

**MIDLOTHIAN COUNCIL  
ENVIRONMENTAL HEALTH FOOD & SAFETY  
FOOD SAFETY ENFORCEMENT POLICY**

<b>Approved By:</b>	Cabinet, Midlothian Council
<b>Date Approved:</b>	
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**FOOD SAFETY  
ENFORCEMENT POLICY**

**MIDLOTHIAN COUNCIL**

*“A Council which works with its communities to achieve effective services and a quality environment”*

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## Food Enforcement Policy

### Midlothian Council

Midlothian Council is designated as a Food Authority by the Food Safety Act 1990 (as amended) and as an enforcement authority *under* the Food Hygiene (Scotland) Regulations 2006. The Council is responsible for enforcing a wide variety of laws relating to food safety; the hygiene and composition of food, food contact materials and information about food that must be provided to the consumer. This document describes how the Council enforces food safety law.

#### 1 General Statement of Intention

It is the policy of Midlothian Council to,

- 1.1 act to ensure that food produced or consumed in Midlothian is properly described to the consumer and is safe to eat.
- 1.2 enforce food safety law in a way that is based on control of the risk to public health or prejudice to the consumer.
- 1.3 be reasonable, proportionate, consistent and appropriate when enforcing the law.
- 1.4 appoint enough suitably qualified and experienced persons to carry out the food law enforcement duties of the Council.
- 1.5 reduce the risk of non-compliance by providing assistance, guidance and advice to any business that approaches us to help them meet their legal obligations.
- 1.6 be mindful, when exercising our regulatory functions, of the duty on regulators the [Regulatory Reform \(Scotland\) Act 2014](#) and the [Scottish regulators' strategic code of practice - gov.scot \(www.gov.scot\)](#) to contribute to achieving sustainable economic growth.

## 2 Regulation and Enforcement

- 2.1 Regulation and enforcement is carried out by authorised officers appointed as Inspectors by the Council.
- 2.2 Our Authorised Inspectors have a legal right to enter any premises where food is manufactured, made, sold or provided within the Council's area, to check compliance with food law.
- 2.3 Regulation includes activities such as the inspection of food and food business premises, visits to investigate complaints, sampling for the examination and analysis of foods and the giving of advice and guidance to businesses.
- 2.4 Food law means any law, enacted in the UK and Scotland or retained European community regulations covering food hygiene, safety or compositional standards, food information or the import or export of food.
- 2.5 If we find during a regulatory activity that food law is not being complied with, we will act to protect the safety and interest of consumers and to bring the business back into compliance with the law. This action is called Enforcement.
- 2.6 Where a regulatory activity involves attendance at a premises we will leave a record of the visit or inspection noting any actions taken or likely to be taken by the Inspector.
- 2.7 When carrying out regulation and enforcement, Inspectors take reference from the food legislation, guidance provided in the Food Law Code of Practice, Practice Guidance and Interventions Guidance (see [Food Law Code of Practice \(Scotland\)](#) | [Food Standards Scotland](#) | [Food Standards Scotland](#) ), our own operational procedures, and the Scottish Government.
- 2.8 Where Inspectors are considering action, which may be inconsistent or not covered by such guidance, they can take reference from members of the Lothian and Borders Food Liaison Group. If a consensus of approach cannot be achieved the matter will be referred to Food Standards Scotland.

## 3 Enforcement

When we find during a regulatory activity that food law is being broken by a food business there are a range of enforcement actions we can take.

**A Written Warnings**

- A1 We can write to the business to:
- a. Warn the food business that they are not complying with the law
  - b. Tell the food business what the law requires it to do.
  - c. Tell the food business what the law that is being broken is called.
  - d. Give the food business an appropriate amount of time to do what is required to comply with the law.
- A2 We are most likely to issue a written warning following an inspection in any of the following circumstances: -
- a. Our assessment of the food business operator indicates that compliance can be achieved by a written warning.
  - b. Contraventions of the law did not pose an immediate or significant risk to public health or of misleading the consumer. However, we consider that hazards to food safety in the business need to be more effectively controlled or improvements made to food information.
  - c. There were structural or operational contraventions of the law that need to be improved to prevent risk to public health or detriment to the consumer.
  - d. A surveillance sample of food from the business indicates that there are improvements to practices which need to be made.
- A3 We will send a written warning (or confirmation of any warnings given on a record of inspection) within 15 working days of the regulatory activity.
- A4 We may also use the written warning to give advice to the food business operator but we will make it clear what the law requires and what we are advising as good practice.
- A5 We may revisit to check that the business has done what we asked for in a written warning.

