

Food and Feed Enforcement Policy

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Introduction

As a Local Authority, we are responsible for regulating Food and Feed law across a wide range of businesses within Cumberland. This Policy sets out our approach to enforcement where non-compliance has been identified by authorised officers. In accordance with the Cumberland Enforcement Policy, this policy has been approved by the Director of Public Health and Communities and formally adopted by Cumberland Council's Regulatory Committee.

1.0 Purpose

The purpose of this enforcement policy is to promote an efficient and effective approach to food and feed enforcement within Cumberland that is always consistent, fair, transparent, accountable, proportionate and targeted. The aim is to improve compliance with legislation whilst minimising the burden on businesses, individuals and organisations. The policy sets out what businesses and others being regulated can expect from enforcement officers.

This policy will sit underneath the overarching enforcement policy for Cumberland Council. The overarching policy will go into greater depth on the approach taken by Cumberland Council, having due regard to the government Enforcement Concordat and the Regulators Compliance Code. This policy compliments the principles laid down in national policies to ensure the Officers are fair when exercising their enforcement duties.

2.0 Application

This policy will be implemented and supported by authorised officers within the Council.

3.0 References

- Food Standards Agency's Framework Agreement
- Regulators Code 2014
- Human Rights Act 1998
- Regulation of Investigatory Powers Act 2000
- Police and Criminal Evidence Act 1984 (as amended)
- Home Authority Principle
- Primary Authority Scheme & BEIS Primary Authority Statutory Guidance
- FSA Food Law Code of Practice (England) (FLCOP)
- FSA Feed Law Code of Practice (England)
- FSA Food Law Practice Guidance
- FSA Feed Law Practice Guidance
- Food Safety and Hygiene (England) Regulations 2013
- Food Safety Act 1990
- EC Regulation 178/2002.

- EC Regulation 853/2004
- The Code for Crown Prosecutors
- Legislative and Regulatory Reform Act 2006

4.0 Policy Statement

Cumberland Council aims to ensure:

- To ensure that all food and drink intended for sale for human consumption that is produced, stored, distributed, handled or consumed is safe, hygienic and compliant with food legislation.
- To ensure food meets quality standards, is correctly labelled and is honestly described so that consumers can have confidence in the food they buy.
- To ensure food is safe by preventing contamination and protecting consumers with food allergies.
- To ensure that food is traceable from farm to fork to prevent fraud and enable swift action to be taken in the event of any food safety issue.
- To promote healthier food choices.
- To ensure that feeding stuffs are produced, transported, stored and used appropriately to prevent the outbreak of disease and ensure the safety of the food chain.

In carrying out its Food Law enforcement Cumberland Council will encourage food businesses and regulated bodies to comply with their food safety obligations and grow as businesses.

This Policy has been written having regard to the Food Standards Agency's Framework Agreement, the Legislative and Regulatory Reform Act 2006 and Regulators Code 2014. Officers will therefore have regard to and implement the principles of proportionality, consistency, transparency and targeting.

Inspections of food and feed businesses and other food safety activities will be in accordance with legislation, statutory Codes of Practice and guidance issued by the Food Standards Agency and the Central Government Departments, such as the Department for Environment, Food & Rural Affairs and Department for Business, Energy and Industrial Strategy (BEIS).

The Council fully acknowledges and endorses the rights of individuals and will ensure that all enforcement action is in strict accordance with the Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000 and the Police and Criminal Evidence Act 1984 (as amended).

The Council recognises that the particular interests of different consumers within its area will need to be taken account of to ensure that legislation is enforced fairly and consistently. Interpreters will be used where there is difficulty in understanding the English language. Where possible, translated advisory leaflets will be made available. Any visits that are required out of hours will be undertaken as necessary.

We are fully committed to the Home Authority Principle and the Primary Authority Scheme* and will utilise the principle whenever enforcement activity is considered, especially where the issue has national implications. We will have full regard to the BEIS Primary Authority Statutory Guidance.

All enforcement action will be based on the risk to health and in accordance with this policy. Any departure from this policy must be justified to the appropriate line manager with delegated authority under the Council's constitution. The reasons for any departure will be fully documented and a copy retained on the premises file.

This Policy supports service delivery and intervention plans and procedures, and it will be actively brought to the attention of all relevant officers. The policy is supported in certain areas by additional procedural guidance. A copy of this policy will be made available at Council offices and to any person that requests one. The Policy will also be made available on the Council's website.

*The Home Authority Principle and the Primary Authority Scheme are supported by food and trading standards services throughout the UK. The Primary Authority Scheme has been made under The Regulatory Enforcement & Sanctions Act 2008. A local authority acting as a home or originating authority will place special emphasis on the legality of goods and services originating within its area. It aims to prevent infringements by offering advice and guidance at source in order to maintain high standards of public protection at minimum cost. The Home Authority is the authority where the relevant decision making base of an enterprise is located. The Originating Authority is an authority in whose decentralized enterprise produces goods and services.

