

LAND AND ENVIRONMENTAL SERVICES BUSINESS REGULATION FOOD SAFETY	Document: Food Safety Policy	Ref No: FSP12(A)	Issue: 2.5
	Title: Enforcement Policy		Date: 03.9.15
	Prepared By: P. Birkin		Page: 1 of 13
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1. INTRODUCTION

Glasgow City Council aims to ensure that all food produced, handled, distributed, stored and consumed within the City is safe and is of the nature, substance and quality demanded by the consumer. Food Safety legislation is enforced by Land and Environmental Services, Environmental Health Group.

The Service seeks to adopt a fair and balanced approach to the enforcement of food law and to apply the principles of better regulation. Where possible, an informal, advisory approach will be used to ensure that businesses are aware of their legal responsibilities and comply as required. However, formal means of enforcement such as formal notices and prosecution will be used to ensure that the principal objective of public safety is achieved, where necessary.

Food Law enforcement activity will be undertaken in accordance with the Council's corporate goals relating to equality, service delivery and customer care. Additionally, the approach taken will accord with the requirements of the Food Safety Act 1990 Code of Practice in relation to reasonableness, proportionality and consistency.

2. PURPOSE

This document aims to establish the enforcement options available to the Service in relation to food safety activity and to define the courses of action appropriate in specific instances.

3. POLICY CONTENTS

The document covers enforcement in the following areas:

- 3.1** Enforcement Options (Paragraph 4.1)
- 3.2** Food Premises Registration (4.2)
- 3.3** Interventions (4.4)
- 3.4** HACCP Enforcement (4.5)
- 3.5** Training of Food Handlers (4.6)
- 3.6** Unsatisfactory Food Samples (4.7)
- 3.7** Complaints about Food and Food Premises (4.8)
- 3.8** Suspension and Withdrawal of Approvals (4.9)

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4. FOOD SAFETY ENFORCEMENT POLICY

4.1 ENFORCEMENT OPTIONS

When determining the type of enforcement action to take, the Service/Authorised Officers shall have regard to the nature of the breach and the history of compliance of the food business operator. Additionally, consideration shall be given to the said operator's willingness to undertake necessary works. Reference shall also be made to Chapter 3.1 of The Code of Practice.

4.1.1 INFORMAL APPROACH

4.1.1.1 An informal approach should be considered as the primary option in the following circumstances:

- Where formal action is not proportionate with the risk to public health
- Where there is no breach of a specific Act or Regulation
- Where it appears that an informal approach will be successful

4.1.1.2 An informal approach is **not** appropriate in the following circumstances:

- Where formal action is proportionate with the risk to public health
- Where it appears that an informal approach will not be successful
- Where the breach is a transient one and where swift enforcement action is considered necessary
- Where the breach relates to an imminent risk to health

It may also, in certain circumstances, be considered inappropriate to rely on informal action where a non-compliance is recurring.

4.1.2 HYGIENE IMPROVEMENT NOTICES

4.1.2.1 Hygiene Improvement Notices shall be considered as the primary option in the following circumstances:

- Where informal action is not proportionate with the risk to public health
- Where it appears that informal action would be unlikely to be successful

It may also be considered appropriate, in certain circumstances, to serve a Hygiene Improvement Notice (HIN) where a non-compliance is recurring.

4.1.2.2 HINs are **not** appropriate in the following circumstances:

- Where a breach is a continuing one
- Where such a Notice is not proportionate with the risk to Public Health
- Where the breach is a transient one, being related to a short-term event
- Where there is an imminent risk of injury to health
- Where the breach does not relate to food hygiene matters

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4.1.3 REMEDIAL ACTION NOTICES

4.1.3.1 Remedial Action Notices may be served in circumstances where urgent action is required to ensure food safety and that the minimum time period of 14 days to comply with a Hygiene Improvement Notice is considered to be too long. Such a notice can only be served where the Hygiene Regulations have been breached.

4.1.3.2 A Remedial Action Notice (RAN) must not be used where there is an imminent risk of injury to health.

4.1.3.3 A RAN may be appropriate where an earlier informal requirement to rectify a serious hazard has been ignored – or where the officer has reason to believe that an informal approach would not be successful.

4.1.3.4 A RAN may be served where a food safety inspection has been hampered.

4.1.3.5 A RAN may prohibit or restrict any activity which is giving rise to a food safety hazard. It is conceivable that a RAN may require the complete cessation of a food operation until urgent matters are addressed.

