

BANBRIDGE DISTRICT COUNCIL

FOOD SAFETY ENFORCEMENT POLICY

1.0 Introduction

- 1.1 Banbridge District 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 guidance notes and has been developed in a local context but within a consistent national framework. It also encapsulates the principles of the Enforcement Concordat which was adopted by Banbridge District on 7 April 2003. The policy draws extensively on guidance contained in codes of practice issued under Article 39 of the Food Safety (NI) Order 1991. This policy sets out the principles which will enable the Council's Environmental Health Department to provide an effective and fair service and to ensure consistent and open enforcement. It is written for the attention of Council officers and business representatives who enquire about our policies and procedures.

2.0 Main Objective

- 2.1 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.

3.0 Enforcement Action

- 3.1 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 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 statutory Codes of Practice issued under Article 39 of the Food Safety Order (NI) 1991 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.
- 3.5 All re-visits will be undertaken in accordance with the Re-visit Policy – Food Hygiene/Food Standards FC/POL/C005.

4.0 Decision-making/Authorisations

- 4.1 The Director of Environmental Services has devolved powers to make all decisions concerning formal enforcement action. These decisions will be made on the basis of reports/information provided to him by environmental health staff.
- 4.2 Emergency Prohibition Notices may only be served by the Director of Environmental Services the Environmental Health Manager and any other Environmental Health Officer specifically nominated and approved by Council.
- 4.3 Improvement Notices may be served following the service of Minded To Notices by all Environmental Health Officers authorised under the Order.
- 4.4 In deciding whether to prosecute, the Council accepts that it will be guided by Code of Practice No. 1 : Legal Matters issued under the Order.

5.0 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 statutory Codes 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 may 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.

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 premises 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 Codes of Practice issued under the Food Safety (NI) Order 1991 suggest that informal action may be an appropriate action
- 5.4.3 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 Codes of Practice on Food Standards and Food Hygiene Inspections.

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.

5.5 Improvement Notices

5.5.1 Improvement 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 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.

The Council accepts that as a precursor to serving an Improvement Notice, a Minded-To Notice must be served in accordance with the Deregulation (Improvement of Enforcement Procedures) (Food Safety) Order (NI) 1996.

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

5.5.4 The Council accepts that an Improvement Notice is a legal document and as such it confirms that failure to comply with an Improvement Notice 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 outcomes.

5.6 Emergency Prohibition Notices

5.6.1 The Council accepts that from time to time the service of Emergency Prohibition Notices may be necessary but only in one or more of the following circumstances:

- * the consequences of not taking immediate and decisive action to protect public health would be unacceptable
- * an imminent risk to injury to health can be demonstrated. This might include evidence from relevant experts, including a food analyst or food examiner
- * the guidance criteria, specified in the relevant statutory Code of Practice,

- * concerning the conditions where prohibition may be appropriate, are fulfilled
- * there is no confidence in the integrity of an unprompted offer made by a proprietor voluntarily to close premises or cease to the use of any equipment, process or treatment associated with the imminent risk
- * a proprietor is unwilling to confirm in writing his/her unprompted offer of a voluntary prohibition

5.6.2 The Council accepts the guidance on Emergency Prohibition Notices contained in the Code of Practice on Prohibition Procedures.

5.6.3 The Council recognises that other bodies such as home and originating authorities will require to be advised of formal action taken by the Council and its outcome.

5.6.4 The Council recognises that in certain circumstances, an authorised officer may accept voluntary action on the part of a proprietor of a food premises, this most commonly taking the form of voluntary closure of the premises concerned.

An Authorised officer shall only accept such voluntary action where:

- (a) It will be, at least, as effective as serving an emergency prohibition notice and;
- (b) Written confirmation of the proprietors offer is obtained and a written undertaking is given not to re-open the premises without the specific permission of an authorised officer of the district council.

5.7 Prosecution

5.7.1 In general, the Council will restrict prosecution to those person 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 on Legal Matters.
- 5.7.5 The Council notes that a court must impose a 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 will require to 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 on Legal Matters 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 offenders 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 consider taking alternative enforcement action. This will usually take the form of prosecution.
- 5.8.6 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 outcome.
- 5.8.7 Recording Offences and Notifications 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.

- Sections in italics will require amendment to individual Council's circumstances.

5.9 Revocation of Licences and Approvals

- 5.9.1 The Council recognises that it has the power to issue Butchers Licences and to approve Premises handling or manufacturing Meat, Dairy and Fishery Products.
- 5.9.2 The Council also recognises that it has the right to refuse, suspend or revoke any licence or approval which it has received/issued.
- 5.9.3 In general the Council will restrict refusal, suspension or revocation of licenses or approval to those who blatantly or repeatedly breach the conditions specified in the relevant regulations and have been successfully prosecuted for such breaches.
- 5.9.4 The Council will suspend or revoke a licence or on approval where an imminent risk to health is identified and an Emergency Prohibition Order has been granted by the Court.

6.0 Bacteriological Sampling

- 6.1 The number of samples taken per annum will be directed by the programme devised by Northern Ireland Food Liaison Group and Public Health Laboratory Service.
- 6.2 Sampling officers will follow the current NIFLG Food Sampling Policies and Associated Guidance adopted by the Council.
- 6.3 All results will be notified in writing along with any recommendations deemed necessary.
- 6.4 If the results indicate an imminent risk to health then authorised officers will taken further formal action as deemed necessary.

7.0 Complaints

- 7.1 Where complaints are received regarding composition, labelling, microbiological or other contamination, authorised officers will follow the current Food Complaints Procedure adopted by the Council.

8.0 Detention/Seizure of Food

- 8.1 Where in the course of an inspection or visit to a premises an authorised officer is satisfied that food therein fails to meet the general food safety requirements, he/she will follow procedures laid out in the relevant Code of Practice.