

OMAGH DISTRICT COUNCIL

FOOD SAFETY ENFORCEMENT POLICY

1 Introduction

1.1 Omagh 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. The policy draws extensively on guidance contained in the Code 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. In relation to this policy, the Council will have due regard of the principles contained within the "Enforcement Concordat" published in March 1998.

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 Scope

3.1 Enforcement Action

In its application of this policy, the Council recognises its duty to act in accordance with the Human Rights Act and PACE Code of Practice. 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, ie 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 the statutory Code 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 Chief Environmental Health Officer and the Environmental Services Committee 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.

4 Decision-making/Authorisations

- 4.1 The Council's Environmental Services 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/her representative.
- 4.2 The service of all notices including Hygiene Emergency Prohibition Notices and Hygiene Improvement Notices, remedial action notices and detention notices under the Food Hygiene Regulations (NI) 2006 is the responsibility of the 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 the Code of Practice 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 the Food Safety (NI) Order 1991, Code 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 interests of ensuring consistent enforcement.

Enforcement options that are available, having considered all relevant information and advice are:

- (a) to take informal action, including voluntary surrender of food;
- (b) to detain and seize food;
- (c) to issue Hygiene Improvement, improvement or Hygiene Emergency Prohibition Notices;
- (d) to issue Remedial Action Notices and Detention Notices;
- (e) to suspend or withdraw approvals of establishments;
- (c) to issue Formal Cautions;
- (d) to prosecute.

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. The Council will have regard to the procedures set out in the LACORS Home Authority Principle.

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 the Code of Practice issued under the Food Safety (NI) Order 1991 suggests that informal action may be an appropriate action.

5.4.3 The Council expects that inspection reports will be issued following all primary inspections even in those circumstances where conditions at the time of inspection are satisfactory. The content of such reports will be as directed in the Code of Practice issued under the Food Safety (NI) Order 1991.

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 Hygiene Improvement Notices/Improvement Notices

5.5.1 The Council recognises that authorised officers may serve Hygiene Improvement Notices or Improvement Notices.

Hygiene Improvement Notice (Food Hygiene Regulations (NI) 2006, Regulation 6)

The Council considers that Hygiene Improvement Notices are appropriate in any of the following circumstances or a combination thereof:

- Where formal action is proportionate to the risk to public health;
- Where there is a record of non-compliance with breaches of the food hygiene regulations;
- Where the authorised officer has reason to believe that an informal approach will not be successful.

Improvement Notice (Food Safety (NI) Order 1991) Article 9

It is unlikely that there will be any circumstances from the 1st January 2006 under which it would be appropriate to issue an Improvement Notice under Article 9 of the Food Safety (NI) Order 1991. District Councils should deal with hygiene matters using powers under the Food Hygiene Regulations (NI) 2006 and, given the restrictions set out in Article 9(3) of the Order, it is highly unlikely any circumstances would exist under which it might be appropriate for an Improvement Notice to be issued for food standards matters.

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

5.5.3 The Council accepts all relevant guidance in the statutory Code of Practice issued under The Food Safety (NI) Order 1991 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 outcome.

5.6 Hygiene Emergency Prohibition Notices (Food Hygiene Regulations (NI) 2006, Regulation 8)

5.6.1 The Council accepts that from time to time the service of Hygiene Emergency Prohibition Notices may be necessary in those circumstances that involve an imminent risk of injury to health:

Examples are listed in the Code of Practice issued under the Food Safety (NI) Order 1991 for situations where prohibition of premises, equipment or a process may be appropriate.

- 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 issued under The Food Safety (NI) Order 1991.
- 5.6.4** The Council recognises that other bodies such as Home and Originating Authorities should be advised of formal action taken by the Council and its outcome.
- 5.6.5** Voluntary procedures to remove an imminent risk of injury to health may be used at the instigation of the food business when that person agrees that health risk /condition exists. An Officer may suggest this option but only when they are able to use Hygiene Emergency Prohibition procedures under Regulation 8..

The Council accepts the guidance on the use of Voluntary Procedures contained within the Code of Practice issued under The Food Safety (NI) Order 1991.