4.1.4 HYGIENE EMERGENCY PROHIBITION NOTICES/ORDERS AND EMERGENCY PROHIBITION NOTICES/ORDERS

4.1.4.1 Hygiene Emergency Prohibition and Emergency Prohibition proceedings shall be considered as the primary option in the following circumstances:

- Where there is an imminent risk of injury to health; and
- Where the breach relates to hygiene matters; and
- Where Voluntary procedures are not considered to be appropriate

N.B. Voluntary closure shall only be considered where there is confidence that the food business operator will co-operate.

4.1.5 PROSECUTION

4.1.5.1 Prosecution shall be considered to be appropriate in any of the following circumstances:

- Where there is a failure to comply with the requirements of a Hygiene Improvement Notice
- Where there is a failure to comply with the requirements of a Remedial Action Notice
- Where there is a failure to comply with the requirements of a Hygiene Emergency Prohibition Notice
- Where prosecution is deemed to be in proportion with the risk to public health
- Where there is a flagrant breach of the law
- Where a breach is considered to be sufficiently serious – whether or not other forms of formal action have been pursued (i.e. Hygiene Improvement Notice, Hygiene Emergency Prohibition Notice or Remedial Action Notice)

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NB. Legal proceedings shall only be instigated following consideration of the factors specified in Chapter 3.1.7 of the Code of Practice.

4.2 FOOD PREMISES REGISTRATION

- 4.2.1 The Service aims to register all food businesses located within the City which are the subject of a legal requirement for registration. It is also proposed that all food premises which are considered to be “new” and which are deemed to be of a high or unknown risk are inspected within 28 days of the Service becoming aware of their existence.

4.3 FOOD SAFETY INTERVENTIONS

- 4.3.1 The main purpose of a food safety intervention inspection is to protect the public. The Service aims to undertake interventions within food premises on a risk-based, preventative basis. The intervention programme relating to the inspection of premises for food hygiene during 2015-2016 is as follows:

Food Hygiene	
Business Type/Risk Category	Intervention Type
A-Risk	Food Safety Inspection (encompassing an assessment of the Food Safety Management System and Specifically the controls for E Coli 0157 Cross Contamination)
B-Risk	Food Safety Inspection (encompassing an assessment of the Food Safety Management System and Specifically the controls for E Coli 0157 Cross Contamination)
C-Risk	Food Safety Inspection (encompassing an assessment of the Food Safety Management System and Specifically the controls for E Coli 0157 Cross Contamination)
D-Risk	Monitoring Visit (No D-risk Interventions planned for 2015-2016)
E-Risk	Alternative Enforcement Intervention
Unrated/Missed	Food Safety Inspection (encompassing an assessment of the Food Safety Management System and Specifically the controls for E Coli 0157 Cross Contamination)

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The interventions stated above are described in the table below:

Type of Intervention	Definition/Description
Approved Premises Inspection	An inspection to assess the inherent complexities of a Premises Approved under EC Regulation 853/2004
Food Safety Inspection	A full inspection of the premises and assessment of the businesses' documented food safety management system (if present). The nature of the inspection form and reporting procedure used will depend upon certain issues including the level of compliance encountered. In some instances, a hand-written report will be issued at the time of the visit. On other occasions, the Food Business Operator will be sent a typed intervention report. The premises may be subject to further revisits. An assessment of Food Information compliance will be included.
Monitoring Visit	A visit to check ongoing compliance in relation to food safety management. The visit will generate a hand-written report issued contemporaneously.
Alternative Enforcement Intervention	Confirmation, by completion of a questionnaire that the business is still operating on a very low risk basis.
Revisit	A visit to assess compliance with a report issued during the Food Safety Inspection. It is anticipated that such visits will be conducted between 1 and 7 days after the initial inspection

4.4 OTHER INTERVENTIONS/VISITS

- 4.4.1 Sampling Visits
- 4.4.2 Visits in response to unsatisfactory microbiological samples relating to the presence of food poisoning organisms
- 4.4.3 Visits to check on compliance with formal actions, i.e. Hygiene Improvement Notices, Remedial Action Notices, Hygiene Emergency Prohibition Notices/Orders, Hygiene Prohibition Notices/Orders and Prosecutions
- 4.4.4 Visits to investigate complaints about food and food premises
- 4.4.5 Visits to investigate food poisonings and allegations of the same
- 4.4.6 Inspections of premises in response to a Licensing application
- 4.4.7 Visits to advise regarding proposed premises
- 4.4.8 Visits in relation to Glasgow-based Food Incidents
- 4.4.9 Visits in relation to Food Alerts
- 4.4.10 Visits in relation to imported food requirements
- 4.4.11 Visits to seize, detain or condemn food or to receive or inspect surrendered food

