



East Dunbartonshire Council

**EAST DUNBARTONSHIRE COUNCIL
HOUSING & PROTECTIVE SERVICES**

Enforcement Policy For Food Safety Legislation

Revision 3 –16th January 2007

**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)	

GENERAL POLICY OF HOUSING & PROTECTIVE SERVICES OF EAST DUNBARTONSHIRE COUNCIL IN RELATION TO FOOD SAFETY

Housing & Protective Services of East Dunbartonshire Council is committed to its role in protecting the health and well being of the public, and as a statutory Food Authority 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.

Housing & Protective Services of 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.

(The Enforcement Policy for Food Safety legislation has been approved by Development & Environment Committee on 16/01/07)

1.0 SECTION ONE - DEFINITIVE STATEMENT OF PRINCIPLES

1.0.0 Housing & Protective Services 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 consistent and fair, proportionate to the risk(s), and based on published standards in accordance with the Service's Enforcement Policy and the Enforcement Concordat.
- (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 the Local Authority Co-ordinators of Regulatory Services (LACORS), the Scottish Food Enforcement Liaison Committee(SFELC) and the Food Standards Agency.

1.0.1 The remainder of this Policy defines in more specific detail the application of the above principles to the enforcement of Food Safety legislation.

1.1 Fundamental Principles -

1.1.0 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, the issue of written warnings, statutory notices and prosecution.

1.1.1 This Policy has been prepared with reference to The Food Law: Code of Practice and Practice Guidance (Scotland) and to guidance from LACORS, the SFELC and The Food Standards Agency.

1.1.2 The implementation of this Policy is intended to secure, as far as is practicable, the safety of food and drink provided to the final consumer, whilst also providing local businesses with guidance and assistance in complying with relevant legislation and ensuring that enforcement action is correctly targeted.

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

2.0.0 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 Environmental Health Manager of Housing & Protective Services.

2.0.1 It is the Policy of Housing & Protective Services to issue procedures, and prescriptive standards when deemed appropriate. Authorised Officers shall comply with these when carrying out Food Safety Enforcement duties. Similarly, Housing & Protective Services will issue guidance as necessary, to which enforcement officers shall have regard.

2.0.2 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.

2.0.3 A review of enforcement activity will form part of the routine performance monitoring carried out within Housing & Protective Services and for food safety enforcement this will entail the following:-

(i) The Principal Officer - Food Safety, 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 for food officers who carry out food hygiene inspections and the equivalent of two occasions for officers who carry out both food hygiene and food standards inspections.

(ii) The Principal Officer - Food Safety 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 Principal Officer - Food Safety shall, review all relevant documentation relating to 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.

2.0.4 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

3.0.0 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.

3.0.1 Officers will only be authorised by the Head of Housing & Protective Services to carry out specific food enforcement activities only if they hold the appropriate qualifications and the necessary skills and experience.

3.0.2 Prior to the appointment of an Officer as an “Authorised Officer” regard will be taken of current guidance from the Food Standards Agency, Royal Environmental Health Institute for Scotland (REHIS), Scottish Food Safety Officers Registration Board (SFSORB) and The Food Law Code of Practice & Practice Guidance (Scotland).

3.0.3 Officers authorised to carry out food hygiene inspections and enforcement will receive structured ongoing training of a minimum of ten hours each year in accordance with Housing & Protective Services Training Plan.

3.0.4 Where an Officer holds appropriate qualifications but has not enforced food law or particular areas of food law 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 law duties, the Officer will in addition be monitored by the Principal Officer - Food Safety for a minimum of 3 months.

3.0.5 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 Principal Officer - Food Safety.

3.0.6 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.

