

**INFRASTRUCTURE SERVICES**

**PROTECTIVE SERVICES - ENVIRONMENTAL HEALTH  
SECTION**

**FOOD LAW  
ENFORCEMENT  
POLICY  
2019/2020**

**ABERDEENSHIRE COUNCIL  
ENVIRONMENTAL HEALTH SERVICE**

**FOOD LAW ENFORCEMENT POLICY**

**1. GENERAL STATEMENT OF AIMS**

The Environmental Health Service is committed to providing a quality food law enforcement service for all consumers who live in, work in or visit Aberdeenshire.

The Environmental Health Service will endeavour, within the limits of its resources, to develop and improve the food law enforcement service it provides to ensure that the needs of the consumer are met.

In addition, businesses and consumers will be encouraged to trade fairly and competently and to co-operate with the Environmental Health Service in meeting its statutory responsibilities.

**2. OBJECTIVES**

- 2.1 To carry out food law enforcement duties assigned to the Environmental Health Service.
- 2.2 To carry out regular intervention visits to food businesses and to monitor trading and food safety, hygiene and standards practices.
- 2.3 To investigate complaints which allege breaches of the Community Provisions which the Environmental Health Service is authorised to enforce.
- 2.4 To offer advice, guidance, education and encouragement on good food law practices where appropriate and when requested.
- 2.5 To achieve consistent, balanced and fair enforcement of statutory duties.
- 2.6 This Policy has been produced with reference to the Scottish Regulators' Strategic Code of Practice in accordance with the Regulatory Reform (Scotland) Act 2014.
- 2.7 Aberdeenshire Council Environmental Health Service will make a commitment to better regulation by;
  - ensuring that the way regulators carry out their work in practice and interact with those they regulate can make a significant contribution to supporting businesses and contribute to sustainable economic growth.

- seeking to understand those they regulate including taking economic and business factors appropriately into account in carrying out their regulatory activities.
- developing effective relationships with those they regulate and have clear two-way communication in place.
- exercising regulatory functions in a way that is transparent, accountable, proportionate, consistent and targeted only where necessary.

### **3. ENFORCEMENT POLICY**

- 3.1 The enforcement policy of the Environmental Health Service is set out in this document, however, officers will also operate in accordance with the
- Food Law Code of Practice (Scotland),
  - Interventions Food Law Code of Practice (Scotland),
  - Food Law Practice Guidance (Scotland) and
  - Aberdeenshire Council Food Law Enforcement Intervention Policy & Procedure – parts A to E
- 3.2 The Environmental Health Service will ensure that its authorised officers are adequately qualified, trained and experienced consistent with their authorisation and duties in accordance with Food Law Codes of Practice in order to meet its objectives in a proper manner.
- 3.3 All authorised officers are expected to adhere to the enforcement policy outlined in this document.
- 3.4 Only officers of the Environmental Health Service who are authorised to do so will serve formal enforcement Notices.
- 3.5 The enforcement policy is readily available to the public and food businesses within Aberdeenshire at all Environmental Health Offices and on the Aberdeenshire Council website.

<https://www.aberdeenshire.gov.uk/environment/food-safety/>

- 3.6 The Environmental Health Service is fully committed to following guidance issued by Food Standards Scotland, Scottish Government, the Royal Environmental Health Institute of Scotland (REHIS), Health Protection Scotland (HPS), Scottish Government Rural Payments and Inspections Directorate (SGRPID) and the Scottish Food Enforcement Liaison Committee (SFELC).

#### **4. RESPONSIBILITY**

It is the responsibility of all food law enforcement officers to:

- 4.1 Carry out all duties in a professional and courteous manner.
- 4.2 Acquaint themselves with the requirements of this policy, the Food Law Code of Practice (Scotland), the Interventions Food Law Code of Practice (Scotland), the Food Law Practice Guidance (Scotland), all Aberdeenshire Council Food Law Policies and Procedures and any associated food law guidance.

#### **5. ENFORCEMENT WITHIN ABERDEENSHIRE COUNCIL-RUN ESTABLISHMENTS**

- 5.1 Food Law Enforcement Officers shall ensure that all food businesses within the ownership and/or management of Aberdeenshire Council shall be subject to food law enforcement decisions and actions in exactly the same manner as any other food business within Aberdeenshire.
- 5.2 Any breaches of food law identified as the result of an intervention or investigation of Aberdeenshire Council-run premises shall be notified to the Chief Executive by e-mailing the food hygiene report or food complaint report to the dedicated e-mail address.  
[FoodReport@Aberdeenshire](mailto:FoodReport@Aberdeenshire) with a copy sent to the Lead Food Officer.

