

APPENDIX 1



COMMUNITY PROTECTION - ENVIRONMENTAL HEALTH

Enforcement Policy For Food Safety Legislation

Revision 5 – 7 October 2019

**RECORD OF DOCUMENT REVISION
ENFORCEMENT POLICY FOR FOOD SAFETY LEGISLATION**

Revision Status	Date of Revision	Revision Description	Signature
1	17 Jan 2001	Production of policy & approval to the Technical Services Committee.	
2	9 December 2003	Changes to reflect impact of directed surveillance and minor textual changes.	
3	January 2007	Amendment to reflect changes in food legislation & food law; Code of Practice & Practice Guidance (Scotland)	
4	13 Feb 2014	Update to reflect current structure	
5	October 2019	Update to reflect current structure and new Code of Practice, Practice Guidance (Scotland) and Interventions Code of Practice (2019)	K. MacDonald

GENERAL POLICY IN RELATION TO FOOD SAFETY

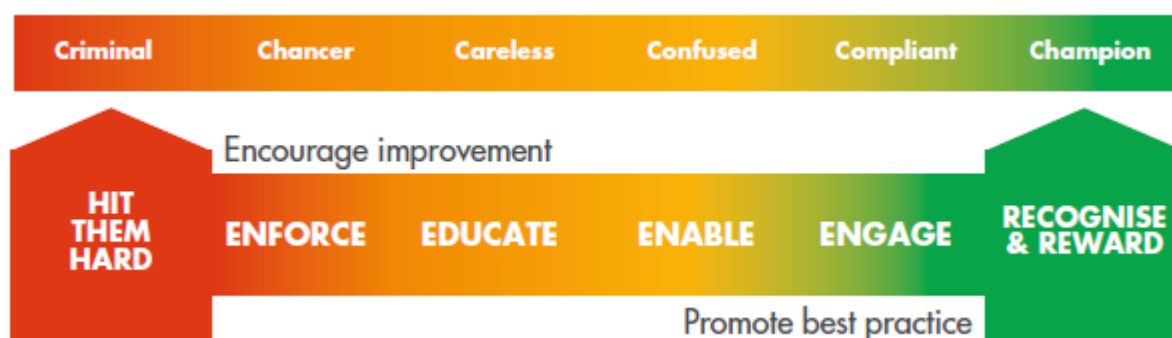
East Dunbartonshire Council is committed to its role in protecting the health and wellbeing of the public. As a statutory Food Authority we will seek to ensure that food and drink intended for sale for human consumption which is produced, stored, distributed, handled or consumed within East Dunbartonshire is without risk to the health or safety of the consumer and also meets the relevant quality, composition and labelling standards. This Service will also seek to promote good manufacturing practice, fair trading practices and the maintenance of quality assurance procedures.

East Dunbartonshire Council will, in addition to the exercise of its statutory enforcement role, work to support all food businesses through a partnership approach including the provision of advice and guidance.

This Policy aims to align enforcement activity in support with Food Standards Scotland's Regulatory Strategy and the Scottish Government's approach to Better Regulation as set out in the Scottish Regulators' Strategic Code of Practice.

NATIONAL COMPLIANCE SPECTRUM

This Policy aims to protect public health and fair trading practices. At the heart of the policy East Dunbartonshire Council seeks to deal robustly with poorly compliant businesses and at the same time enable responsible food businesses to flourish as demonstrated by the Compliance Spectrum below.



ORGANISATION

Food Safety legislation is enforced by the Environmental Health service on behalf of East Dunbartonshire Council. The service sits within the Community Protection section of Place and Community Planning.

The service reports to the Place, Neighbourhood and Corporate Assets Committee.

The Environmental Health service is led by a Team Leader with support from a Development Lead Officer and other Authorised Officers.

1.0 SECTION ONE - STATEMENT OF PRINCIPLES

1.0.1 The rationale underpinning the Policy is foremost the protection of the public through enforcement action, proportionate to the assessment of risk to public health. The range of enforcement actions available includes education and advice, sampling and surveillance, verbal warnings, written warnings, statutory notices and prosecution.

1.0.2 This Policy has been prepared with reference to The Food Law Code of Practice, Practice Guidance (Scotland) and Interventions Code of Practice issued by Food Standards Scotland (FSS) and associated guidance from The Scottish Food Enforcement Liaison Committee (SFELC).

Environmental Health will enforce food safety legislation according to the following fundamental principles:-

- (i) Enforcement action will only be initiated where it accords with the Council's general policy on food safety.
- (ii) Enforcement shall be based upon an assessment of risk to public health. (In this context, risk is defined as the probability of harm to health.)
- (iii) Enforcement shall be transparent, consistent, fair and proportionate to the risk(s), and based on published standards in accordance with the Service's Enforcement Policy and the Scottish Regulators Strategic Code of Practice.
- (iv) Enforcement action shall comply with The Food Law Code of Practice and Practice Guidance (Scotland).
- (v) Enforcement action shall accord with enforcement guidance, issued by FSS and SFELC.

1.0.3 The Team Leader is the Lead Officer for food safety and is a suitably qualified and experienced officer who holds the qualifications specified in the Food Law Code of Practice (Scotland). The Team Leader has a technical understanding of food production processes undertaken in the East Dunbartonshire area.

1.0.4 The remainder of this Policy defines in more specific detail the application of the above principles to the enforcement of food safety legislation.

2.0 SECTION TWO - POLICY IN RELATION TO ACHIEVING CONSISTENCY OF APPROACH WITHIN FOOD SAFETY ENFORCEMENT ACTIVITIES

2.0.1 Enforcement decisions taken by Authorised Officers shall be made in compliance with this Policy. Any departure from the Policy will be exceptional, justifiable and be taken only after consideration and consultation with the relevant senior officer or the Community Protection Manager. Where indicated, including where the issue appears to be of national significance, the matter will be referred to West of Scotland Food Liaison Group who will liaise with the SFELC / FSS as necessary.

2.0.2 Where enforcement action impacts on aspects of a business policy which has been agreed centrally by the decision making base of the business, then reference shall be made to the Home Authority, in accordance with the Home Authority Principle.

2.0.3 It is the Policy of Environmental Health to issue procedures, prescriptive standards and guidance when deemed appropriate. Authorised Officers shall comply with these when carrying out enforcement duties.

