

EAST AYRSHIRE COUNCIL

CABINET REPORT – 4th May 2011

FOOD SAFETY ENFORCEMENT POLICY

Report by Executive Director of Finance and Corporate Support

1. PURPOSE OF REPORT

- 1.1 To advise cabinet of the Food Safety Enforcement Policy, (Appendix I). The purpose of this policy is to establish a fair and consistent level of enforcement action when Authorised Officers are undertaking inspections and other food safety interventions.

2. BACKGROUND

- 2.1 The White Paper “The Food Standards Agency – A Force for Change” identified the Food Standards Agency as having a key role in overseeing Local Authority enforcement activities relative to Food Safety.
- 2.2 The provision of a Food Safety Enforcement Policy is seen as a key part in the Council’s enforcement activities and sets out what businesses or other persons being regulated can expect in relation to enforcement. It will also be used as a reference document for Authorised Officers before deciding upon any enforcement action.
- 2.3 This policy replaces and updates all previous food safety enforcement policies and will be subject to audit by the Food Standards Agency as part of the monitoring of food law enforcement by Local Authorities.

3. DISCUSSION

- 3.1 This Food Safety Enforcement Policy is written in accordance with COSLA’s enforcement concordat. It details the procedures to be followed by Authorised Officers when enforcement action is to be taken. It also details the scope of enforcement options available, ranging from informal action, formal notices and prosecution proceedings.
- 3.2 The Food Safety Enforcement Policy also contains a review and complaints procedure. This allows businesses or other persons the opportunity to either seek a review or make a complaint regarding an enforcement decision.

4. LEGAL IMPLICATIONS

- 4.1 The Food Safety Enforcement Policy will be subject to audit by the Food Standards Agency in accordance with the Framework Agreement on Official Feed and Food Controls by Local Authorities, Amendment 5, April 2010. It is also written in accordance with the Food Law Code of Practice (Scotland) and the Practice Guidance (Scotland).

5. FINANCIAL IMPLICATIONS

- 5.1 Nil.

6. COMMUNITY PLANNING/POLICY IMPLICATIONS

- 6.1 The Food Safety Enforcement Policy is commensurate with the Community Plan vision "*East Ayrshire will be a place with strong, vibrant communities where everyone has a good quality of life and access to opportunities, choices and high quality services which are sustainable, accessible and meet people's needs*"

7. CONCLUSION

- 7.1 This policy will be used by authorised officers when deciding on the level of food safety enforcement action required and ensure that all decisions taken are fair, consistent and proportionate.
- 7.2 This policy will demonstrate that the Council is providing a balanced service in respect of our enforcement responsibilities and further demonstrates our overall commitment to Food Safety.

8. RECOMMENDATIONS

- 8.1 Cabinet is invited to:-
- (i) Consider the approval of the Food Safety Enforcement Policy (Appendix I); and
 - (ii) Otherwise note the report.

Alex McPhee
Executive Director of Finance and Corporate Support

7 April 2011

LIST OF BACKGROUND PAPERS

1. Appendix I- East Ayrshire Council, Food Safety Enforcement Policy.
2. Framework Agreement on Official Feed and Food Controls By Local Authorities, Amendment 5, April 2010.

Any person wishing to inspect the background papers should contact David Mitchell, Head of Legal, Procurement and Regulatory Services on 01563 576161 or by E-mail to David.Mitchell@EastAyrshire.gov.uk.

Food Safety Enforcement Policy



East Ayrshire

COUNCIL

Food Safety Enforcement Policy

Introduction

As a statutory Food Authority this document sets out what businesses or other persons being regulated can expect from us in relation to enforcement. It will be used as a reference document by all of our officers before deciding upon enforcement action.

The policy is based on the following fundamental principles.

