

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

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MIDLOTHIAN COUNCIL

FOOD SAFETY

ENFORCEMENT POLICY

MIDLOTHIAN COUNCIL

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

FOOD SAFETY ENFORCEMENT POLICY

Foreword

I am pleased to provide you with a copy of the revised edition of Midlothian Council's Food Safety Enforcement Policy

We believe that the majority of food businesses wish to operate within the law and Midlothian Council is committed to working in partnership with food business operators in our area to enable them to maintain the safety of food offered to consumers in Midlothian and beyond.

However, the Council recognises that its principal duty is to protect consumers from harm. Where compliance is not being achieved it will use enforcement powers, including referral to the Procurator Fiscal to achieve the necessary level of compliance to safeguard the consumer.

In order for the Council to demonstrate that the reasons for the decisions it makes are as transparent and open as possible this Food Safety Enforcement Policy sets out what food businesses and indeed consumers in Midlothian can expect from food enforcement officers.

Any action we require a food business operator to take will be proportionate to the risks involved and where the law allows, we will take account of the circumstances of each case and the confidence we have in the management of the food business when considering action.

In preparing this policy we have taken account of guidance and principles given in the Food Standards Agency Framework Agreement on Local Authority Food Law Enforcement, the Scottish Regulators' Strategic Code of Practice and the Regulatory Reform (Scotland) Act.

I hope you will find this food enforcement policy informative and urge you to contact our officers if you require advice or information to ensure your business complies with the law.

Councilor Jim Bryant
Cabinet Portfolio Holder for Communities and Economy

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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). It has delegated obligations under the Food Hygiene (Scotland) Regulations 2006 to enforce and execute in its area the provisions of the European Community Regulations relating to food hygiene and food standards. Each food authority is required to have an up to date published policy explaining how it enforces food safety and standards legislation and to make this available to businesses and consumers.

Reviewed January 2015

1 General Statement of Intention

It is the policy of Midlothian Council,

- 1.1 To strive to ensure that food and drink intended for human consumption, which is produced, stored, distributed, handled or consumed in the area of the Council is without risk to the health and safety of the consumer and is so described as to allow the consumer to make an informed choice.
- 1.2 To apply a level of enforcement action based on the assessment of the risk to public health or prejudice to the consumer.
- 1.3 To appoint sufficient numbers of suitably qualified and experienced persons to act as Authorised Officers for the purpose of discharging the Authority's functions and duties in relation to food hygiene and standards in accordance with this policy.
- 1.4 To recognise that the majority of food businesses prefer to meet their legal obligations and to provide guidance and advice to any business that approaches us to enable them to do this.
- 1.5 To acknowledge the duty placed on regulators by the Regulatory Reform (Scotland) Act 2014 and the Regulators' Strategic Code of Practice to contribute to sustainable economic growth and the principle of better regulation where this does not conflict with our regulatory functions and responsibilities.

2 Regulation and Enforcement

2.1 We carry out regulatory activity to check that food businesses are complying with their legal obligations. Regulatory activity includes;

- the inspection of food and food business operations,
- revisits to check compliance,
- the investigation of complaints about food or food businesses,
- food sampling
- the examination and analysis of foods and the investigation of unsatisfactory results
- the keeping of records of regulatory activity
- the registration and approval of food businesses
- any other activity that seeks to maintain or bring about compliance by food businesses with the food safety law

2.2 We recognise that supporting and enabling food businesses through the giving of advice and guidance is an intrinsic part of better regulation.

2.2 However, where we find during a regulatory activity that food safety or standards law is not being complied with, we will intervene to bring the business back into compliance with the law. This action or intervention is called enforcement.

2.3 Enforcement is carried out by authorised officers appointed by the Council. Authorised officers have legal powers to carry out the regulatory activities mentioned above. They will provide identification on request. They should not ask you to do anything which is not covered by this enforcement policy

2.4 When carrying out regulatory activity it is our policy to take enforcement action that is reasonable, proportionate, consistent with what is asked of other businesses and appropriate to the risk to public health. We will;

- Tell the food business what the law requires it to do.
- Tell the food business what the law that is being broken is called and why we believe it is being broken.
- If possible, or appropriate, give the food business a reasonable amount of time to do what is required to comply with the law.
- Make clear in any communication with the food business what is required by the law and what we might advise as good hygiene practice.