3.0.7 Food Hygiene Inspections of the following classes of food business namely:-

- businesses risk assessed in terms of The Food Law Code of Practice being in category A or B;
- all food manufacturers and processors; and
- premises approved or requiring approval under Regulation (EC) 853/2004;

may only be carried out by Officers with the following qualifications:-

- (i) qualified Environmental Health Officer holding the Diploma in Environmental Health; or
- (ii) officers holding the Higher Certificate in Food Premises Inspection awarded by the Scottish Food Safety Officers Registration Board (SFSORB) or in England, Environmental Health Officers Registration Board (EHRB) or The Institute of Food Science and Technology (IFST)

- 3.0.8 Where premises change category, e.g C to B, as a result of an inspection and the Inspecting Officer holds the Ordinary Certificate in Food Premises Inspection, the outcome and any action proposed will be validated by an appropriately qualified Officer as above.
- 3.0.9 Improvement Notices may only be signed by Officers with relevant experience and appropriate qualifications as outlined below:-
- (a) qualified Environmental Health Officers; or
 - (b) officers holding the Higher Certificate in Food Premises Inspection awarded by SFSORB, or the EHRB or the IFST
 - (c) holders of the Ordinary Certificate in Food Premises Inspection awarded by SFSORB EHRB or IFST for food hygiene inspections in businesses assessed in terms of The Food Law Code of Practice as being in categories C-E.
- 3.1.0 Emergency Prohibition Notices or 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 and Hygiene Emergency Prohibition Notices.
- 3.1.1 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 shall be carried out only by Environmental Health Officers holding the diploma in Environmental Health. Detention and seizure of fresh meat shall be carried out by qualified Environmental Health Officers holding the Diploma in Environmental Health and qualified in accordance with the Authorised Officers (Meat Inspection) Regulations 1987 or Officers qualified and competent as defined in Section 1.2.9.31 of the Food Law: Code of Practice (Scotland).
- 3.1.2 The decision to submit a Report to the Procurator Fiscal has been delegated to the Principal Officer - Food Safety. The Principal Officer - Food Safety 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

- 4.0.0 Under certain circumstances it may be necessary for Environmental Health and Food Safety Officers in the course of their duties to carry out 'under cover' operations in a covert manner; that is surveillance without a persons knowledge.
- 4.0.1 The Regulation of Investigatory Power 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 using Covert Human Intelligence Sources.
- 4.0.2 Where it is deemed necessary for Directed Surveillance to be undertaken then this will be carried out in accordance with the corporate policy and procedures on the authorisation of the use of Covert Human Intelligence Source.

4.0.3 This policy seeks to ensure that the use, deployment, duration and effectiveness of sources is subject to an authorisation, review and cancellation procedures. Authorisations for directed surveillance relating to food safety matters shall be made by the Environmental Health Manager of Housing & Protective Services.

5.0 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 law enforcement duties in a manner which avoids potential or actual conflicts of interest.

5.0.2. Officers who carry out home or originating authority duties shall at all times act in an impartial and transparent manner both to the food businesses and to other enforcement bodies.

5.0.3. 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 the services of other providers.

5.0.4 Where inspections are undertaken in premises owned by or run by East Dunbartonshire Council, that is where the Council is the proprietor, Enforcing Officers shall carry out inspections to the same standard as they would in a private food business.

5.0.5 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 Chief Executive of East Dunbartonshire Council.

5.0.6 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.

5.0.7 Where contract caterers operate within East Dunbartonshire's premises they will be assessed as a 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

6.0.0 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 Housing & Protective Services will adopt and comply with the Code of Practice, guidance issued by SFELC/LACORS/The Food Standards Agency, including advice relating to the Home Authority Principle, where appropriate.

6.0.1 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;
 - (e) the range of enforcement options available and their likely outcome.
- 6.0.2 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.
- 6.0.3 Authorised Officers will not take any enforcement action which is inconsistent with the advice issued by the SFELC/LACORS or Enforcement Service Policies without prior consultation with the Principal Officer for Food Safety or the relevant Senior 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 / LACORS / Food Standards Agency, as necessary
- 6.0.4 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.