- Enforcement action will only be initiated when a Food Business Operator is in significant breach of this Authority's policy on Food Safety.
- Enforcement shall be based upon an assessment of risk to public health.
- Enforcement shall be consistent, fair, proportionate to the risk(s), in accordance with this policy and in line with recommendations made by the Confederation of Scottish Local Authorities (COSLA).
- Enforcement action shall comply with the current Code of Practice made under Section 40 of the Food Safety Act 1990.
- Enforcement action shall accord with enforcement guidance issued by the Food Standards Agency, Local Government Regulation (LGR), and the Scottish Food Enforcement Liaison Committee (SFELC).
- All enforcement action will clearly differentiate between legal requirements and recommendations of good hygiene practice.

The policy is reviewed regularly. Reviews will take into account each of the following:

- Statutory requirements.
- Changes in service structure.

It is recognised that small businesses and individuals may have limited resources. In this regard, we provide guidance documents and information leaflets on compliance with food safety law. The operation of this policy is therefore intended to support the many operators of food businesses who wish to comply with the law, whilst focussing formal enforcement action only on those who are negligent, reckless, or unwilling to provide minimum standards of Food Safety.

About enforcement

The purpose of enforcement is to:

- Ensure that duty holders take action to deal immediately with serious breaches of the law;
- Promote and achieve sustained compliance with the law;

- Ensure that those who breach legal requirements are held to account, which may include recommending prosecution or serving statutory notices.

We have adopted COSLA's enforcement concordat and by doing so we commit ourselves to the following policies and procedures, which contribute to best value and the following enforcement principles.

Targeting

We shall ensure that enforcement activities are focused and proportionate to risk and non-compliance. Targeting of enforcement will also take due account of local and national priorities.

Openness

We will provide information and advice in plain language on the rules that we apply and will disseminate this as widely as possible. We will be open about how we set about our work, including any charges that we set, consulting businesses, voluntary organisations, charities, consumers and workforce representatives. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

Helpfulness

We believe that prevention is better than cure and that our role therefore involves actively working with businesses, especially small and medium sized businesses, to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage business to seek advice/information from us. Applications for approval of establishments, licences, registrations, etc. will be dealt with efficiently and promptly.

Accountability

We will provide well publicised, effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

Proportionality

We will minimise the costs of compliance for business by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action.

We will take particular care to work with small businesses, individuals and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

Consistency

We will carry out our duties in a fair, equitable and consistent manner. While enforcement officers are expected to exercise judgement in individual cases, we have arrangements in place to promote consistency, including effective liaison with other Authorities and enforcement bodies.

Procedures

Enforcement procedures are detailed within this document and staff have been advised to fully familiarise themselves with the procedures.

Advice from an officer is given clearly and simply in writing, explaining why any remedial work is necessary and over what time-scale. We also clearly distinguish between legal requirements and best practice, advice or recommendations.

Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required. (for example, the existence of serious imminent risk to health)

Where there are rights of appeal against formal action, advice on the appeal mechanism is clearly set out in writing at the time the action is taken.

Enforcement officer standards

All our enforcement officers are authorised in compliance with all necessary legal requirements.

All enforcement officers are made fully aware of our enforcement policy. In addition officer training is provided on an ongoing basis in order to ensure that the details of the policy are understood and adhered to, and that all enforcement officers are kept up to date with current legal requirements and practices.

All enforcement officers must take account of the inspection and enforcement guidelines issued by our service and enforcement action will only be undertaken in compliance with this policy and with the guidelines. In addition we will review the training needs and requirements of enforcement officers annually.

Review process

Businesses or other persons being regulated can seek a review of any enforcement decision or action taken by any officer. It's important to be aware that a request to review action taken is quite distinct from making a complaint about the service. It may be that a business or other person being

regulated is quite willing to admit to having committed a breach of the law but wishes to request that a less severe form of enforcement action be taken.

The procedures for requesting reviews and making complaints are largely the same.

A review of enforcement action taken may be requested for any reason but it is anticipated that in the majority of cases, one of the following reasons will apply:

- allegations relating to misuse of power
- lack of discretion
- poor professional judgement or conduct
- disputes of over points of fact
- disputes over points of law

In the first instance, all reviews will be carried out internally without recourse to outside agencies.