- 2.0.4 In order to ensure that the Enforcement Policy for Food Safety is consistently applied it will be included as part of the induction process for Authorised Officers at commencement of employment with the Council.
- 2.0.5 A review of enforcement activity will form part of the routine performance monitoring carried out within Environmental Health and for food safety enforcement this will entail the following:-
- (i) The Team Leader and/or Development Lead Officer shall accompany each full time equivalent Authorised Officer under his/her supervision on a planned programmed inspection on a minimum of one occasion each year.
 - (ii) The Team Leader and/or Development Lead Officer shall hold regular meetings to discuss enforcement issues, record any matters of significance raised and thereafter, where appropriate, discuss them with the relevant Senior Officer.
 - (iii) The Team Leader and/or Development Lead Officer shall review all relevant documentation relating to at least one programmed inspection for each full time equivalent Authorised Officer to ensure that the inspection procedure is being followed and that where deviations have occurred these are justifiable and have been the subject of prior discussion.
- 2.0.6 The relevant training requirements of Authorised Officers will be assessed on an annual basis and appropriately prioritised and targeted to secure Continuous Professional Development.

3.0 SECTION THREE - POLICY IN RELATION TO DECISION MAKING IN ENFORCEMENT AND AUTHORISATION OF OFFICERS

- 3.0.1 Officers undertaking food safety duties shall be appointed by East Dunbartonshire Council, in accordance with the requirements of Section 5 of the Food Safety Act 1990.
- 3.0.2 Officers will be authorised by the Executive Officer – Place and Community Planning to carry out specific food enforcement activities only if they hold the appropriate qualifications and the necessary skills and experience.
- 3.0.3 Prior to the appointment of an Officer as an “Authorised Officer” regard will be taken of current guidance from Food Standards Scotland, The Royal Environmental Health Institute for Scotland (REHIS), Scottish Food Safety Officers Registration Board (SFSORB) and The Food Law Code of Practice & Practice Guidance (Scotland).
- 3.0.4 As of 1 July 2019 inspections will be carried out under a new inspection regime called the Food Law Rating System (FLRS) which combines the rating systems for Food Hygiene and Food Standards into one Food Law Intervention scheme based upon a new food business performance model that will target resources on high to medium risk and non-compliant businesses. Officers must be qualified in both Food Hygiene and Food Standards disciplines in order to complete a Food Law Intervention.
- 3.0.5 Officers authorised to carry out food safety inspections and enforcement will receive structured ongoing training of a minimum of ten hours each year in accordance with the Environmental Health Training Plan.
- 3.0.6 Where an Officer holds appropriate qualifications but has not enforced food safety or particular areas of food safety for some time, structured revision training will be provided for a minimum of 15 hours before the resumption of said duties. Following

absence of 3 years or more from food safety duties, the Officer will in addition be monitored by the Team Leader for a minimum of 3 months.

3.0.7 The competency of Authorised Officers to carry out their functions, will be the subject of assessment through the internal monitoring and auditing systems undertaken by the Team Leader and/or Development Lead Officer.

3.0.8 The range of enforcement activities which an Officer will be authorised to undertake will be limited by the qualifications held and his/her level of experience.

3.0.9 Qualifications and Awarding Bodies – Food Hygiene:-

- a) qualified Environmental Health Officers holding the Diploma in Environmental Health as awarded by REHIS, Chartered Institute of Environmental Health (CIEH) or holding a Certificate of Registration of the Environmental Health Officers Registration Board (EHRB);
- b) officers holding the Higher OR Ordinary Certificate in Food Premises Inspection awarded by the Scottish Food Safety Officers Registration Board (SFSORB) or (EHRB) or The Institute of Food Science and Technology (IFST);
- c) officers holding the Higher Certificate in Official Controls (HCOC) as awarded by REHIS or EHRB.

3.1.0 Qualifications and Awarding Bodies – Food Standards:-

- a) Diploma in Environmental Health (or its antecedents) awarded by REHIS; The EHRB Diploma in Environmental Health (or its antecedents) or Certificate of Registration of EHRB;
- b) The Higher Certificate in Food Standards Inspection issued by SFSORB;
- c) The Higher Certificate in Food Premises Inspection issued by EHRB or the IFST with an endorsement to include Food Standards Enforcement; or The Higher Certificate in Official Controls (HCOC) issued by REHIS or EHRB;
- d) Diploma in Trading Standards (DTS) or its antecedents;
- e) Diploma in Consumer Affairs (DCA) provided it includes the Food and Agriculture Paper of Part II, or its antecedents;
- f) DCA Certificate of Competence in relation to Food and Agriculture (or its antecedents);
- g) One of the following Trading Standards Qualifications Framework Certificates with the Food Standards service delivery module (issued by the Trading Standards Institute (TSI):
 - Module Certificate;
 - Diploma in Consumer Affairs and Trading Standards (DCATS);
 - Certificate of Competence.
- h) Higher Diploma in Consumer Affairs and Trading Standards (HDCATS) (this certificate must be presented with one of the awards/certificates listed above).

3.1.1 Improvement Notices or Hygiene Improvement Notices may only be signed by Officers with relevant experience and appropriate qualifications as outlined below:-

- i) Environmental Health Officers enforcing food hygiene or food processing regulations;
- ii) Holders of the Higher Certificate in Food Premises Inspection who are authorised to carry out food hygiene inspections;

- iii) Holders of the Ordinary Certificate in Food Premises Inspection in relation to the food business establishment/s they are authorised to inspect.
- 3.1.2 Emergency Prohibition Notices / Hygiene Emergency Prohibition Notices shall only be signed by qualified Environmental Health Officers who have at least two years post qualification experience in food safety matters and who are currently involved in food enforcement. It is not the policy of East Dunbartonshire Council to authorise Food Safety Officer's to sign Emergency Prohibition Notices or Hygiene Emergency Prohibition Notices.
- 3.1.3 Detention and Seizure of Food under Section 9 of The Food Safety Act 1990 including detention of food by virtue of Regulation 27 of the Food Hygiene Scotland Regulations 2006 or by regulation 5(2) of the Novel Foods (Scotland) Regulations 2017 shall be carried out only by authorised Environmental Health Officers holding the Diploma in Environmental Health.
- 3.1.4 Remedial Action Notices shall only be signed by qualified Environmental Health Officers or holders of the SFSORB Higher Certificate in Food Premises Inspection who have at least two years post qualification experience in food safety matters and who are currently involved in food enforcement.
- 3.1.5 The decision to submit a Report to the Procurator Fiscal has been delegated to the Team Leader who will discuss the proposed report with the relevant Enforcement Officers before reaching a decision and thereafter advise the relevant Senior Officer.