4.5 HACCP ENFORCEMENT

- 4.5.1 The Service shall apply the matrix in **Annex 1** when determining the enforcement action to be taken in relation to compliance with the requirements of Article 5 of EC Regulation 852/2004

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4.6 TRAINING OF FOOD HANDLERS

- 4.6.1 The Service aims to ensure that food handlers within the City are supervised and instructed and/or trained in food hygiene matters commensurate with their work activities (as required by Article 4(2) and Annex II, Chapter XII of EC Regulation 852/2004). In effect, those persons coming directly or indirectly into contact with food should be trained and/or instructed to a level appropriate to the operations they are to perform. Food handlers must, therefore, have the necessary knowledge and skills to handle food hygienically.
- 4.6.2 When considering the appropriate enforcement action, officers shall take the following factors into account:
- 4.6.2.1 The nature of the food, in particular its ability to sustain growth of pathogenic or spoilage micro-organisms
 - 4.6.2.2 The manner in which the food is handled and packed, including the probability of contamination
 - 4.6.2.3 The extent and nature of processing or further preparation before final consumption
 - 4.6.2.4 The conditions under which the food will be stored
 - 4.6.2.5 The expected length of time before consumption
- 4.6.3 When considering the appropriate level of training required, officers shall consider the following factors:
- 4.6.3.1 The type of food handled
 - 4.6.3.2 The client group served
 - 4.6.3.3 The role of the food handler – especially in the case of a person with a supervisory role
- 4.6.4 The level of compliance shall be ascertained during inspection by examining the food handling procedures. If these appear to be unsatisfactory, the relevant food handlers should be questioned. If questioning reveals a lack of knowledge or understanding, the matter shall be raised as a requirement in the inspection report. A requirement for training shall not be made where no significant deficiencies in food handling practice have been identified.
- 4.6.5 Formal action, in the form of a Hygiene Improvement Notice, shall only be taken in the following circumstances:
- 4.6.5.1 There are significant food hygiene deficiencies – at critical control points (these matters shall be raised in the inspection report in conjunction with the training issue); and
 - 4.6.5.2 Where food handlers display a lack of knowledge or understanding of food hygiene matters as they relate to critical control points; and
 - 4.6.5.3 Where there has been a previous informal requirement.
- 4.6.6 A period of no less than 12 weeks shall be accorded to any Hygiene Improvement Notice served in relation to food hygiene training.
- 4.6.7 In the case of both informal and formal action, compliance may be achieved by **either** attendance at a formal training course **or** by some other means – such as in-house supervision, in-house instruction or training or distance learning/personal study.

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4.7 UNSATISFACTORY FOOD SAMPLES

4.7.1 Microbiological Samples

4.7.1.1 Where a sample result is unsatisfactory in relation to a high bacterial count or other indicators of poor food hygiene, this information shall be brought to the attention of the food business operator. In each instance a letter shall be sent giving details of the result. The matter will also be raised by an officer during a subsequent visit to the premises. Formal action, in relation to the sample failure, will only be considered where unsatisfactory food hygiene practices are identified during such a visit and where appropriate action is not taken to correct the matter.

4.7.1.2 Where a sample result is unsatisfactory in relation to food poisoning organisms, this information shall be brought to the attention of the food business operator during a secondary inspection, made in direct response to the sample result. Written confirmation shall also be provided of the sample failure. Formal action may be considered appropriate in the following circumstances:

- 4.7.1.2.1 Where the sample represents a clear link between the food business and a food poisoning case or outbreak
- 4.7.1.2.2 Where consumption of food would present a risk to health
- 4.7.1.2.3 Where the sample failure is repeated
- 4.7.1.2.4 Where necessary remedial action is not taken by the food business operator
- 4.7.1.2.5 Where food handling practices within the business are unacceptable
- 4.7.1.2.6 Where food handling practices within the business are unacceptable and represent an imminent risk to health

4.7.1.3 Formal action may take the form of Prosecution, Seizure/Detention of Food. Hygiene Improvement Notice or Hygiene Emergency Prohibition action or a combination of these.

4.7.2 Chemical Samples

4.7.2.1 Where a sample result is unsatisfactory in relation to product composition and/or labelling, the deficiency shall be brought to the attention of the relevant food business operator by means of a letter. Advice may be given at this point in relation to compliance. Arrangements shall then be made for further samples to be obtained. Subsequent samples may be official samples.