Anyone seeking a review should make their request in writing to the Team Leader, Food Safety/Health and Safety or the Regulatory Services Manager within 14 days.

Anyone who does not wish to put his or her request in writing should contact the Environmental Health office and ask to speak to the Team Leader. The Team Leader, is responsible for reviewing the case and will carry out interviews where necessary and inspect any work records maintained by the investigating officer(s).

(NB: Where the Team Leader has had any direct involvement in the matter being reviewed, the case will always be referred to the Regulatory Services Manager for investigation).

Reviews will be carried out as quickly as possible. In cases where the request has failed to overturn the original decision, the person who requested the review can initiate a formal complaint in the appropriate manner.

Formal complaint process

Anyone who is dissatisfied with an enforcement decision can make a formal complaint in accordance with East Ayrshire Council's corporate complaints procedure which provides that the Council will address complaints as follows:-

Stage 1 – If you have experienced a problem with the service or have a complaint to make, the quickest way to get it resolved may be to talk to the Team Leader, Food Safety/Health & Safety

Stage 2 - If the Team Leader cannot resolve your complaint straight away you can ask the Regulatory Services Manager or the Head of Service to

review your complaint. The Regulatory Services Manager/Head of Service will provide a written response within 7 working days.

Stage 3 - If you are not satisfied with that response you can ask the Executive Director of Finance and Corporate Support to review your complaint and the previous response given. The Executive Director will aim to respond to your complaint within 14 working days.

Stage 4 - If you are still not satisfied, you can ask the Chief Executive to review your complaint. The Chief Executive will review the matters you are unhappy about and respond to you within 21 working days.

(Note – full contact details for all of these officers are provided at the end of this document)

Further, if you have exhausted the Council's complaint process and still remain unhappy then you can ask the Scottish Public Services Ombudsman to consider your complaint. Again, full contact details are provided at the end of this document. Further details of the complaints process can be found on the Council website at www.east-ayrshire.gov.uk.

Enforcement procedures

Section 1: definitive statement of principles

Enforcement of Food Safety Legislation shall be in accordance with the following fundamental principles:

- Enforcement action will only be initiated where it accords with the council's general policy on food safety
- Enforcement shall be based upon assessment of risk to public health
- Enforcement shall be consistent, fair and proportionate to the risk
- Enforcement action shall comply with the Food Law Code of Practice (Scotland) made under Section 40 of the Food Safety Act 1990
- Enforcement action shall accord with enforcement guidance issued by the Local Government Regulation (LGR), the Scottish Food Enforcement Liaison Committee (SFELC) and the Food Standards Agency (Scotland)
- Enforcement shall accord with the principles of the enforcement policy formulated in accordance with the concordat on enforcement approved by the council.

Section 2: statement of general food policy

We are committed to our role in the protection of the public, and as a statutory food authority, shall seek to endeavour that food and drink intended for human consumption which is produced, stored, distributed, handled or consumed within East Ayrshire is without unreasonable risk to the consumer.

In addition to our statutory enforcement role, we will offer advice and assistance to all food businesses within East Ayrshire.

Section 3: consistency of approach

Enforcement decisions taken by authorised officers shall be made in compliance with this policy. Any departure from the policy will be for exceptional reasons, must be justifiable and be taken only after approval by the Regulatory Services Manager or, in his absence, the Head of Legal, Procurement and Regulatory Services.

The Team Leader, Food Safety will accompany each authorised officer on planned programmed inspections throughout the year and also holds regular team meetings where food safety issues can be discussed. In addition our managers hold regular meetings to consider any relevant food safety issues.

Section 4: scope of enforcement options

We recognise the importance of taking enforcement decisions which are fair, consistent, proportionate and based on published standards. We shall adopt and comply with the "Food Law Code of Practice (Scotland)", guidance issued by SFELC, LGR and the FSA including advice relating to the home authority principle, where appropriate.