## **B Enforcement Notices**

- B1** We can serve a range of Enforcement Notices:
- a. A Hygiene Improvement Notice to require the business to remedy a contravention of the law by a certain time.
  - b. A Remedial Action Notice to stop the use of a food process, piece of equipment or part of a food business, or change or modify a process so that a risk to health is removed or to prevent obstruction of an Inspector.
  - c. A Hygiene Emergency Prohibition Notice that immediately closes a food business, prohibits a process or use of equipment because there is an imminent risk to public health.
  - d. A Detention notice to stop food entering the food chain while checks are made on its safety or labelling.
  - e. A Seizure Notice taking unsafe or improperly described food out of the food chain so that it can be destroyed.
- B2** We are likely to issue an enforcement notice:
- a. Where we find that significant hazards to food safety in the business have not been identified or are not being controlled.
  - b. We have little confidence the food business operator will respond to a written warning.
  - c. We discover matters that are likely to cause a risk to the health of consumers should a contravention persist.
  - d. There are a number of significant contraventions of the legislation.
  - e. There is a history of non-compliance following previous regulatory activity including failure to respond to written warnings.
  - f. Standards of the operation are poor with little management awareness of statutory obligations.
- B3** Any Notice served will state:
- a. What law is not being complied with
  - b. Why the Inspector believes the law is not being complied with
  - c. What the food business needs to do to comply with the law

- d. Any time limit for doing what is required. Time limits for compliance with the requirements of Hygiene Improvement Notices (the law allows at least 14 days for a Hygiene Improvement Notice) are set based on the risk to health of the identified contraventions. Inspectors will always attempt to agree time limits for compliance with food business operators.
  - e. Any rights to make representation to a court or to appeal against the requirements of a Notice and any time limit for doing so.
- B4 Only suitably authorised Inspectors can serve Notices. Notices will only be served where sufficient evidence exists to support a legal case should the notice not be complied with.
- B5 We will consider written requests for reasonable extensions to the time limits for compliance with Hygiene Improvement Notices or to suggest works of an equivalent effect. Such requests must be received in writing before the expiry of the time limit for any appeal against the Notice.
- B6 Where a Hygiene Emergency Prohibition Notice has been served we will apply to the Sheriff Court for an Emergency Prohibition Order within five days. We will notify the person served with a Notice of the court hearing at least one day before it takes place.
- B7 The Authority will notify details of the issue of a Hygiene Improvement Notice to: -
  - The Primary Authority (where appropriate)
- B8 We will revisit food businesses to check that Notices are complied with. Failure to comply with a Notice is a criminal offence and will usually result in a report to the Procurator Fiscal.
- C Prosecution**
- C1 We can submit a report to the Procurator Fiscal recommending prosecution for offences committed under food law.
- C2 In addition to any of the enforcement action described above we may submit a report to the Procurator Fiscal in any of the following circumstances; -
  - a. Where an Enforcement Notice has not been complied with.
  - b. Where the public health is, or has been, put at risk by deliberate breaches of the law.

- c. Where the alleged offender has been given reasonable opportunity to correct a potentially serious risk to food safety identified to them by an Authorised Inspector but has failed to do so.
- d. Where there is a history of similar offences related to risk to public health.
- e. Where there are significant contraventions of the law relating to the composition of food or it's labelling.
- f. Where we discover deliberate intent to adulterate food, defraud, or mislead the consumer as to the nature or composition of food.
- g. Where there has been deliberate obstruction of an authorised Inspector.

C3 We will write to the offending party telling them we intend to report them for prosecution and giving them opportunity to offer any explanation or comments they wish to be considered. Any reply provided by the offender may be used in evidence and they will be made aware of that fact.

C4 We will only make a report to the Procurator Fiscal where there is sufficient evidence to support a reasonable likelihood of conviction and it is in the public interest to proceed. Factors we consider include

- the degree of harm caused or potentially caused by the offence
- the compliance history of the offender
- the likelihood of a due diligence defence being established
- the ability and willingness of important witnesses to cooperate
- the willingness of the offender to prevent a recurrence of the problem
- the public benefit of a prosecution
- any explanation offered by the offender.

