



West Devon  
Borough  
Council

# FOOD SAFETY ENFORCEMENT POLICY

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# **SOUTH HAMS AND WEST DEVON COUNCIL**

## **FOOD SAFETY ENFORCEMENT POLICY**

### **1.0 Introduction**

- 1.1 This formally adopted document explains the Council's approach to food safety enforcement and sets out the powers available to deal with food safety matters. It supports both the Environmental Health Service Enforcement Policy and the Food Safety Service Plan setting out the Council's function, its scope and method of service delivery as required by the Food Standards Agency. Copies of both the Environmental Health Enforcement Policy and the Food Safety Service Plan are available upon request.
- 1.2 It is the Council's policy to strive to ensure that food and drink intended for sale for human consumption, which is produced, stored, distributed, handled or consumed within South Hams and West Devon and/or originating from South Hams and West Devon is without risk to the health or safety of the consumer.
- 1.3 The Council's approach to enforcement reflects the responsibilities placed upon it by the Food Safety Act 1990 (as amended) and the European Communities Act 1972 and includes the range of powers made available by regulations and orders made there under especially the Food Safety and Hygiene (England) Regulations 2013.

This policy also embodies the statutory Code of Practice and associated Practice Guidance issued by the Food Standards Agency.

Although the primary responsibility for ensuring food safety lies with proprietors of food businesses, the Council views co-operation with proprietors and others who have duties under the law as the best way of achieving compliance and the requirements for programmed inspections are seen as a means of building positive relationships between business and the Council.

The Council will also take account of various industry guides to good hygiene practice and guidance from the Better Regulation Delivery Office (BRDO), Local Government Regulation (LGR) and any relevant Government departments when assessing compliance.

- 1.4 The Council endorses and fully supports the Principles of Good Enforcement as set out in the Enforcement Concordat published by the Cabinet Office in March 1998. The Council formally adopted the Concordat at the meeting of the Environment and Health Committee on 23 July 1998. The Council also endorses the European Convention on Human Rights as implemented by the Human Rights Act 1998.
- 1.5 It is the Council's policy that enforcement action, be it verbal warnings, the issue of written warnings, statutory notices, or prosecutions, is primarily based upon an assessment of risk to the health of the consumer and the seriousness of any alleged offence.

- 1.6 The Council will ensure that all recipients of its food safety service receive fair and equal treatment regardless of race, ethnicity, gender or disability. Officers will be aware of the potential problems of comprehension where English is not a first language.
- 1.7 The Council endorses the principles laid down in the BRDO Primary Authority Partnership arrangements and the LGR and Home Authority Principles and where Council enforcement action impacts on a business' national policy or procedures, the Primary or Home Authority will be consulted. The originating authority (i.e. the local authority responsible for ensuring compliance in premises producing or handling in their area) will also be contacted
- 1.8 All food safety enforcement officers are required to support and comply with this policy and will be given sufficient information, instruction and training to enable them to do so. Initial and on going training will be given to all food safety enforcement officers to ensure they understand the requirements of this policy and abide by the terms of the policy when making an enforcement decision. All officers are appropriately authorised under the legislation in accordance with their qualifications and competency. (This is subject to a separate internal procedure).
- 1.9 Any departure from this policy will be exceptional, capable of justification and will, where appropriate, involve consultation with the Devon and Cornwall Food Safety Liaison Group (a group of lead officers from all Devon and Cornwall local authorities, (including Trading Standards), the Food Standards Agency, Public Health England. The reason for any departure from this policy will be documented.
- 1.10 Prior to formal enforcement action being taken, the Council will provide an opportunity to discuss the circumstances of the case with the food business operator and, if possible resolve points of difference unless immediate action is required so as to safeguard the consumer.
- 1.11 For the purposes of this document 'enforcement' is action taken to secure compliance with the legal requirements of food law mentioned in 1.3 above and includes the giving of advice and guidance on the interpretation or application of food law.
- 1.12 Although our primary aim is to safeguard the public, we also wish to support the Council's current priorities. We will achieve this by providing advice and assistance to business on reducing their risk liability in our areas of statutory enforcement. We will also, where appropriate, signpost businesses to other agencies.

