

Environmental Health Service

ENFORCEMENT POLICY

Version: 1.0 **Issue Date:** November 2015 **Amendments:** (date)

1. INTRODUCTION

- 1.1 This policy provides guidance for officers involved in the enforcement of environmental health law, and informs businesses, individuals and customers of the enforcement approach of the service.
- 1.2 The policy applies to all officers of Aberdeenshire Council's Environmental Health Service in the execution of their duties.
- 1.3 It incorporates the better regulation principles of transparency, accountability, proportionality, consistency and targeted action required by the Regulatory Reform Act 2006 and takes account of the Scottish Regulators' Strategic Code of Practice, the Regulators' Code, the Feed Law Code of Practice and the National Local Authority Enforcement Code.
- 1.4 The policy is supported by our Team and topic-specific service plans, and inspections and interventions procedures, which provides more detail on how interventions will be conducted.
- 1.5 The policy has been approved by the Council and is published on the Aberdeenshire Council website. Copies can be obtained by contacting the Environmental Health Service, Gordon House, Blackhall Road, Inverurie AB51 3WA.

2. OUR AIMS

- 2.1 The primary function of the service is to improve, protect and maintain the safety of the public. To achieve this we will:
 - provide advice and support to those businesses and individuals who seek to comply with legislation,
 - seek to build effective working relationships with those we regulate, understand their regulatory challenges and encourage communication and appropriate dialogue

- recognise the benefits that successful and compliant businesses bring to our communities, and carry out our duties in a way that assists businesses comply and grow sustainably.
- be aware of wider community and business interests and give these factors due consideration in the decision making process without compromising the protection of the public
- ensure our interventions are targeted according to risk and on the basis of available intelligence and so minimise unnecessary burdens on compliant businesses.
- carry out proportionate and consistent enforcement where justified.

2.2 The purpose of the policy is:-

- To ensure that the statutory enforcement duties of the council undertaken by the Environmental Health Service are fulfilled.
- To ensure comprehensive and consistent enforcement of legislation and to ensure officers are aware of their responsibilities.
- To ensure the promotion of education and training for those working in areas where legislation is enforced by the council.
- To ensure cooperation with all other public agencies.

3. **OUR APPROACH TO COMPLIANCE AND ENFORCEMENT**

- 3.1 Our first objective is to help prevent non compliances arising. We will provide advice and guidance to businesses and individuals through a variety of means, including the provision of advice leaflets and signposting to internet information but we encourage direct contact from businesses at an early stage so that advice provided takes account of their specific circumstances.
- 3.2 We will ensure compliance through appropriate, proportionate action. There will be occasions where immediate formal action will be required but in general we will seek to achieve compliance through escalating action as appropriate. It is however, the clear responsibility of business operators to be informed on environmental health legislation and to ensure compliance with it.
- 3.3 Although the local authority has an advising and enforcement role, the primary responsibility to ensure compliance with legislation rests with the business owner/operator or individual undertaking an activity.

4. **TRANSPARENCY**

- 4.1 The Environmental Health Team Plan contains details of our priorities and actions. Information on our operational activities, performance indicators and customer satisfaction data for the previous year will be published on an annual basis on our website. It is our aim to work with businesses in an open, transparent and positive manner.

- 4.2 Enforcement officers are authorised to carry out their duties commensurate with their job role and qualifications. These include powers to do the following:
- enter premises at all reasonable hours
 - require the production of information
 - inspect goods and documents
 - purchase any goods
 - seize and detain any goods and documents, when an offence is reasonably suspected
 - issue formal Notices in certain circumstances

4.3 The powers are provided by statute and officers are authorised through the Council's scheme of delegation.

5. **TARGETING**

5.1 Routine inspection programmes are undertaken in respect of food safety and health and safety. The service bases its routine inspection programmes on:-

Health and safety: The service undertakes a priority based Preventative Inspection Programme of Premises in terms of the HSWA 1974 in accordance with the HSE/Local Authority Enforcement Liaison Committee (HELA) Circular 67/2 (Version 4.1). National Local Authority Enforcement Code introduced under section 10 of HSWA.

Food Safety: The Service undertakes a risk based planned intervention programme in respect of food hygiene, and food standards, in terms of the Food Hygiene(Scotland) Regulations 2006, and in accordance with the Food Law Code of Practice.

5.2 In addition to planned general inspections, officers carry out other visits in connection with:

- food safety alerts and reported incidents
- complaints and other intelligence
- special surveys
- referrals from other agencies
- special requests from business
- accidents and dangerous occurrences
- communicable disease outbreaks
- national initiatives
- provision of advice

5.3 We target our resources at our priority areas, these being developed from complaints and intelligence data and taking into account national priorities where appropriate.