4.0 SECTION FOUR – POLICY ON DIRECTED SURVEILLANCE

- 4.0.1 The Regulation of Investigatory Powers Act, 2000 (RIPA) and The Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) provide a legal framework under which enforcement bodies may carry out covert surveillance. It may therefore be necessary for Officers to use this framework for investigative purpose in the course of delivering their duties.
- 4.0.2 Where it is deemed necessary for covert surveillance to be undertaken in connection with an investigation then this will be carried out in accordance with the corporate policies and procedures that cover authorisations for the use of Directed Surveillance and the use of Covert Human Intelligence Sources.
- 4.0.3 These policies seek to ensure that all applications in relation to covert surveillance activities are subject to appropriate authorisation, review and cancellation procedures. Any applications for the use of Directed Surveillance or the use of Covert Human Intelligence Sources in relation to food safety matters shall be made to one of the Council's Authorising Officers in line with RIPSA authorisation process.

5.0 SECTION FIVE - POLICY ON CONFLICTS OF INTEREST AND INSPECTION OF PREMISES OWNED AND OPERATED BY EAST DUNBARTONSHIRE COUNCIL

- 5.0.1. Environmental Health and Food Safety Officers shall undertake their food safety enforcement duties in an impartial and transparent manner which avoids potential or actual conflicts of interest.
- 5.0.2. As a registered training centre East Dunbartonshire Council will from time to time offer training to food businesses. East Dunbartonshire Council also operate a pest control service which can be accessed by food businesses. It is the policy of East

Dunbartonshire Council to advise businesses that these services are not exclusive and that they may use other service providers.

- 5.0.3 Where inspections are undertaken in premises owned by or managed by East Dunbartonshire Council, Enforcing Officers shall carry out inspections to the same standard as they would in a private food business.
- 5.0.4 All reports shall be sent to the relevant manager within the Council and an arrangement is in place to forward copies of all reports for Council owned or operated premises to the relevant department managers.
- 5.0.5 Mechanisms are in place to ensure that outstanding matters are resolved including feedback on remedial action taken and regular progress meetings. In the event that outstanding issues cannot be resolved by cooperation then any such matter will be brought to the attention of the Chief Executive for resolution.
- 5.0.6 Where contract caterers operate within East Dunbartonshire's premises they will be assessed as any other private food business and inspected as part of the authority's planned programme.

6.0 SECTION SIX - POLICY IN RELATION TO THE SCOPE OF ENFORCEMENT OPTIONS

- 6.0.1 East Dunbartonshire Council recognises the importance of taking enforcement decisions that are consistent, fair, proportional to risk(s), and based on published standards. To this end Environmental Health will adopt and comply with the Code of Practice, guidance issued by SFELC, REHIS and Food Standards Scotland, including advice relating to the Home Authority Principle, where appropriate.
- 6.0.2 Before making a decision on enforcement action, Officers shall consider:-
 - (a) The consequences of non-compliance, in relation to public health risk;
 - (b) The seriousness of the offence;
 - (c) Confidence in management;
 - (d) The business history; and
 - (e) The range of enforcement options available and their likely outcome.
- 6.0.3 Once all the criteria described above have been considered, together with other relevant information, the Officer shall determine if enforcement action is justified and whether it should take the form of:-
 - (a) Informal action;
 - (b) Formal action - seizure and detention;
 - (c) Statutory Notices;
 - (d) Submission of a report to the Procurator Fiscal.

7.0 SECTION SEVEN – HOME AUTHORITY PRINCIPLE

- 7.0.1 The Council supports The Local Authorities Co-ordinators of Regulatory Services (LACORS) Home Authority Principle and the European Forum of Food Law Enforcement Practitioners (FLEP) European Principle of the Home Authority to aid efficiency, minimise duplication and provide an effective means of communication between Local Authorities and those authorities within the EU.

Environmental Health shall have three distinct roles namely:

- As **Home Authority** where the relevant decision making base of a food business is based within East Dunbartonshire Council's area.
 - As **Originating Authority** where the product(s) of a food business are produced or packaged within East Dunbartonshire Council's area (most enterprises in the U.K. operate from a single base and in such circumstances the functions of Home Authority and Originating Authority are combined).
 - As **Enforcing Authority** where East Dunbartonshire Council undertakes inspections, receives complaints or detects infringements where there is no Home or Originating Authority.
- 7.0.2 When East Dunbartonshire Council is the Home Authority, and/or Originating Authority then Community Protection shall offer advice or guidance on compliance with the law and on good practice. Community Protection are not bound to find a solution to a particular problem encountered by a business and shall under no circumstances compromise its legal responsibilities and duties as Food Authority.
- 7.0.3 All enquiries in relation to Environmental Health's role as Home and/or Originating Authority shall be logged by the Authorised Officer on the Departmental Management Information System against the premises in question.
- 7.0.4 Acting as Home Authority, Environmental Health shall undertake to provide an appropriate response to all enquiries from other Authorities. Requests for information may include the following:
- (i) A request for information where the issue of concern is of minor significance and no enforcement action is envisaged. The Authorised Officer should review the premises file, computer record and provide the appropriate information.
 - (ii) If a serious issue, but no prosecution is likely, the Authorised Officer shall visit the food premises and undertake a thorough investigation into the matter. Dependant on the outcome of the investigation, an appropriate course of action should be determined with regard to the business, and a written response provided to the Authority who made the original enquiry.
 - (iii) If a serious issue, where the Enforcing Authority has indicated that a prosecution is likely or desirable, a thorough investigation should be undertaken by two Authorised Officers. Dependant on the outcome of the investigation an appropriate course of action should be determined with regard to the business, and documentation forwarded to the Authority in question.
- 7.0.5 All requests for East Dunbartonshire Council to undertake a formal agreement to act as a Home Authority for a food business should be referred to the Team Leader for consideration, thereafter the matter should be discussed with the Community Protection Manager before an agreement is finalised with the company in question.
- 7.0.6 In all instances where formal enforcement action is being considered by an Authorised Officer, and the Home Authority Principle is applicable then he/she should undertake prior liaison with the relevant Authority advising where formal action is being instituted and the outcome of any subsequent Prosecution. This is particularly applicable where the action involves a national Company or multiple food businesses.
- 7.0.7 If an Authorised Officer is seeking formal assistance of a Home Authority (and if applicable Originating Authority) he/she should do so in accordance with this Policy and the procedure for Food Complaints.

- 7.0.8 Where the Authorised Officer experiences difficulty in adhering to the Home Authority Principle then the matter should be brought to the attention of the Team Leader or a relevant Senior Officer. It is the policy of Environmental Health that thereafter such concerns should be discussed with SFELC/FSS.
- 7.0.9 Food Authorities in England may be a Primary Authorities. While the Primary Authority scheme does not extend to Scotland in relation to food, officers will treat a Primary Authority as if they were the Home Authority.