- 5.6.6 Regulation 25 – Certification that food has not been produced, processed or distributed in compliance with the Hygiene Regulations.**

When food has not been produced, processed or distributed in compliance with the Hygiene Regulations, Regulation 25 may be used to seize and detain the food by the use of Article 8 of the Food Safety (NI) Order 1991.

5.7 Prosecution

5.7.1 The decision to initiate a prosecution should be taken at the earliest opportunity. In general, the Council will restrict prosecution 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. The Council will have regard to the Food Control Prosecution Procedure.

5.7.2 The circumstances which are likely to warrant prosecution may be characterised by one of the following: (Ref LACOTS Guidance 1994)

- 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 where such action would be more appropriate.

5.7.4 In deciding on whether to prosecute, the Council will take into account all the factors in the Code of Practice issued under The Food Safety (NI) Order 1991.

5.7.5 The Council notes that a court must impose a Hygiene 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 should 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 issued under The Food Safety (NI) Order 1991 advises that Councils should consider issuing a formal caution in accordance with Home Office Circular 30/2005 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 Chief Environmental Health Officer, the Senior Food Officer and any other senior officer who may be so authorised by the Council via delegated powers held by 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 initiate a prosecution.

5.8.6 The Council recognises that other bodies such as Home and Originating Authorities should 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.

5.9 Internal Appeals Mechanism

Should a situation arise where an individual or organisation does not agree with the proportionality of the action taken by the Environmental Health Department, the matter will be referred initially to the Chief Environmental Health Officer. If after consideration by the Chief Environmental Health Officer, the individual or organisation still feels aggrieved, the matter will be referred to the Chief Executive for consideration.

5.10 Secondary Inspections

A secondary inspection is defined in the Code of Practice issued under The Food Safety (NI) Order 1991 as any other visit to a food business that is not a primary inspection for any purpose connected with the enforcement of food law.

Authorised officers may decide to carry out a secondary inspection as part of follow up action where contraventions were found and measures to correct these were required. Additionally secondary inspections may be carried out to discuss for example, HACCP based systems or food hygiene training or to investigate complaints.

In many circumstances there may not be a need to carry out such additional inspections, officers should consider the previous history of the premises and make a decision based on risk as to whether or not matters arising require a secondary inspection or can be considered at the next primary inspection.

6.0 Enforcement within District Council-run Premises

With respect to all food businesses where the Council is the proprietor, the premises will be inspected and assessed according to The Food Safety (NI) Order 1991, the statutory Code of Practice (Annex 5) and relevant food hygiene regulations by authorised officers of the Council. A report of the inspection will be sent to the Council Chief Executive without undue delay where serious breaches of food law have been detected.

7.0 Enforcement Options within Product-Specific Establishments subject to Approval under Regulation 853/2004

Authorised Officers will seek to remedy non-compliance in establishments subject to approval under Regulation 853/2004 by a graduated approach. When necessary, Hygiene Improvement Notice provisions in Regulation 6 or the Hygiene Prohibition Procedures in Regulation 8 of the Food Hygiene Regulations (NI) 2006. Authorised officers should consider these options before commencing any other enforcement action. However, Remedial Notices and/or Detention Notices as provided for by Regulation 9 of these Regulations may be used, when appropriate.

Remedial action notices can be served when the Food Hygiene Regulations are being breached or an inspection under the Hygiene Regulations is being hampered. Regulation 9 also allows for the detention of any food, including the taking of samples for the purposes of examination, by the service of a Detention Notice.

Circumstances when it may be appropriate to issue such notices are detailed in the Food Law Code of Practice.

Powers to withdraw or suspend the approval or conditional approval of an establishment may be used when appropriate. However, procedures to suspend an establishment's approval or conditional approval will only be initiated if other enforcement options have been considered.

Any action that the Council may take in respect of product-specific premises will have regard to the Food Law Code of Practice issued under the Food Safety (NI) Order 1991.

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

YES	NO
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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
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Have consultations in the past with relevant groups, organisations or individuals indicated that particular policies create problems which are specific to them?

YES	NO
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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.

REFERENCES

"Enforcement Concordat" Cabinet Office March 1998

Human Rights Act 1998

Food Safety (NI) Order 1991 Code of Practice Jan 2005

The Code for Crown Prosecutors CPS 2004

Enforcement Concordat: Good Practice Guide for England and Wales (DTI)