



**Clackmannanshire
Council**

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Comhairle Siorrachd
Chlach Mhanann

Development Services

FOOD LAW ENFORCEMENT POLICY

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1. **Introduction**
- 1.1. This policy covers Clackmannanshire Council's enforcement activity in relation to Food Law. Feed enforcement within Clackmannanshire is carried out by Food Standards Scotland. Primary production enforcement is carried out by the Clackmannanshire and Stirling joint Trading Standards service. Clackmannanshire Council discharges its responsibilities as a Food Authority through Place Directorate, Development Services, Environmental Health, Kilncraigs, Alloa, FK10 1EB.
- 1.2. Only officers duly authorised by the Council may enforce food law in Clackmannanshire. Those officers will be subject to enforcement limitations, dependant upon qualification and experience, imposed by the Authorisation of Officers Procedure.
- 1.3. Copies of this Enforcement Policy are available on request from Environmental Health, Development Services, Clackmannanshire Council. Copies are free of charge. Copies are also available from www.clacks.gov.uk
- 1.4. This Food Law Enforcement Policy plays an important part in the Food Law Service Plan, delivering Clackmannanshire's Food Law Enforcement Service. All enforcement action will be targeted utilising the National Food and Feed Compliance Spectrum and will take regard of the Scottish Regulators Strategic Code of Practice.
- 1.5. The Food Law Enforcement Policy ensures the comprehensive and consistent enforcement of food safety within Clackmannanshire in line with the Food Law Code of Practice (Scotland). It is a requirement that all officers delivering food law regulation read, understand and follow the Code of Practice.
- 1.6. In preparing and updating this policy due regard has been taken of the advice issued by Central Government, Scottish Food Enforcement Liaison Committee (SFELC), and Food Standards Scotland (FSS).
- 1.7. All decisions on enforcement action shall only be made after consideration of this Enforcement Policy. Any deviation from the policy will be exceptional, be capable of justification and have been fully considered by the Environmental Health Team Leader, unless to delay a decision may result in significant risk to the public. The circumstances relating to any departure will be comprehensively documented.
- 1.8. Clackmannanshire Council will strive to ensure all food and drink relating to any food business activity within Clackmannanshire is without risk to health and does not mislead the consumer either about its composition or by its presentation.

- 1.9. It is recognised that working in partnership, sharing information and intelligence with other agencies as necessary, is an important part of better regulation.
- 1.10. Clackmannanshire Council acknowledges education is a means of securing improvement in Food Safety Standards and will work with Businesses to help them comply with the law by:
- offering on the spot advice during visits and inspections;
 - answering queries within five working days;
 - distributing electronic information leaflets free of charge.

2. Official Controls

- 2.1. An 'official control' is any form of control that the Council carries out to verify a business's compliance with food law.
- 2.2. The aim of an official control is to prevent, eliminate or reduce to acceptable levels any risks to health presented by food businesses whilst aiming to:
- guarantee fair practices in food trade
 - protect consumer interests, including food labelling and other forms of consumer information.

3. Conflict of Interests

- 3.1. It is essential that all staff carrying out official controls in food law are free from conflicts of interest.
- 3.2. There are many situations in which the interests of an officer or the authority may conflict with the carrying out of official controls. Examples are where an authorised officer provides their own training service for food hygiene; where they give advice to food businesses which is independent and distinct from the advice that is given in the course of carrying out official controls (whether in conflict with that advice or not); or acting as a consultant to food businesses. Conflict may be reduced or negated through the causation being made remote from the Council.
- 3.3. In accordance with the Food Law Code of Practice (Scotland) (January 2019), no officer connected with Food Law delivery in Clackmannanshire may provide consultancy, training or other food related services in Clackmannanshire.
- 3.4. The Council does not provide food hygiene training courses. If they are provided in the future it will be ensured that the service is not promoted by the council in competition with other providers or in any other way which may conflict with the interests of food law delivery.

- 3.5. The council provides a pest control service limited to Council property only and under no circumstances is the service to be offered to local businesses. In any exceptional circumstances that this may be considered necessary the express approval of the Environmental Health Team Leader must be obtained first. Approval can only be given if it is demonstrated there is no conflict with the interests of food law delivery.
- 3.6. The Council will provide no other service to food businesses which could involve a conflict of interests with food law delivery. Any such service provided outwith the Environmental Health Service will be reported to the Senior Service Manager, (Development) for any action required. The Council will not exclusively promote any food related service it provides in competition with other providers in the area.
- 3.7. The Council has procedures in place which will be followed at all times in relation to the regulation of food premises in which the Council is also the Food Business Operator or proprietor. These are detailed below at Section 7.