7.0 POLICY ON ALTERNATIVE ENFORCEMENT STRATEGIES

7.0.0 Food Hygiene Premises

- 7.0.1 Food Authorities may exclude from their planned inspection programme food premises falling within category E of the Food Hygiene Inspection Frequencies as defined in Annex 5 of the Food Safety Act 1990 : Code of Practice.
- 7.0.2 It is the policy of this Service to continue to include Category E food premises within the planned programme of inspection and will undertake primary inspections of such premises at least once in every 3 year period

7.1 Food Standards premises

- 7.11. Food Authorities may exclude from their planned inspection programme food premises falling within Category C of the Food Standards Inspection Frequencies defined in Annex 5 of the Food Safety Act 1990 Code of Practice.

7.1.2. It is the policy of this service to exclude Category C food premises from the planned programme of inspections where they fall within the types of premises identified at 1.13 below.

- 7.1.3
- (i) businesses where there is minimal food preparation and/storage of food. Examples of such businesses include - church halls, public halls, nurseries, small scale residential homes, bed and breakfast establishments, home economics kitchens, lunch clubs, fire station kitchens and cafes with limited food preparation.
 - (ii) transient Food Operations such as “one day events”. These events shall be subject to scrutiny in terms of food standards legislation on the day of the event and therefore shall not be included in the programmed workload;
 - (iii) producers of milk where there is no heat treatment/bottling of product. The primary aspect of a Food Standards Inspection in this type of operation would be to determine chemical or bacteriological deficiencies/anomalies which is best achieved through a sampling initiative. Accordingly, “producers” of this type shall be included within Protective Services Sampling Policy and Programme;
 - (iv) businesses mainly retailing pre-packed low risk foods, such as off-sales or newsagent, are perceived to be of negligible risk, and are expected to have been the subject of food law enforcement at an earlier point in the supply chain by the Home/Originating Food Authority or Port Authority; and
 - (v) street trader operations, as the products retailed should have been the subject to food law enforcement at an earlier point in the supply chain.

Housing & Protective Services has determined that it is prudent to reduce the Food Standards Inspection regime within local authority educational establishments. It is considered that a Food Standards Inspection of one school, operating as a “production unit” within the authority, on an annual basis will be an effective indication of prevailing conditions, as food and food contact materials are purchased centrally by the approved buyers consortium, which is the subject of audit by Local Authority Environmental Health Officers. Private schools shall be included within the planned programme for food standards.

7.1.4 Category C food standards premises will not be subject to primary inspections. These businesses will be subject to spot checks on their compliance with Food Standards matters during planned primary Food Hygiene Inspections.

7.1.5 Where contraventions are noted during these visits a report of the matters identified will be issued to the business concerned and where the contraventions noted are significant a new risk rating will be produced for the business.

7.1.6. A new risk rating will also be carried out where the nature of the business changes, the business changes ownership or the service receives a justified food complaint that reveals significant contraventions of Food Standards legislation.

7.1.7 Where the premises are re-risk rated as Category A or B for food standards then the premises will thereafter be included in the services planned programme of inspection.

8.0 SECTION EIGHT - STATEMENT OF POLICY IN RELATION TO INFORMAL ACTION

8.0.0 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.

8.0.1 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;

8.0.2 Following a programmed inspection, an inspection report will 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.

8.0.3 When an informal approach is determined, written documentation issued to proprietors to secure compliance with legislation shall comply with any procedures or prescriptive standards issued under this policy and will contain the following:-

- (a) a heading identifying the relevant legislation under which the premises were assessed;
- (b) the date of assessment, person interviewed and matters/areas considered at the time of the visit; and
- (c) a statement of the manner in which the legislation is being contravened and the measures required to achieve compliance with legal requirements;
- (d) when contraventions of a particular enactment are detailed in an inspection report, the relevant Regulation, Annex and Article shall form the heading of that section of the report to identify the legislation contravened.
- (e) any recommendations or advice of good hygiene practice shall be clearly differentiated from legal requirements and identified as such.

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

9.0.0 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 Principal Environmental Health Officer or other Senior Officer.

10.0 SECTION TEN – POLICY IN RELATION TO THE ISSUE OF HYGIENE IMPROVEMENT NOTICES

10.0.0 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 proprietor 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.