## **2.0 Enforcement Principles**

- 2.1 In enforcing the law, South Hams and West Devon Council will pay due regard to the following principles:

### **2.1.1 Transparency**

Food business proprietors or their representative will receive sufficient explanation to understand what is expected of them and what they can expect from the Council e.g. verbal and written communication by enforcement officers

after inspecting premises will be put clearly and simply and will always distinguish between statutory requirements and recommendations as to good practice.

The rights of appeal against legal notices or decisions by the Council will be clearly laid out.

### **2.1.2 Consistency**

Broadly similar approaches will be used in similar circumstances in order to achieve consistent ends. The Council recognises that food businesses and similar operations expect consistency from different enforcement officers with whom they come into contact in securing compliance with the law and the investigation of complaints. To achieve and maintain consistency of enforcement, guidance produced by the Food Standards Agency, LGR and the Devon and Cornwall Food Safety Liaison Group will be taken into account to promote consistency. Where there is a shared enforcement role with another Agency, we will liaise at an early stage to assist consistency. The Council has adopted the principles of quality monitoring of enforcement officers and inter-authority auditing. These are subject to internal procedural documents.

### **2.1.3 Proportionality**

Enforcement action will be related to the risk or seriousness of alleged offences. Any action taken by enforcement officers to achieve compliance with the law will depend upon the risks to the consumers which are present and the seriousness of any breach of the law. New businesses are required to register or, in the case of premises processing products of animal origin (milk, meat, egg and fishery products and shellfish) i.e. high risk premises will require approval before processing commences. Priority action will be given to those acting outside approval as opposed to those premises where registration is required.

### **2.1.4 Targeting**

Inspections will be targeted primarily on those food businesses whose activities give rise to the most serious risks or where hazards are least well controlled. Premises where serious hazards exist and/or where standards require improvement will be inspected more frequently than those premises where hazards are of a low order and standards are high. This will be achieved through the use of a risk rating system in accordance with the Food Standards Agency Code of Practice which enables premises to be 'scored' following an inspection according to the hazards and risks that are identified.

In accordance with the FSA CoP, certain low risk premises will be inspected but subjected to an alternative enforcement strategy. This intervention will include, self-assessment questionnaires etc, however, some premises will be subject to inspection to determine their current risk status and checks on information supplied as part of any intervention. Additionally, low risk premises subject to complaint will receive a visit.

### **2.1.5 Helpfulness**

Advice and guidance are regarded as central to the implementation of the enforcement policy and used to inform businesses and individuals of their rights and responsibilities and, in this way, many issues can be resolved without having to resort to the more formal stages of enforcement. A courteous approach and efficient service will be provided by competent officers. The purpose of the visit will be clearly explained and any further contact details

either for that officer or a colleague or other agency will be given. Requests for advice and reports of inspections will be processed as quickly as possible. Inspection reports and formal notices will set out clearly what is required and whether the matter is a breach of legal requirement or good practice guidance.

### **3.0 Enforcement Options**

3.1 The Council recognises and affirms the importance of achieving and maintaining consistency in approach to making decisions which concern food safety enforcement action. Dependant upon the individual situation as regards risk and seriousness, the Council will adopt a graduated approach to enforcement. To achieve and maintain consistency, the guidance in the Food Standards Agency Codes of Practice/Practice Guidance, BRDO and LGR advice will be considered and followed where appropriate.

3.2 In deciding the most appropriate enforcement decision the Council will consider certain criteria including the seriousness of the offence, the businesses past history, confidence in its management, the consequences of non-compliance and the likely effectiveness of the various options.

3.3 Having considered all relevant information and evidence, the options are one or more of the following: -

- To take no action;
- To take informal action;
- To use statutory notices;
- To prosecute;
- To use Simple cautions.
- To deal with unfit food by seizure etc
- To deal with imported foods

#### **3.3.1 No Action**

Action will not be taken where there are no breaches of legal provisions; however it might be appropriate to make recommendations as to good practice so as to improve standards.