4.7.2.2 A more formal course of action shall be deemed appropriate under the following circumstances:

- 4.7.2.2.1 Where consumption of the food presents a risk to health; or
- 4.7.2.2.2 Where the sample failure is repeated; or
- 4.7.2.2.3 Where practices or processes within the premises are unsatisfactory and present an imminent risk to health

4.7.2.3 Formal action shall take the form of either Prosecution, Seizure/Detention of Food and/or Emergency Prohibition action.

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4.8 COMPLAINTS ABOUT FOOD AND FOOD PREMISES (INCLUDING ALLEGATIONS OF FOOD POISONING)

- 4.8.1 Where it is established that a complaint or “service request” highlights a breach of food safety legislation, the matter shall be addressed in accordance with this document insofar as it relates to enforcement options. In the case of complaints against food premises, an enforcement decision shall be made following an inspection of the said premises. Where the complaint relates to food and there is satisfactory corroborated evidence of the complaint, each case shall be treated initially as being appropriate for referral to the Procurator Fiscal and shall be investigated accordingly.
- 4.8.2 Notwithstanding paragraph 4.8.1, in normal circumstances the main objective will be to ensure that there is no recurrence of the incident, or in the case of a food poisoning outbreak, to achieve immediate control. A judgement shall be made in each case as to whether there has been wilful neglect or any deliberate attempt to prejudice a purchaser.
- 4.8.3 Each case shall be considered on its merits.
- 4.8.4 When deciding whether a complaint shall be referred to the Procurator Fiscal recommending prosecution, the following criteria shall be applied:
- 4.8.4.1 The existence and/or availability of admissible evidence which may provide a realistic prospect of conviction
 - 4.8.4.2 The seriousness of the alleged offence – in the context of the consequences or potential consequences for the health and safety of the complainant or other persons exposed to the hazard. Particular consideration shall be given, where relevant, to the consequences for any persons exposed to the hazards who are particularly vulnerable.
 - 4.8.4.3 The degree of neglect or perceived neglect on behalf of the party concerned
 - 4.8.4.4 Whether there was any deliberate attempt to prejudice the consumer, i.e. any fraud by, or financial gain accrued by the party concerned
 - 4.8.4.5 The previous history of the party concerned
 - 4.8.4.6 The willingness of the party to take all necessary steps to prevent a recurrence of the problem
 - 4.8.4.7 The ability and/or willingness of witnesses to co-operate
 - 4.8.4.8 The likelihood of the defendant being able to establish a defence of due diligence
 - 4.8.4.9 The probable public benefit of a prosecution, especially in respect of any precedent which might be set
 - 4.8.4.10 Any extreme mitigating circumstances offered by way of explanation by the accused
 - 4.8.4.11 Whether any other actions such as formal warning, service of a Hygiene Improvement Notice, instigation of Hygiene Emergency or Emergency Prohibition action would be more effective in the particular circumstances.

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4.9 SUSPENSION AND WITHDRAWAL OF APPROVALS

4.9.1 Suspension of Approvals

4.9.1.1 Suspension of approval shall only be considered where other forms of enforcement action are deemed to be unsuitable. Such action shall only be taken where the establishment is approved in terms of EC Regulation 853/2004.

Consideration shall be given to EC Regulation 882/2004, Article 31 (2) (e) prior to taking suspension action. Additionally, any action taken shall be in accordance with the Code of Practice.

4.9.2 Withdrawal of Approvals

4.9.2.1 Withdrawal of approval shall only be considered where other forms of enforcement action are deemed to be unsuitable (including suspension). Such action shall only be taken where the establishment is approved in terms of EC Regulation 853/2004.

4.9.2.2 Consideration shall be given to EC Regulation 882/2004, Article 31 (2) (e) prior to taking withdrawal action. Additionally, any action taken shall be in accordance with the Code of Practice.

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ANNEX 1 - HACCP ENFORCEMENT

The Service shall apply the following matrix when determining enforcement action in relation to compliance with the requirements of Article 5 of EC Regulation 852/2004:

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The Service shall apply the following matrix when determining enforcement action in relation to compliance with the requirements of Article 5 of EC Regulation 852/2004:

Category of Premises	Examples of Premises within Category	Required Compliance	HACCP Assistance	Enforcement
Very Low Risk No unwrapped food No high risk food No cold chain	Off-Sales Confectionary Shops Grain Stores Newsagent (no cold chain) Filling Station (no cold chain) Greengrocer (no cold chain) Chemist – no cold chain	No requirement to comply with Article 5 in relation to documented system – if no significant hazards present	None required – if no significant hazards present	No formal action anticipated
Low Risk No unwrapped high risk food Cold chain	Newsagent Grocer Filling Station Chemist Health Food Shop Lidl/Farmfoods/Iceland-type supermarkets	Identify and Document significant Control Measures and Record Monitoring	Provision of House Rules (Fcom 460) and Temperature Monitoring Forms (Fcom 106/474) Provision of thermometer (where available) Advice provided at inspection and in report. Aforementioned documents supplied in report or on demand.	No formal action anticipated
Retailers Unwrapped high risk food	Grocers Delicatessens Newsagents	Full compliance with Article 5	RetailSafe manual available Food Safety Advice Session offered. Advice provided at inspection and in	Where there is minor non-compliance, raise this in the report. Where the non-compliance is critical to food safety,

