

# Monmouthshire County Council

## FOOD LAW ENFORCEMENT POLICY

### 1.0 Introduction

- 1.1 This enforcement policy should be read in conjunction with the Council's Corporate Enforcement Policy which outlines the authority's broader approach to delivering its enforcement responsibilities.
- 1.2 We affirm the importance of achieving and maintaining consistent, balanced and fair enforcement. Regard will be given to the Food Law Code of Practice and Practice Guidance, Code for Crown Prosecutors, Enforcement Concordat, LACORS guidance, Home Authority Principle, Industry Guides and the Regulatory Enforcement and Sanctions Act 2008 and associated guidance.
- 1.3 Departures from the Food Safety Enforcement Policy should be exceptional and the reasons for any departure should be recorded.
- 1.4 All enforcement action considered by us will primarily be based upon the following:
- An assessment of risk to public health
  - Nature of the breach
  - History of compliance
  - Confidence in management
  - The need to prevent a recurrence.
- 1.5 Authorised Officers will ensure that the enforcement action they undertake is reasonable, proportionate and consistent with good practice. Officers will take account of the full range of enforcement options available and include:
- Informal action.
  - Statutory Notices & Voluntary Closure
  - Seizure and Detention
  - Simple Cautions
  - Prosecution
- 1.6 Except where circumstances indicate a significant risk, officers should operate a graduated approach starting with informal action and only moving to formal action where the informal does not achieve the desired effect.

### 2.0 Informal Action

- 2.1 This enforcement option includes the offering of advice, the issuing of verbal warnings and requests for action and the use of informal letters and food hygiene inspection reports.
- 2.2 The following circumstances are considered appropriate for use of informal action as a means to secure compliance with the requirements of food safety legislation within a reasonable time scale:-
- Circumstances where the consequences of non-compliance with the contravention identified will not pose a significant risk to public health;
  - Acts or omissions, which are minor and not serious enough to warrant formal action;

- The Food Business Operator's past history of compliance, and or willingness to undertake the necessary works, demonstrates that it can be reasonably expected that informal action will result in compliance;
- Where matters identified constitute good practice as opposed to legal contraventions.

2.3 A clear distinction between action needed to meet statutory requirements and recommendations about good practice shall be made in all communications with food businesses.

### **3.0 Approach To Food Safety Management Enforcement**

3.1 Authorised Officers will adopt a graduated and educative approach to ensuring food business operators implement and maintain food safety management procedures which are commensurate with the size and nature of the business. However, food premises that present a clear and imminent danger to public health will be subject to formal enforcement actions to secure improvement.

### **4.0 Hygiene Improvement Notice**

4.1 Hygiene Improvement Notices are served on the food business operator to secure compliance with food safety requirements within a given time period. Failure to comply with the notice constitutes an offence.

4.2 A Hygiene Improvement Notice may be 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 may not be successful

4.3 A Hygiene Improvement Notice would not be appropriate in the following circumstances:

- Where the contravention might be a continuing one, for example, personal cleanliness of staff and a notice would only secure an improvement at one point in time;
- In transient situations, and it is considered that swift enforcement action is needed, for example, a one day festival or sporting event. A Hygiene Emergency Prohibition Notice would be the only formal remedy that would have immediate effect;
- Where there is a breach of good hygiene practice but no failure to comply with an appropriate regulation.

4.4 Improvement Notices shall only be signed and served by those Officers who have been appropriately authorised and witnessed the contraventions.

4.5 Where it is not possible to identify the food business operator the hygiene improvement notice will be addressed to the "food business operator" and left at the named premises. Where possible, the person who is responsible for taking action also receives a copy, especially where the local manager is not the food business operator.

- 4.6 Hygiene Improvement Notices will clearly state the measures required and the time limit for completion (not less than 14 days). Wherever possible, the officer will discuss the detail of the work required with the food business operator before a notice is issued. However, the issue of a notice will not be delayed if this person cannot be reached.
- 4.7 In exceptional circumstances, where the food business operator can demonstrate genuine difficulties in completing the works careful consideration will be given to a written request to extend the time limit for compliance. If this is successful, the officer will cancel the original notice and issue a new notice with a revised timescale.
- 4.8 Compliance will be checked following the expiry of the notice or as soon as practicable after notification has been received. Consideration will be given to works that will achieve the same effect. The officer will confirm in writing that the works have been satisfactorily completed.
- 4.9 The notice will include details of the right of appeal and the name and address of the relevant local court.

