



# **FALKIRK COUNCIL**

## **ENFORCEMENT POLICY – FOOD HYGIENE, FOOD STANDARDS AND FEEDINGSTUFFS**

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## **1. INTRODUCTORY NOTES**

### **1.1 Operational Enforcement Arrangements**

- Falkirk Council discharges its regulatory responsibilities as a food authority through its Development Services. References to Falkirk Council, the Council, the Authority or Development Services (and its officers) may consequently be used interchangeably and should be interpreted accordingly. Any reference to officers and authorised officers should be taken to refer to duly authorised officers of the Food and Safety or Trading Standards Sections of Development Services.
- Development Services has adopted and will apply through its activities the Central and Local Government Concordat on Good Enforcement. Included in the term 'enforcement' are advisory visits and assisting with compliance, as well as licensing and formal enforcement action. The primary principles promoted by the Concordat are openness, helpfulness, consistency, proportionality, agreed standards of service and access to complaints processes.

### **1.2 Availability of Enforcement Policy**

- Copies of the Enforcement Policy, or a summary of the Policy, will be readily available to the public and food businesses from Development Services. Copies will be provided free of charge.

### **1.3 Supplementary Documentation**

- The Enforcement Policy is supported by supplementary internal policy and procedures written by Development Services for associated subject areas identified in the Food Standards Agency Framework Agreement on Local Authority Food Law Enforcement.

## **2. PURPOSE OF ENFORCEMENT POLICY**

- 2.1 The purpose of this Enforcement Policy is to ensure the comprehensive, competent and consistent enforcement of Food and Feedingstuffs legislation within the Falkirk Council area and to ensure that authorised officers are aware of their role and responsibilities to this end.
- 2.2 All decisions on enforcement action shall be made following consideration of the Enforcement Policy. Any departure will be exceptional, be capable of justification, and have been fully considered by appropriate service management unless to delay a decision may result in significant risk to the public or others. The circumstances relating to any departure will be fully documented.

## **3. GENERAL STATEMENT**

- 3.1 Falkirk Council is committed to the identification and development of and compliance with effective and relevant policies and procedures in respect of its food and feedingstuffs enforcement activities.
- 3.2 Falkirk Council recognises that the primary function of its enforcement and related work is to protect the public and other sectors. It considers that its enforcement role in food and feedingstuffs regulation complements the Council's Goal of creating healthier and safe communities. The Council also supports the area of maintaining a fair and safe trading environment.
- 3.3 Falkirk Council will carry out its enforcement function in an equitable, practical and consistent manner which complies as appropriate with relevant legislation, Food Safety Act Codes of Practice, or other centrally issued guidance including Industry Guides to Good Hygiene Practice.
- 3.4 Falkirk Council recognises that the effectiveness of legislation in protecting consumers or sectors in society depends critically on the compliance of those regulated. It also recognises that most businesses want to comply with the law. It will, therefore, take care to help businesses and others meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly. Falkirk Council considers that all citizens will reap the benefits of this approach through better information, choice and safety.

#### **4. APPLIED APPROACH TOWARDS ENFORCEMENT**

4.1 Education will usually be the first course of action to secure any necessary improvement. Falkirk Council will work with businesses to help them comply with the law. To this end Development Services shall:

- ◆ offer on the spot advice during routine visits and inspections
- ◆ ensure an effective and suitable response is made to all queries
- ◆ provide or promote training courses or seminars where appropriate
- ◆ provide free 'drop-in' sessions for food businesses, to assist in compliance with formal technical requirements such as risk assessment
- ◆ development Business Information Sheets
- ◆ maintain a library of training material, including videos, for free loan to food businesses or other relevant groups
- ◆ promote dialogue with business communities

#### **5. COMMUNICATION CONSIDERATIONS**

5.1 Officers shall ensure that all communication, including advice, on enforcement issues is clear, structured and relevant, and capable of being understood by the recipient.

5.2 Where it appears to an officer that an operator's ability to communicate in English may be a barrier to compliance, he/she will:

- ◆ arrange for a translator to act on the Council's behalf in subsequent meetings
- ◆ enclose with all communication an offer of help with translation written in the operator's own language
- ◆ provide, where appropriate, information leaflets in the operator's own language.

#### **6. HOME AUTHORITY PRINCIPLE**

6.1 The Council shall support the Home Authority Principle promoted by the Local Authorities Co-ordinators of Regulatory Services (LACORS).

6.2 The Council shall provide advice for businesses on legal compliance where it acts as home and/or originating authority.

6.3 The Council shall liaise with the home authority of a company whose premises have been inspected and offences identified which are, or appear to be, associated with the company's centrally defined policies and procedures.

6.4 The Council shall have regard to any information or advice it has received from any liaison with home and/or originating authorities.

6.5 The Council, having initiated liaison with any home and/or originating authority, shall notify that authority of the outcome.

## **7. GENERAL ENFORCEMENT CONSIDERATIONS**

7.1 In deciding what form of formal action may be most appropriate, the likely timescale to conclude the action will be weighed up against any risk to health and safety.