4. Inspections

- 4.1. The format of inspections is covered by the Food Law Inspection Procedure. This procedure will be adhered to at all times.
- 4.2. Letters will be sent to the proprietor within 15 working days except in cases where it has to be translated by the Translation Service and the translation has not been returned in time. Standard paragraphs for Food Law Inspections are to be used where applicable.
- 4.3. Inspection frequency is determined by the inspection rating of the premises as per Food Law Code of Practice (Scotland) and Interventions Code of Practice as applicable.
- 4.4. Revisits following a food safety inspection may be carried out to check that compliance with statutory requirements have been achieved. Revisits are restricted to those matters which the officer determines are too serious to be left until the next inspection date. This is subject to Paragraph 4.5 below. It is vital to reduce time spent on revisiting to the absolute minimum required for public safety and good regulation. Repeated revisits will require to be justified in the inspection reports. They will be challenged concerning seriousness of contravention, any possible deviation from this policy and detriment to public safety in relation to unresolved matters.
- 4.5. In some circumstances the track record of the Food Business Operator may indicate that significant contravention(s) will be remedied without a further visit being required. In these circumstances the officer must be confident that the matter will be remedied and that food safety will not be compromised by

leaving the premises until the next scheduled inspection. Under these circumstances, and only with prior agreement from the Team Leader, a re-visit may be allowed to pass.

- 4.6. The timing of a revisit will be determined by the nature of risk to public health and the action required to secure compliance. The appropriate enforcement action **MUST** be taken when food businesses have failed to remedy the serious contravention(s), which initiated the revisit.
- 4.7. Inspections other than programmed or revisit inspections may be carried out:
- on request from a proprietor looking for advice;
 - on request from a proprietor for a FHIS Pass Certificate;
 - to reply to a property enquiry for the premises;
 - to investigate a complaint about the premises;
 - to investigate a complaint about food sold from the premises;
 - to inform the proprietor and investigate any unsatisfactory samples submitted to Glasgow Scientific Services for analysis or examination;
 - new premises or change of proprietor will instigate an inspection;
 - where available information indicates an inspection is necessary in the interests of public health and safety
- 4.8. Officers are provided with mobile phones, white overcoats, hair nets, a hat and a pair of safety shoes. Protective clothing shall be worn during inspection, wherever appropriate, or to conform with the Business own policy. Where a Business supplies additional protective clothing this shall be worn.
- 4.9. Officers are provided with probe thermometers and probe wipes.
- 4.10. Officers are responsible for ensuring they are appropriately equipped and are to inform the Team Leader of any deficiencies that need replacement.
- 4.11. Before inspecting premises, Officers shall introduce themselves by showing their photo identification card and explain the purpose of the visit.

5. Enforcement

- 5.1. Clackmannanshire Council will adopt a graduated approach to enforcement using education and advice to secure compliance wherever appropriate. This approach will not be suitable where businesses persistently or deliberately avoid their regulatory responsibilities to gain unfair competitive advantage. Full regard will also be had to the effect of non compliance on public health.

