

Worcestershire Regulatory Services

Policy on the exercise of statutory powers of entry and associated powers

1. Background

In April 2015, the Secretary of State at the Home Office introduced a Code of Practice [“The Code”] under Sections 47 and 48 of the Protection of Freedoms Act 2012.

Section 47 of the Act requires this Code to be one, ‘containing guidance about the exercise of powers of entry and associated powers’. Section 51 of the Act states that a ‘relevant person’ must have regard to the Code. Authorised officers of Worcestershire Regulatory Service [“WRS”], no matter what activities they undertake on behalf of partners, are “relevant persons” for the purposes of the Act in relation to legislation for which they have enforcement responsibilities.

The Code states that local authorities should ensure that all relevant persons are familiar with its contents. The Code is admissible in respect of both criminal and civil proceedings and failure to adhere to its requirements may be taken into account in any such proceedings.

2. Aim of this policy and its relationship with the Service’s Enforcement Policy

The aim of this policy document is to:

- outline the approach that WRS will take in managing the exercise statutory powers of entry and associated powers, on behalf of its partners and customers (where contracts require WRS to operate within its own policy frameworks as opposed to those of the customer);
- ensure that officers at all levels of the service will be clear where the responsibility rests for making decisions around the exercise of these powers;
- clarify the recording requirements of the Code; and
- who will be responsible for monitoring and oversight of the decision making process.

The Code states that each use of powers does not need to be subject to a defined decision making process. This policy document will help officers to identify where they can continue to operate as previously using their authorised officer and delegated powers at their own discretion, and where their use should be subject to further scrutiny before deployment.

This policy does not supersede the Enforcement Policy but sits alongside it, supporting and helping to detail the use of powers in certain circumstances within this wider policy framework.

3. General Requirements of the Code

Where an operation, project, investigation or similar activity requires the exercise of statutory powers, the Code requires a proper process of approval for the exercise of powers, whether for specific visits or for programmes of visits and, for large scale operations, that this be granted by a senior officer

Within WRS, where proactive activities are developed for the purposes of the service's annual plan, the exercise of statutory powers will be identified in the individual project plan for that element of the service plan. As part of the planning process, officers and senior practitioners will give consideration to:

- Whether or not the exercise of powers is caught by the Code, and, if not, whether the provisions of the Code may be appropriately applied. For example, The EC Directive governing the inspection of premises for Food Hygiene purposes requires unannounced inspection therefore the use of certain of the provisions within the Code would be inappropriate.
- Where the exercise of powers is caught, officers and senior practitioners will consider whether or not the necessary objectives can be met by less intrusive means without the exercise of statutory powers
- This consideration and its outcome should be recorded within the project plan for each activity.

All project plans will be signed off by the Team Manager before the activity is undertaken. The service plan is reviewed by the Management Team and Head of Service on a regular basis and, from time to time, the Head of Service may review the explanation for the use of powers within any project plan.

Where the exercise of statutory powers may be necessary in relation to a reactive piece of work i.e. a service request or consumer complaint, the officer allocated the piece of work, along with their senior practitioner, will consider the appropriateness of exercising powers in relation to the matter in hand, and will only take appropriate and proportionate action.

For larger scale operations and investigations, an operational order or an investigation plan will be created, which identifies what action will be taken including the exercise of powers. These will be overseen by Senior Practitioners and reviewed by Team Managers in order to ensure the use of powers remains both necessary and proportionate during the process.

The exercise of powers will be done in a manner which is impartial and fair at all times, causes as little disruption to legitimate business operations and complies with any restrictions e.g. legally privileged material. Officers must notify their manager immediately if any situation arises which might be perceived as a conflict of interest.

4. Application of the Code Pre, During and Post Routine Visit Requirements

Where a routine visit (i.e. one where there is no established suspicion of non-compliance being present) is to be made using powers of entry that do not fall within the exemption section of this policy, and, where it is appropriate and practical to do so, reasonable notice (usually not less than 48 hours) will be provided to the occupier or landowner. Notice will, where practicable, be given in writing, which will include email. Where giving such notice would frustrate the purpose of the visit or where it is not practicable to do so, officers will still visit unannounced.