8.0 SECTION EIGHT - POLICY ON FOOD COMPLAINTS

- 8.0.1 Food complaints shall be investigated in accordance with the Services' Food Complaints Procedure and the Home Authority Principle. Any enforcement action which may ensue shall be in accordance with this Policy.
- 8.0.2 The objective of this policy is to ensure that all food complaints referred to this Service are investigated in a fair and consistent manner and that the outcomes achieve the aim of protecting the health and consumer interests of our clients.
- 8.0.3 For the purposes of this policy a food complaint encompasses any food which is unfit for human consumption or not of the nature, substance or quality demanded by the consumer. This also applies to foods which do not comply with compositional requirements.
- 8.0.4 In the first instance any complainant wishing to have a food complaint dealt with has the option to:
- (a) Deal with their complaint on a civil basis by corresponding with the vendor/supplier/manufacturer concerned directly, or
 - (b) To request that this service deals with the matter in terms of its statutory powers.
- 8.0.5 Where the matter is investigated by this Authority, such an investigation will be in accordance with the Service's food complaints procedure.
- 8.0.6 Where a client makes a food complaint to another Authority in relation to food originating from East Dunbartonshire Council's area, then the matter shall be investigated by this Service in accordance with the Food Complaints Procedure.
- 8.0.7 Where a client makes a food complaint to this Service, in relation to food originating out with East Dunbartonshire Council's area, the matter will be forwarded to the relevant authority for investigation. It should be noted that this service is the Enforcing Authority for complaints originating within the area of East Dunbartonshire.
- 8.0.8 Where another Authority requests assistance in the investigation of a food complaint which originates from a premises based in East Dunbartonshire Council's area, but where the food is sold in another Authority's area then this complaint will be investigated in accordance with Section 7 of this Policy and in accordance with the Food Complaints Procedure.

9.0 SECTION NINE - POLICY IN RELATION TO SECURING COMPLIANCE WITH FOOD SAFETY REQUIREMENTS OF REGULATIONS INCLUDING POLICY ON SECONDARY INSPECTION

- 9.0.1 Environmental Health shall implement and maintain a planned programme for Food Safety Primary Inspections. Food hygiene and food standards shall be assessed during each food safety inspection to ensure the protection of public health. This includes assessment of the measures to safeguard microbiological quality, absence of pathogenic micro-organisms and safety for consumption. Furthermore, inspections will endeavour to secure the accuracy of food information presented, compliance with compositional standards and ensuring produce is of the nature, substance and quality demanded by the consumer.
- 9.0.2 Inspection frequencies shall be determined by a system of priority classification of food premises in order that premises presenting a greater risk to the consumer receive more frequent inspections than those presenting a lesser risk.
- 9.0.3 Premises other than production holdings, approved premises and those premises enforced by FSS Operations for hygiene will be risk assessed using the inspection rating scheme outlined in the Interventions Code of Practice. The minimum frequency of inspection shall be equal to or more frequent than those set out in Interventions Code of Practice. Production holdings, approved premises and those premises enforced by FSS Operations (Hygiene) shall be inspected at the frequencies specified in Annex 5 of the Food Law Code of Practice (Scotland).
- 9.0.4 Authorised Officers shall ensure that Food Safety Inspections are carried out in accordance with the Environmental Health - Food Safety Inspection Procedure and that enforcement decisions are taken in accordance with this Policy, The Food Law Code of Practice, and Practice Guidance (Scotland), Industry Guides and any relevant current guidance from SFELC and FSS.
- 9.0.5 It is the policy of Environmental Health by means of a management information system to ensure that inspection frequencies are being maintained. The Team Leader/Development Lead Officer shall adopt procedures to determine the following on a quarterly basis:-
- (a) The number of premises in each risk category or inspection frequency,
 - (b) The number of premises (within each category) due a planned inspection during the previous month and the number actually inspected,
 - (c) Corrective action required in respect of point (b) should the number of planned inspections fall below an acceptable level, and
 - (d) On an annual basis, the Executive Officer shall report to Committee detailing targeted inspections and the success or otherwise in meeting those targets.
- 9.0.6 The inspection frequencies identified do not include secondary inspections. Secondary inspections are defined as inspections carried out solely to determine whether outstanding matters identified during programmed inspections have been remedied.
- 9.0.7 Food business shall be subject to appropriate enforcement action and secondary inspections where they fail to comply with significant statutory requirements and this failure indicates poor food safety management or compromises food safety, public health or materially prejudices consumers. Such enforcement actions will be in accordance with Section 6 of this Policy.

9.0.8 Secondary inspections shall be undertaken where the following enforcement actions are intended:-

- (i) Prosecution
- (ii) Service of Hygiene Improvement Notice
- (iii) Service of Remedial Action Notices
- (iv) Service of Hygiene Emergency Prohibition Notice/Emergency Prohibition Notice
- (v) Service of Hygiene Emergency Prohibition Order/Emergency Prohibition Order
- (vi) Service of Detention of Food Notice
- (vii) Service of Seizure of Food Notice
- (viii) Service of Written Warning to the business where serious and significant contraventions have been identified

Where an Authorised Officer has invoked any of the formal enforcement actions detailed, secondary inspection to check on compliance shall at all times be carried out either (a) on the expiry date specified within the formal notice procedure applied or (b) in accordance with the timing of revisits specified in procedures laid down under this policy.

9.0.9 In certain circumstances a secondary inspection may be undertaken prior to the issue of the above notices or a Warning Letter. This shall be on occasions where the officer deems it necessary to revisit the premises within a very short time frame. In such instances clear verbal instructions shall be given to the Food Business Operator or manager as to the matters to be addressed and the date intended to revisit the premises.

Where a secondary inspection requires to be carried out this inspection may take precedence over other visits on the planned programme.

Secondary inspections shall also be carried out following a primary inspection of an approved premises and the frequency of such inspections will be in accordance with the Food Law Code of Practice (Scotland).

9.1.0 The timing of the visit shall be determined by the action taken as a result of the earlier inspection and the inspection shall as far as practicable be undertaken by the officer undertaking the primary inspection in line with the time scales communicated to the business.

9.1.1 Where the Authorised Officer who carried out the initial inspection is unable to undertake the revisit within the specified time period he/she shall advise the Team Leader or other relevant senior officer and agree a satisfactory course of action on a risk assessment basis.