An inspection report will contain information specified in the Food Standards Agency Code of Practice will always be given following an inspection even where conditions are found to be satisfactory.

#### **3.3.2 Informal action**

Informal action to secure compliance with legislation includes offering advice/guidance, verbal warnings and request for action, the use of letters and the issue of food safety inspection reports, including those generated on site at the time of inspection

The Council generally considers it appropriate to take informal action in one or more of the following circumstances: -

- Where the act or omission is not serious enough to warrant formal action.
- Where from the businesses past history it can be reasonably expected that informal action will achieve compliance.
- Where confidence in the businesses management is high.

- Where the consequences of non-compliance will not pose a significant risk to public health and do not represent a serious departure from acceptable standards of trading practice.
- Where even some of the criteria are not met, there may be circumstances in which informal action will be more effective than a formal approach. This may apply to food businesses associated with voluntary organisations using volunteers.

Written reports to business will:

- Contain all the information necessary to understand what work is required and why it is necessary.
- Indicate the statutory provision contravened and measures which will enable compliance with the legal requirement.
- Make a clear distinction between matters necessary to meet statutory requirements and those which are recommended as good hygiene practice.
- Confirm the nature of advice given to the business.

### **3.3.3 Statutory Notices**

#### **3.3.3.1 Hygiene Improvement Notices**

Service of a Hygiene Improvement Notice will be considered appropriate where one or more of the following criteria are satisfied:

- Where formal action is proportionate to the risk to public health.
- Where there is evidence of history of non compliance with breaches of the hygiene regulations.
- Where the Officer has reason to believe that an informal approach will not be successful.
- Where there is an intention to prosecute but effective prompt action is also needed to remedy conditions that are serious or deteriorating.

Realistic time limits will be attached to Hygiene Improvement Notices and, before service these will be discussed with the food business operator and, wherever possible, agreed with the operator. A request for an extension of time will be considered where genuine difficulties occur in achieving compliance by the deadline provided they are made in writing to the officer issuing the notice prior to expiry date, explaining why the work will not be completed within the agreed time limit. The option to request an extension will be given to the recipient when the notice is served. Additionally, appeal provisions available to the recipient of the notice will be explained and given in writing at the time the notice is served. In cases where English is not a first language, the Council will endeavour to include in the language of the recipient, a warning on the Notice or attached to the Notice advising them that the document is important and to seek immediate advice.

Failure to comply with a Hygiene Improvement Notice will normally result in legal proceedings after consultation with the Food Lead, and the Council's Solicitor.

#### **3.3.3.2 Hygiene Emergency Prohibition Notices**

A Hygiene Emergency Prohibition Notice will be served under specific circumstances where a health risk condition has been fulfilled in that there is an imminent risk of injury to health. The service of the Notice will result in an

application to the Magistrates' Court to issue an Order prohibiting the use of the premises, processes or equipment until adequate improvements are made. In cases where English is not the first language, the Council will endeavour to include in the language of the recipient, a warning on the Notice or attached to the Notice advising them that the document is important and to seek immediate advice.

Emergency Prohibition Notices will be considered in one or more of the following circumstances: -

- The consequences of not taking immediate and decisive action to protect public health would be unacceptable.
- An imminent risk of injury to health can be demonstrated. This might include evidence from relevant experts, including the public analyst or food examiner.
- There is no confidence in the integrity of an unprompted offer to close premises voluntarily or cease the use of equipment, process or treatment associated with imminent risk.
- A proprietor is unwilling to confirm in writing his/her unprompted offer of a voluntary closure.

Voluntary closure of premises is a measure adopted as a result of a written agreement between the business proprietor and the Council that the premises close until matters are appropriately remedied. The Council will not normally consider this action as the first option because of its non-statutory basis.

Regard shall be had to advice on the Primary and Home Authority principles. Primary and Home Authorities and where appropriate, originating authorities will be advised of action taken by this Council and its outcome.