Where the Code applies, reasonable efforts will be made to try and carry out any routine visit or proactive inspection by consent, unless this would frustrate the purpose of the exercise, e.g. by causing undue delay. Attempts to gain consent and the response (or lack of one) to such approaches will be recorded.

Officers will do their best to ensure that consent is informed such that the occupier of a premise understands:

- : The purpose of the visit;
- What their powers of entry and associated powers are;
- How these powers will be used;

A notice of powers and rights relevant to the visit in question that complies with the provisions of the Code will be issued to a business at the beginning of the visit and officers will explain the nature of any relevant provisions.

Visits will be undertaken at reasonable hours, this being by reference to working hours of the business concerned. During such visits, only reasonable and proportionate numbers of personnel will be present sufficient to undertake any activity associated with the visit in an efficient, timely and cost effective manner.

Officers will produce their identification at the commencement of a visit so that the person can be certain who they are dealing with. Where any requirement for assistance from any occupier of a premise is required, this will be clearly explained in terms of what is required, why it is required and what sanctions may apply for non-compliance.

Where goods or documents are seized in accordance with powers exercised under this Code (rather than one such as PACE Code B,) the occupier will be provided with the following information:

- Details of the items seized;
- Procedures relating to the retention of property;
- Any appeal rights;
- How long items may be held until they are returned (although counterfeit, illegal or hazardous items may be destroyed);
- Any compensation procedures;

Seized items will be held securely and safely and reviewed within a reasonable amount of time to ensure their evidential value. Any items of no evidential value or not required for other reasons as part of the legal process will be returned to the occupier as soon after their review as is reasonably practicable.

Where a person is, for whatever reason, unhappy with the actual use or the manner of use of statutory powers, the officer exercising the powers will provide them with a copy of the service's complaints procedure, which explains in straightforward language, how to make a complaint. It will also include details of how a copy of the Code can be obtained

5. Visits to private dwellings

Where a visit is to a private dwelling, this will only be undertaken with informed consent unless a warrant has been obtained under judicial authorisation, or a warrant issued by a duty Inspector under the provisions of PACE. The timing of visits to private dwellings will be agreed with the occupier except where entry is made under one of the forms of warrant described above.

6. Exceptions

This policy document does not apply to entry to premises for purposes, and in circumstances, which are subject to a separate statutory Code of Practice, for example:

- Police and Criminal Evidence Act 1984 Code B
- Food Law (Code of Practice) England made under the Food Safety Act 1990

Also, where a UK legislative provision is derived from an EU provision requiring unannounced proactive visit processes as part of the control mechanism, WRS will continue

to use this method as part of its control strategy for these provisions. Other provisions of the policy may be followed to allow ease and consistency of recording.

There will be circumstances where the initial exercise of powers could be subject to the Code, but may later become subject to another Code of Practice, for example, if offending is identified, at which point the requirements of this Code will cease to have effect.

e.g. An officer is exercising a routine power of entry for inspection purposes in accordance with product safety legislation. During the course of that visit suspicion of an offence is formed and the purpose of the visit changes to one of gathering evidence.

At that point, this policy document will cease to be relevant and actions would follow the normal provisions of the Service's Enforcement Policy and any relevant provisions of PACE Codes.

7. Records of the use of powers

Where a visit is undertaken with the consent of the occupier and no issues of significance are identified, as part of the recording process for this activity, a note of the legislation used and the power exercised should be made.

Where a visit results in the identification of a more significant issue then the officer exercising the power will 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

Where a warrant is executed, the officer in charge will ensure that the following information is recorded:

- Name of the justice of the peace or judge;
- Advice provided to the occupier about consequences of any obstruction;
- Information about any obstructive conduct by an occupier;
- Date and time the warrant was executed;
- Name of occupier or person in charge of the premises;
- Names of authorised persons executing the warrant and anyone accompanying them;
- Whether a copy of the warrant and a notice of powers and rights was handed to the occupier, or left at the premises and where;
- Whether any articles specified in the warrant were sought and their location;
- Whether any other articles were seized

These records will be kept in such a manner that they can be retrieved if required without undue activity difficulty or cost being incurred, for example if they were requested as part of a Freedom of Information Act request.