10.0.1 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 an Emergency Prohibition Notice shall normally be the only suitable course of action.

10.0.2 The Food Law: Code of Practice & Practice Guidance (Scotland) gives detailed guidance on when and how a Hygiene Improvement Notice should be used. 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 Improvement Notice and Hygiene Improvement Notice procedures for this Authority.

- 10.0.3 Officers drafting Hygiene Improvement Notices must comply with The Food Law: Code of Practice & Practice Guidance (Scotland) and any procedures or prescriptive standards issued under this Policy.
- 10.0.4 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.
- 10.0.5 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)
- 10.0.6 Hygiene Improvement Notices shall be served on the Food Business Operator. If the name and address of the proprietor is not known, the Notice will be addressed to the “owner” and left at the premises. Where a food business has a number of proprietors, with equal responsibility, the Notice shall list all proprietors but a separate copy shall be served on each person. Where a proprietor is a Public or Limited Company, the name of the proprietor will be the Limited Company, not the Company Secretary.
- 10.0.7 The time specified for compliance with the Notice shall be reasonable and be subject to discussion with the proprietor of the food business, and in no circumstances be less than 14 days.
- 10.0.8 Where Notices are served on a National Company, the Authorised Officer shall ensure that, where appropriate, the Home Authority is notified.
- 10.0.9 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.
- 10.0.10 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 10 of this policy. Officers shall establish all necessary evidence at the time of determining the need for formal enforcement action.

11.0 SECTION ELEVEN - POLICY IN RELATION TO INSPECTION, DETENTION AND SEIZURE OF SUSPECT FOOD

- 11.0.0 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 2005. The authority may also detain or seize foods not produced under hygienic conditions in terms of Regulation 27 Food Hygiene (Scotland) Regulations 2006.
- 11.0.1 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).
- 11.0.2 Reference should be made to Section 3 of this Policy for clarification of Officers authorisation to seize or detain food.

12.0 SECTION TWELVE – POLICY IN RELATION TO REMEDIAL ACTION AND DETENTION NOTICES.

12.0.0 Regulation 9 of the Food Hygiene (Scotland) Regulations 2006 provides powers to issue Remedial Action Notices and Detention Notices in respect of premises subject to approval under E.C. Regulation 853/2004.

12.0.1 It is the policy of Housing & Protective Services 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. Remedial Action Notices shall be considered where a continuing offence is identified or a food business operator has ignored corrective measures suggested by this service and the offence poses a risk to public health.

12.0.2 Authorised Officers shall seek to remedy non compliance in approved establishments by 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.

12.0.3 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 an 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.

12.0.4 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.

12.0.5 Authorised Officers considering serving Remedial Action Notices or Detention Notices should normally consult with the Principal Environmental Health Officer or other Senior Officer.

13.0 SECTION THIRTEEN - POLICY IN RELATION TO HYGIENE EMERGENCY PROHIBITION NOTICES

13.0.0 It is the Policy of Housing & Protective Services 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 proprietor is unwilling to confirm in writing an offer of voluntary prohibition or closure.
- 13.0.1 Before considering issuing a Hygiene Emergency Prohibition procedures an Officer must obtain the corroboration of a second Authorised Officer to provide corroborative evidence.
- 13.0.2 Only Authorised Officers with relevant experience shall issue Emergency Prohibition Notices and to Section 3 of this Policy provides clarification on Officers authorised to take this action.
- 13.0.3 Authorised Officers intending to institute Hygiene Emergency Prohibition Notice Procedures should ensure that the Principal Officer - Food Safety, or relevant Senior Officer are advised prior to the action being taken.
- 13.0.4 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 Principal Officer - Food Safety, or relevant Senior Officer prior to obtaining such expertise.
- 13.0.5 Once the Emergency Prohibition Notice has been served, an application for an Emergency Prohibition Order must be made to the Court within 5 days.
- 13.0.6 The Authorised Officer serving the Notice shall notify the Home Authority of a National Company of the service of an Emergency Prohibition Notice, where appropriate.
- 13.0.7 It is the Policy of Protective Services to report to the Procurator Fiscal all instances of failure to comply with an Emergency Prohibition Notice. Officers must therefore be sure that there is sufficient evidence to justify the action.
- 13.0.8 In invoking this action Officers shall have regard to the Authority's Procedure on the service of Emergency Prohibition Notices and The Food Law: Code of Practice & Practice Guidance (Scotland)