#### **6. ENFORCEMENT ACTION**

- 6.1 The protection of public health and consumers' rights is an enforcement officer's primary concern and can best be achieved by the education of and guidance and encouragement to food business operators and managers in order that they can fully understand their responsibilities in relation to food safety, be aware of all relevant food law and develop appropriate measures to adequately control food safety risks.
- 6.2 In the first instance, enforcement officers shall therefore:
  - ✧ Seek to assist businesses in improving food safety management and give guidance on how to develop, implement and maintain good control systems;
  - ✧ Highlight areas where food law is not being complied with; and
  - ✧ Require appropriate corrective action to be carried out and/or make recommendations of good practice to be considered by the food business.

6.3 In coming to an enforcement decision when evidence of contravention of Community Provisions is noted during interventions and investigations, food law enforcement officers will assess the risks and carefully consider all relevant facts and circumstances such as:

- ✧ The seriousness and extent of the contravention
- ✧ The means of remedying the situation
- ✧ The attitude of the management
- ✧ The previous history of compliance.

6.4 The enforcement choices for officers are:

- ✧ No action required
- ✧ Informal letter – verbal advice given
- ✧ Formal letter – contraventions notified and Verification re-visit
- ✧ Statutory Notice served
- ✧ Report to Procurator Fiscal

#### 6.5 No Action Required

When there are no observed contraventions, a completed intervention report shall be sent to the food business operator indicating this decision.

#### 6.6 Informal Letter – Verbal Advice Given

Informal action can be taken in instances where:

- ✧ an act or omission is not serious;
- ✧ past history of the business/food business operator does not warrant alternative action;
- ✧ there is confidence in the food business operator/manager that matters will be corrected; or
- ✧ the consequences of non-compliance do not pose a significant risk to consumers.

Informal action may be taken by the issue of verbal informal warnings which must be recorded on the business record. The written intervention report sent to the food business operator shall record any verbal informal warnings given.

#### 6.7 Formal Advisory/Warning Letter – Contraventions Notified

When an intervention reveals food law contraventions of a recurring minor nature, or matters of a more serious nature and previous history suggests a high probability of compliance, food law enforcement

officers will issue a formal advisory or warning letter. Such written notification will contain:

- ✧ The contraventions of food law
- ✧ A legal reference to the specific Community Provision
- ✧ Remedial work necessary to comply with the legislation
- ✧ An appropriate and agreed timescale for completion of necessary works
- ✧ An indication whether the notification is a legal requirement, a recommendation on good practice or general advice.

## 6.8 Verification Re-visits

A verification re-visit for a food law official control intervention shall be carried out when a food business fails to comply with significant statutory requirements.

The timing of the verification re-visit shall be determined by the Food Law Rating Scheme banding, the nature of the contravention and the action required to bring about compliance.

Appropriate formal enforcement action **MUST** be considered when food businesses have failed to remedy significant contravention(s) at the first verification re-visit.

When a Food Law Rating Scheme banding of E or D is achieved at the planned intervention stage the food law enforcement officer **MUST** consider whether immediate formal enforcement action is required.

Verification re-visits in respect of Band E and D premises shall have a higher priority than other Group 2 and all Group 3 planned interventions.

## 6.9 Statutory Notices

Where food law enforcement officers are of the opinion that an informal approach will not be successful and/or that more formal action is required to reflect the risk to public health then Statutory Notices shall be served.

## 6.10 Criteria for Service of Statutory Notices

One or more of the following:

- ✧ Clear contraventions of food law
- ✧ Non-compliance presents a significant risk to food safety
- ✧ There is a verified history of non-compliance
- ✧ Poor standards of management and poor awareness of food law requirements
- ✧ Effective and immediate action is required to remedy imminent risk.

- 6.11 The Lead Food Officer and the relevant Team Manager must be kept informed of the progress of the service and follow-up of all Statutory Notices.

