### Prosecution

Many breaches of trading standards law are criminal offences and can be prosecuted in the Sheriff Court. A successful prosecution may have a range of consequences, including the following:

- the trader will have a criminal record
- a punishment or sentence. Trading standards offences can usually be punished with a fine. For the most serious cases imprisonment is an option, with maximum periods of up to two years for some trading standards offences. Where a business is prosecuted for offences under intellectual property law (trade marks and copyright), maximum penalties can be very high indeed (up to ten years' imprisonment)
- an order to pay compensation to victims
- disqualification as a company director (where the offence was connected with a company) or from driving (where there is a good reason - for example, where the offence included bad driving or was facilitated by the use of a vehicle)
- confiscation of assets and money under proceeds-of-crime legislation
- forfeiture of any illegal or infringing goods and any equipment used in committing the offence

### Written warning

This is a formal warning, which may be issued as an alternative to prosecution, where it is in the public interest to do so.

There is no obligation on trading standards services to issue a written warning, but it might be issued for relatively minor first-time offending.

## **Enforcement orders**

For a range of breaches, trading standards services can apply to the Court of Session or the Sheriff Court for an enforcement order requiring the business to comply with the law. This may include the following consequences:

- the order itself. A breach of the order is contempt of court, which carries a maximum penalty of a fine and two years' imprisonment
- an order to take 'enhanced consumer measures', including changes to business processes and paying compensation to victims
- a requirement to publicise the order

## **Undertaking**

This is a formal promise by the business to comply with the law and, where appropriate, to take enhanced consumer measures.

There is no obligation on trading standards services to accept an undertaking, but it may be accepted if the business genuinely appears to be committed to making amends.

## **Compliance notices**

In some cases, trading standards services can issue a notice requiring the business to take action or to stop doing something, without the need to apply to court for an order. These notices have different names and different conditions depending on the law they are made under.

In general there will be a deadline to comply with the notice. If a business fails to comply with a notice, this can lead to court action; if the business disagrees with the use of the notice, it usually has the opportunity to apply to the court or a tribunal to appeal against it.

Compliance notices are available under a range of laws, including product safety, weights and measures, and fair trading.

## **Administrative penalties**

In some cases, trading standards services can issue a penalty notice, in effect imposing a fine directly on a business without the need for court proceedings.

Such notices are available under a range of legislation, including laws relating to underage sales of tobacco and nicotine vapour products.

The business can usually appeal to the court or a tribunal against the use of such a notice or against the

level of penalty imposed.

## **Can trading standards services intervene to get redress for a consumer?**

Trading standards services cannot order redress for individual consumers or take court action on their behalf, although they may offer advice and assistance to consumers making their own claims in court or through an alternative dispute resolution service (see 'Alternative dispute resolution').

However, in the event of prosecution or an application for an enforcement order, trading standards services can ask for a court order requiring compensation to be paid.

## **Aren't trading standards services just there to protect consumers rather than businesses?**

No. Although most trading standards law is intended to protect consumers, breaches of trading standards law put honest, reputable, compliant businesses at a disadvantage. In addition, trading standards services enforce legislation that protects businesses (such as the Business Protection from Misleading Marketing Regulations 2008, covered in the 'Business-to-business marketing' guide) and give advice to businesses.

Local authorities have a statutory duty to have regard to the desirability of promoting economic growth in their area, and trading standards services are therefore keen to promote successful, compliant business.

## **Primary Authority**

Primary Authority is a scheme run by local authorities to offer advice to businesses. For more information see 'Primary Authority'.

## **Further information**

The Department for Business, Energy and Industrial Strategy (BEIS, which was known as the Department of Business, Innovation and Skills at the time) has produced detailed guidance on how the Consumer Rights Act 2015 affects trading standards officers' powers: *Investigatory Powers of Consumer Law Enforcers: Guidance for Businesses on the Consumer Rights Act 2015*.

BEIS has also published guidance on the 'enhanced consumer measures' brought in by the Consumer Rights Act 2015: *Enhanced Consumer Measures: Guidance for Enforcers of Consumer Law*. As the document's title suggests, it is primarily aimed at TSOs but it may also be of interest to businesses in their dealings with trading standards services.

## **Key legislation**

Consumer Rights Act 2015

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## Please note

This information is intended for guidance; only the courts can give an authoritative interpretation of the law.

The guide's 'Key legislation' links may only show the original version of the legislation, although some amending legislation is linked to separately where it is directly related to the content of a guide. Information on amendments to legislation can be found on each link's 'More Resources' tab.

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