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| South Derbyshire District Council | FOOD ENFORCEMENT POLICY | |
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PART 1

'INTRODUCTION & POLICY'

1.0 INTRODUCTION

- 1.1 Fair and effective enforcement is essential to protect the health, safety and interests of the residents, visitors and businesses of South Derbyshire District Council. Even in a small case a decision about enforcement action has serious implications for all involved; the general public, businesses, victims, witnesses and defendants. The Community Services Directorate applies this policy so that it can make fair and consistent decisions about enforcement.
- 1.2 The Policy is also designed to make sure that everyone knows the principles that the Environmental Health services apply when carrying out enforcement work. By applying the same principles, everyone involved in the process is helping to treat stakeholders fairly but effectively.

2.0 PURPOSE

- 2.1 The purpose of this document is to state the Authority's general policy with respect to law enforcement; following the principles contained in the Enforcement Concordat issued by the Cabinet Office and adopted by South Derbyshire District Council in September 2000 and guidance issued by the Food Standards Agency.
- 2.2 The Policy is based on the principles of openness (about our policies and practices), clear standards (performance and levels of service), proportionality (to secure compliance), consistency (of approach), targeting (of enforcement action) and transparency (of methods and organisation). The Policy follows the principles of the Human Rights Act 1998. All Environmental Health Staff must apply the principles of the European Convention on Human Rights in accordance with the Act.
- 2.3 We will we will publish service standards for all enforcement work following consultation with interested parties. These standards will set out the levels of service the public and businesses can expect to receive.

- 2.4 The emphasis of enforcement will be primarily based upon risk to public health, or in other words, the seriousness of the contravention.

This document covers enforcement activities carried out by Environmental Health staff under the delegated authority granted by South Derbyshire District Council in relation to Food Safety Enforcement, in the context of this policy, includes action carried out in the exercise of, or against the background of, statutory enforcement powers. This is not limited to formal enforcement action such as a prosecution, and includes for example, the inspection of premises for the purpose of checking with acts and regulations, and provision of advice to aid compliance. Its purpose is to provide an enforcement standard that respects the principles of the Enforcement Concordat in full and meets the requirements in guidance published by both government and the relevant professional bodies. In producing this policy regard has also been taken of the Director of Public Prosecution's Code for Crown Prosecutors.

- 2.5 This policy is available on the Council's web site and in hardcopy at the Council's offices. It can be ordered by telephoning 01283 595717, e-mailing carl.jacobs@south-derbys.gov.uk or writing to The Environmental Health Manager, South Derbyshire District Council, Civic Offices, Civic Way, Swadlincote, Derbyshire, DE11 0AH. The public and business will be notified of this policy by distribution of leaflets. We welcome comments on this policy from all sources.
- 2.6 On request, this policy will be made available on tape, in Braille, large type, or in a language other than English.

3.0 GENERAL POLICY

- 3.1 This authority is committed to ensuring that food and drink intended for human consumption, which is produced, stored, distributed, handled or consumed within the District of South Derbyshire is without risk to the health or safety of the consumer and satisfies the consumers' rights.
- 3.2 This Authority will work with food businesses to achieve legislative compliance, through inspection, education and the provision of information.
- 3.3 This Authority is committed to considering the views of local food businesses when developing its food policies.
- 3.5 This Authority requires officer support for and compliance with the policy.
- 3.6 The policy will be documented, regularly reviewed and developed.

- 3.7 Only properly trained Food Law Enforcement Officers will be employed by this Authority. Refresher training will be provided as and when it is required as described by the Food Law Code.
- 3.8 Any departure from the policy will be exceptional, capable of justification and be fully considered by Environmental Health Manager (Commercial & Licensing) or the Environmental Health Manager before the decision is taken, unless it is considered that there is significant risk to the public in delaying the decision.
- 3.9 This Authority is committed to providing ready access to those wishing to appeal or complain about enforcement action.

PART TWO

"AUTHORISATION"

1.0 PURPOSE

- 1.1 The purpose of this document is to state the authority's policy with respect to:-
- a) Identification of officers appointed and authorised to take enforcement action.
 - b) Identification of the designation of the persons who may authorise a prosecution under the Food Safety Act 1990. (hereafter referred to as 'the Act')
 - c) Identification of the limits of delegations for Food Enforcement Officers.

2.0 AUTHORISATIONS

- 2.1 Enforcement action under the Food Safety Act 1990 should be initiated by suitably qualified, experienced and competent Enforcement Officers.

The qualification and experience of authorised officers are prescribed by The Food Law Code of Practice. Consequently the authorisation of officers under Section 5 of the Act and the conferring of powers under Section 11 and 12 of the Act, will be in accordance with any other relevant code of practice.