10.0 SECTION TEN - STATEMENT OF POLICY IN RELATION TO INFORMAL ACTION

10.0.1 Informal action to secure compliance with legislation includes offering verbal advice, the use of letters, and inspection reports, including those generated on premises following an inspection.

10.0.2 It is the Policy of this Council to take informal action where one or more of the following circumstances pertain:-

- (a) The act or omission is of a minor nature, is not a repeated defect and as such is not serious enough to warrant formal action;

- (b) From the past history of the individual/business it can be reasonably expected that informal action will achieve compliance;
- (c) Confidence in the management is high;
- (d) The consequence of non-compliance will not pose a significant risk to public health;

10.0.3 Following a programmed inspection, an instant inspection report will be supplied and left with the business representative. Any further written correspondence such as a letter shall be issued within fifteen working days. This will be carried out on each occasion, including where conditions at the time the premises are inspected are found to be satisfactory. The report will follow the format suggested in the Food Law Code of Practice (Scotland) and any procedures, prescriptive standards, and guidance issued under this policy.

10.0.4 When an informal approach is determined, written documentation issued to Food Business Operators to secure compliance with legislation shall comply with any procedures or prescriptive standards issued under this policy.

11.0 SECTION ELEVEN - POLICY IN RELATION TO THE ISSUE OF IMPROVEMENT NOTICES UNDER SECTION 10 OF THE FOOD SAFETY ACT 1990

11.0.1 It is the policy that the issue of Improvement Notices in terms of Section 10 of the Food Safety Act 1990 will not be considered for routine food enforcement. The use of Improvement Notices will only be considered in unforeseen and exceptional circumstances and shall not be served without the authorisation of the Team Leader or other Senior Officer.

12.0 SECTION TWELVE – POLICY IN RELATION TO THE ISSUE OF HYGIENE IMPROVEMENT NOTICES

12.0.1 A Hygiene Improvement Notice will be issued where the following circumstances, or a combination thereof pertain:-

- (a) Where a significant contravention of a legislative requirement is construed as being likely to endanger the public health;
- (b) Where formal action is deemed proportionate to the risk to public health;
- (c) Where there is a lack of confidence in the Food Business Operator or organisation to respond to an informal approach, and leads the Officer to believe that an informal approach will not be successful;
- (d) Where standards are generally poor with little management awareness of statutory requirements;
- (e) Where there is a record of non-compliance with food hygiene or food processing legislative requirements; and
- (f) Where previously an informal approach has failed.

- 12.0.2 Hygiene Improvement Notices will not normally be issued where the following circumstances pertain:
- (a) In the case of minor contraventions;
 - (b) Where the contravention is a continuing one, such as personal cleanliness of staff or general cleaning matters and in such circumstances a Notice would only secure an improvement at one point in time; and
 - (c) In transient situations or where there is imminent risk of injury to health and swift enforcement action is needed. In such cases a Hygiene Emergency Prohibition Notice / Emergency Prohibition Notice shall normally be the only suitable course of action.
- 12.0.3 Officers shall ensure that they comply with the Food Law Code of Practice & Practice Guidance (Scotland) and with any procedures or prescriptive standards issued under this Policy and the Hygiene Improvement Notice procedures for this Authority.
- 12.0.4 Hygiene Improvement Notices may be signed only by Officers authorised to do so. Reference should be made to Section 3 of this policy on qualifications of Authorised Officers.
- 12.0.5 Where an Officer who is not authorised to sign Hygiene Improvement Notices carries out an inspection, the outcome of which is that the service of Improvement Notices is required, the Notices may be signed only by an Authorised Officer who has witnessed the contravention(s)
- 12.0.6 Hygiene Improvement Notices shall be served on the Food Business Operator. If the name and address of the Food Business Operator (FBO) is not known, the Notice will be addressed to the "owner" and left at the premises. Where a food business has a number of Food Business Operators, with equal responsibility, the Notice shall list all FBO's but a separate copy shall be served on each person. Where the Food Business Operator is a Public or Limited Company, the name of the FBO will be the Limited Company, not the Company Secretary.
- 12.0.7 The time specified for compliance with the Notice shall be reasonable and be subject to discussion with the Food Business Operator of the food business, and in no circumstances be less than 14 days.
- 12.0.8 Where Notices are served on a National Company, the Authorised Officer shall ensure that, where appropriate, the Home Authority is notified.
- 12.0.9 The Authorised Officer responsible for the service of an Improvement Notice shall, on expiry of the time period specified within the Notice, undertake a secondary inspection to the premises in order to determine compliance.
- 12.1.0 It is the Policy of this Council to report all instances of failure to comply with an Improvement Notice to the Procurator Fiscal subject to Section 18 of this policy. Officers shall establish all necessary evidence at the time of determining the need for formal enforcement action.

13.0 SECTION THIRTEEN - POLICY IN RELATION TO INSPECTION, DETENTION AND SEIZURE OF SUSPECT FOOD

- 13.0.1 It is the Policy of this Council to detain or seize food where Authorised Officers have reason to believe that the food fails to comply with the Food Safety requirements, specified within of the Food Safety Act 1990 & General Food Law Regulations 2004. The authority may also detain or seize foods not produced under hygienic conditions in terms of Regulation 27 Food Hygiene (Scotland) Regulations 2006.
- 13.0.2 In invoking this action Officers shall have regard to the Authority's Procedure for the Detention and Seizure of Suspected Food; The Food Law Code of Practice & Practice Guidance (Scotland).
- 13.0.3 Reference should be made to Section 3 of this Policy for clarification of Officers authorisation to seize or detain food.

14.0 SECTION FOURTEEN – POLICY IN RELATION TO REMEDIAL ACTION AND DETENTION NOTICES.

- 14.0.1 Regulation 9 of the Food Hygiene (Scotland) Regulations 2006 provides powers to issue Remedial Action Notices and Detention Notices.
- 14.0.2 It is the policy of Environmental Health that the use of Remedial Action Notices and Detention Notices shall be proportionate to the risk to public health or where immediate action requires to be taken to ensure food safety.
- 14.0.3 Authorised Officers shall seek to remedy non-compliance via a graduated approach. Remedial Action Notices are likely to be considered where the use of Hygiene Improvement Notices would not be appropriate because the breaches of hygiene regulations requires immediate action and the use of Hygiene Emergency Prohibition Notice represented a disproportionate use of statutory powers.
- 14.0.4 Remedial Action Notices would be considered where the following circumstances occur:
- (i) The failure of any equipment or part of an establishment to comply with the Food Hygiene (Scotland) Regulations 2006.
 - (ii) The need to impose conditions upon or the prohibition of the carrying on of any process breaching the requirements of the Regulations.
 - (iii) Where an adequate health inspection is hampered in any establishment.
 - (iv) Where the rate of operation of the business is detrimental to its ability to comply with the Food Hygiene (Scotland) Regulations 2006.
- 14.0.5 Where a Remedial Action Notice is served the authorised Officer should consider whether a Detention Notice should also be served. Circumstances which might lead to the issue of a Detention Notice would include where there are indications or suspicions that food produced is unsafe and requires to be examined, including taking samples.
- 14.0.6 Authorised Officers considering serving Remedial Action Notices or Detention Notices should normally consult with the Team Leader or other Senior Officer.