6. **PROPORTIONALITY**

- 6.1 To achieve compliance, enforcement action will be proportionate to the risks and the seriousness of any breach. As far as the law allows, due account will be taken of all the circumstances of the case, including the size and capacity of the business, and the attitude of the operator.
- 6.2 In general we will take an 'escalating' approach, with informal means used initially wherever possible to resolve problems and secure compliance. However there will be occasions when immediate formal action is required.
- 6.3 Informal enforcement action includes verbal and written advice, and written warnings which warn that further contraventions could result in formal enforcement action.
- 6.4 Formal enforcement action includes statutory notices (including suspension notices, prohibition notices and improvement notices), fixed penalty notices and penalty charge notices, formal undertakings and applications and reports to the Procurator Fiscal. Detailed information is available within Food, H&S and AH&W Service Plan and procedures
- 6.5 The decision to embark on formal action and the type of action taken will take account of the following:
- seriousness of the breach and its impact on the health, safety and well-being of the public at large,
 - the means of remedying the contravention and the likelihood of it happening again
 - previous history of compliance and attitude of the operator, including steps taken or which they failed to take to prevent the breach and the extent to which they have cooperated with regulators and heeded advice in the past
 - confidence in the operator's management and quality assurance systems
 - the need to deter future breaches
- 6.6 We will tell businesses, in writing, why enforcement action is being taken against them. The letter or notice will clearly identify the contraventions, the actions necessary to rectify the situation and will ensure that legal requirements are clearly distinguished from best practice advice or recommendations.
- 6.7 The Service provides general and specific advice to ensure businesses are aware of their responsibilities and on how they can comply with legislative requirements.

7. **CONSISTENCY**

- 7.1 It is important that a consistent approach is taken to similar problems. We support the Home Authority and Primary Authority Schemes, which are designed to promote uniformity, reduce duplication and assist enterprises to comply with the law.
- 7.2 Officers will also have due regard to instruction, guidance and advice on policy and operational matters issued by such bodies as the Health and Safety Executive, Food Standards Scotland, and SEPA.

- 7.3 We actively participate in the work of local, regional, Scotland and UK co-ordination and liaison groups.
- 7.4 Officers have authorisations pertinent to their qualifications and job title. Officers undergo an annual appraisal process to identify and address training needs. Internal and external training is provided to ensure officers maintain their competency. Training of officers is kept under constant review. Cognisance is taken of the Regulatory Development Needs Analysis Process in determining training needs.
- 7.5 Formal enforcement action is closely monitored by line managers. Where a prosecution report is contemplated, this is conducted in accordance with the Food Law Enforcement Policy and procedure, developed, implemented and reviewed in accordance with the Food Standards Scotland Framework Agreement.
- 7.6 The Service has topic based focus groups where enforcement issues can be raised. The Service also participates in regional and national liaison groups.

8. **ACCOUNTABILITY**

- 8.1 All staff are bound by the Aberdeenshire Council Equality Policy which prevents discrimination and promotes acceptable standards of behaviour.
- 8.2 Businesses and individuals can expect:
- to be shown all due courtesy
 - to be informed of the purpose of the visit
 - to be shown identification
 - to be given guidance on the law
 - to receive feedback on their compliance level
 - to be given advice on action necessary to remedy points of non-compliance
 - to be given reasonable time to take remedial action
 - to be told of procedures for appealing against any enforcement action
 - to have commercially sensitive information kept confidential
- 8.3 We will seek feedback directly or via surveys on the way we go about our work on a regular basis and review our processes and procedures in light of this information. This information, along with results of our performance measures will be published in our Team Plan.
- 8.4 We will give businesses information on how they can formally appeal a regulatory decision where such a right exists or otherwise ask for a review of a regulatory decision where no statutory right of appeal exists.

9. **MONITORING AND REVIEW**

- 9.1 Team Managers will continually review the actions of enforcement officers to ensure compliance with the policy. Any deviation and the reasons for this will be recorded and reported to the Environmental Health Manager.

9.2 The Enforcement Policy will be reviewed annually by the EH Management Team, and if and when new legislation is introduced.

10. COMMENTS AND COMPLAINTS

10.1 Businesses and individuals who feel we have failed to comply with this policy or who are dissatisfied with any action we have taken can raise the matter with the officer concerned or their line manager. If this does not resolve the matter a formal complaint may be lodged using the Council's complaints procedure Have Your Say. Details are contained on the Council website at <http://www.aberdeenshire.gov.uk/haveyoursay/>.

10.2 We welcome feedback and anyone wishing to comment on this document or the environmental health service as a whole, can contact us by the following methods:

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| By post or in person: | Environmental Health Service Gordon House Blackhall Road Inverurie AB51 3WA |
| By telephone: | 01467 628153 |
| By email: | environmental@aberdeenshire.gov.uk |
| Website: | http://www.aberdeenshire.gov.uk/haveyoursay |