3.0 INDEMNIFICATION

- 3.1 The Authority will indemnify authorised officers against the whole of any damages and costs

or expenses which may be involved, if the Authority is satisfied that the officer honestly believed that they were acting within their powers and that their duty as an inspector entitled them to do it, providing the inspector was not wilfully acting against instructions

4.0 THE POLICY

4.1 It is the policy of this authority that:-

- a) Where, as a result of adherence to the principles outlined in the policy document, a prosecution is necessary, the following Officers may instigate that particular course of action:-
 - 1) An Authorised Environmental Health Officer
 - 2) An appropriately Authorised & qualified Technical Assistant
- b) The following designated Officers must also be consulted as part of the prosecution decision making process:-
 - 1 Environmental Health Manager (Commercial & Licensing)
 - 2 Head of Community Services or Environmental Health Manager
 - 3 Legal & Members' Services Manager
- c) All such Officers who are responsible for authorising a prosecution will be aware of the limits of their delegated power by reference to statutory Codes of Practice & the Council's Delegation Scheme.
- d) The following designated Officers are authorised to take enforcement action under the Food Safety Act 1990.
 - i) Environmental Health Officers
 - ii) Suitably Authorised and Qualified Technical Staff
 - iii) The Managers of the Officers in (i) and (ii) above

PART THREE

ENFORCEMENT OPTIONS

1.0 PURPOSE

1.1 The purpose of this document is to state the Authority's policy with respect to:-

- a) Achieving and maintaining consistency of approach in making decisions concerning food safety action.
- b) Ensuring commitment to an approach in all enforcement decisions that is fair and balanced and relates to common standards that protect the public.

2.0 ENFORCEMENT OPTIONS

2.1 Enforcement options that are available, having considered all relevant information and evidence are :-

- a) Take informal action.
- b) Issue statutory notices.
- c) Issue formal cautions.
- d) Prosecution
- e) Take prohibition action
- f) Seizure or detention of Food

3.0 THE POLICY

3.1 It is the policy of this authority that:-

- a) Where an inspection or investigation reveals full compliance with the relevant Food Safety and Codes of Practice, no further action may be required, other than to issue a post inspection report. Details of the fact that the inspection revealed that no action was required will be recorded in the premises file.
- b) Informal action may be given in the form of:-
 - advice
 - verbal warnings
 - requests for action by the use of letters
- c) Informal action will be taken in the following circumstances:-
 - i) Where an act or omission is not serious enough to warrant formal action.
 - ii) Previous history of the organisation, enterprise or individual suggests that informal action will achieve compliance.
 - iii) Confidence in the organisation, enterprise or individual is high.
- e) Following a food safety / food hygiene inspection an Enforcement Officer will issue an inspection report.
- f) All verbal warnings, advice or requests for action, at the time of the inspection, will be confirmed in writing.
- g) Where informal action is taken, legal requirements and recommendations will be clearly differentiated.

- 3.2 This Authority supports the Chief Officers, Derbyshire Food Liaison Group as a forum for developing consistent enforcement.
- 3.3 This Authority supports LACORS in its role of liaison between Local Authorities and the Food Standards Agency to ensure that a co-ordinated and pro-active approach to Food Safety takes place.
- 3.4 The policies for statutory notices, formal cautions and prosecutions are stated in Parts 4, 5 and 6 of the Policy Document.

PART FOUR

STATUTORY NOTICES

1.0 PURPOSE

- 1.1 This policy details the matters to be considered in the issue of Formal Statutory Notices.

2.0 THE POLICY

2.1 Hygiene Improvement Notices

a) Hygiene Improvement Notices will be issued when one or more of the criteria below apply:-

- 1) There are significant contraventions of food safety legislation.
- 2) There is a lack of confidence that the proprietor will respond to an informal approach.
- 3) There is a history of non-compliance.
- 4) Standards are generally poor and management has little awareness of requirements.
- 5) The consequences of non-compliance could be potentially serious to public health.
- 6) Effective action needs to be taken as quickly as possible to remedy conditions that are serious and deteriorating.

b) Hygiene Improvement Notices will relate to the risk to health and will not be issued for minor technical contraventions.

