

Health & Environment

**FOOD SAFETY  
ENFORCEMENT POLICY**

January 2012

# FOOD SAFETY ENFORCEMENT POLICY

## 1. INTRODUCTION

It is the Council's policy to ensure the safe and hygienic production, storage and sale of food and drink by the enforcement of legislation and the provision of advice to consumers and operators of food businesses.

This policy will be achieved through inspection, sampling and investigation. Enforcement decisions arising as a result of such action will be taken in accordance with the ***Council's Code of Practice on Enforcement*** and this policy will have regard to risks to health which may arise because of failures in food hygiene or safety.

In the enforcement of food safety law, the Council will have regard to the principles of proportionality in applying the law and securing compliance; consistency of approach; targeting of enforcement action; and transparency about how the Council operates and what those regulated may expect.

The main concern of the Council is the prevention of poor hygiene and ill health. This is best achieved by encouraging effective management of food safety by those who create the risks. Accordingly the Council's enforcement officers will seek to help businesses and consumers improve their management of food safety by providing appropriate advice. Liaison will be maintained with other regulators where there is a wider regulatory interest.

### ***Enforcement Concordat***

***All decisions to which the policy refers shall be taken in accordance with the Council's Code of Practice on Enforcement, which incorporates and is to be read in conjunction with the central and local government Concordat on Good Enforcement that was adopted by the Council on 23 April 1998.***

***This document should be read in conjunction with the Concordat and The Code for Crown Prosecutors.***

## 2. SCOPE

A policy to cover all aspects of food safety enforcement.

## 3. RELEVANT DOCUMENTS

- Food Safety Act 1990 (as amended)
- Relevant Codes of Practice
- All relevant food safety regulations
- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigation Act 1996
- Home Office Circular 30/2005
- Code for Crown Prosecutors
- Regulation of Investigatory Powers Act 2000
- LACORS circulars
- LACORS Guidance in Food Safety Enforcement Policies (1994)

## 4. RESPONSIBILITY

The requirements of the policy must be followed by all officers responsible for food safety enforcement.

## 5. DELEGATION AND AUTHORISATIONS

Decisions about food safety enforcement are delegated to officers of the Council as follows:-

### Health & Environment Manager

- appointment and/or authorisation of officers to exercise statutory functions
- exercise of powers of entry
- service of notices, exercise of powers in default and recovery of expenses
- in consultation with the Head of Legal Services, the institution of legal proceedings, and approval and amendment of any grant, licence, permit, authorisation or approval.

N.B. In the absence of the Health & Environment Manager, the duty will be undertaken by the Principal Environmental Health Officer.

### Council Solicitor

To institute and prosecute on behalf of the Council proceedings in respect of any offence against any legislation, including byelaws, which the Council is authorised to enforce.

### Authorised Officers

#### **Hygiene Improvement Notices**

All Environmental Health Officers who are suitably qualified and experienced are authorised to exercise the powers contained in Regulation 6 of the Food Hygiene (England) Regulations 2006.

#### **Remedial Action Notices and Detention Notices**

All Environmental Health Officers who are suitably qualified and experienced are authorised to exercise the powers contained in Regulation 9 of the Food Hygiene (England) Regulations 2006.

#### **Seizure and Detention of Food**

All Environmental Health Officers who are suitably qualified and experienced are authorised to exercise the powers contained in Regulation 27 of the Food Hygiene (England) Regulations 2006 and/or Section 9 of the Food Safety Act 1990 (as amended).

#### **Procurement of Samples**

All Environmental Health Officers who are suitably qualified and experienced are authorised to exercise the powers contained in Regulation 12 of the Food Hygiene (England) Regulations 2006 and/or Section 29 of the Food Safety Act 1990 (as amended).

#### **Powers of Entry**

All Environmental Health Officers who are suitably qualified and experienced are authorised to exercise the powers contained in Regulation 14 of the Food Hygiene (England) Regulations 2006 and/or Section 32 of the Food Safety Act 1990 (as amended).

## Hygiene Emergency Prohibition Notices/Emergency Prohibition Procedures

All Environmental Health Officers who are suitably qualified and experienced are authorised to exercise the powers contained in Regulation 8 of the Food Hygiene (England) Regulations 2006 and/or Section 12 of the Food Safety Act 1990 (as amended).

Before issuing a Hygiene Emergency Prohibition Notice or using Food Safety Act 1990 (as amended) procedures, authorised officers will, where it is practicable to do so, obtain prior approval of the Environmental Health Manager or Principal Environmental Health Officer

Any enforcement decision which may be required and which do not fall within the express limits of this policy shall be taken by the Environmental Health Manager or Principal Environmental Health Officer in consultation with the Chief Executive and Chairman of the Community Services and Licensing Committee.