- 5.2. Robust action will be taken against any food business operators who deliberately or recklessly flout the law or where there is a serious risk to the safety of consumers. This will include reporting to the Procurator Fiscal where appropriate.
- 5.3. Officers are required to use the full range of documents outlined in this Policy to ensure their enforcement decisions follow the five principles of better regulation. The principles require regulation to be transparent, accountable, consistent, proportionate and targeted.
- 5.4. The Council commits not to use enforcement actions of any kind as an indicator of performance. This ensures officers are able to use the full range of enforcement options without being influenced by performance monitoring.
- 5.5. Environmental Health Officers, Environmental Health Technical Officer and The Environmental Health Team Leader are authorised to carry out enforcement under The Food Safety Act 1990, The Food Hygiene (Scotland) Regulations 2006 and all other Regulations made thereunder (as amended) subject to being suitably qualified, experienced and competent.
- 5.6. Suitable qualification, experience and competency is as detailed in the Food Hygiene (Scotland) Regulations 2006, The Food Safety (Sampling & Qualification Regulations 2013, the Food Law Code of Practice (Scotland) and Official Feed And Food Control Regulations 2009 (all as amended). A record of officers suitably qualified is at Annexe 1 of the Authorisation of Officers Procedure.
- 5.7. Each Officer receives in-house training and attendance at formal courses or vocational visits. Officers will receive a minimum of 10 hours per year Continuing Professional Development (CPD) for food related subjects. The Environmental Health Team Leader will review progress in relation to adequate CPD for food law enforcement purposes.
- 5.8. All officers have access to suitable, sufficient, and up to date information to enable them to carry out competent inspections including all legislation, codes of practice, industry guides, SFELC guidance, Food Standards Scotland guidance and the internet.
- 5.9. Training needs are assessed during annual Performance, Review & Development interviews with the Environmental Health Team Leader.
- 5.10. Officers shall ensure that all communication, including advice, on enforcement issues is clear, structured and capable of being understood by the recipient.
- 5.11. Where it appears to an Officer that communication in English may be a barrier to compliance he/she will utilise the Language Line call centre via their issued mobile phone. Arrangements for

a translator to attend any site visit may be made with prior consultation and agreement from the Environmental Health Team Leader .

- 5.12. Officers will provide, where available, information leaflets in the proprietors own language.
- 5.13. Where advice is confirmed in writing a clear distinction must be made between statutory requirements and recommendations. However, the approach taken to enforcement will always be consistent with current guidance and the protection of public health remains the paramount consideration.
- 5.14. The Council is guided by the Home Authority Principle. Where the principle cannot be adhered to, concerns would be discussed with SFELC and Food Standards Scotland.
- 5.15. The Council will provide advice for businesses within Clackmannanshire on legal compliance. Officers will liaise with the Home Authority of a Company on issues of advice or enforcement directly related to centrally agreed policies or procedures of that food business.
- 5.16. The Council shall have regard to any information provided from home and/or originating authorities and will notify them of the outcome of any investigation.
- 5.17. There are the following hierarchal enforcement options open to officers:
 - No action at all
 - Verbal advice/warning
 - Written advice/warning
 - Enforcement Notice (where appropriate)
 - Seizure or detention (where appropriate)
 - Report to Procurator Fiscal
- 5.18. In deciding what enforcement action to take, officers will have full regard to Regulation EC 2017/625 which requires the nature of the non-compliance to be considered along with the operator's past record in relation to non-compliance. Regard will also be given to Food Standards Scotland's Regulatory Strategy, The Scottish Regulators' Strategic Code of Practice, The National Compliance Spectrum, The Crown Office publication "Reports to the Procurator Fiscal – A Guide for Specialist Reporting Agencies" and this Enforcement Policy. All of these documents are available to officers for reference.
- 5.19. In relation to new businesses which have no past compliance record, officers will be required to make a professional judgement based on the operator's willingness to comply, deliberateness of any actions to mislead or defraud and the risk to public health.

- 5.20. In all circumstances, having regard to Paragraph 5.16 above, the most expedient and effective enforcement action will be taken to protect health.
- 5.21. In deciding whether or not a business presents a risk to food safety regard shall also be had to:
- the nature of the food
 - the manner in which it is handled
 - the manner in which it is packed
 - any process to which it is subjected
 - the conditions under which it is stored or displayed
- 5.22. Significant risk – in deciding whether or not any risks associated with a business are significant, consideration will be given to the adequacy of controls at critical points in the food process and the possible consequences for food safety if the controls are inadequate. Significant risk in this context means that an incident is more likely to occur than not.
- 5.23. Contraventions may be dealt with informally subject to the following provisos:
- where the consequences of non-compliance will not present a significant risk to health
 - where (from the business's previous record) it can reasonably be expected that compliance will be forthcoming
 - where, due to the nature of the business (e.g. – voluntary organisations) informal action may be more effective
- 5.24. Where the health risk condition (as defined in food safety law) is fulfilled, the primary action of all officers will be to eliminate that risk. This may be by use of one, all or any combination of the following:
- Issue of Emergency Prohibition Notice (or voluntary closure procedures if this is found to be more effective)
 - Seizure or Detention of food (or voluntary surrender procedures if this is found to be more effective)
 - Report to the Procurator Fiscal
- The written procedures dealing with each action are to be followed. Full guidance on the “health risk condition” and examples of use of voluntary procedures and Emergency Prohibition Notices are provided by the Food Law Code of Practice (Scotland).
- 5.25. In the majority of cases contraventions will not warrant immediate formal action such as enforcement notices or report to the Procurator Fiscal. In these circumstances normally the following actions will take place:
- No action at all

- Verbal or Written notification of the contravention including remedial works required.
- Follow-up action to ensure the necessary work is completed (either by re-visit or at the next programmed inspection depending on the seriousness and trigger values for re-visit being met).