4.1 Review of Policy

This policy will be reviewed regularly and updated in response to changes in legislation, statutory guidance or service delivery.

5.0 Enforcement Options

Authorised officers will consider the most appropriate course of action, which should be taken following inspection or investigation. These include:

- No action
- Informal action, advice and voluntary measures (e.g. voluntary closure)
- Formal letter known as informal written notice
- Statutory Notices – Improvement Notices, Detention of Food Notices, Remedial Action Notices and Emergency Prohibition Notices.
- Issuing and revoking approvals including suspensions and conditional approvals
- Prohibiting operations and processes
- Simple caution
- Prosecution

Where formal enforcement action is to be considered, the officer will advise the Primary Authority and Home/Lead Authority where relevant, of any actions intended and seek agreement. Officers will refer to the Primary Authority website to establish any partnership arrangements, <https://primary-authority.beis.gov.uk/user/login>.

5.1 No Action

There will be occasions when it is appropriate to take no further action on completion of the inspection or investigation. This will be the case where the risk to health is insignificant and/or the premises, is low risk in nature i.e. no food preparation. A report of inspection will be left on-site or sent soon after the inspection highlighting that the standards of compliance are satisfactory.

5.2 Informal Action

Informal action includes verbal advice, requesting others to act, letters and/or emails containing recommendations of good hygienic practice, accepting the voluntary surrender of food and closures, and the issuing of reports of inspection in accordance with the Food Standards Agency - Food Law Code of Practice (England) (FLCOP).

Informal action will be appropriate in the following circumstances:

- The act or omission is not serious enough to warrant formal action.
- From the past history, it can be reasonably expected that informal action will achieve compliance.
- The consequences of non-compliance will not pose a significant threat to food safety.

Verbal advice will be offered where practices do not constitute a breach of the legislation or where advice on good practice, for example within industry guides, good manufacturing practice (GMP) or trade association guidance, has not been followed. Officers providing verbal advice will ensure that they clearly differentiate between those items that are legal requirements and those that are recommendations of good practice.

Verbal advice will be confirmed in writing where necessary. This may form part of the Report of Inspection, which is normally left at the end of the visit or sent afterwards.

5.3 Formal letters

Formal letters will be considered appropriate in the following circumstances:

- Where the act or omission is not serious enough to warrant the service of a statutory notice;
- The history or track record of the individual or company means that it can be reasonably expected that a formal letter will achieve compliance;
- The consequences of non-compliance will not pose a significant threat to food safety; or
- If the food business is non-compliant

Any formal letters shall be written in accordance with the Food Standards Agency FLCOP and practice guidance. They will contain all the information necessary to understand what work is required and why it is necessary. They will indicate the Regulations contravened and the measures, which will enable compliance.

Letters will clearly differentiate between matters, which are necessary to meet statutory requirements and those which are recommendations.

The opportunity to discuss the contents of the letter with the officer and/or the Lead Food Officer will be made available and both contact details will be clearly visible in the letter.

Where a letter is to be sent to the food business operator, officers will aim to achieve a target date of 10 working days from the inspection/visit date.

Where a food business is deemed compliant or only minor contraventions are noted during an inspection/visit, the outcome may be detailed on the inspection report left at the premises and no follow-up letter provided.

5.4 Statutory Notices

In certain circumstances, the service of a statutory notice will be appropriate. A range of notices may be used:

- Hygiene Improvement Notices / Improvement Notices
- Hygiene Emergency Prohibition Notices / Emergency Prohibition Notices
- Detention and Condemnation of Food Notices
- Remedial Action Notices
- Warrants to enter premises
- PACE Code B Notices
- Other relevant statutory notices for which the Authority enforces.

5.5 Hygiene Improvement Notices / Improvement Notices

The following factors determine the use of Improvement Notices in accordance with the Food Law Practice Guidance (England).

- a) There are significant contraventions of legislation
- b) There is a lack of confidence that the food business operator or company will respond to an informal approach
- c) There is a history of non-compliance with informal action or formal letters, history of poor risk scores and award scheme ratings
- d) Standards are generally poor with little management awareness of statutory requirements
- e) The consequences of non-compliance could be potentially serious to public health
- f) Effective action needs to be taken as quickly as possible to remedy conditions, which are serious, or deteriorating, even though it is intended to prosecute.
- g) Officers will have regard to other professional guidance available e.g. Knowledge Hub.