Before making a decision on the need for any enforcement action the following should be considered:

- The public health consequences of non-compliance
- The seriousness of the offence
- Confidence in management
- History of the food business
- The likely effectiveness of all available enforcement options

Once all the criteria described above have been considered along with any other relevant information, the options for enforcement shall be:

- That there is no need for action
- To take informal action
- To use statutory notices
- To submit a report to the Crown Office and Procurator Fiscals' Service

Where appropriate, the Home or Originating Authority shall be informed of any proposed enforcement action against a business for which they have an interest in accordance with the guidance issued by LGR on the home authority principle.

Section 5: Informal action

Informal action to secure compliance with legislation includes offering advice, verbal warnings and requests for action, the use of letters and the issue of copies of inspection reports.

It is our policy to take informal action in the following instances:

- The act or omission is not serious enough to warrant formal action.
- That having regard to the past history of a business it is considered that informal action will achieve compliance.
- There is adequate confidence in the management.
- The consequence of non-compliance will not pose a significant risk to public health.

When an informal approach is determined, written documentation issued to food business operators shall:

- Contain all the information necessary to understand what work is required and why it is necessary.
- Indicate the regulations/statute contravened, measures which will enable compliance with legal requirements and what other means of achieving the same effect may be chosen.
- Clearly distinguish any recommendations of good practice from legal requirements
- State the time period available to the business for compliance with legal requirements.

Section 6: Hygiene Improvement Notices

The hygiene improvement notice procedure will be followed in the following circumstances:

- Where formal action is proportionate to the risk to public health.
- Where there is a record of non-compliance.
- Where there is a lack of confidence in the food business operator to respond to an informal approach and the enforcement officer is not entirely confident that an informal approach will be successful.

Notices shall not be issued in the following circumstances:

- In the case of a minor technical contravention, without relevance to any potential risk to public health.
- Where the contravention is a continuing one such as personal cleanliness of staff or general cleaning issues and the notice would only secure improvement at one point in time. (In such circumstances a report to the Procurator Fiscal should be considered).

- In transient situations where there is imminent risk of injury to health and immediate enforcement action is required. (In these circumstances a hygiene emergency prohibition notice should be served).

Authorised officers must apply realistic time limits on notices after talks with the food business operator who should also be fully advised of the appeal procedure.

A food business operator's failure to comply with a notice will be reported to the Procurator Fiscal.

Officers must send written confirmation to food business operators in the event of a notice being complied with satisfactorily.

Section 7: Hygiene Emergency Prohibition Notices

It is our policy to serve a hygiene emergency prohibition notice, as appropriate, in the following circumstances: -

- Where an imminent risk of injury to health can be demonstrated. Specialist opinion should be sought, if necessary, prior to making a final decision.
- The relevant criteria specified in the "Food Law Code of Practice (Scotland)" are fulfilled.
- Where the authorised officer has no confidence in an offer of voluntary closure or where the food business operator is unwilling to confirm in writing an offer of voluntary closure.

Authorised officers should advise the Team Leader, Food Safety or Regulatory Services Manager of their intention to proceed with a hygiene emergency prohibition notice

Hygiene emergency prohibition notices should only be signed by Environmental Health Officers or Environmental Health Technicians who have at least two years post qualification experience in food safety matters and are currently involved in food enforcement.

Following the service of an emergency prohibition notice an application should be made to the court within five days for an emergency prohibition order. The authorised officer serving the notice shall notify the relevant home authority, as appropriate.

Section 8: Remedial Action Notices and Detention Notices

It is our policy for suitably experienced enforcement officers to serve remedial action notices and/or detention notices in accordance with the provisions of the "Food Law Code of Practice (Scotland)".

Section 9: Voluntary Undertakings

It is our policy to seek and/or accept a voluntary undertaking to close a premises or to cease using a process or equipment only where there is no risk of the

premises being re-opened or the process or equipment being re-used without the specific permission of the service.