### **6. ENFORCEMENT OPTIONS**

6.1 The choices for action are as follows:-

- to take no action;
- to take informal action;
- to use statutory notices;
- to use formal cautions; and
- to prosecute.

6.2 Enforcement decisions must be consistent, balanced and fair and be based on accepted public protection principles.

6.3 In particular officers should ensure that they:

1. are reasonable
2. act proportionally
3. are consistent

Officers should operate a graduated and educative approach and only move to formal action where the informal does not achieve the desired effect.

6.4 Some decisions should only be reached after all the relevant circumstances have been evaluated. Included within these are:-

- the seriousness of the offence;
- the enterprise's past history;
- confidence in management;
- the consequences of non-compliance;
- the likely effectiveness of the various enforcement options.

6.5 If enforcement action has been fully considered within the Environmental Health section and is still viewed as being inconsistent with current informed guidance, then the matter(s) should (unless extreme circumstances prevail) be put before the North Yorkshire Food Liaison Group for a consensus group view. If no decision can be reached, or the issue appears to be of national significance, or it appears the available guidance has not taken into account all the relevant factors, then LACORS will be approached and asked to consider the appropriate enforcement response.

## **7. MULTI-SITE FOOD BUSINESSES**

Officers should be mindful of the Home Authority Principle when dealing with multi-site businesses.

## **8. NO ACTION (with respect to the business)**

Only appropriate when, in the officer's opinion, there are no factors which indicate that relevant statutes and/or guidelines have been compromised. [A record of the visit is still required following each inspection]

## **9. INFORMAL ACTION**

Informal action includes verbal warnings or requests for action and the use of letters.

Informal action will be considered where:-

- circumstances do not warrant formal action;
- confidence in the management of the business is high;
- the consequences of non-compliance from a public health perspective is not significant;
- it can be reasonably expected that informal action will achieve compliance.

At the conclusion of every inspection or investigation, the officer should discuss the details of the visit with the proprietor/manager and issue a report.

When an informal approach is used, the officer should:-

- ensure the proprietor/manager receives all the information to understand what work is required and why it is necessary;
- indicate the regulations contravened and the measures which will achieve compliance and indicate that other means of achieving the same effect may be chosen;
- clearly differentiate between any legal requirements and recommendations,
- where appropriate officers must be mindful of the Home Authority Principle.

## **10. STATUTORY ACTIONS – HYGIENE IMPROVEMENT NOTICES**

10.1 Service of Hygiene Improvement Notices will be considered where:-

- an informal approach has been tried but has not been successful, or there is reason to believe that such an informal approach would not succeed;
- there are significant contraventions of legislation;
- there is a lack of confidence in the proprietor/manager to respond to an informal approach;
- there is a history of non-compliance with informal action;
- there are significant risks to public health;
- it is intended to prosecute but effective actions need to be taken to remedy conditions that are serious or deteriorating.

10.2 Hygiene Improvement Notices will only be issued by suitably qualified and experienced officers who are authorised to do so.

10.3 In serving Hygiene Improvement Notices, the appropriate Code of Practice and any relevant LACORS advice will be followed. Realistic time limits will be applied and all suitable ways of complying with the Notice will be considered.

10.4 Failure to comply with a Notice within the specified time limit will, except where extenuating circumstances apply, result in prosecution.

10.5 Where relevant, officers must liaise with any appropriate Home and Originating Authorities and follow guidance from LACORS on the Home Authority Principle.

10.6 Officers should be mindful that Hygiene Improvement Notices are not appropriate in the following circumstances.

- where the contravention might be a continuing one e.g. personal cleanliness of staff
- in transient situation e.g. a one day festival a Hygiene Emergency Prohibition Notice would be the only formal remedy which would have immediate effect
- where there is a breach of good hygiene practice but no failure to comply with an appropriate regulation

## **11. STATUTORY ACTIONS - REMEDIAL ACTION NOTICES AND DETENTION NOTICES**

11.1 In respect of product specific establishments subject to approval under Regulation 853/2004, Remedial Action Notices may be served, in addition to the other enforcement options available. The service of a Remedial Action Notice allows for the prohibition on the use of equipment of any part of the establishment, the cessation or reduction of activities, or the detention of food of animal origin for the purposes of examination.

11.2 Service of a Remedial Action Notice will be considered where:-

- The failure of any equipment or part of an establishment to comply with the requirements of the "Hygiene Regulations".
- The need to impose conditions upon, or the prohibition of the carrying on of, any process breaching the requirements or hampering adequate health inspection in accordance with the Regulations;
- Where the rate of operation of the business is detrimental to its ability to comply with the Regulations.