(For actions involving the use of '**Prohibition Orders**' see 'Prosecution' section below).

### 3.3.3.3 Remedial Action/Detention Notices

These powers are available for use in premises subject to 'approval' under Regulation 853/2004. These are principally premises which process products of animal origin e.g. dairies, meat, fish, egg products and shellfish. Whilst authorised officers will seek to remedy non compliance by adopting a graduated approach to enforcement, there may be situations where these powers would be used. Such actions will be proportionate to the risk to public health and where immediate action is required to ensure food safety. The matters will be clearly explained and set out in writing. They may be used in conjunction with those powers available relating to seizure and detention of food under the Food Safety Act (as amended).

Remedial Action Notices may be used where hygiene regulations are being breached or where inspection is being hampered and allow for the prohibition of the use of any equipment or any part of the premises, the imposition of conditions upon, or prohibiting any process and allow for the rate of any operation to be reduced or stopped immediately.

Detention Notices may be used to detain any food including the taking of samples and would be used where there are indications or suspicions that food at an establishment is unsafe.

### 3.3.4 Prosecution

The Council accepts that the decision to prosecute is a serious and important step in the enforcement process. In general, it will be restricted to those persons who blatantly disregard the law, refuse to achieve even the basic minimum legal requirements after following previous interventions by the Council, and who put the public at risk of ill health. The decision to prosecute will be made as soon as possible once the facts are known. Prosecution will not commence or continue unless there is sufficient admissible and reliable evidence that an offence has been committed, there is a realistic prospect of conviction and that it is in the public interest to prosecute. The decision to prosecute will be made by the Food Lead and the Council's Solicitor in consultation with the Environmental Health Community of Practice Lead and the case officer.

3.3.4.1 Prosecution is likely to be appropriate when one or more of the following circumstances dictate:

- Where there has been a flagrant breach of the law, particularly where the economic advantages of breaking the law are substantial and the law abiding are placed at a disadvantage to those who disregard it.
- The gravity of the offence taken with the general record and approach of the offender warrants a strong legal sanction.
- Where the offence and/or the circumstances leading to it are reasonably foreseeable.
- Where it is not likely that the offender will be able to demonstrate a 'due diligence' defence.
- Where it is considered to be an appropriate way of drawing attention to the need for compliance and the maintenance of standards, especially where there would be a normal expectation that a prosecution would be taken.
- Where the offender and any others may be deterred from similar failures through the conviction.
- Evidence of wilful intent of the offender.
- Where there has been a previous history of offending, poor standards or lack of cooperation.
- Where, after the nature of the alleged offence has been made clear and understood by the offender, (taking into account any potential language difficulties), the attitude of the offender is not helpful, particularly in respect of any explanations offered and any remedial action taken.
- The likelihood of the offender re-offending if firm action is not taken.
- If the prosecution is successful, a significant penalty is likely to result.
- The particular contravention or circumstances have caused serious public alarm.
- Where the offence involves a failure to comply in full or in part with the requirements of a statutory notice or where there is a significant breach of condition of licence registration or approval which would compromise food safety.

3.3.4.2 When circumstances have been identified which might justify a prosecution, all relevant evidence and information will be considered to enable a consistent, fair and objective decision to be made.

3.3.4.3 When reaching the decision to prosecute, guidance in the Code for Crown Prosecutors, issued by the Crown Prosecution Service and the Food Standards Agency Code of Practice/Practice Guidance will be followed.

3.3.4.4 Where the Court is satisfied following certain prosecutions that there is a risk of injury to health and where the Council request it, a **Prohibition Order** may be imposed. In such an instance, the Council will present evidence that the health risk condition is fulfilled. This criteria is met if the following involve a risk of injury to health:

- the use for purposes of the business of any process or treatment;
- the construction of any premises used for the purpose of the business, or the use for those purposes of any equipment; and
- the state or condition of any premises or equipment used for the purposes of the business.

