



## Comhairle Nan Eilean Siar

### FOOD SAFETY ENFORCEMENT POLICY

#### INTRODUCTION

The Comhairle adopted an enforcement policy in October 1995, which covers all aspects of its regulatory role. The food safety enforcement policy is based on the general concepts of that document but it is more detailed, in that it refers to the specific action available to Officers in the enforcement of food safety legislation.

#### OBJECTIVE

To ensure that enforcement action relating to food safety is carried out:

- a) in a fair, practical and consistent manner to protect the consumer and maintain a level playing field for responsible businesses; and
- b) in a way that is broadly acceptable to the public, business people and those responsible for enforcement.

#### SCOPE

This policy applies to breaches of food hygiene and food standards legislation.

#### MONITORING

To see that the terms of the objective are met, monitoring will be carried out on the following basis:

- a) All food premises will be assessed on the basis of risk to public health and failure to comply with food hygiene and food standards requirements; and
- b) Premises will be inspected on a frequency determined by that risk assessment, in accordance with guidance in Code of Practice No. 9: Food Hygiene Inspections and the Lancashire Association of Chief Environmental Health Officers-Food Officer Group "*Guidance on Scoring of Food Premises*" for hygiene inspections and in accordance with guidance in Code of Practice No. 8: Food Standards Inspections.

#### ENFORCEMENT

All enforcement action taken in respect of food premises or food samples will take cognisance of the statutory Codes of Practice issued under Section 40 of the Food Safety Act 1990, the Food Standards Agency – Scotland and the Local Authorities Co-ordinating body on Food and Trading Standards (LACOTS) guidance. In addition, when food sample results are unsatisfactory, the advice of the public analyst and guidance given by the Scottish Centre for Infection and Environmental Health and the Food Standards Agency – Scotland will be taken into account. In

deciding whether or not to take any form of formal action, consideration will be given to the Home Authority Principle. Where appropriate, the “Home” and “Originating” Authorities will be consulted and kept informed.

All authorised officers, when making enforcement decisions, will abide by the Policy. It is equally applicable to all aspects of the legislation, including Hazard Analysis Systems and the requirements for the training and supervision of food handlers. Any departure from the policy must be exceptional, capable of justification and be fully considered by the Head of Food Safety before the decision is taken, unless there is significant risk to the public in delaying the decision.

Reports to the Procurator Fiscal will only be made following consultation with the Head of Food Safety. In his absence and in the case of an emergency consultation will be with the Director. Reports to the Procurator Fiscal will only be made with the knowledge of the Director for Sustainable Communities.

The options for enforcement action are:

- To take no action;
- To take informal action;
- To use statutory notices; and
- To make a report to the Procurator Fiscal

The type of action taken will depend on circumstances but in all cases of informal action it will be made clear what is mandatory and what is desirable but not compulsory.

## **NO ACTION**

There are unlikely to be any circumstances where no action is taken.

## **INFORMAL ACTION**

Written inspection reports will always be issued following a programmed inspection, in terms of the approved Codes of Practice.

Oral guidance will be issued when:

- The act or omission is not serious;
- Non-compliance does not pose a significant risk; and
- There is not a history of non-compliance.

A letter specifying what must be done and by when, will be sent if:

- Non-compliance poses a significant risk;
- Oral guidance has been unsuccessful;
- There is not a history of non-compliance; and
- The breach is significant but does not warrant prosecution.

## **IMPROVEMENT NOTICES**

There is provision in the legislation for the service of Improvement notices.

These will be issued in consultation with the Lead Food Safety Officer when:

- non-compliance poses significant risk;

- where informal action has been unsuccessful (there is a history of non-compliance) and;
- where the severity of the contravention is such that it would not be appropriate to leave the matter unresolved until the next programmed inspection or until the conclusion of a prosecution.

When serving Improvement Notices, regard shall be had to Code of Practice No 5. Officers who have not personally witnessed the contravention(s) cited in the notice shall **not sign** Improvement Notices.

Improvement Notices may be served on the evidence of the inspecting officer alone (subject to approval by the relevant senior officer). However, where an inspection is made upon expiry of a notice and a prosecution is likely, a witness will accompany the inspecting officer.

Persons failing to comply with Improvement Notices may be the subject of a report to the Procurator Fiscal subject to the guidance in Code of Practice No. 2: Legal Matters.

## **EMERGENCY PROHIBITION NOTICE**

When serving Emergency Prohibition Notices, regard shall be had to Code of Practice No 6 and LACOTS guidance.

Where an inspecting officer in the course of his/her duties encounters a situation where there appears to be imminent risk of injury to health (as defined in Code of Practice No 6), that officer shall immediately advise the Lead Officer. If it is agreed that the risk is imminent, then the inspecting officer will serve a Notice immediately. Emergency Prohibition Notices shall be signed by the inspecting officer, in the presence of another authorised officer, where practicable.

The steps detailed in Code of Practice 6 must be followed, when serving Emergency Prohibition Notices, and applying to the Fiscal For Emergency Prohibition Orders.

## **PROSECUTION**

Reports to the Procurator Fiscal for prosecution will be made when the alleged offence:

- Involves a flagrant breach of the law such that public health, safety or well-being is or has been put at risk;
- Involves a failure by the suspected offender to correct an identified serious potential risk to food safety having been given a reasonable opportunity to comply with the legislation;
- Involves a failure to comply in full or part with a statutory notice; or
- Follows a history of similar offences related to risk to public health by the suspected offender.

Reports to the Procurator Fiscal will be subject to the guidance in Code of Practice No. 2: Legal Matters.

## **REVISIT INSPECTIONS**

A revisit inspection shall be carried out: -

- where there is significant risk; and
- where standards have fallen such that it would not be appropriate to leave the matter unresolved until the next programmed inspection