



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

ECONOMY & COMMUNITIES

ECONOMIC GROWTH – PROTECTIVE SERVICES

ENVIRONMENTAL HEALTH

FOOD LAW ENFORCEMENT POLICY AND PROCEDURES

1. INTRODUCTION

- 1.1 This document sets out North Ayrshire Council's Enforcement Policy with respect to Food Law. North Ayrshire Council strives to ensure food businesses are handling and producing food and drink in a safe and hygienic manner to protect the health, safety and consumer rights of the residents of North Ayrshire.
- 1.2 This policy has been developed to enable officers from North Ayrshire Council's Environmental Health Section, to enforce food legislation in local food businesses in a reasonable, proportionate and consistent manner. A risk based approach is used and the principles laid down allow for open and transparent enforcement.

2. DEVELOPMENT, REVIEW AND IMPLEMENTATION

- 2.1 This policy takes account of the statutory Codes of Practice and Practice Guidance issued under the Food Safety Act, the Food Hygiene (Scotland) Regulations 2006, the Official Feed and Food Controls (Scotland) Regulations 2009 and the Food (Scotland) Act 2015. It incorporates the principles of the Enforcement Concordat and support guidance issued by LACORS and SFELC. It also takes cognisance of the Regulator's code.
- 2.2 The policy is reviewed as required, based on changes in relevant legislation and guidance.
- 2.3 A copy of the policy is available on request and is posted on the North Ayrshire Council website.
- 2.4 All Authorised Officers should implement the policy when carrying out their duties. Any departure from the policy should be exceptional. The reasons for the departure should be agreed with a manager and suitably recorded by the officer.
- 2.5 More detailed procedural documents are available to support officers in their enforcement decisions. These are attached as appendices to this policy.

3. ENFORCEMENT OPTIONS

- 3.1 There are a full range of enforcement options available to officers to deal with breaches of food law. For the purpose of this policy 'enforcement' may include educating food business operators, giving advice, practical guidance on the interpretation or application of food law, informal action, sampling, detaining and seizing food, serving Hygiene Improvement Notices, Improvement Notices, Remedial Action Notices, Hygiene Emergency Prohibition procedures, prohibition procedures and making reports to the Procurator Fiscal .

- 3.2 It is the policy of North Ayrshire Council that a graduated and educative approach will be undertaken to seek the co-operation of the food business operator in the first instance, unless circumstances indicate a significant risk. Where an informal approach is failing to secure compliance, the officer will progress to more formal action.
- 3.3 However, where the contravention appears to relate to a deliberate act to mislead and/or defraud consumers and/or other Food Business Operators and is considered to be a criminal offence, the graduated approach should not be applied, and the default position should be to consider submitting a report to the Procurator Fiscal.

4. ENFORCEMENT INFORMATION

- 4.1 All Authorised Officers have up-to-date information readily available to enable them to carry out their duties competently. This includes relevant legislation, the Food Law Code of Practice (COP), UK Guides to Good Practice where appropriate, guidance issued by the FSA, FSS, LGR and or SFELC, relevant Industry Codes of Practice, and appropriate technical literature. Copies of SFELC and Liaison Group minutes are available on the Environmental Health network.

5. FOOD LAW COMPLIANCE

- 5.1 Compliance with Food Law is checked during the following interventions:
- Food Premises Inspection
 - Audit of Food Business Documentation
 - Food Sampling
 - Complaint Investigations

6. COMMUNICATIONS WITH BUSINESS

- 6.1 All communications regarding enforcement with food business operators will be, where possible, undertaken in accordance with the relevant sections of the Food Law Code of Practice and Home/Primary Authority Principle and in particular:
- 6.1.1 A clear distinction between action needed to meet statutory requirements and recommendations about good and/or best practice should be made in all communications with food business establishments.
- 6.1.2 All correspondence will identify each contravention and the measures which, in the opinion of the Authorised Officer, could be taken in order to secure compliance. Correspondence will contain an indication of the time scale suggested for achieving compliance to allow steps to remedy non-compliance to

be planned and prioritised even when there is no need to revisit to monitor compliance.. Revisits such as secondary visits, should be conducted in accordance with sub-section 28.4of the COP.

- 6.1.3 Up to date Standard documents, circulars, booklets and other publications are issued to assist businesses and Officers are available to discuss letters, circulars etc. with any food business operator to whom they have been sent and/or issued..

6.2 *Multi- site Food Businesses*

- 6.2.1 Communication with multi-site food businesses should be with the head office of the business concerned unless they have specified another preferred address. This includes any copies of inspection reports left with on-site personnel.

6.3 *Enforcement within North Ayrshire Council premises*

- 6.3.1 All inspection reports will be sent to the relevant representative from the council Department responsible for the operation of the food business and a copy sent to the Catering Manager in charge of the premises.
- 6.3.2 Major contraventions which pose a risk to food safety will be notified to the Chief Executive in accordance with the Food Law Code of Practice Section 1, paragraph 5.3.

