

# LIMAVADY BOROUGH COUNCIL

## COMHAIRLE BHURIG LÉIM AN MHADAIDH



### FOOD SAFETY ENFORCEMENT POLICY

#### 1 Introduction

Limavady Borough Council recognises the importance of all Councils having a systematic and consistent approach to policies on the use of formal enforcement powers. This policy is based on LACORS (Local Authority Coordinating Office on Regulatory Services) guidance notes and has been developed in a local context but within a consistent national framework. The policy draws extensively on guidance contained in the Code of Practice issued under Article 39 of the Food Safety (NI) Order 1991 (the Code of Practice) and aims to ensure that enforcement action is focused on situations where the public is put at risk and on food businesses which are negligent of their obligations or are intentionally infringing the law. In relation to this policy, the Council will have due regard to the principles contained within the 'Enforcement Concordat' published in March 1998.

#### 2 Main Objective

It is the Council's policy to strive to ensure that any food supplied for human consumption, which is produced, stored, distributed, handled, consumed or imported within the Council boundary is without risk to the health or safety of the consumer.

#### 3 Enforcement Action

- 3.1 In its application of this policy, the Council recognises its duty to act in accordance with the Human Rights Act.

To achieve its objective, the Council accepts that enforcement action will be necessary. Informal action, be it verbal warnings, or the issue of written warnings or formal action, i.e. statutory notices, or prosecution, will be primarily based upon an assessment of risk to public health. In this context, "risk" is the probability of harm to health occurring due to non-compliance with Food Safety Law.

- 3.2 The Council supports all specific guidance on enforcement action contained in the Code of Practice and LACORS Guidance Notes and any other policies or procedures agreed by the Council.

- 3.3 This policy is binding on all enforcement decisions made by officers authorised by the Council. Any departure from the policy must be exceptional, capable of justification and be fully considered by the Director of Environmental Services before the decision is taken, unless it is considered that there is significant risk to the public in delaying the decision.

- 3.4 The Council accepts that all authorised officers must be fully acquainted with the requirements of this policy and to this end the Council commits itself to initial and ongoing training considerations as may be necessary.

## **4 Decision-making/Authorisations**

- 4.1 The Council's Environmental Services Committee will make all decisions concerning prosecutions on the basis of reports or information provided to it by the Director of Environmental Services or his representative.
- 4.2 The service of Emergency Prohibition Notices and Improvements Notices under the Food Safety Order (NI) 1991 and Hygiene Emergency Prohibition Notices, Hygiene Improvement Notices, Remedial Action Notices and Detention Notices under the Food Hygiene Regulations (NI) 2006 is the responsibility of the Director of Environmental Services, the Environmental Health Manager and any other officer specifically nominated and approved by the Council.
- 4.3 In deciding whether to prosecute, the Council accepts that it will be guided by the Code of Practice.

## **5 Enforcement Options**

- 5.1 The Council recognises and affirms the importance of achieving and maintaining consistency in its approach to making all decisions which concern food safety enforcement action including prosecution.
- 5.2 To achieve and maintain consistency, the Council will follow the guidance in the Code of Practice, LACORS Circulars and advice offered in relation to LACORS Home Authority Principle where appropriate.
- 5.3 In considering enforcement needs which may be inconsistent with, contrary to or unclear from any advice already available, the Council will in the first instance consult with the Northern Ireland Food Liaison Group (NIFLG) through the appropriate Group officer. NIFLG will also consider matters of national significance and refer these as appropriate to LACORS in the interests of ensuring consistent enforcement.

Enforcement options that are available, having considered all relevant information and advice are:

- (a) to take informal action;
- (b) to issue Improvement Notices or Emergency Prohibition Notices under the Food Safety (NI) Order 1991;
- (c) to issue Hygiene Improvement Notices or Hygiene Prohibition Notices under the Food Hygiene Regulation (NI) 2006;
- (d) to issue Remedial Action Notices or Detention Notices in respect of an establishment subject to approval under Article 4(2) of EC Regulation 853/2004 under the Food Hygiene Regulation (NI) 2006;
- (e) to issue Formal Cautions;
- (f) to prosecute.

### **5.4 Informal Action**

5.4.1 The Council recognises informal action as one means to secure compliance with Food Law. In this context, informal action includes offering advice, verbal warnings and requests for action, the use of letters and the issue of food hygiene inspection reports, including those generated on a premise following an inspection.

5.4.2 Informal action is appropriate in the following circumstances:

- \* the act or omission is not serious enough to warrant formal action

- \* from the individual's/enterprise's past history, it can be reasonably expected that informal action will achieve compliance
- \* confidence in the individual/enterprise's management involved is high
- \* the consequences of non-compliance will not pose a significant risk to public health
- \* in all circumstances where the Code of Practice issued under the Food Safety (NI) Order 1991 suggests that informal action may be an appropriate action.