7.2 In deciding whether or not a business, food, products or material presents a risk to health or safety, regard shall be had for:

- ◆ the nature of the hazard
- ◆ the degree of risk
- ◆ the number of people at risk
- ◆ the nature of the food, product or material, the manner in which it is handled, the manner in which it is packed, any process to which it is subjected, and the conditions under which it is stored or displayed.

## **8. ENFORCEMENT OPTIONS**

8.1 In coming to any decision regarding enforcement action, consideration shall be given to the seriousness of the offence, the associated enterprise's past history, confidence in management, the consequences of non-compliance and the likely effectiveness of the various enforcement options.

8.2 Having considered all relevant information and evidence the choices for action are:

- ◆ to take no action
- ◆ to take informal action
- ◆ to use statutory notices
- ◆ to initiate prosecution proceedings

8.3 Where enforcement action is being considered which may be inconsistent with that adopted by other authorities, the matter will be referred for discussion at appropriate local or national liaison groups for consideration and guidance.

## **9. INFORMAL ACTION**

9.1 Informal action to secure compliance with legislation includes offering advice, verbal warnings, requests for action and the use of letters.

9.2 Circumstances appropriate for informal action include:

- ◆ cases where the act or omission is not serious enough to warrant formal action
- ◆ cases where from the individual's/enterprise's past history, it can be reasonably expected that informal action will achieve compliance
- ◆ cases where confidence in management is high
- ◆ cases where the consequences of non-compliance will not pose a significant risk to public health and safety
- ◆ cases even where some of the above criteria are not met, but where there may be circumstances in which informal action will be more effective than a formal approach.

## **10. STATUTORY NOTICES**

10.1 The use of statutory notices shall in general be related to risk to health or safety or significant technical deficiencies. It will not be appropriate to use statutory notices for minor technical contraventions.

10.2 Circumstances suitable for the use of statutory notices include:

- ◆ cases where there are significant contraventions of legislation
- ◆ cases where physical works are necessary to provide basic levels of facilities
- ◆ cases where there is a lack of confidence in the proprietor or enterprise to respond to an informal approach
- ◆ cases where there is a history of non-compliance with informal action
- ◆ cases where standards are generally poor with little management awareness of statutory requirements
- ◆ cases where the consequences of non-compliance could be potentially serious to public health or safety
- ◆ cases where, even if it is also intended to prosecute, effective action also needs to be taken as quickly as possible to remedy serious conditions or deficiencies

- 10.3 Other than in exceptional circumstances, the issue of a Hygiene Emergency Prohibition Notice will require to be endorsed by Development Services' Food & Safety Regulation Manager or Head of Environmental and Regulatory Services. It should only be necessary to consider the use of Emergency Prohibition Notices in one or more of the following circumstances:
- ◆ cases where the consequences of not taking immediate and decisive action to protect the public health would be unacceptable
  - ◆ cases where the imminent risk of injury to health can be demonstrated. This might include evidence from relevant experts, including a Public Analyst, Food Examiner or Agricultural Analyst
  - ◆ cases where the guidance criteria specified in the relevant statutory Code of Practice concerning the conditions where prohibition may be appropriate are fulfilled
  - ◆ cases where there is no confidence in the integrity of an unprompted offer made by a proprietor to voluntarily close premises or take such appropriate action as required to eliminate immediate risk.
  - ◆ cases where a proprietor is unwilling to confirm in writing his/her unprompted offer of a voluntary action to eliminate immediate risk.
- 10.4 Where consideration will be given to possible financial implications of formal action on the Council, these considerations will not outweigh any identified need to take action in the interests of protection of the public health.

## **11. PROSECUTION**

- 11.1 The ultimate decision as to whether or not to prosecute rests with the Procurator Fiscal, and the Council's authorised officers shall liaise with the Procurator Fiscal regarding those cases presented for prosecution.
- 11.2 In deciding whether or not there are sufficient grounds to recommend that prosecution be sought by the Procurator Fiscal, due consideration will be given to all relevant centrally issued criteria and guidelines.
- 11.3 A recommendation to prosecute will in general be restricted to those persons who blatantly disregard the law, refuse to achieve even the basic minimum legal requirements, and who put the public or other groups at serious risk.
- 11.4 Circumstances which are likely to warrant a recommendation to prosecute include:
- ◆ cases where the alleged offence involves a breach of the law which is serious to such an extent that health is or has been put at risk, blatant or repetitious

- ◆ cases where there has been a blatant breach of the law in respect of production description, packaging or associated issue
- ◆ cases where the alleged offence includes a failure by the suspected offender to correct an identified serious potential risk to health and safety, having been given reasonable opportunity to comply with lawful requirements of an authorised officer
- ◆ cases where the offence involves a failure to comply in full or part with the requirements of a statutory notice
- ◆ cases where there is a history of similar offences related to risk to health or safety, or breach of food standards requirements