- Authorised officers shall comply with relevant provisions of the "Food Law Code of Practice (Scotland)" relating to voluntarily closing a business or ceasing to use a process or equipment.
- Written confirmation is required of a voluntary undertaking. This shall include confirmation that the premises will not be re-opened or the process or equipment re-used without specific consent from the service.
- Authorised officers shall ensure that the written undertaking is signed and dated by the food business operator or some other person who states that they have sufficient authority to secure and sustain the closure of the premises or the disuse of the process or equipment.
- Authorised officers shall advise any person giving an undertaking that by doing so they are relinquishing their rights to compensation if a court subsequently declines to make a hygiene emergency improvement order.

Section 10: Prosecution proceedings

It is our policy to initiate prosecution proceedings by the submission of a report to the Procurator Fiscal in the following circumstances:

- It appears that there is a serious breach of the law putting the health, safety or well being of the public at risk.
- The offence involves a failure to comply with the requirements of a statutory notice.
- Where it appears that persons are blatantly disregarding the law.

Notwithstanding the above, before deciding to submit a report to the Procurator Fiscal, consideration will be given to relevant factors particularly those given in the "Food Law Code of Practice (Scotland)".

Section 11: Inspection, detention and seizure of suspect food

It is our policy to detain or seize food where authorised officers believe that the food fails to comply with the food safety requirements specified within Section 8 (2) of the Food Safety Act 1990.

We will seize food that has been detained and is subsequently considered by the authorised officer to fail to comply with Section 8 (2) of the Food Safety Act 1990.

Legal proceedings will be initiated for failure to comply with a notice served in terms of the Food Safety Act 1990 and the Food Hygiene (Scotland) Regulations 2006.

Section 12: Re-visits following programmed inspections

Our policy is as defined in the "Food Law Code of Practice (Scotland)" and where significant contraventions of food hygiene or processing regulations and/or poor hygiene practices are found during the programmed inspection then arrangements will normally be made for a re-visit.

In such instances the enforcement officer and if necessary the Team Leader should discuss the circumstances and agree whether it would be appropriate to conduct a re-visit and the timing of such a visit.

Wherever possible the re-visit should be conducted by the officer who undertook the original inspection.

Section 13: Compliance with Article 5 - Regulation (EC) No. 852/2004.

We will take a graduated approach to the enforcement of Article 5 compliance depending on the nature and the extent of the food business operations. We shall try to assist food businesses to obtain Article 5 compliance wherever possible. In order to ensure a consistent approach a set of standard contraventions are to be used for Article 5 compliance and tailored to the individual food business requirements.

The Food Standards Agency, Cooksafe system and the East Ayrshire Council, Food Safety Management System and associated records will also be used to assist Food Business Operators achieve compliance.

Where non-compliance with Article 5 exists we will not hesitate to take formal enforcement action against businesses where little or no progress towards compliance has been made, and where assistance has been previously offered and either refused or ignored.

Section 14: LGR principle of the home authority

It is our policy to recognise and support the LGR home authority principle and to offer assistance and support to any business for which this council is home authority.

In considering enforcement action against a national company, we shall act in accordance with the home authority principle.

Useful Contact Details

Bryan Campbell, Team Leader – Food Safety/Health & Safety, Environmental Health Services, Western Road, Kilmarnock KA3 1LL	(01563) 554020	bryan.campbell@east-ayrshire.gov.uk
Paul Todd, Regulatory Services Manager, Western Road, Kilmarnock KA3 1LL	(01563) 554021	paul.todd@east-ayrshire.gov.uk
David Mitchell, Head of Legal, Procurement & Regulatory Services, Council Headquarters, London Road, Kilmarnock KA3 5BU	(01563) 576061	david.mitchell@east-ayrshire.gov.uk
Alex McPhee, Executive Director of Finance & Corporate Support, Council Headquarters, London Road, Kilmarnock KA3 5BU	(01563) 576279	alex.mcphee@east-ayrshire.gov.uk
Fiona Lees, Chief Executive, Council Headquarters, London Road, Kilmarnock KA3 5BU	(01563) 576019	fiona.lees@east-ayrshire.gov.uk
Scottish Public Services Ombudsman, Freepost EH641, Edinburgh EH3 0BR	0800 377 7330	ask@spsso.org.uk