- c) Hygiene Improvement Notices will only be issued by Officers who have been properly authorised to do so. They will only be signed by an authorised Officer who has personally witnessed the contravention.
- d) Authorised Officers will follow The Food Law Codes of Practice and guidance on the use of Statutory Notices.
- e) Authorised Officers will place realistic time limits on Statutory Notices, preferably agreed with the proprietor.
- f) The Authorised Officer will discuss with the proprietor the works that will be specified and fully consider other proposed options.
- g) If a HIN expires, there is no longer a facility to extend the expiry date of the Notice. A new Notice must be served, after carrying out an inspection to verify that a contravention is still in existence.
- h) Failure to comply with a Hygiene Improvement Notice will in general result in the institution of court proceedings.
- i) Information will be given to other bodies which should be notified of any formal action taken and its outcome. These may include Home and Originating authorities.

2.2 Hygiene Emergency Prohibition Notices

2.2.1 The Food Hygiene (England) Regulations 2006 procedures

2.2.2 When to use Hygiene Emergency Prohibition Notices (regulation 8)

Unless the use of Voluntary Procedures is more appropriate in the circumstances, Hygiene Emergency Prohibition Procedures should be used if an authorised officer has evidence that the health risk condition is fulfilled. If the appropriate evidence is found, a Hygiene Emergency Prohibition Notice may be served on the food business operator, followed by an application to a Magistrates' Court for a Hygiene Emergency Prohibition Order.

2.2.3 Health risk conditions where use of Hygiene Prohibition Procedures may be appropriate

The following paragraphs provide examples of circumstances that may show that The health risk condition exists as defined by regulation 7(2)/regulation 8(4) i.e. there is an imminent risk of injury to health, and where an authorised officer may therefore consider the use of such prohibition powers. These examples are in no way prescriptive or exhaustive and are for illustrative purposes only.

2.2.4 Health risk conditions where prohibition of premises may be appropriate

- 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 fulfilment of the health risk condition.

2.2.5 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.
- Use of storage facilities or transport vehicles for primary produce where the storage facilities or transport vehicles have been inadequately cleaned or disinfected.

2.2.6 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.

2.2.7 Health risk condition no longer exists: Certificate (regulation 7(6)(a) and regulation 8(8))/health risk condition remains in existence: Certificate (regulation 7(7)(b) and regulation 8(9)(b))

In respect of Hygiene Emergency Prohibition Notices and Hygiene Emergency Prohibition Orders, the Food Authority should issue a certificate to the food Business operator within three days, if it is satisfied that the health risk condition no longer exists.

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. If the Food Authority is satisfied that the health risk condition no longer exists, it must issue a notice that determination to the food

business operator and must do so within three days. 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.

2.2.7 Voluntary Procedures (food hygiene)

Voluntary Procedures to remove a health risk condition may be used, at the instigation of the food business operator, when the food business operator agrees that a health risk condition exists as defined by regulation 7(2)/regulation 8(4) i.e. there is an imminent risk of injury to health. An officer may suggest this option to the food business operator, but only when they are able to use regulation 8. If in doubt, the food business operator should be advised to take legal advice.

Any voluntary closure agreement should be confirmed in writing by the food Business operator or manager and the authorised officer, with an undertaking by the food business operator or manager not to re-open without the officer's prior approval. If the manager of a food business offers to close voluntarily, the officer should confirm that the manager has the authority of the food business operator to agree to such voluntary action.

The officer should ensure that frequent checks are made on the establishment to ensure that it has not re-opened.

If the food business operator offers to close voluntarily, the officer should:

- consider whether there is a risk of the establishment being re-opened without the officer's knowledge and/or agreement (if this were to cause food poisoning, the Food Authority could be criticised for not having used statutory powers);
- recognise that there is no separate legal sanction against a food business operator who re-opens for business after offering to close, although enforcement action for the actual breaches e.g. unsafe food, similar processing as before, etc, remains available; and
- explain to the food business operator that, by making the offer to close, any right to compensation is lost.

PART FIVE

DETERMINATION OF PROSECUTION OF OFFENCES

1.0 PURPOSE

1.1 This policy details the criteria on which a decision to prosecute should be based

2.0 PROSECUTIONS

2.1 The Local Authority always has the discretion whether or not to prosecute for an offence and the decision to prosecute should be based on the circumstances of each case. The criteria for prosecution must, in general, be related to risk or the seriousness of a food standards offence, rather than being a punitive response to minor technical regulatory transgressions. All factors in the relevant Food Law Code of Practice must be taken into account.

3.0 THE POLICY

3.1 A breach of legislation will not automatically result in institution of legal proceedings. The circumstances which are likely to warrant prosecution may be characterised by one or more of the following criteria:-

- a) The alleged offence involves flagrant breaches of law such that public health, safety or well-being is put at risk, or there is a serious offence under food standards legislation.
- b) The alleged offence involves a failure by the offender to correct an identified serious potential risk to food safety after having been given a reasonable opportunity to do so.
- c) The offence involves a failure to comply in full or part with the requirements of a Statutory Notice.
- d) There is a history of similar offences related to risk to the public or food hygiene offences.
- e) A Simple Caution has previously been issued for a similar offence.