15.0 SECTION FIFTEEN - POLICY IN RELATION TO HYGIENE EMERGENCY PROHIBITION NOTICES

15.0.1 It is the Policy of Environmental Health to serve Hygiene Emergency Prohibition Notices where the following circumstances pertain:

- (a) Where the consequence of not taking immediate and decisive action to protect public health would be unacceptable;
- (b) Where an imminent risk of injury to health can be demonstrated;
- (c) Where the criteria specified in The Food Law Code of Practice Guidance are confirmed;
- (d) Where there is no confidence in the integrity of an offer of voluntary prohibition or closure, or where a FBO is unwilling to confirm in writing an offer of voluntary prohibition or closure.

15.0.2 Before considering issuing a Hygiene Emergency Prohibition Notice procedures an Officer must obtain the corroboration of a second Authorised Officer to provide corroborative evidence.

15.0.3 Only Authorised Officers with relevant experience shall issue Hygiene Emergency Prohibition Notices - Section 3 of this Policy provides clarification on Officers authorised to take this action.

15.0.4 Authorised Officers intending to institute Hygiene Emergency Prohibition Notice procedures are to ensure that the Team Leader or relevant Senior Officer are advised prior to the action being taken.

15.0.5 Where the process or treatment under consideration requires the specialist knowledge of a technical expert, the Authorised Officers shall seek medical or other expert advice as necessary and will discuss the matter with the Team Leader or relevant Senior Officer prior to obtaining such expertise.

15.0.6 Once the Hygiene Emergency Prohibition Notice has been served, an application for a Hygiene Emergency Prohibition Order must be made to the Court within 5 days.

15.0.7 The Authorised Officer serving the Notice shall notify the Home Authority of a National Company of the service of a Hygiene Emergency Prohibition Notice, where appropriate.

15.0.8 It is the Policy of Environmental Health to report to the Procurator Fiscal all instances of failure to comply with a Hygiene Emergency Prohibition Notice. Officers must therefore be sure that there is sufficient evidence to justify the action.

15.0.9 In invoking this action Officers shall have regard to the Authority's Procedure on the service of Hygiene Emergency Prohibition Notices and The Food Law Code of Practice & Practice Guidance (Scotland)

16.0 SECTION SIXTEEN – POLICY IN RELATION TO EMERGENCY PROHIBITION NOTICES

16.0.1 An alternative to the use of Hygiene Emergency Prohibition is to serve an Emergency Prohibition Notice in terms of Section 12 of the Food Safety Act 1990. This option shall only be considered when exceptional conditions are found, where an imminent risk to health occurs which is not due to food hygiene deficiencies.

16.0.2 This option should only be considered after explicit authorisation by the Team Leader Environmental Health or other Senior Manager. Officers serving Emergency Prohibition Notices shall ensure that they comply fully The Food Law Code of Practice and Practice Guidance (Scotland). The general policy in relation to Hygiene Emergency Prohibition Notice shall also apply with the exception that an application to Court for an Emergency Prohibition Order shall be made within 3 days.

17.0 SECTION SEVENTEEN - POLICY IN RELATION TO VOLUNTARY UNDERTAKINGS IN RELATION TO IMMINENT RISK OF INJURY TO HEALTH

17.0.1 As an alternative to serving an Emergency Prohibition Notice or Hygiene Emergency Prohibition Notice it is the Policy of this Council to accept written voluntary undertakings to close premises, to cease using a process or equipment only where the following specific circumstances pertain:

- (i) Where there is no risk of the premises being re-opened or the process or equipment being re-used without the specific permission of the Council;
- (ii) The Authorised Officer has confidence that the Food Business Operator will comply with the undertaking; and
- (iii) Where the manager is not the Food Business Operator that he/she has obtained agreement from the Food Business Operator that the undertaking will be honoured.

17.0.2 The Operator of a Food Business or other person associated with that business may be prompted to voluntarily close their business or to cease using a process or equipment. This option should only be used if they are able to proceed formally in terms of Regulation 8 Food Hygiene Scotland Regulations 2006 or Section 12 of the Food Safety Act 1990.

17.0.3 In all circumstances, where a Voluntary Closure Procedure is being applied, two Authorised Officers require to be present for corroboration.

17.0.4 The Food Law Code of Practice gives guidance on the acceptance of voluntary undertakings in relation to situations where there is imminent risk to public health. Authorised Officers shall ensure that they comply with the Food Law Code of Practice and with any procedures or prescriptive standards issued with this Policy.

17.0.5 Authorised Officers accepting voluntary undertakings to close premises or to cease using a process or equipment shall obtain the written confirmation of the voluntary undertakings to close the premises or to cease using a process or equipment. This undertaking must include written confirmation that the premises will not be re-opened or the process re-commenced or equipment re-used without the specific permission of the Council.

17.0.6 Authorised Officers shall ensure that both written undertakings are signed and dated by the Food Business Operator of the Food Business or other person associated with the business, holding sufficient authority of office with the business to secure and sustain the closure of the premises, discontinuance of the process or use of equipment.

17.0.7 Authorised Officers accepting such undertakings shall explain to the person giving the undertaking, that by giving the undertaking they are relinquishing their rights to compensation.

17.0.8 It is the Policy of Community Protection to report to the Procurator Fiscal, offences identified when a voluntary undertaking to close premises or to cease using a process or equipment is breached. Officers shall therefore ensure that there is sufficient evidence to justify their actions and result in a successful outcome in Court.

18.0 SECTION EIGHTEEN - POLICY IN RELATION TO PROSECUTION PROCEEDINGS

18.0.1 It is the Policy of this Council to submit a report to the Procurator Fiscal where the following circumstances pertain:

- (a) Where the alleged offence involves a flagrant breach of the law, such that health, safety or well-being of the public is or has been put at risk;
- (b) Where the alleged offence involves a failure to correct an identified serious potential risk to food safety, after a reasonable opportunity to comply with relevant legislative requirements has been given;
- (c) Where the offence involves a failure to comply in full or in part with the requirements of a Statutory Notice; and
- (d) Where there is a history of similar offences within the premises relating to risk to public health.