We can take reference from the Code of Practice and the document "Reports to the Procurator Fiscal – A Guide for Specialist Reporting Agencies".

C5 Where there is sufficient evidence to proceed with a prosecution we will report the matter to the Procurator Fiscal as soon as possible.

C6 Where prosecution could result in the imposition of a Prohibition Order by the Court (banning a person from being a food business operator) we will provide to the Procurator Fiscal with appropriate information to support the prohibition of a food business operator as detailed in Code of Practice

- C7 The Authority will notify details of a successful prosecution to: -
- The Home or Originating Authority and the Primary Authority
  - Royal Environmental Health Institute of Scotland
- C8 The Authority will notify details of any Prohibition Order made against a person to: -
- Royal Environmental Health Institute of Scotland
- C9 Where it is considered in the public interest the Authority will publicise details of a successful prosecution.

#### 4. Formal Action in Approved premises

- 4.1 In addition to the powers to issue Remedial Action and Hygiene Improvement Notices Authorised Inspectors have additional powers in food business that are Approved under retained EU Regulation EC 853/2004.
- 4.2 Inspectors will have regard to the guidance given in the Food Law Code of Practice (Scotland), Practice Guidance and Approved Premises Scottish National Protocol see ([Approved Establishments Scottish National Protocol | Food Standards Scotland](#)) when determining if the level of enforcement action that is appropriate.
- 4.3 Suspension and Withdrawal of Approval

Action to suspend or withdraw the approval for an establishment will be taken when all other enforcement options are considered insufficient to control the food hazards presented by the establishment. Suspension or withdrawal of approval will be considered by the Authority where it has:

- identified serious deficiencies or has to stop production at an Approved establishment repeatedly and
- the food business operator is not able to provide adequate guarantees regarding future production, or
- where a hygiene prohibition order has been made against the food business operator.

The Authority may suspend an establishment's approval temporarily if the food business operator can guarantee that it will resolve deficiencies within a reasonable time.

## 5 Enforcement in Primary Authority premises

Where we are aware that a food business is part of organisation that has a Primary Authority partnership for food regulation we may contact the local authority partner to make them aware that enforcement action is being taken.

## 6 Regulation in businesses subject to alternative inspection arrangements

- 6.1 Some food businesses present a very low risk to the consumer. It is the policy of the Authority to allow authorised Inspectors discretion to use alternative strategies to on-site inspection in those food premises presenting a very low food safety risk. Currently this means contacting the premises using a self-assessment questionnaire rather than carrying out an on-site inspection. A business may be risk rated based on the details in the response received. Inspectors will carry out an inspection where the results of the contact suggest a significant change to the business operation, where the food business operator does not respond or if complaints have been received.

## 7 Enforcement within premises operated by the Council

- 7.1 We will subject food operations in Council premises to the same food safety legislation and inspection procedures as any other food premises. Written communications concerning contraventions noted during inspections will be sent to the appropriate Head of Service and may be brought to the attention of the Director or Chief Executive.

## 8 Enforcement following food sampling

- 8.1 Food samples from businesses in Midlothian are taken according to the requirements of the annual Food Safety plan and the Food sampling policy.
- 8.2 Where a sample taken for surveillance purposes produces an adverse result – being unhygienic or not of the described nature, this will be brought to the attention of the Food Business Operator in line with paragraph 3 of this policy.
- 8.3 Where a formal sample is taken which produces an adverse result enforcement formal action in line with paragraph 3 of this policy will be considered.

## 9.0 Voluntary undertakings

- 9.1 It is the policy of this Authority to allow Inspectors discretion to accept a voluntary undertaking from a food business operator to prevent detriment to the public. Typical examples might include the voluntary

surrender of food which is past its durability date or has been made unsaleable by freezer or chiller breakdown. A business may also decide to cease trading whilst it addresses urgent matters of cleanliness or repair. The food business operator may be required to sign an undertaking to say they are taking such action voluntarily and they understand that it does not prevent further enforcement action being taken against them.

10 Monitoring the consistency of Enforcement activity

- 10.1 It is the policy of the Authority to monitor the consistency of its enforcement activity to ensure that this policy is properly followed.