11.3 Circumstances which might lead to the issue of a Detention Notice include those where there are indications or suspicions that food is unsafe because of breaches of the requirements of the Hygiene Regulations.

11.4 Only a specifically authorised officer with detailed knowledge of enforcement in approved establishments will sign a Remedial Action Notice. These officers should have received additional training in order to allow them to undertake inspections of these premises.

11.5 As soon as the officer is satisfied that the matters specified in the Remedial Action Notice have been complied with or, in respect of Detention Notices, where the food has been found not to be unsafe, they will issue a notice of withdrawal.

## **12. STATUTORY ACTIONS – HYGIENE EMERGENCY PROHIBITION NOTICES**

12.1 Emergency prohibition will be considered where it can be proven that the use of any premises, equipment process or treatment poses an imminent risk of injury to health, and the consequences of not taking immediate and decisive action to protect public health would be unacceptable.

This can be taken to mean:-

- the consequences of not taking immediate and decisive action to protect public health would present an imminent risk to public health;
  - an imminent risk can be demonstrated. This might include evidence from relevant experts, including a food analyst or food examiner;
  - the relevant guidance specified in the Code of Practice is fulfilled;
  - there is no confidence in the integrity of an unprompted offer to voluntarily close premises or cease use of equipment, process or treatment which poses an imminent risk to health;
  - a proprietor is unwilling to confirm in writing his/her unprompted offer to voluntarily cease the use of premises, equipment, process or treatment.
- 12.2 Hygiene Emergency Prohibition Notices will only be issued by suitably qualified and experienced officers who are authorised to do so. Before issuing a Hygiene Emergency Prohibition Notices, authorised officers will, where it is reasonably practicable to do so, obtain the prior approval of the Environmental Health Manager or Principal Environmental Health Officer.
- 12.3 Where chemical contamination is suspected, there are likely to be circumstances where medical or other expert advice, e.g food analyst, should be sought before a final enforcement decision is taken.
- 12.4 Once a Hygiene Emergency Prohibition Notice has been issued, an application for a Hygiene Emergency Prohibition Order must be made by the authorised officer to the Magistrates' Court within three days. Failure to do so will entitle the proprietor of the business to compensation.
- 12.5 Where relevant, officers must liaise with any appropriate Home and Originating Authorities and follow guidance from LACORS on the Home Authority Principle.
- 12.6 Premises (examples where prohibition may be appropriate)
- infestation by rats, mice, cockroaches, birds or other vermin serious enough to result in the actual contamination of food or a significant risk of contamination,
  - poor structural condition and poor equipment and/or poor maintenance or routine cleaning and/or serious accumulations of refuse, filth or other extraneous matter resulting in an actual or significant risk of food contamination,
  - drainage defects or flooding resulting in an actual or significant risk of food contamination,
  - premises or practices that contravene legislation and have been implicated in a food poisoning outbreak,
  - combinations of the above or the cumulative effect of contraventions which taken together represent an imminent risk of injury to health.
- 12.7 Equipment (examples where prohibition may be appropriate)
- use of defective equipment e.g. pasteuriser not working to the required temperature,
  - inadequate cleaning of equipment used for processing high-risk foods.
- 12.8 Process (examples where prohibition may be appropriate)
- serious risk of cross-contamination
  - inadequate temperature control
  - operation outside critical limits e.g. incorrect pH
  - use of a process for a product which is inappropriate

### 13. PROSECUTION

- 13.1 Prosecution will be considered where there has been a serious breach of food safety legislation.
- 13.2 The decision to refer matters to the Council Solicitor for prosecution will be taken by the Health & Environment Manager or Principal Environmental Health Officer who will consider all relevant evidence and information.
- 13.3 Circumstances which may warrant the prosecution include:-
- offences involving a flagrant breach of the law such that public health, safety or well being is put at risk;
  - offences which involve failure of the offender to correct identifiable potential risks to food safety, where a reasonable opportunity to comply has been given by an authorised officer;
  - offences which involve a failure to comply with the requirement of a statutory notice;
  - where there is a history of offences related to food hygiene and safety.
- 13.4 Before a recommendation for prosecution is made, the officer responsible for deciding on enforcement action must be satisfied that there is relevant, admissible, substantial and reliable evidence that an offence has been committed by an identifiable person or company.
- 13.5 With insufficient evidence to prosecute, other types of formal action, such as cautioning, are not alternatives.
- 13.6 There must be a realistic prospect of conviction: The Code for Crown Prosecutors provides guidance.
- 13.7 In taking the decision to prosecute, the guidance contained in Code of Practice 2 and any other relevant Codes must be followed. Factors which may be included in the assessment are:-
- a) the seriousness of the alleged offence:-
    - the risk or harm to public health
    - identifiable victims
    - failure to comply with a statutory notice served for a significant breach of legislation
    - disregard of public health for financial reward
  - b) the previous history of the party concerned:-
    - offences following a history of similar offences
    - failure to respond positively to past warnings
    - failure to comply with statutory notices
  - c) the likelihood of the defendant being able to establish a due diligence defence
  - d) the ability of any important witnesses and their willingness to co-operate
  - e) the willingness of the proprietor/manager to prevent a recurrence of the problem
  - f) the probable public benefit of a prosecution