## **7. HYGIENE IMPROVEMENT NOTICE**

- 7.1 When serving a Hygiene Improvement Notice, regard shall be given to the Food Law Code of Practice (Scotland), the Food Law Practice Guidance (Scotland) and the Food Hygiene (Scotland) Regulations 2006.
- 7.2 A Hygiene Improvement Notice shall be served under Regulation 6 of the Food Hygiene (Scotland) Regulations 2006.
- 7.3 A Hygiene Improvement Notice may be served on the evidence of the inspecting officer alone.
- 7.4 Where an inspection is made upon the expiry of a Notice, and a prosecution may be likely, a witness shall accompany the inspecting officer. Officers who have not personally witnessed the contravention(s) stated in the Notice **shall not sign** Hygiene Improvement Notices.
- 7.5 A Hygiene Improvement Notice shall only be signed by food law enforcement officers authorised to do so by Aberdeenshire Council. Such officers must be suitably qualified, with experience in food law enforcement, and meet the requirements set out in the Food Law Code of Practice (Scotland), Section 1, Chapter 4.9.1 and Aberdeenshire Council's Food Law Authorisation Policy and Procedure.
- 7.6 Failure to comply with the terms of a Hygiene Improvement Notice shall result in the consideration of a report to the Procurator Fiscal in accordance with the Food Law Code of Practice (Scotland)
- 7.7 Compliance with the terms of a Hygiene Improvement Notice shall always be verified in writing to the food business operator by the inspecting Authorised Officer.
- 7.7 Further guidance on Hygiene Improvement Notices is available in the Food Law Code of Practice (Scotland), Section 3, Chapter 15 and the Food Law Practice Guidance (Scotland) Chapter 3.2
- 7.8 Food law enforcement officers authorised to serve Hygiene Improvement Notices **must** adhere to the Hygiene Improvement Notice Work Procedures and complete the associated checklist when serving all Hygiene Improvement Notices.
- 7.9 The Lead Food Officer, the relevant Team Manager or an appropriate Senior Officer must verify that the Hygiene Improvement Notice work procedures have been fully complied with during the service of all Hygiene Improvement Notices in the prescribed manner.

## **8. HYGIENE EMERGENCY PROHIBITION NOTICE**

- 8.1 When serving a Hygiene Emergency Prohibition Notice, regard shall be given to the Food Law Code of Practice (Scotland), the Food Law Practice Guidance (Scotland) and the Food Hygiene (Scotland) Regulations 2006.
- 8.2 A Hygiene Emergency Prohibition Notice shall be served under Regulation 8 of the Food Hygiene (Scotland) Regulations 2006 only when an imminent risk to health can be demonstrated in respect of criteria set out in the Food Law Code of Practice (Scotland).
- 8.3 A Hygiene Emergency Prohibition Notice shall only be signed by an officer who has personally witnessed the contravention(s) and who meets the qualification and experience requirements set out in the Food Law Code of Practice (Scotland), Section 1, Chapter 4.9.3 and Aberdeenshire Council's Food Law Authorisation Policy and Procedure.
- 8.4 After the issue of a Hygiene Emergency Prohibition Notice, an application for a Hygiene Emergency Prohibition Order shall be made to a Sheriff within five days in accordance with Regulations 2 & 8 of the Food Hygiene (Scotland) Regulations 2006 unless the health risk conditions are no longer fulfilled.
- 8.5 If an application is made to a Sheriff for the issue of a Hygiene Emergency Prohibition Order notification in writing must be provided to the food business operator at least 24 hours prior to the application being heard informing of the date, time and venue.
- 8.6 If an Officer is satisfied that a food business operator has taken sufficient measures to secure that a health risk condition is no longer fulfilled, in respect of the business, a Certificate that there is no longer a risk to health shall be issued to the food business operator.

If an Officer is not satisfied that sufficient measures have been taken, a Notice of continuing risk to health shall be issued to the food business operator.

On receipt of an application for a Certificate a determination shall be made within 14 days and a Certificate or Notice issued within 3 days of the determination.

- 8.7 Further guidance on Prohibition Procedures is available in the Food Law Code of Practice (Scotland), Section 3, Chapter 16 and the Food Law Practice Guidance (Scotland) Chapter 3.3

