



# **FOOD SAFETY**

# **ENFORCEMENT POLICY**

# CONTENTS

	<b>Page</b>
1. Introduction	3
2. Main Objective	3
3. Enforcement Action	3
4. Decision Making/Authorisations	3
5. Enforcement Options	4-8
Appendix A	9-10

## **1. INTRODUCTION**

- 1.1 Antrim 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 guidance notes and has been developed in a local context but within a consistent national framework. The policy draws extensively on guidance contained in Codes of Practice issued under Article 39 of the Food Safety (NI) Order 1991 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.

## **2. 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. 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 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 statutory Codes of Practice issued under Article 39 of the Food Safety Order (NI) 1991 and LACORS Guidance Notes and any other policies 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 *Chief Environmental Health Officer/District Council Committee* before the decision is taken, unless it is considered 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. DECISION-MAKING/AUTHORISATIONS**

- 4.1** The Council's Environmental Health Committee will make all decisions\* concerning prosecution on the basis of reports or information provided to it by the Chief Environmental Health Officer or his representative.

*\*(The content of this section of any policy will depend on the Council's existing policy. For example, this section may need elaboration and extension in circumstances where officers are already authorised to undertake prosecutions in accordance with the Audit Commission's advice).*

- 4.2** The service of emergency prohibition notices and improvement notices under the Food Safety Order (NI) 1991 is the responsibility of the Chief Environmental Health Officer, the Deputy Chief Environmental Health Officer, the Senior Food Officer 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 Code of Practice No 1: Legal Matters issued under the Food Safety (NI) Order 1991.

## **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 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 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 interest 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 a 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** The Council recognises that authorised officers of the Council may serve Improvement Notices. The Council considers that 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.

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

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

**5.5.5** 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 outcome.

## **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 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** Only officers specifically authorised to do so may serve 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.

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

**5.6.4** 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.

**5.6.5** The Council authorized that in certain circumstances, an authorized 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 authorized 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 authorized officer of the district council.

## **5.7 Prosecution**

**5.7.1** In general, the Council will restrict 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 authorized 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 suspect 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 authorized officer
- where the offence involves a failure to comply in full or 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 authorized 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.

**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 Chief Environmental Health Officer, the Deputy Chief Environmental Health Officer, the Senior Food Officer and any other senior officer who may be so authorised by the Council on the recommendation of the Chief Environmental Health Officer.*

**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 consider taking alternative enforcement action. This will usually take the form of prosecution.

**5.8.6** The Council recognises that other bodies such a 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 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.

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

## **5.9 Butchers Licensing - Enforcement**

- 5.9.1** The Council recognizes that on occasions butchers' licenses may be required to be refused, revoked or suspended.
- 5.9.2** The decision to refuse, revoke or suspend butchers' licenses shall be in accordance with the advice detailed in the Food Standards Agency guidance notes The Food Safety (General Food Hygiene) Amendment Regulations (NI) 2001 – Licensing of Butchers Shops August 2001.
- 5.9.3** Only Officers specifically authorised to do so may enforce refusal, revocation or suspension of butchers' licenses.

## **Food Safety Enforcement Policy**

### **SCREENING FOR EQUALITY IMPACT ASSESSMENT** **Northern Ireland Act 1998 (Section 75)**

#### **Introduction**

Section 75 of the Northern Ireland Act 1998 requires all public authorities in carrying out their functions relating to Northern Ireland to have due regard to the need to promote equality of opportunity between:

- Persons of different religious beliefs.
- Persons of different political opinions.
- Persons of different racial groups.
- Persons of different ages.
- Persons of different marital status.
- Persons of different sexual orientation.
- Men and women generally.
- Persons with a disability and persons without.
- Persons with dependants and persons without.

To satisfy this requirement, council departments carry out Equality Impact Assessments of policies to test whether they could have an adverse impact on equality of opportunity between any of the nine groups listed above. While it is acknowledged that Section 75 puts a duty on public authorities to look at its policy areas and not just those relating to equality issues, it is accepted that not all policies need to be assessed to the same extent. Screening aims to identify those policies that are likely to have the greatest impact on equality of opportunity and therefore should be subject to a full Equality Impact Assessment.

#### **Brief Summary of the Policy**

The policy details how the council will ensure that the action it will consider and take to enforce the Food Safety (N.I.) Order 1991 is both focused and consistent. It addresses enforcement options and actions, the decision making process, butchers licensing and the authorisation of officers.

#### **Aims of the Policy**

The policy aims to clarify how the enforcement service will operate 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 and safety of the consumer.

## Screening Analysis

Is there evidence of higher or lower participation or uptake by different groups within any of the nine categories?

YES	NO ✓
-----	------

Is there any evidence that particular groups have different needs, experiences, issues and priorities in relation to the particular main policy area?

YES	NO ✓
-----	------

Is there an opportunity to better promote equality of opportunity or good relations by altering policy or working with others in Government or the community at large?

YES	NO ✓
-----	------

Have consultations in the past with relevant groups, organisations or individuals indicated that particular policies create problems which are specific to them?

YES	NO ✓
-----	------

## Equality Impact Assessment Decision

This policy has been screened for any possible impact on equality of opportunity affecting the groups listed in Section 75 of the Northern Ireland Act 1998 and no adverse or differential aspects were identified. A full Equality Impact Assessment is not therefore required.