5.26. When actions other than enforcement notices or reporting to the Procurator Fiscal are undertaken the guiding principle will be one of helping businesses to understand and comply with their legal obligations.

6. Enforcement Notices

6.1. *Hygiene Improvement Notices*

6.2. Hygiene Improvement Notices shall be served in accordance with the Food Law Code of Practice (Scotland). When serving a Hygiene Improvement Notice regard shall be had for the Scottish Regulators Strategic Code of Practice. Hygiene Improvement Notices will be served under the following circumstances:

- where it is proportionate to the public health risk having consideration to this Enforcement Policy,
- where there is a record of non-compliance with food safety regulations,
- Where the officer believes an informal approach will not be successful.

6.3. While Improvement Notices may be served on the evidence of the authorised officer alone, upon expiry of the notice (where prosecution is likely) the authorised officer will be accompanied by a suitably qualified witness. Except where circumstances have changed such as to cast doubt on the quality of the evidence, all persons failing to comply with Improvement Notices will be subject of a report to the Procurator Fiscal. Improvement Notices will not be signed by authorised officers on behalf of another officer unless the other officer has witnessed the contravention.

6.4. *Remedial Action Notices*

6.5. Remedial Action Notice shall be served in accordance with the Food Law Code of Practice (Scotland). When serving a Remedial Action Notice regard shall be had to the Scottish Regulators Strategic Code of Practice.

6.6. It is important that public health is protected and that the most appropriate action is taken to do this whilst following the principles of better regulation.

- 6.7. Remedial Action Notices will only be served under the following circumstances:
- where it is proportionate to the public health risk having consideration to this Enforcement Policy,
 - where the serving of a Remedial Action Notice is required to ensure urgent action is taken to ensure food safety,
 - where other approaches will not be successful
- 6.8. Remedial Action Notices, once served, must be monitored for compliance. Any failure to comply with a Remedial Action Notice will result in a report to the Procurator Fiscal. In exceptional circumstances and after consultation with the Team Leader Environmental Health, non compliance with the notice will be dealt with by alternative means than a report to the Procurator Fiscal. In these cases the reasons for the decision will be fully documented.
- 6.9. *Hygiene Emergency Prohibition Notice*
- 6.1. All Hygiene Emergency Prohibition Notices shall be served in accordance with the Food Hygiene (Scotland) Regulations 2006. When serving Hygiene Emergency Prohibition Notices, regard shall be had for the Food Law Code of Practice (Scotland) and the Scottish Regulators Strategic Code of Practice.
- 6.2. If an authorised officer, in the course of his/her duties, encounters a situation where there is evidence that the health risk condition is fulfilled (as defined in the Food Hygiene (Scotland) Regulations 2006) that officer will immediately serve a Hygiene Emergency Prohibition Notice. The Food Law Code of Practice (Scotland) gives examples of situations where this might be appropriate action to take but it is up to the authorised officer to decide, based on evidence, if the condition is fulfilled. The Environmental Health Team Leader must be advised immediately, or, in his absence, the Senior Service Manager (Development) of any such notice served or intention to serve such notice.
- 6.3. Hygiene Emergency Prohibition Notices will not be signed by authorised officers on behalf of another officer unless the authorised officer has also witnessed the contravention and is satisfied that the health risk condition is fulfilled along with imminent risk to health.
- 6.4. Voluntary procedures may be used only when there is sufficient evidence to proceed with emergency prohibition procedures. The Procedures for Issue Of Improvement And Hygiene Emergency Prohibition Notices must be followed.