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	Supermarkets Fishmongers (selling smoked mackerel etc) Non-manufacturing Butchers Street Traders and Hot Roll Premises (where only filled rolls sold)		report	score as an "Improvement Required" Where there is significant non-compliance with Article 5, provide RetailSafe Manual. Serve Hygiene Improvement Notice following revisit If significant non compliance relates to a significant Cross Contamination risk then serve a Remedial Action Notice – Refer to FSP04(B) Cross Contamination Focused Inspections
Caterers	Public Houses (Food) Restaurants Takeaways Canteens Hotels Nurseries (Preparation) Residential Care Schools Manufacturing Butchers Street Traders (where more than filled rolls sold)	Full Compliance with Article 5 (Including the requirements of the FSA Cross Contamination Guidance)	CookSafe manual available Food Safety Advice Session offered. Advice provided at inspection	Where there is minor non-compliance with Article 5, raise this in the report. Where the non-compliance is critical to food safety, score as an "Improvement Required" Where there is significant non-compliance with Article 5, provide CookSafe manual (where appropriate) and Serve a Hygiene Improvement Notice following a revisit. If significant non compliance relates to a significant Cross Contamination risk then serve a Remedial Action Notice - Refer to FSP04(B) Cross Contamination Focused Inspections
Manufacturers	-	Full Compliance with Article 5 (Including the requirements of the FSA Cross Contamination Guidance)	Food Safety Advice Session offered. Advice provided at inspection	Where there is minor non-compliance with Article 5, raise this in the report. Where a non-compliance is critical to food safety, it may be appropriate to serve a "targeted HIN". Where there is significant non-compliance, serve a Hygiene Improvement Notice following a revisit. If significant non compliance relates to a significant Cross Contamination risk then serve a Remedial Action Notice - Refer to FSP04(B) Cross Contamination Focused Inspections
Wholesalers/ Distributors	-	Full Compliance with Article 5 (Including the requirements of the FSA)	Food Safety Advice Session offered. Advice provided at inspection	Where there is minor non-compliance with Article 5, raise this in the report.

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		Cross Contamination Guidance)		<p>Where a non-compliance is critical to food safety, it may be appropriate to serve a “targeted HIN”.</p> <p>Where there is significant non-compliance, serve a Hygiene Improvement Notice following a revisit.</p> <p>If significant non compliance relates to a a significant Cross Contamination risk then serve a Remedial Action Notice - Refer to FSP04(B) Cross Contamination Focused Inspections</p>
Other Low Risk Premises	Public Houses - where no food is sold (or where minimal sale of high risk food etc)	Identify and Document significant Control Measures and Record Monitoring	Provision of House Rules (Cleaning Beer Lines and Production of Ice) (Fcom 462) and Monitoring Forms	Raise non-compliance in report (providing Documentation and Monitoring Forms). Reassess compliance at next programmed inspection. Where progress is unsatisfactory, serve a Hygiene Improvement Notice
	Nurseries/Lunch Clubs – where food is brought in pre-cooked	Identify and Document significant Control Measures and Record Monitoring	Provision of House Rules (Fcom 461) and Monitoring Forms (Fcom 106/474)	Raise non-compliance in report (providing Documentation and Monitoring Forms). Reassess compliance at next programmed inspection. Where progress is unsatisfactory, serve a Hygiene Improvement Notice
	Butchers (Raw meat only)	Identify and Document significant Control Measures and Record Monitoring	Provision of House Rules (Fcom 458) and Monitoring Forms (Fcom 106/474)	Raise non-compliance in report (providing Documentation and Monitoring Forms). Reassess compliance at next programmed inspection. Where progress is unsatisfactory, Serve a Hygiene Improvement Notice
	Fishmongers (No unwrapped high risk food)	Identify and Document significant Control Measures and Record Monitoring	Provision of House Rules (Fcom 459) and Monitoring Forms (Fcom 106/474)	Raise non-compliance in report (providing Documentation and Monitoring Forms). Reassess compliance at next programmed inspection. Where progress is unsatisfactory, Serve a Hygiene Improvement Notice

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