- g) whether any other action such as issuing a Simple Caution under Home Office Circular 30/2005, Hygiene Improvement or Hygiene Prohibition Notice would be more appropriate or effective
- h) any explanation offered by the company or the suspected offender.

Once a decision to instigate prosecution has been taken the matter should be referred without delay to the Council's Solicitor (see 12.2).

- 13.8 Consideration must be given by the officer to the criteria to be adopted with respect to the prohibition of premises and persons when they are successfully convicted. The relevant Code of Practice should be consulted prior to a court appearance in order to establish whether an application should be made to the court for a prohibition. Such a decision will be formed around the court deciding the degree to which the risk or injury to health exists.
- 13.9 Where relevant, officers must liaise with any appropriate Home and Originating Authorities and follow guidance from LACORS on the Home Authority Principle.
- 13.10 Officers should be mindful that as well as points in favour of a prosecution various factors mitigate against such action including.
  - the likelihood of a nominal penalty
  - the offence was committed as a result of a genuine mistake or misunderstanding (this must be balanced against the seriousness of the offence)
  - whether any other action such as a simple caution would be more appropriate

#### **14. SIMPLE CAUTION**

- 14.1 Simple Cautions are an option which officers should consider using Home Officer Circular 30/2005.
- 14.2 Simple Cautions will be administered by the Council Solicitor.
- 14.3 The decision to refer matters to the Council Solicitor for Simple Caution will be taken by the Environmental Health Manager or Principal Environmental Health Officer who will consider all relevant evidence and information.
- 14.4 The Simple Cautions are an alternative to Prosecution and may be considered as an option in order to:-
  - deal quickly and simply with less serious offences where a Simple Caution is still considered appropriate;
  - to divert less serious offences away from the Courts;
  - to reduce the chances of repeat offences.
- 14.5 In order to safeguard the suspected offender's' interests and in the interests of fairness and justice, the following conditions should be fulfilled before a Simple Caution is administered:-
  - a) there must be sufficient evidence of the suspected offender's' guilt at a level which would give a realistic prospect of a conviction in court proceedings
  - b) the suspected offender must admit the offence

- c) the suspected offender must understand the significance of a Simple Caution and then give informed consent to being cautioned.
- 14.6 If there is insufficient evidence to consider taking a Prosecution, then by implication, the conditions are not satisfied for the use of a Simple Caution.
- 14.7 Officers should be aware that there is no legal obligation for any person to accept the offer of a Simple Caution and no pressure should be applied to the person to accept such a caution.
- 14.8 Where a person declines to accept a Simple Caution, consideration must be given to taking alternative enforcement action. This is likely to take the form of a Prosecution but it should be borne in mind by the officer that 'lesser' circumstances may be recognised and a written warning may suffice.
- 14.9 Where relevant, officers must liaise with any appropriate Home and Originating Authorities and follow guidance from LACORS on the Home Authority Principle.

## **15. VOLUNTARY PROCEDURES**

- 15.1 Officers should be aware that:

Voluntary procedures to remove an imminent risk to health may be used at the instigation of either the proprietor or the manager of the business when one or the other agrees that an imminent risk to health exists. An officer may suggest this option but not when they are unable to use section 12 of the Food Safety Act 1990.

- there should be confirmation in writing by both parties (proprietor or manager and officer) of the agreement
- should not re-open without officers approval
- if the manager offers to close voluntarily then the officer must confirm that he had the authority to do so.
- frequent checks on the premises should be made to check they are not re-open.

## **16. SEIZURE AND DETENTION OF FOOD**

- if doubts about security or physical care of detailed food the notice should specify a place to which to should be moved.
- officers should be mindful of any proposals for the treatment of detained food.
- voluntary procedures for the removal of food from the food chain may be agreed between the owner of the food and the officer.

## **17. ENFORCEMENT WITHIN RYEDALE DISTRICT COUNCIL'S OWN PREMISES**

- Any breaches of food law within the canteen will be brought to the attention of the Chief Executive of the Council without undue delay.