

PLANNING & ENVIRONMENTAL SERVICES

ENVIRONMENTAL HEALTH SECTION

FOOD SAFETY ENFORCEMENT POLICY

MAY 2002

(Ref: Framework Agreement – The Standard 15.1)

**ABERDEENSHIRE COUNCIL
ENVIRONMENTAL HEALTH SECTION**

FOOD SAFETY ENFORCEMENT POLICY

1. GENERAL POLICY STATEMENT

The Environmental Health Section is committed to providing a quality food safety service for all consumers who live in, work in or visit Aberdeenshire.

The Environmental Health Section will endeavour within the limits of its resources to develop and improve the food safety service it provides to ensure that the needs of the consumer are met.

In addition, businesses and consumers will be encouraged to trade fairly and competently and to co-operate with the Environmental Health Section in meeting its statutory responsibilities.

2. POLICY OBJECTIVES

- 2.1 To carry out the food safety statutory duties assigned to the Environmental Health Section.
- 2.2 To carry out regular visits to food premises and to monitor trading and food safety practices.
- 2.3 To investigate complaints which allege breaches of the statutes which the Environmental Health Section is authorised to enforce.
- 2.4 To offer advice on good food safety practices where appropriate and when requested.
- 2.5 To achieve consistent, balanced and fair enforcement of those statutory duties.

3. ENFORCEMENT POLICY

- 3.1 The enforcement policy of the Environmental Health Section is set out in this document but officers will also operate in accordance with the relevant Codes of Practice and official guidance made under The Food Safety Act 1990 and associated legislation.
- 3.2 The Environmental Health Section will ensure that its authorised officers are adequately qualified, trained and experienced consistent with their authorisation and duties in accordance with the relevant Food Safety Act Code of Practice in order to meet its objectives in a proper manner.
- 3.3 All authorised officers will be expected to adhere to the enforcement policy outlined in this document.

- 3.4 Only officers of the Environmental Health Section who are authorised to do so will issue enforcement actions.
- 3.5 The enforcement policy is available to the public and food businesses within Aberdeenshire at all Environmental Health Offices and on Aberdeenshire Council's web site at www.aberdeenshire.gov.uk
- 3.6 The Environmental Health Service is fully committed to following guidance issued by the Food Standards Agency, Scottish Executive, Local Authorities Co-ordinating Body of Regulatory Services (LACORS), Royal Environmental Health Institute of Scotland (REHIS), Scottish Centre for Infection & Environmental Health (SCIEH), Department for Environment Food and Rural Affairs (DEFRA) and the Scottish Food Enforcement Liaison Committee (SFELC).

4. RESPONSIBILITY

It is the responsibility of enforcement officers to:-

- 4.1 Carry out all duties in a professional and courteous manner.
- 4.2 Acquaint themselves with the requirements of this policy and the appropriate Codes of Practice issued under the Food Safety Act 1990. (Appendix A)

5. ACTION

- 5.1 The protection of public health and consumers' rights is an enforcement officer's primary concern and can best be achieved by the education and encouragement of proprietors and managers of food businesses in order that they can fully understand their responsibilities in relation to food safety, be aware of all relevant food law and develop appropriate measures to adequately control food safety risks.
- 5.2 In the first instance, enforcement officers will therefore:-
 - ✧ seek to assist businesses in improving food safety management and give guidance on how to implement and maintain good control systems;
 - ✧ highlight areas where the law is not being complied with; and
 - ✧ recommend appropriate corrective action.
- 5.3 In coming to an enforcement decision when evidence of contravention of the legislation is noted during inspections, enforcement officers will assess the risks and carefully consider all relevant facts and circumstances such as:
 - ✧ the seriousness and extent of the contravention
 - ✧ the means of remedying the situation
 - ✧ the attitude of the management
 - ✧ the previous history of compliance.

5.4 The choices for officers are:-

- ✧ No action required
- ✧ Informal action
- ✧ Advisory / Warning letter
- ✧ Statutory Notice
- ✧ Report for Prosecution

5.5 No Action Required

When there are no observed contraventions, a completed inspection report shall be sent to the proprietor indicating this decision. (Appendix B)

5.6 Informal Action

Informal action can be taken in instances where:-

- ✧ an act or omission is not serious;
- ✧ past history of the business/proprietor does not warrant alternative action;
- ✧ there is confidence in the proprietor/manager of the business that matters will be corrected; or
- ✧ consequences of non-compliance do not pose significant risk to consumers.

Informal action can be taken by the issue of oral informal warnings which must be recorded on the premises' record. The written inspection report to the proprietor will record any informal warnings given.

5.7 Advisory / Warning Letter

When an inspection reveals Food Safety or Hygiene contraventions of a minor nature for the first time, or matters of a more serious nature and previous history suggests a high probability of compliance, enforcement officers will issue an advisory or warning letter. Such written notification will contain:-

- ✧ The contraventions
- ✧ A legal reference
- ✧ Remedial work necessary to comply with the legislation
- ✧ A timescale for the completion of necessary works
- ✧ An indication whether guidance is a legal requirement, a recommendation on good practice or general advice.

5.8 Statutory Notices

Where enforcement officers are of the opinion that an informal approach will not be successful and/or that more formal action is required to reflect the risk to public health then Statutory Notices may be served.

5.9 Criteria for Issue of Statutory Notices

One or more of the following:

- ✧ Clear contraventions of legislation
- ✧ Non-compliance presents a significant risk
- ✧ There is a history of non-compliance
- ✧ Poor standards of management and poor awareness of legal requirements
- ✧ Effective and immediate action is required to remedy unsafe conditions.

