

LIMAVADY BOROUGH COUNCIL

COMHAIRLE BHURIG LÉIM AN MHADAIDH



FOOD STANDARDS ENFORCEMENT POLICY

1 Introduction

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). This policy sets out the principles contained within the 'Enforcement Concordat' published in March 1998 which enables the Council's Environmental Health Department to provide an effective and fair service and to ensure consistent, proportional and open enforcement. It is written for the attention of Council officers and business representatives who enquire about our policies and procedures.

We aim to provide a courteous and efficient service in order to maintain a fair and safe trading environment and hence protect the public, the environment and groups such as consumers and workers.

We recognise that most businesses want to comply with law and we will therefore take care to help businesses and others meet their legal obligation without unnecessary expense.

We provide information and advice in a plain language and are open about how we set out our work.

We account for the needs and views of consumers and businesses and encourage them to seek advice and information about us.

2 Main Objective

It is Council's policy to ensure that foods and food packaging meet relevant standards for quality, composition and labelling, presentation and advertising and that reputable food businesses are not prejudiced by unfair competition.

3 Work Planning

The Council will achieve its main objectives by planning the following key activities;

- Food Standards Inspections
- Complaints Investigations
- Sampling for analysis
- Home Authority support.

3.1 Food Standards Inspections

All food premises will be assessed using the criteria detailed in the Code of Practice (Annex 5). The minimum inspection frequency will be determined in accordance with

this assessment score and an inspection programme implemented.

3.2 Sampling for Analysis

The Council intends to submit food and packaging samples to the Public Analyst at the rate of 2.5 per 1,000 population.

3.3 Complaints investigation

The Council will investigate all food complaints brought to its attention in accordance with the procedure detailed in the NIFLG food complaint investigation document of November 2002.

3.4 Home Authority Principle

The Council supports and is committed to the LACORS Home Authority Principle which is designed to encourage efficiency, promote uniformity, reduce duplication and assist enterprises to comply with the law.

4 Enforcement Action

4.1 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 will provide consistent, effective and efficient enforcement, appropriately resourced; with an emphasis placed on "prevention" through advice.

4.2 The Council supports the view that enforcement policy and practice should concentrate on achieving the aims of the food standards requirements through the prevention of infringements, recognising the complementary roles of advice, education, partnership and formal enforcement action, including surveillance and monitoring.

Food businesses that fail to comply with significant statutory requirements will be subject to appropriate enforcement action and a secondary inspection will be made to the premises concerned to ensure that the contravention is remedied.

Failure to comply with significant statutory requirements includes:

- Failure to comply with a single requirement that prejudices consumers;
- Failure to comply with a number of requirements that, taken together, indicate ineffective management.

4.3 The Council supports all specific guidance on enforcement action contained in the Code of Practice, the requirements of the Official Feed and Food Controls Regulations (NI) 2006 and appropriate EC Regulations.

4.4 The Council's Environmental Services Committee will make all decisions concerning prosecution on the basis of reports or information provided to it by the Director of Environmental Services, the Environmental Health Manager or his/her representative.

4.5 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.

Competency and Knowledge

5

To ensure an effective Food Standard enforcement service, the Council will employ staff with the appropriate qualifications, skills, experience and therefore competency. The Council will have regard to the requirements for authorised officers and experts contained in the Code of Practice.

Only officers who have been sufficiently trained and are experienced in matters including general principles of Criminal Law and Practice (including its nature, composition and potential contamination etc), Food Standards Law, food processing, food analysis, quality assurance and auditing will be used for food standards enforcement. The Council is committed to the provision of the necessary training to achieve this aim in accordance with Council training policy and procedure.

Authorisations

6

The Council will appoint and authorise officers under the Food Safety (NI) Order 1991. Officers will be authorised relative to their degree of competency. The Chief Executive, the Director of Environmental Services and the Environmental Health Manager have been given delegated power to authorise officers.

7 Enforcement Options

7.1 The Council recognises and affirms the importance of achieving and maintaining consistency in its approach to making all decisions which concern food standards enforcement action including prosecution.

7.2 To achieve and maintain consistency, the Council will give due consideration to guidance in the Code of Practice, other central government guidance, LACORS Circulars and advice offered in relation to LACORS Home Authority Principle where appropriate.

7.3 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 appropriate officer who will in turn consult with the Northern Ireland Food Liaison Group (NIFLG). 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 evidence, are:

- (a) To take informal action
- (b) To issue formal cautions
- (c) To prosecute

7.4 Informal Action

7.4.1 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 inspection reports, including those generated at the premises following an inspection.

7.4.2 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
- * where the Code of Practice issued under the Food Safety (NI) Order 1991 suggests that informal action may be an appropriate action.

7.4.3 The Council expects that inspection reports will be issued following all programmed 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).

7.4.4 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.

7.5 Formal Cautions

7.5.1 The Council notes that the Code of Practice (Chapter 3.3) advises that Councils should consider issuing a formal caution as an alternative to prosecution.

7.5.2 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

7.5.3 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 authorised by the Council on the recommendation of the Director of Environmental Services.

7.5.4 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

7.5.5 Where a person declines the offer of a formal caution the Council will initiate prosecution.

7.5.6 The Council recognises that other bodies such as home and originating authorities will require to be advised of formal cautions taken by the Council and their outcomes.

7.6 Prosecution

7.6.1 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 prejudice consumers. The decision to prosecute should be taken at the earliest opportunity.

7.6.2 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
- where there is a history of similar offences

7.6.3 Before proceeding with a prosecution, the Council will satisfy itself that there is relevant, admissible, substantial and reliable evidence that an offence has been committed by an identifiable person or company. The Council will satisfy itself that there is sufficient evidence to provide a realistic prospect of conviction. The Council will also satisfy 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.

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

7.6.5 The Council recognises that other bodies such as home and originating authorities will require to be advised of prosecutions taken by the Council and their outcome.

7.7 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.

8.0 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 with the Council area.

9.0 Internal Appeals Mechanism

Should a situation arise where an individual or organization 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.

10.0 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, 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.

11.0 Alternative Enforcement Strategy

Food businesses that present little or no risk to public health or of prejudicing consumers, or trading unfairly for food standards 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.

12.0 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)