- Provide information about how to appeal against formal enforcement action or to dispute the requirements or actions of authorised officers.
- 2.5 Our authorised officers follow guidance provided by the Scottish Government, Food Standards Scotland, the Scottish Food Enforcement Liaison Committee and that contained in the Statutory Code of Practice (Scotland).
- 2.6 Where our authorised officers intend to take action, which may be inconsistent with such guidance or the procedures adopted by other Authorities, they will take reference from members of the Lothian and Borders Food Liaison Group. If consensus of approach cannot be achieved the matter will be referred to Food Standards Scotland which may include referral via the Scottish Food Enforcement Liaison Committee
- 2.7 We may operate alternative regulatory or enforcement strategies in food operations which present a very low or very high food safety or standards risk. This allows us minimise the regulatory burdens on those businesses presenting low levels of risk to public health and to target our activities at higher risk operations.
- 2.8 We will subject Council run or contracted food operations to the same regulatory activity as any other food operation.
- 2.9 We will review this policy at intervals to reflect regulatory and enforcement changes and best practice.

Food Hygiene and Safety Enforcement Action

When we find during a regulatory activity that the law is being broken by a food business we can intervene in a number of ways to protect human health and to bring the business back into compliance. These measures range from warning the business that the law is being broken to preventing a food business from trading. Authorised Officers may also detain and seize food to remove it from the food chain. Serious contraventions of the food safety law can be reported to the Procurator Fiscal. The way in which our Authorised Officers intervene depends on a variety of factors but our general policy intentions are as follows.

3 Informal Action

3.1 When we find during a regulatory activity that;

Any contraventions of the legislation do not pose a significant risk to public health or are minor technical contraventions,

- We consider that hazards to food safety in the business are being properly controlled, we have confidence in the management and there is a satisfactory food safety

management system in place following the hazard analysis principles of Article 5 of EC Regulation 852/2004,

- The history of the food business operator indicates that compliance is likely to be achieved by informal action and
- Any contravention has not persisted from a previous inspection of the premises,

it is our policy to warn the food business that what they are doing, or failing to do, is not in compliance with the law.

- 3.2 We will provide our warnings in writing following inspections or other regulatory activity. If there are only very minor matters concerned we may warn a business verbally.
- 3.3 A revisit may be made by Authorised Officers to check that the business has done what we asked for in any written or verbal warning.

4 Formal Action

- 4.1 Where we find during a regulatory activity that;
- Hazards to food safety in the business are not being controlled,
 - Our confidence in the management of the business is low or we have little confidence the food business operator will respond to a written warning,
 - There is an actual or potentially serious risk to public health should a contravention persist,
 - There are a number of significant contraventions of the legislation,
 - There is a history of non-compliance following previous regulatory activity,
 - Standards of the operation are poor with little management awareness of statutory obligations,
 - The actions of our authorised officers are deliberately obstructed, or
 - There appears to be a deliberate intent on the part of the food business operator to act outwith the law for their own benefit

it is our policy to take formal enforcement action to cause the food business operator to control and reduce the risk.