## **5.0 Hygiene Emergency Prohibition Notice (HEPN)**

- 5.1 A Hygiene Emergency Prohibition Notice is served on a food business operator when an imminent risk of injury to health exists. The effect of the notice is to immediately close the premises, or prevent the use of equipment, or the use of a process or treatment.
- 5.2 An Authorised Officer must make an application to a Magistrates Court for a hygiene emergency prohibition order within three days of a hygiene emergency prohibition notice being served.
- 5.3 A food business operator will be given at least one complete day's notice of the intention to make the application for an emergency prohibition order.
- 5.4 The word "imminent" qualifies the word "risk". There must always be an imminent risk of injury to health before a hygiene emergency prohibition notice can be served. The injury itself may occur sometime in the future. Not everyone exposed to the risk of injury will actually suffer the injury. It is the exposure to the risk of injury that enables action to be taken. For example, if the condition of the premises appeared to carry a high risk of causing an outbreak of food poisoning within the next few days, the Authorised Officer could consider imposing a hygiene emergency prohibition notice.
- 5.5 Health risk conditions where prohibition of premises may be appropriate include:
  - Infestation by rats, mice, cockroaches, birds or other vermin, serious enough to result in the actual contamination of food or a significant risk of contamination;
  - Very poor structural condition and poor equipment and/or poor maintenance or routine cleaning and/or serious accumulations of refuse, filth or other extraneous matter resulting in the actual contamination of food or a significant risk of food contamination;
  - Drainage defects or flooding of the establishment, serious enough to result in the actual contamination of food or a significant risk of food contamination;
  - Premises or practices which seriously contravene food law and have been or are implicated in an outbreak of food poisoning;
  - Any combination of the above, or the cumulative effect of contraventions which, taken together, represent the fulfillment of the health risk condition.

5.6 Health risk conditions where the prohibition of equipment may be appropriate:

- Use of defective equipment, e.g. a pasteuriser incapable of achieving the required pasteurisation temperature;
- Use of equipment for the processing of high-risk foods that has been inadequately cleaned or disinfected or which is grossly contaminated and can no longer be properly cleaned.

5.7 Health risk conditions where prohibition of a process may be appropriate:

- Serious risk of cross contamination;
- Failure to achieve sufficiently high processing temperatures;
- Operation outside critical control criteria, for example, incorrect pH of a product which may allow *Clostridium botulinum* to multiply;
- The use of a process for a product for which it is inappropriate.

5.8 If an officer is satisfied that the health risk condition no longer exists a certificate will be served within three days. If the food business operator applies for such a certificate, the Food Authority must determine the position as soon as is reasonably practicable and within a period of no longer than fourteen days.

5.9 If the Food Authority determines that the health risk condition remains in existence, it must issue a notice of that determination to the food business operator and should do so within three days.

## **6.0 Voluntary Closure**

6.1 Voluntary procedures to remove a health risk condition may be used as an alternative to the service of a Hygiene Emergency Prohibition Notice. This approach could be at the instigation of the food business operator or the Authorised Officer.

6.2 The food business operator or manager and the Authorised Officer should confirm any voluntary closure agreement in writing, with an undertaking by the food business operator or manager not to re-open without the officer's prior approval. The food business operator will be advised that by offering to close voluntarily, any right to compensation is lost. A voluntary closure agreement will not preclude legal proceedings being undertaken for non-compliance with food safety legislation.

## **7.0 Hygiene Prohibition Order made against a person**

7.1 This order prohibits a food business operator from managing any food business or particular type of business.

7.2 When the food business operator has been convicted of an offence, the Authorised Officer may feel that it is appropriate to ask the Court to consider making an order in relation to that operator.

7.3 Circumstances where such action may be appropriate include repeated offences such as failure to clean, failure to maintain equipment, blatant disregard for health risks, or putting health at risk by knowingly using unsafe food.

## **8.0 Hygiene Prohibition Order**

- 8.1 During an inspection of a premise prior to a court hearing for an offence(s) under the food hygiene regulations, the Authorised Officer may discover that the matter(s) giving rise to the prosecution has either not been removed, or has been removed, but has recurred.
- 8.2 If the food business operator is convicted, the court may be asked to consider making a Hygiene Prohibition Order on the premises, process, or equipment, thus ensuring the risk of injury to health is removed.

## **9.0 Remedial Action Notices & Detention Notices**

- 9.1 Remedial Action Notices and Detention Notices apply in respect of establishments subject to approval under 853/2004 and other food establishments subject to regulation 852/2004.
- 9.2 Remedial Action Notices can be served if any of the requirements of the Hygiene Regulations are being breached or hampered. The notice may:
- Prohibit the use of any equipment or any part of the establishment
  - Impose conditions upon, or prohibit, any process
  - Allow for the rate of an operation to be reduced or, stopped completely
- 9.3 The officer will also consider whether food at the establishment should be detained for the purposes of examination by means of a Detention Notice.
- 9.4 Detention Notices provide for the detention of any food, including the taking of samples for the purposes of examination.
- 9.5 As soon as the Authorised Officer is satisfied that the action specified in a Remedial Action Notice has been taken, the notice must be withdrawn by means of a further notice in writing. Similarly, in respect of a Food Detention Notice, if the Authorised Officer is satisfied that the food need no longer be detained, the relevant notice must also be withdrawn by means of a further notice in writing.
- 9.6 Circumstances which may lead to the issue of a Remedial Action Notice in respect of an establishment include:
- The failure of any equipment or part of an establishment to comply with the requirements of the food hygiene regulations
  - The need to impose conditions upon or the prohibition of the carrying on of any process breaching the requirements of the regulations or hampering adequate health inspection in accordance with the regulations
  - Where the rate of operation of the business is detrimental to its ability to comply with the regulations
- 9.7 Circumstances which might lead to the issue of a Detention Notice include indications or suspicions that food is unsafe and examination is necessary and the taking of samples.