7. **ENFORCEMENT OPTIONS – INFORMAL ACTIONS**

- 7.1 In general, a decision to take informal action will depend on:

- The seriousness of the offence;
- The likely effectiveness of the action;
- The anticipated benefits to the public in terms of safety, consumer rights and the environment.

- 7.2 Informal action will be appropriate in the following circumstances:-

- The contravention is not serious enough to warrant formal action;
- The business or individual is willing to take prompt corrective action and past history indicates that informal action will achieve compliance;
- Confidence in the business management system is high;
- The consequences of non-compliance will not pose a significant risk to health or consumer rights.
- In the case of new businesses, an assessment of the food business operator's willingness to undertake the work identified by the officer and an understanding that it did not involve a deliberate act to mislead or defraud consumers or other food business operators

7.3 Informal action to secure compliance with legislation includes issuing reports identifying clearly each contravention and advising on remedial actions. Advice and recommendations of best practice are also given.

8. ENFORCEMENT OPTIONS – FORMAL ACTIONS

8.1 All formal action will be undertaken in accordance with Section 3 paragraph 14 of the Food Law Code of Practice and relevant sections of the Practice Guidance.

8.1.1 *Food Law Notices*

8.1.1.1 When it is considered that the use of informal action would be ineffective or inappropriate consideration must be given to the use of statutory notices. The use of statutory notices will be required in circumstances where:-

- The consequences of not taking immediate and decisive action to protect public health would be unacceptable;
- An imminent or serious risk to health can be demonstrated;
- There are significant contraventions of legislation;
- There is a lack of confidence in the business to respond to an informal approach;
- There is a history of non-compliance with informal action;
- Standards are generally poor with little awareness of statutory requirements;
- The consequences of non-compliance could be potentially serious to public health;
- Effective action is needed to remedy conditions that are serious or deteriorating.

8.1.1.2 Officers consult the Food Law Code of Practice which provides further assistance on deciding what type of notice is relevant in different circumstances. Officers must place reasonable time limits on notices and ensure that the business is made aware of their rights of appeal, appeal mechanisms and the consequences of not complying with a notice where appropriate.

8.1.2 *Detention and Seizure of Suspect Food*

8.1.2.1 Authorised Officers have powers to inspect, detain or seize food suspected of not complying with food safety requirements and certify that foods have not been produced, processed or distributed in accordance with food law. Thereafter, a Sheriff is asked to condemn foods detained/seized. When using these powers officers follow the procedures for serving and withdrawal of notices as detailed in the Food Law Code of Practice.

8.1.3 Withdrawal/Suspension of Approval

8.1.3.1 North Ayrshire Council has the power to withdraw or suspend approval or conditional approval of an establishment subject to approval under Regulation (EC) No 853/2004 which has the immediate effect of prohibiting the establishment from being used for activities which would render it subject to approval.

8.1.3.2 However, food business operators will be given a reasonable opportunity to achieve compliance or to control hazards using alternative enforcement options.

8.1.3.3 Suspension and withdrawal will be undertaken in accordance with Section 5 paragraph 3.5 of the Food Law Code of Practice and taking into account the FSA guidance on the approval of establishments.

8.1.4 Prosecution

8.1.4.1 In some circumstances, and where there is sufficient evidence to support a case, prosecution may be the appropriate course of action. A decision to initiate a report to the Procurator Fiscal will be discussed and agreed with management at the earliest opportunity.

8.1.4.2 A proportionate approach will be followed and other enforcement options will be considered before deciding to submit a report to the Procurator Fiscal in accordance with the Food Law Code of Practice unless paragraph 3.3 above applies.

8.1.4.3 A report to the Procurator Fiscal will be considered in the following circumstances:-

- A serious breach of food law leading to a risk to public health or actual harm to a consumer or group of people;
- A deliberate contravention of the law for commercial advantage or financial gain;
- A failure to comply with the requirements of a statutory notice;
- A poor compliance history
- Where the contravention appears to relate to a deliberate act to mislead and or defraud consumers and or other Food Business Operators and is considered to be a criminal offence,

8.1.4.4 Any decision to pursue prosecution should consider public interest and take into account the Food Law Code of Practice and guidance from the Crown Office.

8.1.5 Prohibition Procedures

8.1.5.1 As a result of a successful prosecution, a Sheriff can grant a prohibition order prohibiting a person from carrying on or managing any food business on public

health grounds.

8.1.5.2 Where such an order has been made against a person, North Ayrshire Council will provide written notification to REHIS and any other relevant agencies.

8.1.5.3 Notifications of persons prohibited from operating a food business received from REHIS are circulated electronically to all staff. Thereafter they are recorded in the Names and Address database of Authority which is cross checked every time a new food business operator is added.

FOOD LAW ENFORCEMENT PROCEDURES

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