

RUGBY BOROUGH COUNCIL **FOOD SAFETY ENFORCEMENT POLICY**

This policy is to be read in conjunction with the Corporate Enforcement Policy, which was approved by Cabinet in 2002.

Officers must also heed the requirements of the Statutory Code of Practice for Regulators*

1.0 General

- 1.1 As a food authority in terms of the Food Safety Act 1990, Rugby Borough Council has a duty to enforce food safety legislation in pursuit of the particular interests of consumers within the authority's area including members of the public, employees and business owners by protecting public health. The responsibility for complying with Food Safety Legislation lies with persons running a food business. Persons employed to handle food also have legal duties.
- 1.2 The principal legislation in this respect are EC Regulations 852/2004, 853/2004 and 178/2002, The Food Hygiene (England) Regulations 2006, Food Safety Act 1990, The General Food Regulations 2004. This policy should be read in conjunction with the above legislation and the requirements laid out in Section 40 of the Food Safety Act 1990 Code of Practice and its predecessors. Regard will be had to Local Authority Co-ordinator of Regulatory Services (LACORS) advice.
- 1.3 Rugby Borough Council will take into consideration various options when carrying out food safety enforcement, including providing advice, guidance and information, action by means of letter, formal action by means of Hygiene Improvement and Hygiene Emergency Prohibition Notices, detention and seizure of unfit food, revocations of approvals, administering Simple Cautions and Prosecutions. The Council will also use educative measures to improve the level of understanding of food safety.

2.0 Enforcement Principles

- 2.1 The aim of the Council through enforcing food safety legislation is to strive to ensure that food and drink intended for human consumption and which is produced, stored, distributed, handled or consumed within the Borough, is without risk to the health or safety of the consumer and meets food safety requirements. Officers will generally operate a graduated and educative approach, only moving to formal action where informal action has not achieved the desired effect or in situations with serious health implications for the public. All actions will be taken only by duly authorised officers in accordance with the Council's Scheme of Delegation. Authorised officers follow the guidance laid down in the Statutory Food Law Code of Practice and associated Practice Guidance issued by the Food Standards Agency (FSA) and in the

absence of any specified guidance have regard to the advice contained in guidance notes issued by the Local Authorities Co-ordinating Body on Regulatory Services (LACORS), the Code for Crown Prosecutors, The Enforcement Concordat and any relevant codes of practice issued under the Regulatory Reform Act 2001.

- 2.2 The Council's authorisation procedure for officers will ensure that only officers who are competent as defined in the Code of Practice will enforce food safety legislation.
- 2.3 Authorised officers also have additional powers including the taking of samples, photographs and the examination of documents.
- 2.4 The Council must adopt a consistent approach towards enforcement within the Borough and this approach is also required to be consistent with that adopted by other authorities. The Council has liaison arrangements with the other district councils in Warwickshire, and Coventry City Council, to ensure a common enforcement policy in relation to food safety.
- 2.5 We will consult with home authorities, where appropriate and also with primary authorities with regard to investigations and any proposed formal action against a company they are responsible for.
- 2.6 We will undertake comprehensive and thorough investigations, including the use of PACE interviews of Food Business Operators, before deciding on formal enforcement action.

3.0 Enforcement Options

3.1 Informal Action

3.1.1 Informal Action will be taken when:

- (a) The act or omission is not serious enough to warrant formal action.
- (b) The history of the food business operator indicates that informal action is likely to achieve compliance.
- (c) The consequence of non-compliance is not highly significant in terms of risk to health.

3.1.2 The following procedure will be adopted:

- (a) Written reports to the Food Business Operator will be issued after all visits and reports will show what is required and clearly distinguish between legal requirements and recommendations of good practice.

- (b) Where there are significant or repeated failures to comply and formal action is not warranted, a warning letter may be used. A warning letter will identify the failure to comply with legal requirements, and the intention to take formal action should the offence continue or be repeated.

3.2 Formal Action and the Primary Authority

- 3.2.1 If formal action is to be considered against a food business that has a Primary Authority for food, we will have to consult the Primary Authority. This is to comply with the requirements of the Regulatory Enforcement and Sanctions Act 2008 (RESA). We would have to seek their agreement to the enforcement action before it could be taken, unless it was emergency action where any delay could cause significant risk of serious harm to human health.
- 3.2.2 The LBRO can also be involved to decide on if there is a conflict between this authority and the primary authority.

4.0. Use of Statutory Notices

- 4.1 Hygiene Improvement Notices will be issued in accordance with the detailed requirements of the Code of Practice and in particular where:
 - (a) There are significant contraventions of the legislation.
 - (b) There is a history of non compliance.
 - (c) There are potentially serious risks to health caused by non-compliance.
- 4.2 Hygiene Improvement Notices will only be issued by authorised officers in accordance with the Notice Procedure.
- 4.3 Failure to comply with a notice will usually result in court proceedings, though each case will be assessed on the facts. An exception can be made for failure being due to a short over run of time allowed.

5.0 Hygiene Emergency Prohibition Notices

- 5.1 These will be issued in accordance with the detailed requirements of the Code of Practice and where the following requirements apply:
 - (a) There is an unacceptable consequence of not taking immediate action to protect health, and
 - (b) There is no confidence in management and any proposals to close the premises, equipment or process which poses an imminent risk are unreliable and a written agreement to voluntary closure is not forthcoming.