SECTION FOURTEEN – POLICY IN RELATION TO EMERGENCY PROHIBITION NOTICES

- 14.0.1 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.
- 14.0.2 This option should only be considered after explicit authorisation by the Principal Environmental Health Officer 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.

15.0 SECTION FIFTEEN - POLICY IN RELATION TO VOLUNTARY UNDERTAKINGS IN RELATION TO IMMINENT RISK OF INJURY TO HEALTH

15.0.0 As an alternative to serving an Emergency Prohibition Notice or Hygiene Emergency Prohibition Order 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 proprietor will comply with the undertaking; and
- (iii) where the manager is not the proprietor, that he/she has obtained agreement from the proprietor that the undertaking will be honoured.

15.0.1 The proprietor 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.

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

15.0.3 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.

15.0.4 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.

15.0.5 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.

15.0.6 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.

15.0.7 It is the Policy of Protective Services 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.

16.0 SECTION SIXTEEN - POLICY IN RELATION TO PROSECUTION PROCEEDINGS

16.0.0 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.

16.0.1 It is the Policy of Housing & Protective Services 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 Principal Officer or other relevant Senior Officer. Reference should be made to Section 3 on Authorised Officers Qualifications.

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

- (a) * the seriousness of the alleged offence;
- * the risk or 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;
- * failure to comply with statutory Notices.

- (c) * the likelihood of the defendant being able to establish a due diligence defence under Section 21 of The Food Safety Act 1990;
- (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; or
- (g) * whether other action, such as issuing a Hygiene Improvement Notice or imposing a prohibition would be more appropriate or effective.

16.0.3 All parties, against whom prosecution proceedings are being considered, shall be informed in writing of the Council's decision at the earliest opportunity.

16.0.4 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.

16.0.5 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.

16.0.6 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.

16.0.7 Following the submission of prosecution proceedings, the lead Officer shall notify the Home Authority of a National Company of the outcome of the action.

17.0 SECTION SEVENTEEN - POLICY IN RELATION TO SPECIFICATION OF TIME LIMITS FOR COMPLIANCE

17.0.0 It is the Policy of Housing & Protective Services, to specify realistic time limits for compliance arising from both formal and informal enforcement action.

17.0.1 It is also the Policy of Protective Services 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.

17.0.2 Officers shall have regard to genuine difficulties which may occur for proprietors attempting to comply i.e regard will be had to the complexity, difficulty and other burdens attendant with compliance.

17.0.3 It is the Policy of Housing & Protective Services wherever possible, to agree the time limit for compliance with the proprietor before it is specified in any Notice.

18.0 SECTION EIGHTEEN - POLICY IN RELATION TO LACORS HOME AUTHORITY PRINCIPLE

18.0.0 It is the Policy of Protective Services to fully recognise, acknowledge and support the LACORS Principle of the Home Authority.

18.0.1 Authorised Officers, in considering enforcement action against a National Company shall act in accordance with the LACORS Principle of the Home Authority and must liaise with the relevant Senior Officer of any Home or Originating Authority.

18.0.2 Where the Authorised Officer experiences difficulty in adhering to the Home Authority Principle then that matter should be brought to the attention of the Principal Officer - Food Safety or a relevant Senior Officer. It is the policy of Housing & Protective Services that, thereafter, such concerns shall be discussed with LACORS/SFELC and ultimately, where appropriate, the Food Standards Agency.