The use of Improvement Notices will be related to risk to health and they will not be used for minor contraventions of the legislation. They will not be used where the contraventions might be a continuing one or in transient situations i.e. personal cleanliness of staff or one day festival or sporting event.

Officers issuing Improvement Notices will discuss with the food business operator the works to be undertaken and realistic time limits for the completion of the works. The officer will consider alternative solutions of equal effect put forward by the food business operator.

The authorised officer will check compliance as soon as practicable after notification that the work has been completed or at the latest, the day following the expiry of the notice. The authorised officer will confirm in writing that the works have been satisfactorily completed.

Failure to comply with an Improvement Notice may result in the instigation of legal proceedings in the majority of cases.

The officer will consider all reasonable written requests for an extension of time of the notice where these are made within the existing time scale.

5.6 Hygiene Emergency Prohibition Notices / Emergency Prohibition Notices

The use of Emergency Prohibition Notices will be deemed appropriate where there is an imminent risk of injury to health and where for example, the circumstances outlined in the Food Standards Agency Food Law Practice Guidance are fulfilled. Examples are as follows:

Health risk conditions where prohibition of premises may be appropriate:

- a) 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.
- b) 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.
- c) Drainage defects or flooding of the establishment, serious enough to result in the actual contamination of food, or a significant risk of food contamination
- d) Premises or practices which seriously contravene food law and have been, or are implicated, in an outbreak of food poisoning.
- e) Any combination of the above, or the cumulative effect of contraventions which, taken together, represent the fulfilment of the health risk condition.

Health conditions where the prohibition of equipment may be appropriate:

- a) 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.
- b) Dual use of complex equipment, such as vacuum packers, slicers and mincers for raw and ready-to-eat foods. However, dual use of less complex equipment such as weighing scales may be appropriate subject to the business being able to demonstrate that such equipment will be effectively cleaned and disinfected between use for raw and ready-to-eat foods.
- c) Use of storage facilities or transport vehicles for primary produce where the storage facilities or transport vehicles have been inadequately cleaned or disinfected.

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

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

5.7 Detention and Condemnation of Food Notices

Authorised officers will use powers to inspect, detain, seize and arrange for the condemnation of food if they have reasonable grounds that the food does not comply with the food safety requirements as prescribed in the in the Food Safety and Hygiene (England) Regulations 2013, Food Safety Act 1990 and Article 14 of EC Regulation 178/2002.

The procedure for detaining, seizing and arranging for the condemnation of food will be in accordance with Food Law Practice Guidance (England).

A person in charge of food that has been detained or seized for the purposes of condemnation by a Magistrate may be eligible for compensation if:

- The detention of food notice is withdrawn; or
- The magistrate fails to condemn the food; and
- The food has deteriorated in value resulting from the action.

5.8 Remedial Action Notices (RANS)

It is only appropriate to use these notices for requiring works in food premises approved under EC Regulation 853/2004 and in accordance with Food Law Practice Guidance (England).

5.9 Warrants to Enter Premises

The Council can apply to the Magistrates Court for a warrant to enter premises if:

- Necessary entry is required at an unreasonable time; and/or
- Entry to a premises is refused; and/or
- Entry is expected to be refused; and/or
- The premises are vacant, and entry is required.
- If 24 hours' notice to domestic premises would compromise the purpose of the investigation.

5.10 PACE Code B Notices

There is no obligation on authorised officers to issue routinely a PACE Code B Notice when undertaking their statutory duties in a food and feed establishment to verify compliance with food and feed law. A PACE Code B Notice, which sets out the powers of authorised officers and rights of occupiers, must be used in those circumstances where authorised officers are carrying out a directed search. A directed search can be defined as

looking for something predetermined as relevant to a suspected or alleged offence, and may be appropriate as part of an ongoing investigation, for example in response to a complaint where evidence of suspected offences may already exist. The procedure on service of Code B notices must be referred to by Officers and legal advice sought before use.

5.11 Legal Proceedings

Cumberland Council will consider instigating legal proceedings where there is admissible, substantive and reliable evidence that an identifiable person or company has committed an offence and there is a realistic prospect of conviction. The following circumstances may warrant the instigation of legal proceedings:

- a) The offence involves breaches of the law, such that public health, safety or well-being is put at risk;
- b) The offence involves a failure to correct an identified potential risk to food safety arising from the processing, cooking, handling or storage of food, having given the offender a reasonable opportunity to comply with the lawful requirements of an authorised officer;
- c) The offence involves a failure to comply in full or in part with the requirements of a statutory notice;
- d) Offences have resulted in the service of a Prohibition Notice;
- e) There is a history of similar offences related to risks to the safety of food.