## **9. REMEDIAL ACTION NOTICES/DETENTION NOTICES**

- 9.1 When serving a Remedial Action Notice and/or Detention Notice regard shall be given to the Food Law Code of Practice (Scotland), the Food Law Practice Guidance (Scotland) and the Food Hygiene (Scotland) Regulations 2006.
- 9.2 Remedial Action Notices and Detention Notices shall be served under Regulation 9 of the Food Hygiene (Scotland) Regulation 2006.
- 9.3 Detention Notices under Regulation 9 of the Food Hygiene (Scotland) Regulations 2006 shall only be served on establishments requiring approval under Regulation (EC) 853/2004
- 9.4 A Remedial Action Notice/Detention Notice may be served on the evidence of the inspecting officer alone. Where an inspection is made upon expiry of a Notice, and a prosecution may be likely, a witness shall accompany the inspecting officer. Officers who have not personally witnessed the contravention(s) stated in the Notice **shall not sign** Remedial Action Notices/Detention Notices.
- 9.5 Remedial Action Notices/Detention Notices may only be signed by officers authorised to do so by Aberdeenshire Council. Such officers must be suitably qualified with appropriate experience in food law enforcement and meet the requirements set out in the Food Law Code of Practice (Scotland), Section 1, Chapter 4.9.4 and Aberdeenshire Council's Food Law Authorisation Policy and Procedure.
- 9.6 Remedial Action Notices may be served in the following circumstances:
- ✧ The failure of any equipment or part of an establishment to comply with requirements of the Community provisions.
  - ✧ The need to impose conditions upon any process breaching requirements of the Community provisions.
  - ✧ The prohibition of any process breaching requirements of the Community provisions.
  - ✧ The hampering of adequate health interventions in accordance with the Food Hygiene (Scotland) Regulations 2006.
  - ✧ The rate of operation of the business is detrimental to its ability to comply with requirements of the Community provisions.
- 9.7 Detention Notices may be served on establishments requiring approval under Regulation (EC) 853/2004 when there are indications or suspicions that food is unsafe and requiring examination and the taking of samples.
- 9.8 Action taken should be proportionate to the risk to public health and where immediate action is required to ensure food safety.

- 9.9 A Remedial Action Notice may be used if a continuing offence requires urgent action due to a risk to food safety or when corrective measures have been ignored by a food business operator and there is a risk to public health.
- 9.10 When an Authorised Officer is satisfied that action specified in a Remedial Action Notice has been satisfactorily completed the Notice shall be withdrawn by the issue of a Withdrawal of a Remedial Action Notice, in writing, to the food business operator of the approved establishment.
- 9.11 When an Authorised Officer is satisfied that food specified in a Detention Notice need no longer be detained the Notice shall be withdrawn by the issue of a Withdrawal of a Detention Notice, in writing to the food business operator of the approved establishment.
- 9.12 Further guidance on Remedial Action Notices and Detention Notices is available in the Food Law Code of Practice (Scotland), Section 3, Chapter 18.

## **10. REPORTS TO THE PROCURATOR FISCAL**

- 10.1 Reporting contraventions to the Procurator Fiscal may be considered in one or more of the following circumstances:
- ✧ Where there is a history of non-compliance with food law.
  - ✧ Where there is a blatant and reckless disregard of food law requirements.
  - ✧ Where the public have been put at a significant risk.
  - ✧ The unlikelihood of a “due diligence” defence being established.
  - ✧ Failure to comply with a Hygiene Improvement Notice.
- 10.2 If an officer is satisfied that circumstances merit sending a report to the Procurator Fiscal, then the report will be prepared at the earliest opportunity with time-bar dates taken into account.

**N.B. Enforcement officers cannot decide to prosecute – only the Procurator Fiscal can do this.**

- 10.3 When considering the submission of a report to the Procurator Fiscal reference should be made to the document entitled:

**“Reports to the Procurator Fiscal – A Guide for Specialist Reporting Agencies”.**

10.4 When submitting a report to the Procurator Fiscal enforcement officers shall consider the following criteria:

- ✧ The Food Law Enforcement Policy has been adhered to.
- ✧ The evidence gathered is sufficient.
- ✧ The co-operation of witnesses.
- ✧ The alleged person(s) responsible have been accurately identified.
- ✧ Any explanation given by the alleged person(s) responsible.
- ✧ The likelihood of a due diligence defence being established.
- ✧ Satisfaction of the public interest test.
- ✧ The seriousness of the offence.
- ✧ Previous convictions.
- ✧ The likelihood of a nominal penalty.
- ✧ Whether the offence was committed as a genuine mistake.
- ✧ Whether other enforcement action would be more appropriate.

## **11. COMPLAINTS**

11.1 Complaints in respect of food law enforcement activities shall be dealt with in accordance with Aberdeenshire Council's Corporate Complaints Procedure.

## **12. REVIEW**

12.1 This Policy shall be reviewed annually and revised, as and when required, by the Lead Food Officer and members of the Food Focus Group.