19.0 SECTION NINETEEN - POLICY IN RELATION TO SECURING COMPLIANCE WITH FOOD HYGIENE/SAFETY REQUIREMENTS OF REGULATIONS INCLUDING POLICY ON SECONDARY INSPECTION

19.0.0 Housing & Protective Services shall implement and maintain a planned programme for Food Hygiene Primary Inspections, and inspection visits shall to be carried out in accordance with that programme.

19.0.1 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.

19.0.2 Premises other than production holdings and approved premises will be risk assessed using the inspection rating scheme outlined in annex 5 of the Code of Practice : Food Hygiene Inspections. The minimum frequency of inspection shall be equal to or more frequent than those set out in Food Law: Code of Practice. (Scotland) Production holdings and approved premises shall be inspected at the frequencies specified in Annex 5 of the Food Law: Code of Practice (Scotland).

19.0.3 Authorised Officers shall ensure that Food Hygiene Inspections are carried out in accordance with the Housing & Protective Services - Food Hygiene 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 LACORS, SFELC and The Food Standards Agency.

19.0.4 It is the policy of Housing & Protective Services by means of a management information system to ensure that inspection frequencies are being maintained. The Environmental Health Manager shall adopt procedures to determine the following on a monthly 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 Head of Housing & Protective Services shall report to Committee detailing targeted inspections and the success or otherwise in meeting those targets.

19.0.5 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.

19.0.6 Food business shall be subject to appropriate enforcement action and secondary inspections where they fail to comply with significant statutory requirements. Such enforcement actions will be in accordance with Section 5.0 of this policy.

19.0.7 A secondary inspection shall be carried out where the business fails to comply with relevant statutory requirements and this failure indicates poor food safety management or compromises food safety, public health or materially prejudices consumers.

19.0.8 In relation to food hygiene contraventions identified during a primary inspection, a secondary inspection shall be carried out where critical food safety contraventions are detected or where a number of contraventions are identified which are not critical to food safety individually, however when taken together indicate poor management of food safety.

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

- (i) Prosecution
- (ii) Service of Hygiene Improvement Notice/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

19.10 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 proprietor 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).

- 19.11 Secondary inspections shall be based on either the relevant inspections form for the business or shall focus on the significant statutory requirements contravened.
- 19.12 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.
- 19.13 It is the policy of Housing & Protective Services that where there is ongoing non-compliance with the relevant Hygiene Regulations, with the same contraventions (albeit of lesser significance with regard to risk) being outstanding from the previous inspection, then the Inspecting Officer shall give consideration to the application of enforcement procedures such as the Hygiene Improvement Notice Procedure, if appropriate, or a letter advising that a revisit will be carried out at an earlier date than the next programmed inspection. This approach is deemed appropriate and necessary in order to secure ongoing improvement in the overall hygienic standards within food businesses.
- 19.14 It is the policy of Housing & Protective Services that the Authorised Officer shall view the failure of a proprietor to adequately address the important issue of training for food handlers seriously, particularly where the premises undertakes high risk food operations.

Formal enforcement approaches such as Hygiene Improvement Notice procedures shall be taken where the following applies:-

- breaches of the Food Hygiene Training Requirement have resulted in non-compliance with other food hygiene requirements;
- the food business involves high risk operations and non-compliance with training is likely to affect the future safety of food within the business or result in breaches of other food hygiene requirements giving rise to an unacceptable risk to food safety;
- the food business involves high risk operations and has failed to respond to an informal educative approach, consisting of notification in two previous letters;
- in situations where effective controls are in place which achieve food safety and meet other hygiene requirements but the training requirement is not met, and the business is a low risk food operation, Authorised Officers shall use their professional judgement and give careful consideration as to the effect of this breach on the future safety of food before applying formal enforcement procedures.

In making an assessment of the level of supervision, instruction or training required for food handlers, Authorised Officers shall refer to relevant Industry Guides and The Code of Practice.

- 19.15 It is the policy of Housing & Protective Services that where an Authorised Officer adopts a formal approach to enforcement of the requirement relating to the supervision, instruction and training of food handlers, that the business shall not be

invited to participate in, food hygiene training provided by this Service due to the potential conflict of interest.