In deciding whether legal proceedings should be taken, Officers will have regard to the Authority's legal procedures and the general principles set out in the Code for Crown Prosecutors. Once the Authority is of the opinion that legal proceedings may be instigated, the case is considered in the light of the following factors:

- a) The seriousness of the offence:
 - The risk to public health
 - The number of identifiable victims
 - Failure to comply with a statutory notice served for a significant breach of legislation
 - Disregard for the public health for financial reward.
- b) The previous history of the food business operator or company:
 - The offences follow a previous history of similar offences
 - Failure to respond positively to past written notices and warnings
 - Failure to comply with statutory notices
- c) The likelihood of the defendant being able to establish a due diligence defence:
 - Practical steps taken or due diligence defence available but there is doubt about its legal validity
 - Practical steps taken but there is doubt that the due diligence defence has been achieved
 - Practical steps have been taken that are not totally effective, therefore due diligence has not been proved

- No practical step taken, therefore there is no possibility of proving due diligence

d) If relevant, the ability of witnesses and their willingness to co-operate:

- Witnesses would rather not be involved in prosecution but might be willing if encouraged
- Witness would require summons to attend
- Witness would be willing to attend court but may not be effective under cross examination
- Witness would be willing to attend and will be effective

e) The willingness of the food business operator or company concerned to prevent a recurrence of the problem:

- Steps have been taken to prevent a recurrence and there is confidence that these will be effective
- Steps have been taken to prevent a recurrence but there are doubts that these will be effective
- Steps to prevent a recurrence have been promised but confidence is low that the promises will be fulfilled
- The food business operator or company are not willing to prevent a recurrence and there is no confidence that the food business operator is capable of preventing a recurrence

f) The public benefit and interest of a prosecution and the importance of the case for:

- The likely penalty upon conviction
- The offender's age and state of health
- The offender's attitude to the offence
- Whether it might establish a legal precedent

g) Any explanation offered by the food business operator or the company:

- Explanation is satisfactory, factors appear to be beyond the control of the defendant
- Explanation shows that prevention was possible but necessary steps had not been taken
- Explanation poor, blatant failure to control circumstances leading to offence
- No explanation offered, wilful disregard for public health

5.12 Legal Proceedings – Simple Cautions and Prosecution

Where formal action is considered to be necessary, legal proceedings may take the form of either a simple caution or a prosecution.

Simple Cautions

The Council may offer simple caution as an alternative to prosecutions in order to:

- Deal quickly and simply with less serious offences
- To divert less serious offences away from the Courts and

- To reduce the chances of repeat offences

The Council will only make the offer of a simple caution where:

- There is sufficient evidence of the offender's guilt for a realistic prospect of conviction
- The offender admits the offence and
- The offender clearly understands the significance of a simple caution and gives informed consent to being cautioned.

Where a food business operator declines the offer of a simple caution, the Council will proceed with a prosecution.

Prosecution

Prosecutions will only be considered when there is sufficient evidence to provide a realistic prospect of conviction and that prosecution would be in the public interest. The officer, the appropriate line manager, and a legal representative should agree the final decision. The officer(s) will follow the standard forms to instruct legal to consider the case with a summary of the facts and initial information. If a PACE interview has occurred as part of the initial decision-making process, a transcript should be given to legal along with the initial information.

6.0 Decision-making and Authorisation

All Officers who undertake the enforcement options in this policy will have the necessary authorisation, qualifications, training, experience and competence to do so. All actions will be in accordance with the Food Standards Agency FLCOP (England).

All officers will be issued with a formal written record of their authorisation, signed by the appropriate Assistant Director. Officers will also be issued with an "Authority to Enter" card with a summary of their available powers of entry.

7.0 Working with Others to Secure Compliance

Officers will work closely with others to secure compliance with food safety legislation. Discussion and liaison may be necessary with the following:

7.1 Consumers and businesses

The views of our stakeholders are essential in obtaining effective compliance with the legislation. The need to protect the health of the consumer whilst acknowledging the concerns of businesses are recognised and are implicit within this policy and the requirements of the Regulators Code.

7.2 Food Standards Agency

The FSA will be notified of all approvals or any variations issued under product-specific legislation. Under the Food Alert system, the FSA will be notified of any issues, which have a wider concern or where there is a serious localised incident.

7.3 Primary Authority Scheme/Home Authority

If the premises under inspection or investigation are linked to a Primary, Home or Originating Authority, when officers are considering formal action, they will liaise with the identified authority. Where there is an imminent risk to health, action will be taken immediately and the relevant authority will be notified at the earliest available opportunity.

7.4 Public Health Information - UK Health Security Agency (UKHSA)

Infection control advice and epidemiological support will be requested as necessary.

7.5 County Analyst & UKHSA

The expert advice from the Public Analyst and UKHSA may be required in the procurement, analysis and examination of samples during investigations.