3.2 Before a prosecution proceeds, the appropriate Officer will be satisfied that the case is supported by sufficient relevant evidence which is in the public interest and:-

- a) Admissible.
- b) Substantial.
- c) Reliable.

3.3 The guidance contained in The Food Law Code of Practice will be followed and all the following factors taken into account:-

- a) The seriousness of the alleged offence.
- b) The previous history of the party concerned.
- c) The likelihood that a due diligence defence can be established.
- d) The ability of important witnesses and their willingness to co-operate.
- e) Willingness of the party to prevent recurrence of the problem.
- f) Probable public benefit of prosecution.
- g) Whether a Simple Caution, Hygiene Improvement Notice or imposing a Hygiene Prohibition Notice might be more appropriate.
- h) Any explanation offered by the defender.

3.4 Investigation and decision making will not be unduly prolonged or delayed and witnesses, complainants or other parties will be kept informed as to the progress of the case.

3.5 Once a decision to instigate prosecution has been taken, the matter will be referred, without undue delay, to the person(s) designated in Part two of the policy, who may confirm prosecution action. Subsequently the matter will be referred to the Local Authority Solicitor or other such Officer as appropriate, who is authorised to conduct legal proceedings. The procedure for the submission of case reports will be followed.

3.6 Following a successful prosecution, a Hygiene Prohibition Order may be imposed by the Court where it considers that the premises, equipment or process put public health at risk. The Court may also, at its discretion, ban the proprietor or manager from managing a food business. If it is the intention of the authority to seek a Hygiene Prohibition Order once a conviction has been secured, it must be able to satisfy the Court that the health risk condition is fulfilled.

3.7 Where the Local Authority intend to seek a Hygiene Prohibition Order under Section 11 of the Food Safety Act 1990, they will, prior to the hearing:-

- a) Ensure that the proprietor, or his representative has been warned, in writing, of the intention to seek a Hygiene Prohibition Order and any evidence should be disclosed, in advance.
- b) The Office of Fair Trading should be contacted for evidence of previous convictions or warnings. Although current records are no longer held by the OFT.

3.8 Any Officer principally involved in the case should attend court in person, even when a guilty plea has been lodged, in order that further evidence can be given should the Court require it before granting a Hygiene Prohibition order.

4.0 NOTIFICATION OF LEGAL PROCEEDINGS

4.1 LACORS are currently negotiating where records of convictions and prohibitions should be recorded. At present there is no procedure for notification.

- 4.2 The Home Authority and/or the Originating Authority as appropriate will be advised of prosecutions taken and their outcome, in accordance with LACORS guidance.
- 4.3 With respect to complaints, the complainant will always be advised of the outcome of the case in writing.

PART SIX

Simple Caution

1.0 PURPOSE

- 1.1 The purpose of this document is to state the authority's policy with respect to:-
- a) Identification of circumstances when it is appropriate to use a Simple Caution.
 - b) Confirmation that the use of Simple Cautions will be in accordance with the Home Office Circular 16/2008 and LACORS guidance Issue 1 March 2007.
 - c) Identification of the "Cautioning Officer" by designation.
 - d) Course of action to be taken when a person declines the offer of a Simple Caution.
 - e) Other bodies or authorities to be notified, if appropriate.
- 1.2 It is intended that the policy will ensure a consistent application of cautioning decisions.

2.0 AIM OF CAUTIONING

- 2.1 The aim of a Simple Caution is to:-
- a) deal quickly and simply with less serious offenders.
 - b) divert them from unnecessary appearance in the criminal court

3.0 THE POLICY

- 3.1 It is the policy of this authority that:-
- a) A person will only receive a Simple Caution when the circumstances of the offence meet the criteria identified in the Home Office Circular 16/2008

- b) The Formal Caution will be administered by the "Cautioning Officer who will be a Senior Manager". In certain circumstances the Caution may be administered by post.
- c) The offender will be advised in writing of the proposal to issue a Simple Caution.
- d) The Simple Caution will be in writing. Two copies will be signed by the person receiving the caution, each copy will then be signed by the person administering the caution. One of the copies will then be issued to the person receiving the caution.
- e) Where the offender refuses to accept a caution or fails to return the signed copies within 14 days, consideration will be given to the institution of legal proceedings.

4.0 RECORDING OFFENCES

- 4.1 The circumstances of the offence will be recorded in the appropriate premises file and / or in a Simple Caution file.