5.2 The following procedure will be adopted:

An Emergency Prohibition Notice will only be issued by Environmental Health Officers who have at least two years post qualification experience in food safety matters, and are properly trained, competent and duly authorised. Where practicable the Regulatory Services Manager and the Legal Services Manager shall be consulted prior to issue.

5.3 Failure to comply with a notice will usually result in court proceedings, though each case will be assessed based on the facts.

6.0 Remedial Action Notices/Detention Notices

6.1 These will be issued in respect of previous approval under Regulation (EC) 853/2004 in accordance with the guidance in Code of Practice and in particular where:

- (a) Any of the requirements of the “Hygiene Regulations” as defined by Regulation 2 of the Food Hygiene (England) Regulations 2006 are being breached.
- (b) An inspection under the Hygiene Regulations is being hampered.
- (c) Where there are indications or suspicions that food at an establishment is unsafe and therefore examination is necessary including the taking of samples.

6.2 Failure to comply with a Notice will usually result in court proceedings, though each case will be assessed on the facts.

7.0 Detention and Seizure of Food.

7.1 Authorised food officers can require that suspect food is detained at premises, under suitable conditions, whilst it is tested to determine if it is safe for human consumption.

7.2 Samples of the food will be taken, in accordance with the sampling protocol, placed in suitable containers and labelled.

7.3 The samples of food will be transported in a coolbox to the testing laboratory as soon as possible for testing. Detailed records will be kept in case of legal action, to prove the sampling technique used and the continuity of evidence.

7.4 Witness statements may be needed from persons transporting the sample and receiving it at the lab.

- 7.5 Authorised officers can also **seize unfit food**, as per the procedure and submit it to a magistrate for condemnation.
- 7.6 Court Proceedings will usually be the result, where unfit food has been condemned, though each case will be assessed on the facts.

8.0 Simple Cautions

8.1 Simple Caution Procedure to be followed for issuing a simple caution for offences is found in the Home Office Circular 30/2005. Further advice has been issued to Enforcing Officers by Local Authority Co-ordinating Body on Regulatory Services (LACORS) and guidelines have been adopted by the Council on who can issue formal cautions and in what circumstances.

8.2 Simple Cautions will be used when:

- (a) an offence has been committed and there is evidence available which would normally lead to a prosecution, but the offender's age, state of health, previous record and experience indicate that the offence was not due to serious negligence; and
- (b) the issue of a simple caution will reduce the chance of a repeat offence, and the offender has made a demonstration of regret.
- (c) the severity of the offence and its potential impact suggest this is appropriate

8.3 The following procedure will be adopted:

- (a) There must be sufficient evidence of the offender's guilt to give a realistic prospect of conviction and the evidence must be submitted to Democratic and Legal Services to assess and give that opinion.
- (b) The offender must admit the offence.
- (c) The offender must understand the significance of a caution and give informed consent to the caution and consideration should be given to whether a caution is in the public interest.
- (d) Prior to action a report shall be submitted to the Regulatory Services Manager.
- (e) The report must then be submitted to the Head of Environmental Services and the Head of Legal and Admin, for agreement to this course of action.
- (f) The simple caution will be issued by the Head of Legal and Admin and administered to the defendant by a head of service or the Regulatory Services Manager.

- (g) Where a simple Caution has been arranged and is not accepted by the Defendant, legal proceedings will be reconsidered and usually be taken.

9.0 Prosecution

9.1 A prosecution will generally be reserved for persons who blatantly fail to observe the law and where one or more of the following apply:

- (a) Where the alleged offence involves a flagrant breach of the law involving a risk to public health, safety or well being; and/or
- (b) Where the alleged offence involves a failure by suspected offender to correct an identified serious risk to food safety (e.g. failure to comply with a Hygiene Improvement Notice or warning letter);
- (c) There is a history of failure to comply with the law, or where a formal caution has already been issued for a similar offence.

9.2 The following procedure will be adopted:

- (a) There must be sufficient evidence of the offenders guilt to give a realistic chance of conviction, and
- (b) Consideration must be given to the defendant's ability to establish a due diligence defence.
- (c) To assess this, defendants will usually be offered a PACE interview, where appropriate, to examine this and other points.

9.3 Prior to action a report shall be submitted to the Regulatory Services Manager, after the Team Leader, Public Health and Licensing has approved it.

9.4 The report has then to be submitted to the Head of Environmental Services to be agreed before being submitted to Legal Services for consideration.

9.5 The Head of Legal and Admin has to consider the evidence to see if it passes the evidential test and also whether it is in the public interest to prosecute. If they are satisfied, they can arrange for summons to be issued for a court hearing.

* Department for Business, Enterprise & Reform *Regulators' Compliance Code, Statutory Code of Practice for Regulators*, 17th December 2007. Available at: <http://www.berr.gov.uk/files/file45019.pdf>

Agreed By:



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Date: 14th December 2010

Version no. 03/2010

Approved by Cabinet 28th June 2010

Approved by Council 27th July 2010