18.0.2 It is the Policy of Environmental Health that the decision to take evidence with a view to prosecution is to be made by the Authorised Officer(s) during inspection of the premises. Consideration of submission for prosecution shall be made in consultation with the Team Leader or other relevant Senior Officer. Reference should be made to Section 3 on Authorised Officers Qualifications.

18.0.3 The factors to be considered before deciding to take a prosecution shall be as follows:

- (a) the seriousness of the alleged offence; the risk of harm to public health; persons at risk, failure to comply with a Statutory Notice served for a significant breach of legislation; and disregard of public health for financial reward;
- (b) the previous history of the party concerned; offences following a history of similar offences; failure to respond positively to past warnings; and failure to comply with Statutory Notices;
- (c) the likelihood of the defendant being able to establish a due diligence defence;
- (d) the ability of any important witnesses and their willingness to co-operate;
- (e) the willingness to prevent a recurrence of the problem;
- (f) the probable public benefit of a prosecution and the importance of the case; and
- (g) whether other action, such as issuing a Hygiene Improvement Notice or imposing a prohibition would be more appropriate or effective.

- 18.0.4 All parties, against whom prosecution proceedings are being considered, shall be informed in writing of the Council's decision at the earliest opportunity.
- 18.0.5 Officers will note that, notwithstanding the time limits prescribed for prosecution within Regulation 16 of Food Hygiene (Scotland) 2006 and Section 34 of the Food Safety Act 1990, prosecution proceedings shall be submitted to the Procurator Fiscal without any undue delay, within a three month period of the identification of the offence unless there are extenuating circumstances in which case the report will be submitted at the earliest date.
- 18.0.6 The service is committed to the integration of Scottish Criminal Justice Information Systems (ISCJIS) programme and all cases will be reported in accordance with current guidance from the Crown Office.
- 18.0.7 Where appropriate, when evidence is submitted, the Authorised Officer shall consider the possibility of an application for a Prohibition Order following conviction. This would be appropriate where the Authorised Officer discovers that the defect giving rise to the prosecution either has not been removed or has been removed but has re-occurred because of a managerial lapse. This shall be brought to the attention of the Procurator Fiscal.
- 18.0.8 Following the submission of prosecution proceedings, the Lead Officer shall notify the Home Authority of a National Company of the outcome of the action.

19.0 SECTION NINETEEN - POLICY IN RELATION TO SPECIFICATION OF TIME LIMITS FOR COMPLIANCE

- 19.0.1 It is the Policy of Environmental Health, to specify realistic time limits for compliance arising from both formal and informal enforcement action.
- 19.0.2 It is also the Policy of Environmental Health to take into consideration the following factors before a time limit is specified:
- The risk to public health;
 - The nature of the problem; and
 - The practicability of available solutions.
- 19.0.3 Officers shall have regard to genuine difficulties which may occur for Food Business Operators attempting to comply - regard will be had to complexity, difficulty and other burdens attendant with compliance.
- 19.0.4 It is the Policy of Environmental Health wherever possible, to agree the time limit for compliance with the Food Business Operator before it is specified in any Notice.

20.0 SECTION TWENTY - POLICY ON ALTERNATIVE ENFORCEMENT STRATEGIES

- 20.0.1 The Interventions Code of Practice allows for a deviation from planned inspections for the lowest risk category of food establishment, known as a Group 3 Business. The Council has an Alternative Enforcement Strategy which officers must be cognisant of when undertaking food safety interventions. This strategy will be revised annually within the Food Service Plan.

21.0 SECTION TWENTY ONE - POLICY IN RELATION TO SAMPLING AND TESTING

21.0.1 An integral component of an assessment of compliance with food law requirements is the procurement and subsequent analysis or examination of food products or materials in contact with food. Such an activity should form part of a Food Safety inspection. However this is not always possible due to resource limitations and by necessity sampling is generally carried out separately from the Food Safety inspection. However, Environmental Health's Sampling Policy and programme is closely linked to the Food Safety Inspection programme as the risk assessment involved is utilised to define the frequency of sampling and analysis from food businesses. Greater emphasis will also be placed sampling from local manufacturers.

21.0.2 Environmental Health shall endeavour to maintain a sampling rate of 2 samples per thousand population for food standards purposes (includes formal/informal and chemical/bacteriological samples). This should be achieved through this policy and annual Sampling Programme which will be produced annually.

21.0.3 The sampling programme shall cover the fullest range of foodstuffs, raw materials, ingredients, intermediates, technological aides as appropriate and packaging and wrapping in direct contact with food. The level of sampling from premises is related to the activity concerned and the risk assessment of the food business. Local knowledge of traders and trading practices will influence these considerations. The frequency of sampling visits will depend on:-

- (i) The area of distribution of products and range of outlets;
- (ii) The number of product lines;
- (iii) The consequences of product failure;
- (iv) The risk associated with the process and the efficiency of the controls applied;
- (v) The history of any failures to meet the required standards; and
- (vi) New legislation and guidance.

21.0.4 As well as samples which are programmed for examination and/or analysis, consideration will be given to obtaining samples at non-manufacturing sites such as caterers during planned programmed inspections based on risk.

21.0.5 It is the intention of Environmental Health to participate in coordinated Regional and National sampling programmes wherever possible as directed by the West of Scotland Food Liaison Group, SFELC and Food Standards Scotland.

21.0.6 The Home Authority Principle requires Environmental Health to monitor food manufactured or processed within the area. The allocation of sampling resources to premises will be heavily influenced by local knowledge and past experience of the premises. Accordingly, the sampling programme devotes most of sampling resources to manufacturing and processing premises who shall be sampled at least annually.

21.0.7 - CHEMICAL SAMPLING PROGRAMME

The visit frequency shall be increased to more than once per year for premises where the size of the operation is substantial, if there is a history of sample failures or food standards contraventions, if they are a new processor or if by local knowledge it is considered appropriate. The number of samples per visit is determined by the range of products manufactured or processed.

21.0.8 - BACTERIOLOGICAL SAMPLING PLAN

Environmental Health shall set up a sampling programme concentrating on high risk foods which are known to support the growth of pathogenic bacteria. The bacteriological sampling plan shall be formulated by targeting areas of greatest public health significance.

