

JOINT COMMITTEE

Date 25th June 2015

Home Office Code of Practice on the Exercise of Powers of entry

Recommendation

It is recommended that the Joint Committee:

- 1.1 Agree to the adoption of the policy document attached at Appendix 1, which provides an operating framework for the use of statutory powers of entry and related powers by the officers of WRS, acting on behalf of its seven partners;
- 1.2 Consider recommending that partners adopt a similar approach for their retained regulatory service elements to ensure consistency of operation in all regulatory fields across the authorities in Worcestershire and to support joint operational working when it takes place.

Contribution to Priorities/ Recommendations

Exercising powers of entry is at the heart of all enforcement work and therefore vital to the functioning of the regulatory service. A Code of Practice governing the use of these powers was introduced by the Home Office under the Protection of Freedoms Act 2012. Local authorities need to provide a framework for their officers to operate within, to ensure that powers of entry and associated powers are deployed in the correct manner. The attached policy document provides such a framework.

Introduction/Summary Background

This report presents and proposes for adoption by the Joint Committee, a framework policy for the exercise by WRS officers of powers of entry and associated statutory powers, not subject to other codes. The Code also applies where legislation is silent on particular matters or where relevant legislation provides fewer safeguards than those provided in it.

Report

On 6 April 2015, a code of practice issued by the Home Office under section 48 of the Protection of Freedoms Act

2012 came into force. The code provides guidance and sets out considerations that apply before, during and after powers of entry and associated powers are exercised by a range of bodies including local authorities.

The purpose of the Code is to ensure “greater consistency in the exercise of powers of entry and greater clarity for those affected by them while upholding effective enforcement.”

The Code does not override already existing statutory codes e.g. PACE codes, Food Standards Agency codes, but it does have effect where no existing code covering the exercise of powers exists..

Paragraph 6.3 of the code states:

“There should also be a proper process of approval for the exercise of powers of entry, whether for specific visits or for programmes of visits. If an approval process is laid out in legislation, this should be followed, otherwise organisations should ensure that an approval process is in place for the exercise of powers of entry. Where routine inspections or visits for large scale operations are involved, processes should be agreed and approval granted by a senior official or manager (this should be someone sufficiently senior in the chain of command who is authorised to approve the exercise of powers). It is not necessary for every individual visit to be separately approved.”

Much of legislation enforced by WRS is silent as to the approval of the use of powers of entry. Given that the code indicates that not every individual visit needs to be approved, it is suggested that approval of service plans and team plans by managers, can fulfil the requirements of the code. The detailed team plans that sit below the service plan outline all of the proposed activities for the year and it is therefore possible for managers to give consideration to the use of powers at this stage and record the decisions that are made.

Two major changes in practice contained in the code are:

- The giving of notice prior to routine inspection where this would not frustrate the purpose of the visit; and
- The requirement to seek the consent of the occupier/ owner where this is practicable, unless this would frustrate the purpose of the visit (where consent is informed consent)

Whilst WRS officers do make appointments to visit premises where appropriate, the majority of inspection visits are unannounced. Food law provisions are governed by another statutory code and the EU Directive on food law



enforcement requires unannounced inspection as part of the control regime. WRS officers will continue to use this approach for district council food hygiene purposes or county council food standards purposes. However, the requirements of the code may make visits for multiple functions (e.g. Food Hygiene/ Health and Safety, or Food Standards and Weights and Measures) more problematic.

The Code outlines the way in which officers should conduct themselves whilst exercising powers. The requirements are no more than we would expect from an officer behaving in a way that meets our own code of professional conduct.

Generally, where a visit is undertaken with the consent of the occupier and no issues of significance are identified, a note of the legislation used and the power exercised should be recorded.

However, where a visit results in the identification of a more significant issue, which may result in some form of enforcement action, the code requires the officer exercising the power to ensure that the following is recorded:

- The statutory provision under which the power was exercised;
- The approval process that allowed for the exercise of the power of entry;
- Whether the power was exercised with or without a warrant;
- Whether the occupier granted consent and what attempts were made to obtain consent;
- The date time and duration that the powers were exercised;
- The address of the premise;
- Names of officers involved in exercising powers
- Names of other persons present (if known);
- Any grounds for the refusal of any requests made by an occupier;
- A list of any items seized and, if not covered by a warrant, the grounds for seizure;
- Whether reasonable force was used and, if so, why;
- Details of any damage caused and the circumstances for this;
- Details, where known, of premises crossed to gain access to other premise

There are further requirements for recording where the exercise of a power is done under a magistrates' warrant.

The code suggests that all of this information should be available in the form of a register which presumably would be subject to the provisions of the Freedom of Information Act. Given the level of activity of lobbying organisations in relation to the protection of freedoms agenda, it would seem sensible to try to use an IT based solution to ensure that, once recorded,

this information can be easily extracted in response to the likely arrival of information requests.

This code of practice applies more widely than the regulatory functions delivered by WRS. It will impact on all local authority enforcement functions where there is no existing code for officers to follow. Given the desire for consistency of conduct by regulators from businesses and the fact that WRS staff often work on joint operations with officers from partner authorities in other regulatory teams, it would seem sensible for the Joint Committee to recommend that, within their retained regulatory functions, partners take a similar approach to the one recommended.

Financial Implications

There are unlikely to be direct monetary implications from the Code, however, the additional data recording and the additional processes are an additional burden which the service will have to deal with.

Sustainability

NA

Contact Points

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Background Papers

Home Office Code
Proposed WRS policy and process document