**5.4.3** The Council expects that inspection reports will be issued following all primary inspections even in those circumstances where conditions at the time of inspection are satisfactory. The content of such reports will be as directed in the Code of Practice (Annex 6).

**5.4.4** The Council recognises the importance of clear differentiation between legal requirements and matters which are recommended as good hygiene practice in all written or verbal advice given to food traders. Correspondence should contain an indication of the time scale suggested for achieving compliance.

## **5.5 Improvement Notices and Hygiene Improvement Notices**

**5.5.1** The Council recognises that authorised officers of the council may serve Improvement Notices and Hygiene Improvement Notices. The Council considers that service of these Notices are appropriate where one or more of the following criteria apply:

there are significant contraventions of legislation;

there is a lack of confidence in the proprietor or enterprise to respond to an informal approach;

there is a history of non-compliance with informal action;

standards are generally poor with little management awareness of statutory requirements;

the consequences of non-compliance could be potentially serious to public health although it is intended to prosecute, effective action also needs to be taken as quickly as possible to remedy conditions that are serious or deteriorating.

**5.5.2** Improvement Notices and Hygiene Improvement Notices issued by officers of the Council should, in general, be related to risk to health. It is not, for example, appropriate to issue Improvement Notices for minor technical contraventions.

**5.5.3** Only officers specifically authorised to do so may serve Notices on behalf of the Council.

**5.5.4** The Council accepts all relevant guidance in the statutory Codes of Practice and LACORS Guidance Notes on the use of statutory notices.

**5.5.5** The Council accepts that Improvement Notices and Hygiene Improvement Notices are legal documents and as such they confirm that failure to comply with such will in general result in court proceedings. The Council accepts that other bodies such as home and originating authorities will be advised of formal action taken by the Council and its outcome.

## 5.6 Emergency Prohibition Notices and Hygiene Emergency Prohibition Notices

5.6.1 The Council accepts that from time to time the service of Emergency Prohibition Notices and Hygiene Emergency Prohibition Notices may be necessary in those circumstances that involve an imminent risk of injury to health.

5.6.2 The Council considers Prohibition of premises appropriate when one or more of the following criteria apply:

- 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;
- Very 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 the actual contamination of food or a significant risk of contamination;
- Drainage defects or flooding of the premises, serious enough to result in the actual contamination of food or a significant risk of food contamination;
- Premises or practices which contravene the Food Hygiene Regulations (NI) 2006 and have been implicated in an outbreak of food poisoning;
- Any combination of the above, or the cumulative effect of contraventions which, taken together, represent an imminent risk of injury to health.

5.6.3 The Council considers Prohibition of equipment appropriate when the following criteria apply:

- Use of defective equipment, for example, a pasteuriser incapable of achieving the required pasteurization temperature;
- Use of equipment for the processing of high- risk foods that has been inadequately cleaned or disinfected or which is grossly contaminated and can no longer be properly cleaned.

5.6.4 The Council considers Prohibition of a process may be appropriate when the following criteria apply:

- A serious risk of cross contamination;
- Inadequate temperature control;
- Operation outside Critical Control criteria;
- The use of a product which is inappropriate.

5.6.5 Only officers specifically authorised to do so may serve Emergency Prohibition and Hygiene Emergency Prohibition Notices for the Council. The Council further recognises the need for such officers to have considerable experience in a variety of food safety enforcement situations.

5.6.6 The Council accepts the guidance contained in the Code of Practice issued under the Food Safety (NI) Order 1991.

5.6.7 The Council recognises that other bodies such as home and originating authorities should be advised of formal action taken by the Council and its outcome.

5.6.8 Voluntary procedures to remove an imminent risk of injury to health may be used at the instigation of either the proprietor or the manager of the business when that person agrees that an imminent risk of injury to health exists. The Council accepts the guidance on the use of voluntary procedures contained within the Code of Practice (Chapter 3.3).

## **5.7 Prosecution**

**5.7.1** The decision to initiate a prosecution should be taken at the earliest opportunity.

In general, the Council will restrict prosecution to those persons who blatantly disregard the law, refuse to achieve even the basic minimum legal requirements, often following previous contact with the Council, and who put the public at serious risk.