7. Council Premises

- 7.1. When enforcing within Clackmannanshire Council run establishments, a letter, signed by the Environmental Health Team Leader, outlining any contraventions will be sent to the appropriate Senior Service Manager for the service responsible for the food business operation. Any continued failure by that service to satisfactorily remedy the contravention will be escalated in accordance with this Policy to include the appropriate enforcement action.
- 7.2. Any serious breach of food law will be notified by letter addressed to the Chief Executive, drafted by the officer responsible for the enforcement action and signed by the Senior Service Manager (Development) or above Strategic Director, Place. Such letters will require prior approval by the Environmental Health Team Leader who will discuss the matter with the Senior Service Manager (Development).
- 7.3. Serious breaches will include, for example:
- the service of any enforcement notice (including Hygiene Improvement Notice, Remedial Action Notice, etc.);
 - a report to the Procurator Fiscal;
 - service of any fixed penalty notice;
 - any food standards contravention deemed likely to place any potential consumer at risk of harm or distress (e.g. contamination, substitution, food fraud, etc.);
 - any other matter related to food law enforcement which in the opinion of the Team Leader, as Lead Officer for Food, requires to be notified to the Chief Executive.
- 7.4. Any decision by a manager, including the Environmental Health Team Leader, not to send a letter to the Chief Executive, contrary to the recommendations of the officer responsible for the enforcement action, will be fully documented in the file system. This will include full details of the contravention, officer recommendation and reason for not notifying the Chief Executive. A copy of the file record will be sent to the Environmental Health Team Leader who will ensure it is passed to the manager deciding not to notify the Chief Executive and copied to the Strategic Director, Place.
- 7.5. All Council run establishments will be dealt with exactly as any other food business would be dealt with and in full accord with this Policy. All actions and decisions made concerning enforcement at Council run establishments will be transparent. Full records will be kept of all interventions and other regulatory interactions with food businesses run by the Council. These records will be made available to Food Standards Scotland, on

request, in line with that organisation's statutory responsibilities in relation to food.

8. Prosecution

- 8.1. The ultimate decision as to whether or not to prosecute rests with the Procurator Fiscal.
- 8.2. In deciding whether or not there are sufficient grounds to recommend that prosecution be sought by the Procurator Fiscal, due consideration will be given to all relevant centrally issued criteria and guidelines.
- 8.3. A recommendation to prosecute will, in general, be considered for those persons who blatantly disregard the law, fail to achieve a basic compliance with the minimum legal requirements, or who put the public or other groups at a serious risk to health.
- 8.4. Circumstances which are likely to warrant a recommendation to prosecute include:
 - cases where the alleged offence involves a blatant breach of the law such that health is or has been put at risk
 - cases where there has been a blatant breach of the law in respect of product description, packaging or associated issue
 - cases where the offence involves a refusal to comply in full or part with the requirements of an authorised officer
 - cases where the offence involves a failure to comply with the requirements of a statutory notice
 - cases where there is a history of similar offences related to a risk to health or safety or a breach of food standards requirements
 - cases where an officer has been obstructed in undertaking his/her duties
 - cases of repeated failure or refusal to comply with regulation, regardless of seriousness, if this is considered an intentional and deliberate flouting of the law.

9. Quality Management

- 9.1. The Team will maintain a computer database (IDOX Uniform) of all known businesses in the area for which there is responsibility for food safety enforcement.
- 9.2. Officers will keep this database up to date for their work with regard to new premises or the accuracy of details for existing premises using the Idox Uniform Procedure Manual.

- 9.3. The Environmental Health Team Leader (or nominated representative) will carry out internal monitoring of officers work in food law enforcement in accordance with a prepared procedure. The procedure will detail the monitoring records required to be kept to demonstrate officers are applying this Policy and all procedures relevant to food law enforcement.
- 9.4. Any failures to follow this Policy or a procedure will result in action being taken to remedy the failure. This may include re-training or disciplinary proceedings dependant upon the severity of the failure.

10. References

- The Food Hygiene (Scotland) Regulations 2006
- The Food Safety Act 1990
- Regulation EC/178/2002
- Regulation EC/852/2004
- Regulation EC/853/2004
- Regulation EC/854/2004
- Regulation EC/2017/625
- Food Safety (Qualifications & Sampling) (Scotland) Regulations 2013
- Food Law Code of Practice (Scotland)
- The European Commission Guidance Document on Regulation EC/852/2004 (Hygiene of Foodstuffs)
- Scottish Regulators Strategic Code of Practice
- National Food & Feed Compliance Spectrum
- Reports to the Procurator Fiscal – A Guide for Specialist Reporting Agencies