## **10.0 Seizure & Detention**

- 10.1 If while inspecting food, or because of other information from a reliable source the Authorised Officer believes that the food fails to comply with the food safety requirements, the officer may detain or seize the food under Section 9 Food Safety

Act 1990. Reliable sources may include Food Standards Agency, the HPA, NPHS, CCDC.

- 10.2 Seizure and detention may also be necessary after food has been certified as not being produced, processed or distributed in accordance with Regulation 27 of the Food Hygiene (Wales) Regulations 2006.

### ***Detention***

- 10.3 If the Authorised Officer has good reason to suspect that the food does not satisfy food safety requirements then a detention of food notice may be served.
- 10.4 A decision to detain food should only normally be taken if it has been discussed with the owner or person in charge of the food and, if appropriate, with the manufacturer. Where the Authorised Officer has served a detention of food notice, professional judgement will be used to determine whether food should be detained where it is, or moved elsewhere. If the officer has any doubts about the security or physical care of the food, the detention notice should specify a place to which the food is to be moved. The officer will organise periodic monitoring of the food throughout the period of detention.
- 10.5 The Authorised Officer will act as quickly as possible when evidence or information indicates that detained food can be released, and in any case within 21 days. A Withdrawal of Detention of Food Notice will be served.

### ***Seizure***

- 10.6 It is presumed under food law that all food is intended for human consumption until it is proved to the contrary. When considering whether to seize food an officer will consider whether the food in question can be treated or processed before consumption and if so, whether the food, after treatment or processing would be sound and wholesome and satisfy food safety requirements. Food previously detained by an officer may be seized and subject to condemnation after receipt of adverse findings.
- 10.7 When an officer makes a decision to seize food, a food condemnation warning notice will be served on the person in charge of the food, or the owner. This notice will provide warning of the intention to take the food before a Justice of the Peace and apply for its condemnation.
- 10.8 Food that has been seized should be dealt with by a Justice of the Peace as soon as is reasonably practicable, normally within 2 days. Cases involving highly perishable food should be dealt with at the earliest opportunity. If necessary the time scale may be extended to ensure that parties and or their representatives have an opportunity to attend. However, action will not be delayed if the owner cannot be traced or contacted.

### ***Dealing with batches, lots or consignments of food***

- 10.9 The decision to seize or detain a batch, lot, or consignment requires careful consideration before a notice is served. The Authorised Officer will use professional judgement and expert advice, if necessary, to decide whether to detain or seize the whole or part of the batch, lot or consignment. The Authorised Officer will consider:
- The evidence available
  - The nature of the contamination
  - The nature and condition of the container holding the food

- The risk to health
- The quantity of food involved in relation to any sampling which has been undertaken.

### ***Compensation***

10.10 In the event of a detention notice being withdrawn or a Justice of the Peace fails to condemn seized food the food authority will compensate the owner for any depreciation in its value resulting from the action taken by the Authorised Officer.

### **11.0 Voluntary Surrender of foodstuffs**

11.1 Voluntary procedures to remove food that is not suitable for human consumption from the food chain may be used, either at the instigation of the owner of the food or at the suggestion of the Authorised Officer when the owner of the food agrees the food is not suitable for human consumption.

11.2 A receipt should be issued for food that is voluntarily surrendered to the Food Authority for destruction. The receipt should indicate that the food has been voluntarily surrendered to the Food Authority for destruction and be signed and counter-signed by the Authorised Officer and the person surrendering the food respectively.

### **12.0 Destruction and Disposal**

12.1 The local authority, by agreement, may charge the owner of the food for the destruction and disposal of voluntarily surrendered foodstuffs.

12.2 The local authority will usually make an application to the Justice of the Peace for costs associated with the destruction and disposal of seized food.

12.3 If food is to be disposed of, the authority will make every effort to ensure that this is done in a suitable manner and that there is no possibility of food returning to the food chain.

Approved by Cabinet 2<sup>nd</sup> June 2010.

Amended as indicated by underlining in Dec 2013 to include option to serve Remedial Action Notices for premises other than approved premises and to reflect Primary Authority and other considerations under the Regulatory Enforcement and Sanctions Act 2008.