**5.7.2** The circumstances which are likely to warrant prosecution may be characterised by one of the following:

- where 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
- where the alleged offence 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 lawful requirements of an authorised officer
- where the offence involves a failure to comply in full or in part with the requirements of a statutory notice
- where there is a history of similar offences relating to risk to public health

**5.7.3** Before proceeding with a prosecution, the Council must be satisfied that there is relevant, admissible, substantial and reliable evidence that an offence has been committed by an identifiable person or company. The Council must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction. The Council must also be satisfied that it is in the public's interest to prosecute and in this context it will consider guidance contained in the code for Crown Prosecutors.

**5.7.4** In deciding on whether to prosecute, the Council will take into account all the factors in the Code of Practice.

**5.7.5** The Council notes that a court must impose a Prohibition Order or a Hygiene Prohibition Order following certain convictions if it is satisfied that there is a risk of injury to health. The authorised officers of the Council will be required to make available to the court all information necessary for the court to come to an appropriate decision regarding the existence of a risk of injury to health.

**5.7.6** The Council recognises that other bodies such as home and originating authorities should be advised of prosecutions taken by the Council and their outcome.

## **5.8 Formal Cautions**

**5.8.1** The Council notes that the Code of Practice (Chapter 3.1) advises that Councils should consider issuing a formal caution as an alternative to prosecution.

**5.8.2** The Council notes the current Home Office advice which states that the purpose of the formal caution is:

- to deal quickly and simply with less serious offences
- to divert less serious offences away from the courts
- to reduce the chances of repeat offences

**5.8.3** In relation to food offences, the cautioning officers for the Council will be the Director of Environmental Services, the Environmental Health Manager and any other officer who

may be so authorised by the Council on the recommendation of the Director of Environmental Services.

**5.8.4** The Council accepts that the following conditions should be fulfilled before a caution is administered:

- there must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction
- the suspected offender must admit the offence
- the suspected offender must understand the significance of a formal caution and give an informed consent to being cautioned

**5.8.5** Where a person declines the offer of a formal caution, the Council will initiate a prosecution.

## **5.9 Recording offences and notification to other bodies**

The circumstances of the offence will be recorded in the appropriate premises file and, if appropriate, in the formal caution file. The Office of Fair Trading will be notified of any formal cautions issued as soon as possible using the appropriate notification procedure as detailed in the Home Office circular Ref. No. 18/1994. A signed copy of the caution letter will also be sent to the Office of Fair Trading. The Home Authority will be notified of any details of the caution.

## **6.0 Internal Appeals Mechanism**

Should a situation arise where an individual or organisation does not agree with the proportionality of the action taken by the Environmental Health Department, the matter will be referred initially to the Director of Environmental Services. If after consideration by the Director of Environmental Services, the individual or organization still feels aggrieved, the matter will be referred to the Chief Executive for consideration.

## **7.0 Management Controls**

In accordance with the Code of Practice the Council will maintain a documented management system to monitor the quality and nature of inspections undertaken by its officers to ensure, so far as practicable, that inspections are carried out to a uniform standard. The management monitoring system will ensure that the interpretation and action taken by officers following an inspection is consistent within the Council area.

## **8.0 Secondary Inspections**

A secondary inspection is defined in the Code of Practice as any other visit to a food business that is not a primary inspection for any purpose connected with the enforcement of food law.

Authorised officers may decide to carry out a secondary inspection as part of follow up action where contraventions were found and measures to correct these were required. Additionally secondary inspections may be carried out to discuss for example, Hazard Analysis and Critical Control Procedure based systems or food hygiene training or to investigate complaints.

In many circumstances there may not be a need to carry out such additional inspections, officers should consider the previous history of the premises and make a

decision based on risk as to whether or not matters arising require a secondary inspection or can be considered at the next primary inspection.

## **9.0 Alternative Enforcement Strategy**

Food businesses that present little or no risk to public health or safety for food hygiene purposes need not be subject to primary inspections.

Primary inspections of such businesses should be triggered by criteria other than the planned inspection programme. This criteria includes, receipt of consumer complaints or applications for registration or, changes in premises management or the activities.

## **10.0 Enforcement within District Council-run Premises**

With respect to all food business where Council is the proprietor, the premises will be inspected and assessed according to the Code of Practice (Annex 5) and relevant food hygiene regulations by authorised officers of the Council. A report of the inspection will be sent to the Council Chief Executive without undue delay as will any other correspondence regarding the compliance or otherwise of that food business.

### **Note**

Consideration will be given to providing appropriate information in Irish or any other language on request.

## REFERENCES

“Enforcement Concordat” Cabinet Office March 1998

Human Rights Act 1998

Food Safety (NI) Order 1991 Code of Practice Jan 2005

The Code for Crown Prosecutors CPS 2004

Enforcement Concordat: Good Practice Guide for England and Wales (DTI)