- 4.2 Formal enforcement action includes a range of measures which may be taken individually or together. These measures include the serving of enforcement notices, the detention and seizure of food and the reporting of law breaking to the Procurator Fiscal. The nature of the formal action and how it is taken, is prescribed in legislation, the Code of Practice and our operational procedures.
- 4.3 Enforcement notices will only be issued by appropriately authorised, qualified and experienced Officers. As non-compliance with a notice is an offence which may lead to legal action enforcement notices can only be issued by Officers who have witnessed the matter to which the Notice relates.
- 4.4 Enforcement Notices are drafted in accordance with guidance given in the Food Law Code of Practice Scotland. Advice on rights of appeal against the requirements of a Notice will be supplied with any Notice.
- 4.5 Where the matters of concern can be dealt with by immediate intervention to make the business compliant, we will serve a **Remedial Action Notice** on the food business operator. This will require them to;
- Cease the use of a process, or piece of equipment or part of a food business immediately or;
 - Change or modify a process until the matter of concern has been dealt with by the Food business operator.
- This can allow those parts of a food business operation which do not present a risk to continue but it may have the effect of stopping the operation of the business until the matter is resolved.
- 4.6 In other situations where matters of concern need to be dealt with because the ongoing contraventions are likely to give rise to a risk to health we will serve a **Hygiene Improvement Notice** for each non-compliance.
- 4.7 Time limits for compliance with the requirements of Hygiene Improvement Notices (which cannot be less than 14 days) are set based on the risk to health of the identified contraventions and the time necessary to achieve compliance. Officers will always attempt to agree time limits for compliance with food business food business operators.
- 4.8 We will consider written requests by Food business operators for extensions to the time limits for compliance with Notices or to carry out works of an equivalent effect, provided these are received before the time limit for any appeal against the Notice. We will only allow an extension of time if this will not increase the risk to health. Determination will consider the potential risk arising as a result of any time extension

- 4.9 Disputes concerning refusal by an Authorised Officer to written requests to extend the time limits for compliance or to undertake alternative works will be referred in the first instance to the Environmental Health Group Leader Officer (Food and Safety). If a dispute cannot be resolved at this stage we will refer the Food Business Operator to their statutory rights of appeal against the Notice.
- 4.10 We will revisit food businesses to check that Notices are complied with. Failure to comply with a Notice will generally result in the submission of a report to the Procurator Fiscal with a view towards prosecution

5 Formal Action – Hygiene Emergency Prohibition Notices

- 5.1 Where we find during a regulatory activity that conditions exist which present an imminent risk of injury to health, requiring immediate action as described in chapter 16 of Code of Practice (Scotland), it is the policy of the Authority to issue Hygiene Emergency Prohibition Notice prohibiting the use of the premises, of equipment used in the premises or of a process carried on in the premises.
- 5.2 The Officer issuing the Hygiene Emergency Prohibition Notice will apply to the Sheriff Court for an Emergency Prohibition Order to be made within 5 days of issue of the notice. The food business operator will be informed of the court application by written notice.
- 5.3 Where the Authorised Officer considers that the imminent risk involves chemical or biological contamination expert medical or analytical advice may need to be sought before action is taken. Officers may use their powers to detain or seize food in those circumstances.

6 Formal Action- Approved Premises

- 6.1 In addition to the powers to issue Remedial Action and Hygiene Improvement Notices Authorised Officers have additional powers in food business which are Approved under EC Regulation 853/2004.
- 6.2 Officers will have regard to the guidance given in Chapter 35 of the Food Law Code of Practice (Scotland) when determining if this level of enforcement action is appropriate.
- 6.3 Suspension and Withdrawal of Approval

It is our policy to take action to suspend or withdraw the approval for an establishment 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;

- serious deficiencies in the food business operation have been identified
 - production at an Approved establishment has to be stopped repeatedly to address deficiencies
 - **and** the food business operator is not able to provide adequate guarantees regarding future production
 - **and** all other enforcement options are considered insufficient to control food hazards presented by the operation at the establishment.
- 6.4 We may temporarily suspend an establishment's approval if the food business operator can guarantee that it will resolve deficiencies within a reasonable time.
- 6.5 Where a hygiene prohibition order has been made against a food business operator we will withdraw the approval for their establishment.
- 6.6 Suspension or withdrawal of an Approval means that the business cannot continue operations and must cease all activity immediately. We will notify the food business of the suspension or withdrawal of an Approval in writing. We will also notify Food Standards Scotland so that any food recall action can be taken.
- 7 Formal Action – Food Standards
- 7.1 Where we find during a regulatory activity that there are significant contraventions of the law relating to the composition of food or its labelling we may use our powers to detain or seize the food concerned.
- 7.2 We may also report the matter giving rise to the contravention to the Procurator Fiscal.
- 8 Formal Action – Detention and Seizure of Food
- 8.1 Where we find during a regulatory activity that food has not been produced, processed or distributed in accordance with the food safety laws; or that food is so adulterated or misdescribed as to be to the prejudice of the consumer we may;
- detain the food in order that it might be analysed or examined to determine that it is safe or properly described
 - subsequently release the food or seize it and take it before a Sheriff for it to be condemned and disposed of.
- 8.2 Where we seek the condemnation of food we will give the person in charge of the food, notice of this so they can attend if they choose when the matter is dealt with by the Sheriff