- 19.16 Enforcement of the HACCP requirement of the Food Hygiene (Scotland) Regulations 2006 shall be carried out in accordance with the HACCP Compliance Policy outlined at Section 20 of this policy.
- 19.17 As far as practicable, the Authorised Officer who carried out the initial programmed visit and determined a secondary inspection as being required shall carry out the re-inspection and ensure that it is carried out to the time scale notified in correspondence to the business proprietor.
- 19.18 Where an Authorised Officer has invoked any of the formal enforcement actions detailed below, 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.
- (i) Hygiene Improvement Notices.
 - (ii) Remedial Action / Detention Notices.
 - (iii) Emergency prohibition notices/Hygiene Emergency Prohibition Notices
 - (iv) Voluntary closures.
 - (v) Seizure / Detention of Food Notices.
 - (vi) Prosecutions.
- 19.19 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 Principal Officer or other relevant senior officer and agree a satisfactory course of action on a risk assessment basis.
- 19.20 It is recognised that in the interests of efficiency, inspections involving Food Standard requirements may be carried out at the same time as Food Hygiene Inspections.

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

- 20.0.0 The introduction of 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.
- 20.0.1 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.
- 20.0.2 The policy of Housing & Protective Services with regard to the flexibility applicable to businesses in implementing a HACCP type system is detailed at 20.0.3.
- 20.0.3 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 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 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 Housing & Protective Services.
- (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.

20.0.4 It is the policy of Housing & Protective Services that businesses should retain records of food safety monitoring activities for a period of 12 months prior to disposal.

20.0.5 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. All caterers and retailers shall have access to training in “CookSafe” and “RetailSafe” as part of this approach. 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.

20.0.6 For new food businesses, the Authorised Officer shall at the time of the initial inspection provide support, guidance and direction to assist the food business operator to achieve compliance with the Article 5 - HACCP requirements. The exception being where circumstances prevail within the food operation which constitute significant risks to safety of food and merit direct enforcement action.

20.0.7 It is the policy of Housing & Protective Services that 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.

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

21.0.0 It is the Policy of Housing & Protective Services that where an Authorised Officer, during a hygiene 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 and The Food Law: Code of Practice & Practice Guidance (Scotland) and only if the business is fully compliant will approval be considered.

21.0.1 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 Principal Officer - Food Safety.

21.0.2 Housing & Protective Services shall maintain a register of all current approval codes for food businesses subject to approval.

22.0 SECTION TWENTY TWO - POLICY IN RELATION TO NEW BUSINESS

22.0.0 Housing & Protective Services 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 Housing & Protective Services to work as closely with food business proprietors as possible, giving as much information and advice to them as resources allow.

22.0.1 As soon as an Authorised Officer becomes aware that a new business is trading within the area, he/she shall ensure that a food registration form is issued to the proprietor of the business, if said form has not already been received from the food business operator. On receipt of the food registration form the Authorised Officer shall pass a copy of the form to the Systems Administrator together with the Food Standards Agency code and Use code for the food business so that the data may be recorded on the current computer database of the food premises.

22.0.2 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) low risk operations - 6 weeks.

23.0 SECTION TWENTY THREE - POLICY IN RELATION TO ENFORCEMENT WHERE ENGLISH IS NOT THE FIRST LANGUAGE

23.0.0 It is the Policy of Housing & Protective Services to provide support to businesses who use languages other than English.

23.0.1 Where the Authorised Officer deems it appropriate, the Authority shall seek translation services. This is likely to be necessary where the proprietor 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.

24.0 SECTION TWENTY FOUR - STATEMENT IN RELATION TO POLICY REVIEW

24.0.0 This Enforcement Policy shall be reviewed at least once per year by the Principal Officer - Food Safety.

24.0.1 The review shall have regard to all new legislation, The Food Law: Code of Practice and Practice Guidance (Scotland), which concern food safety enforcement action.

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