The Court also has discretion to prohibit a person from managing a food business.

3.3.4.5 The Council will have regard to BRDO and LGR guidance on Primary and Home Authority principles. Primary and Home authorities and, where appropriate, originating authorities will be advised of action taken by the Council and the outcome of such. Additionally, details of any Prohibition Order made will be forwarded to the Chartered Institute of Environmental Health.

### 3.3.5 Simple Cautions

The Council will consider the use of simple cautions as an alternative to a prosecution provided that certain criteria are met. The Council will make it clear to the suspected offender that there is no legal obligation to accept the offer of a simple caution nor will apply any pressure for that person to accept a caution.

3.3.5.1 As detailed in the Home Office circular the purposes of Simple Cautions are:

- 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.

3.3.5.2 To safeguard the suspected offender's interests, the following conditions should be fulfilled before the 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 understand the significance of a formal caution and give an informed consent to being cautioned;
- the suspected offender must admit the offence.

3.3.5.3 A simple caution is inappropriate where:

- there is insufficient evidence for prosecution;
- the suspected offender does not make a clear and reliable admission of the offence.

3.3.5.4 In circumstances where the suspected offender refuses the offer of a Simple Caution, the Council will consider prosecution for the alleged offence(s) other than in exceptional circumstances where a written warning might be more appropriate.

3.3.5.5 The Head of Legal Services with the agreement of the relevant Service Manager is authorised by the Council for the issue of simple cautions.

3.3.5.6 Regard shall be had to BRDO and LGR advice on Primary and Home Authority principles. Primary and Home authorities and, where appropriate, originating authorities will be advised of such action taken by the Council.

### **3.3.6 Seizure etc of unfit food**

3.3.6.1 In addition to those powers mentioned in paragraph 3.3.3.3 above, authorised officers have powers to inspect food intended for human consumption to ensure that it meets food safety requirements.. Additional powers are available to deal with food it is placed on the market and not produced, processed or distributed in accordance with Hygiene Regulations.

3.3.6.2. In the circumstances mentioned in the preceding paragraph, officers may detain food pending further investigation and/or seize it and have it condemned by a Justice of the Peace.

3.3.6.3 The Council also recognises that persons in control of food not meeting food safety requirements or produced etc in accordance with Hygiene Regulations may seek to voluntarily surrender the food to the officers for destruction.

### **3.3.7 Imported food control**

3.3.7.1 The Council has powers to deal with food imported into the country from outside the EU. This may be of animal origin or otherwise and separate legal requirements apply to each.

We will seek to liaise with all relevant agencies both local and national to ensure effective control of imported food.

3.3.7.1 We will exercise various official control powers to ensure the food's destruction, treatment, re-dispatch outside the EU or ensure that the food is used for alternative purposes to that originally intended. However, as regards products of animal origin, our initial approach will be to seek the destruction of the food.

## **4.0 Promotion, Prevention and Publicity**

4.1 Promotion is an important part of this policy as it raises awareness of the Council's food safety powers and expectations and also encourages self regulation within business. Additionally, it raises an awareness of the services available to support business in order to assist them to meet legal requirements. The Council will, following a successful prosecution, publicise the details of the case. In addition to which, (subject to certain exceptions) the Council is obliged to release information under the Freedom of Information Act 2000 and this may include inspection reports, statutory notices and prosecution information.

## **5.0 Costs**

- 5.1 The Council will seek to recover all reasonable costs in circumstances where it is legally entitled to do so.

## **6.0 Grievance**

- 6.1 The Council has adopted a formal complaints procedure and any person aggrieved by the enforcement action taken by the Council in connection with food safety legislation (or any other actions) may register their complaint in accordance with that procedure. A copy is available upon request by writing to South Hams and West Devon Council, Follaton House, Plymouth Road, Totnes TQ9 5NE or telephoning 01803 861234 or via the Council's website at [www.southhams.gov.uk](http://www.southhams.gov.uk) or [www.westdevon.gov.uk](http://www.westdevon.gov.uk)

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