

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

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| <b>Approved By:</b>        | Cabinet, Midlothian Council  |
| <b>Date Approved:</b>      |  |
| <b>Status:</b>             | Open Council Policy  |
| <b>Scope:</b>              | Food Hygiene and Food Standards Enforcement  |
| <b>Review Parameters:</b>  | At 24 month intervals or whenever any substantial changes to the legislation or operational activities occur |
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| <b>Review Inspector:</b>   | Principal Environmental Health Officer (Food & Safety)   |
| <b>Review Action:</b>      |  |

**MIDLOTHIAN COUNCIL**

**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

The Food Safety Act 1990 (as amended) and an enforcement authority under the Food Hygiene (Scotland) Regulations 2006 designate Midlothian Council a Food Authority. 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 work 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 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 or sold 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 If we find during a regulatory activity that food safety or standards 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.
- 2.5 When carrying out regulation and enforcement, inspectors take reference from our own operational procedures, guidance provided by the Scottish Government, Food Standards Scotland, the Scottish Food Enforcement Liaison Committee and the Statutory Code of Food Enforcement Practice (Scotland).
- 2.6 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

### **A Written Warnings**

- A1 When we find during a regulatory activity that the law is being broken by a food business there are a range of enforcement actions we can take.
- A2 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.

A3 We are most likely to issue a written warning 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. Although any contraventions of the law do not pose an immediate or significant risk to public health or mislead the consumer, we consider that hazards to food safety in the business need to be more effectively controlled.
- c. There is a good history of compliance based on previous inspections of the business.
- d. A surveillance sample of food from the business indicates that there are improvements to practices which need to be made.

A4 We will send any required written warning within 15 working days of the regulatory activity.

A5 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.

A6 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
- 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.
- 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 (the law allows this to at least 14 days for a Hygiene Improvement Notice). Time limits for compliance with the requirements of Hygiene Improvement Notices 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 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 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 the food safety and food information laws.
- 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 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 locally details of a successful prosecution.

#### 4. Formal Action - 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 EC Regulation 853/2004.
- 4.2 Inspectors will have regard to the guidance given in the Food Law Code of Practice (Scotland) when determining if this level of enforcement action 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 inform the local authority partner of enforcement action 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 inspection. Inspectors will carry out an inspection where the results of the contact suggest a significant change to the business operation or where the food business operator does not respond.

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     Monitoring the consistency of Enforcement activity

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