- 8.3 We will seize food produced in premises which require to be Approved and are not or has had their Approval suspended or withdrawn.

9 Formal Action – Reporting to the Procurator Fiscal

- 9.1 It is the policy of the Authority to consider reporting evidence of contravention's of the food safety legislation to the Procurator Fiscal in any of the following circumstances; -

- Where there has been a failure to comply with the requirements of a Remedial Action or Hygiene Improvement Notice,
- Where the public health is, or has been, put at risk by flagrant or deliberate breaches of the law,
- Where the alleged offender has been given reasonable opportunity to correct a potentially serious risk to food safety identified to them by the Authorised Officer but has failed to do so,
- Where there is a history of similar offences related to risk to public health,
- Where there are significant contraventions of the law relating to the composition of food or it's labelling,
- Where we discover deliberate intent to defraud or mislead the consumer as to the nature or composition of food, or
- Where there has been deliberate obstruction of the Authorised Officer.

- 9.2 Before proceeding with a report we will write to the offending party informing them that a case for prosecution is being made and giving the opportunity for them to provide any information or comments they wish to be considered. Any reply provided by the offender may be used in evidence.

- 9.3 A decision to refer a report to the Procurator Fiscal will be made by an appropriate senior Environmental Health Officer having determined that the evidence is sufficient and it is in the public interest to proceed. Reference is taken from the Food Law Code of Practice and the document "Reports to the Procurator Fiscal – A Guide for Specialist Reporting Agencies".

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

- 9.5 Where we believe the seriousness of the contraventions warrant it, it is our policy to advise the Procurator Fiscal to consider seeking the imposition of a hygiene prohibition order preventing the food business operator from managing a food business.

10 Voluntary Action by Food Business Operators

- 10.1 Where, following regulatory activity, a food business operator offers to;

- Close a premises voluntarily or cease using equipment or a process or treatment associated with an imminent risk

it is our policy to allow Authorised Officers discretion to accept a written undertaking from a suitably authorised representative of the food business operation agreeing to a voluntary closure provided the representative acknowledges that no compensation will thereafter be payable by the authority for any loss arising from the closure etc.

- Surrender food voluntarily for destruction

it is our policy to accept such food for destruction provided a suitably authorised representative of the food business operation agrees to a written undertaking that the food has been voluntarily surrendered by the owner of the food and that they will pay any reasonable costs for destruction or disposal.

- 10.2 In either case acceptance of voluntary action by authorised officers does not preclude further enforcement action being taken in relation to the matters giving rise to the voluntary action

11 Complaining about Enforcement Action

- 11.1 Food Business operators have a legal right of appeal to the Sheriff Court about any enforcement notices served by our authorised officers. Details of how to appeal are provided at the time of service of notices.

- 11.2 Food business operators who have concerns about regulatory action taken by our authorised officers may raise these concerns initially with a senior Environmental Health Officer. If the concern cannot be resolved at this point the Council has an established complaints procedure. Details of this are available from any Council office open to the public or may be found at http://www.midlothian.gov.uk/info/670/have_your_say/631/complaints_and_sugg

12 Disclosure of Information

12.1 It is our policy to:

- a) Notify, if relevant, the home, originating or Primary Authority of a food business operator of;
 - the service of a formal notice
 - details of a successful prosecution
- b) Notify the Royal Environmental Health Institute of Scotland of
 - the prohibition of a person from managing a food business
- c) Disclose to any person making a proper freedom of information request, records arising from regulatory activity relating to a food business provided this does not conflict with any on-going enforcement action by the Authority.