5.10 The Principal Officer must be kept informed of developments on the issue and follow-up of all Statutory Notices.

6. IMPROVEMENT NOTICE

- 6.1 When serving an Improvement Notice, regard shall be given to the relevant Food Safety Act Code of Practice.
- 6.2 A “Minded To” notification shall be issued in accordance with The Deregulation (Improvement of Enforcement Procedures)(Food Safety Act 1990) Order 1996 (Appendix C) and it will be the inspecting officer’s responsibility to revisit the premises at the expiry of the notification.
- 6.3 At the expiry of the above notification, if the required works or action has not been complied with, an Improvement Notice shall be served in accordance with the Food Safety Act 1990, Section 10 and the relevant Food Safety Act Code of Practice. (Appendix D).
- 6.4 An Improvement Notice may be served on the evidence of the inspecting officer alone. However, where an inspection is made upon expiry of a Notice and a prosecution may be likely, a witness will accompany the inspecting officer. Officers who have not personally witnessed the contravention(s) stated in the Notice **shall not sign** Improvement Notices.
- 6.5 An Improvement Notice may only be signed by officers authorised to do so by Aberdeenshire Council. Such officers must be suitably qualified with experience in food law enforcement and meet the requirements set out in the relevant Food Safety Act Code of Practice.
- 6.6 Failure to comply with an Improvement Notice may result in the submission of a report to the Procurator Fiscal with regard to the guidance contained in Code of Practice No 2: Legal Matters – Part C Legal Proceedings.
- 6.7 Compliance with the terms of an Improvement Notice shall be verified in writing by the Authorised Officer signing the Improvement Notice.

7. EMERGENCY PROHIBITION NOTICE

- 7.1 When serving an Emergency Prohibition Notice, regard shall be given to the relevant Food Safety Act Code of Practice.
- 7.2 An Emergency Prohibition Notice will be served under Section 12 of the Food Safety Act 1990 only when an imminent risk to health can be demonstrated in respect of criteria set out in the relevant Food Safety Act Code of Practice. (Appendix E).
- 7.3 An Emergency Prohibition Notice shall only be signed by an officer who has personally witnessed the contravention(s) and who meets the qualification and experience requirements set out in the relevant Food Safety Act Code of Practice.
- 7.4 After the issue of an Emergency Prohibition Notice, an application for an Emergency Prohibition Order will be made to a Sheriff within three working days in accordance with Section 12 of the Food Safety Act 1990 unless the health risk conditions are no longer fulfilled.
- 7.5 If an application is made to a Sheriff for the issue of an Emergency Prohibition Order notification in writing must be given to a proprietor at least 24 hours prior to a hearing informing of the date, time and venue of such a hearing. (Appendix F)

8. REPORTS TO THE PROCURATOR FISCAL

- 8.1 Reporting contraventions to the Procurator Fiscal will be considered in one or more of the following circumstances:-
 - ✧ Where there is a history of non-compliance with food legislation.
 - ✧ Where there is a blatant and reckless disregard of legal requirements.
 - ✧ Where the public have been put at significant risk.
 - ✧ The unlikelihood of a “due diligence” defence being established.
 - ✧ Failure to comply with an Improvement Notice.
- 8.2 If an officer is satisfied that circumstances merit sending a report to the Procurator Fiscal, then the report will be prepared at the earliest opportunity with time-bar dates taken into account.

N.B. Enforcement officers cannot decide to prosecute – only the Procurator Fiscal can do this.

**9. ENFORCEMENT OF REGULATION 4(3)
(FOOD SAFETY (GENERAL FOOD HYGIENE) REGULATIONS 1995)**

- 9.1 Regulation 4(3) places a clear requirement on a proprietor of a food business to identify any step in the activities of the food business which is critical to ensuring food safety and ensure that adequate safety procedures are identified, implemented, maintained and reviewed on the basis of the following principles:
- (a) Analysis of the potential food hazards in a food business operation.
 - (b) Identification of the points in those operations where food hazards may occur.
 - (c) Deciding which of the points identified are critical to ensuring food safety (critical points).
 - (d) Identification and implementation of effective control and monitoring procedures at those critical points.
 - (e) Review of the analysis of food hazards, the critical points and the control and monitoring procedures periodically, and whenever the food business's operations change.
- 9.2 Aberdeenshire Council recognises the importance of achieving compliance with Regulation 4(3) through an education/advisory approach and officers will approach businesses with a view to advising and directing proprietors on preparing their own hazard analysis policies. This approach has value since the proprietor/manager must have ownership of the policy and understand why the policy directs a particular approach/action. If businesses do not co-operate with the advice and direction offered by officers, then informal or formal enforcement actions will be considered.
- 9.3 Compliance with Regulation 4(3) is required throughout all categories of food premises. However, it is accepted that lower risk categories will have less onerous obligations placed on them but still consistent with the enforcement policy.
- 9.4 When enforcement officers are carrying out food hygiene inspections, they will make an assessment of the proprietors' compliance with Regulation 4(3).
- 9.5 Levels of progress reached and areas of progress required by proprietors of food businesses during the compliance period will be recorded in their premises' file and on the premises text screen of the electronic database.
- 9.6 The enforcement of compliance in respect of Regulation 4(3) shall be carried out in accordance with the relevant Service Standard.
- 9.7 Failure to comply with an Improvement Notice issued with regard to Regulation 4(3) will result in a report being sent to the Procurator Fiscal in respect of non-compliance and/or failure to comply with Regulation 4(3).

10. REVIEW

The Food Safety Enforcement Policy will be reviewed annually.

11. COMPLAINTS

Complaints in respect of food safety enforcement will be dealt with in accordance with Aberdeenshire Council's Corporate Complaints Procedure.