The number of samples proposed should be within sample limits based on the population of the Council. The allocation of food samples is presently set at 108 per annum (approximately 1 per 1000 head of population).

Foodstuffs submitted for examination will be tested against the standards specified in EC Regulation 2073/2005. Where these standards do not apply to a specified foodstuff or where it is considered appropriate to test for other organisms as part of a suite of examinations such foodstuffs will be tested against the Health Protection Agencies Guidelines.

21.0.9 Enforcement samples shall also be taken over and above routine samples. Enforcement samples may be substituted into the sampling programme where it is appropriate to do so and in particular where the sampling allocation would otherwise be exceeded.

21.1.0 Each year Environmental Health receives complaints from consumers concerning the safety or quality of food they have purchased. We shall investigate each complaint and where necessary submit the food for analysis or examination.

22.0 SECTION TWENTY TWO - POLICY IN RELATION TO SECURING COMPLIANCE WITH ARTICLE 5 OF E.C. REGULATION 852/2004

22.0.1 E.C. Regulation 852/2004 requires food businesses to implement permanent procedures based on the principles of Hazard Analysis and Critical Control Point (HACCP). For most food businesses there is a requirement to document their food safety procedures and maintain records of food safety checks carried out.

22.0.2 Recital 15 of E.C. Regulation 852/2004 states that HACCP requirements should be sufficiently flexible in all situations and in some cases good hygienic practices can replace the monitoring of critical points. The recital also states that the requirement of retaining documents should be flexible to avoid undue burdens for very small businesses.

22.0.3 The policy of Environmental Health with regard to the flexibility applicable to businesses in implementing a HACCP type system is detailed at 22.0.4.

22.0.4 The level of HACCP implementation expected for different types of food businesses is as follows:-

- (i) Primary producers e.g. Dairy Farms. All primary producers subject to inspection by enforcement officers will not require any HACCP documentation. Records relating to measures put in place to control hazards will require to be kept.
- (ii) Food businesses handling low risk foods e.g. some retail shops will not be required to retain any HACCP documentation provided the food hygiene pre requisites and food information are in place. However it is acknowledged that simple food safety records may require to be kept depending on the nature, size and / or management of the business.
- (iii) Food businesses handling pre wrapped high risk foods subject to cold chain requirements e.g. retailers with refrigerated and frozen displays. Such businesses may not require written food safety procedures however they will require to ensure

that the food hygiene pre requisites and food information are in place and retain records of food safety monitoring carried out.

- (iv) Food businesses handling / processing high risk foods e.g. retailers selling and/or preparing open high risk foods and caterers. Such businesses will require to have a documented system based on HACCP. Food safety systems such as "CookSafe" or "RetailSafe" or equivalent systems will satisfy this requirement. Exceptionally very small businesses may implement a simplified system subject to agreement with this service.
- (v) Food manufacturing businesses e.g. bake houses, dairy and meat product manufacturers. Such businesses will require to provide a documented HACCP system from first principles. Alternatively where industry guides or templates exist, systems may be based on such guides or templates provided a documented system is produced based on HACCP.

22.0.5 It is the policy of Environmental Health that businesses should retain records of food safety monitoring activities for a period of 12 months prior to disposal.

22.0.6 Within this policy is the requirement that Authorised Officers shall adopt a graduated approach to enforcement of Article 5 – HACCP requirements, initially involving guidance and direction. The exception to this policy will be where circumstances prevail within the food operation which constitute significant risks to safety of food and merit direct enforcement action.

22.0.7 Authorised Officers shall consider the use of enforcement powers in respect of a breach of the HACCP requirements where the following situations pertain:

- (i) In addition to breaches of the HACCP requirements, there is also evidence of significant breaches of other food hygiene requirements;
- (ii) The non-compliance relating to HACCP is likely to lead to significant breaches of the food hygiene requirements;
- (iii) There is no evidence of non-compliance with the general food hygiene requirements however the business involves "high risk operations" and therefore there is a risk that the failure to implement a HACCP system could result in breaches of food hygiene requirements and/or an unacceptable risk to food safety; and
- (iv) The food business involves high risk operations and has failed to respond to an informal educative approach.

23.0 SECTION TWENTY THREE - POLICY IN RELATION TO APPROVAL OF PREMISES UNDER E.C. REGULATION 853/2004

23.0.1 It is the Policy of Environmental Health that where an Authorised Officer, during a food safety inspection, determines that a premises requires to be approved then the procedures detailed below made under this Policy shall be invoked. The service shall fully assess the business application for approval in accordance with relevant legislation, The Food Law Code of Practice, The Approved Premises Protocol (FSS-SFLEC Guide) and the Procedure for Approved Establishments. Only if the business is fully compliant will approval be considered.

23.0.2 Prior to the issue of an approval code for a food operation in terms of EC Regulation 853/2004 the Authorised Officer shall discuss the matter with the Team Leader.

23.0.3 Environmental Health shall maintain a register of all current approval codes for food businesses subject to approval.

24.0 SECTION TWENTY FOUR - POLICY IN RELATION TO NEW BUSINESS

24.0.1 Environmental Health recognise that, from time to time, new businesses will be established and that existing businesses will change ownership. In such situations, it is the policy of Environmental Health to ensure that all businesses are registered without delay and officers will work as closely with FBO's to offer guidance on compliance with regulations.

24.0.2 The initial inspection of a new food business shall, as far as possible, be carried out within time scales outlined below:

(a) High risk food operations - 4 weeks.

(b) Lower risk operations - 6 weeks.

25.0 SECTION TWENTY FIVE - POLICY IN RELATION TO ENFORCEMENT WHERE ENGLISH IS NOT THE FIRST LANGUAGE

25.0.1 It is the policy of Environmental Health to provide support to businesses who use languages other than English.

25.0.2 Where the Authorised Officer deems it appropriate, the Authority shall seek translation services. This is likely to be necessary where the FBO is unable to understand written or spoken English and enforcement action such as the service of Hygiene Improvement Notices, Hygiene Emergency Prohibition Notice/ Emergency Prohibition Notice or a prosecution is likely.

26.0 SECTION TWENTY SIX - STATEMENT IN RELATION TO POLICY REVIEW

26.0.1 This Enforcement Policy shall be reviewed at least once per year by the Team Leader and/or Development Lead Officer.

26.0.2 The review shall have regard to all new legislation and guidance, The Food Law Code of Practice and Practice Guidance (Scotland), Interventions Code of Practice.

26.0.3 The review shall have regard to Council policies, the process of community planning, policies and strategic aims of the Council.