

Shepway District Council

Food Safety Enforcement and Prosecution Policy

It is this our aim to ensure that food and drink intended for sale for human consumption, which is produced, stored, distributed, handled or consumed within the district is safe. This will include shops, restaurants, warehouses, cold stores, factories, mobile food vendors, ports and airports, home producers, mail and internet food businesses and fishing vessels.

Purpose of This Policy

We have adopted this policy to help ensure that enforcement action is fair, proportionate and consistent and in line with the ^a Regulators' Code issued under the Legislative and Regulatory Reform Act 2006.

It sets out the principles on which enforcement decisions are based in a way that is open to all.

When are we likely to take enforcement action?

Enforcement action may result from the following:

- Planned Food Hygiene inspections
- Food Hygiene inspections following a complaint from a member of the public
- Food unfit for consumption
- Food contamination e.g. bacteria, mould and foreign bodies
- Food fraud

General Approach to Enforcement

We will follow this policy when making enforcement decisions. We will also take into account:

- Food Standards Agency Food Law Code of Practice and guidance^b
- Food Standards Agency Framework Agreement on Official Feed and Food Controls^f
- The Regulators' Code^a
- The Code for Crown Prosecutors^c
- Ministry of Justice Guidance – Simple Cautions of Adult Offenders^d

Except where circumstances indicate a significant risk, we will adopt a graduated and educative approach to enforcement. As the first step towards securing compliance, we will take an educative approach, starting at the bottom of the enforcement pyramid i.e. beginning with advice, education and informal action before moving on to more formal action when the informal approach does not achieve the desired effect. Shepway have adopted the Food Hygiene Rating Scheme which provides an incentive for food businesses to gain the economic benefits from achieving a high rating.

Decisions on appropriate enforcement action will be taken based primarily on an assessment of risk to food safety and public health, but will also be influenced by the history of compliance by the proprietor with food safety legislation and his willingness to remedy contraventions

Departures from this policy must be exceptional and the reasons will be documented.

Liaison

We are represented on the Kent Food Technical Group which provides a forum for discussing enforcement matters and helping to achieve consistent enforcement across local authorities.

We will implement the provisions of the ^eBetter Regulation Delivery Office (BRDO) Primary Authority scheme.

The Primary Authority Scheme is lead by the BRDO. It is designed to reduce the burden of “red tape” imposed on business by regulation. One local authority, the “Primary Authority”, works with a business to ensure that the business is compliant.

We will take into account advice issued by Primary Authorities and, where appropriate, consult with the Primary Authorities about enforcement action, particularly where this relates to centrally agreed policies and procedures.

We will notify Primary Authorities of relevant prosecutions and cautions issued.

Where there is joint responsibility or crossover of enforcement with another authority we will ensure there is appropriate liaison with them.

Authorisation of officers

No officer will carry out food hygiene inspection and enforcement duties unless suitably trained and experienced and authorised in writing.

Continuing professional development training will be provided for all food safety officers to enable them to keep abreast of changes in legislation and good practice.

Officers will be fully acquainted with the requirements of this policy upon appointment and with any revisions as they arise.

Arrangements for authorisation of officers are set out in a separate procedure.

Enforcement Options

1. Informal Action (written warning and verbal advice)

The existing procedure of dealing with contraventions by informal letters and verbal advice is accepted and understood by food businesses in Shepway. We will use this approach where possible, as long as we believe that this will achieve compliance with food safety legislation within a timescale that will protect the public health and ensure safe food production.

We recognise the role we can play in supporting new and existing businesses through provision of information and advice to help them achieve compliance.

We will be prepared to offer a reasonable amount of advice or signpost to sources of information in response to requests by an operator of an existing or new food business or following interventions, such as inspections, and will seek to encourage food businesses to adopt good food hygiene practice through this approach.

We will clearly differentiate between legal requirements and recommendations of good hygiene practice in both verbal and written communications.

2. Improvement notices

An improvement notice formally sets out contraventions of legislation, the works required to correct the contraventions and a timescale for completion. Failure to comply with the notice is an offence.

Improvement notices will be used where contraventions are found and where any of the following conditions are satisfied:

- where formal action is proportionate to the risk to public health;
- there is a documented history of non-compliance with food safety legislation;
- an informal approach has been tried but has not been successful, or the authorised officer has no confidence that informal action will be successful;

An improvement notice may not be appropriate in the following situations:

- the contravention is minor and presents no risk to public health;
- the contravention is a continuing one, e.g. cleanliness of staff and a notice would only secure an improvement at one point in time;
- in transient situations and it is considered that swift action is required, such as at a one day event where there exists a risk to public health;
- where there is a breach of good practice but no failure to comply with a specific regulation.

In most circumstances, an improvement notice will only be served after we have discussed the need for such action and timescales with the food business operator informally and considered alternatives, particularly where this relates to structural works.

3. Hygiene Emergency Prohibition Notice and Voluntary Closure

We will use emergency prohibition procedures where there is sufficient evidence that an imminent risk to health exists. A hygiene emergency prohibition notice has the effect of immediately closing a food business or prohibiting the use of equipment or a process where there is an imminent risk of injury to health.

Conditions where prohibition of premises may be appropriate:

- Premises which contravene food safety legislation and have been or are involved in an outbreak of food poisoning or present an imminent risk of one;
- Serious infestation of vermin resulting in actual or imminent risk of contamination of food;
- Poor structural condition and poor equipment and/or poor maintenance of routine cleaning and/or serious accumulations of refuse, filth or other extraneous matter resulting in actual or imminent risk of food contamination;
- Serious drainage defects or flooding of the premises leading to actual or imminent risk of food contamination;
- Any combination of the above or any cumulative effect of contraventions which together represent an imminent risk of injury to health.

Additionally, equipment or a process may be prohibited where there is a risk of cross contamination of ready to eat food or where there is a failure to achieve critical control criteria such as minimum cooking or pasteurisation temperatures or the use of a process which is inappropriate.

3a Voluntary Procedures

There may be occasion where we are satisfied that grounds for Emergency Prohibition exist, but where the food business operator offers to close voluntarily until the health risk is removed. Such an offer will only be accepted if:

- We are satisfied that there is no likelihood of the premises being used as a food business, or of the use of equipment, or of a process without our express agreement.
- the offer and its acceptance is fully documented and signed by the food business operator (or someone with authority to act on their behalf) and signed and approved by specifically authorised officers.
- that the person making the offer is aware that they are relinquishing the rights to compensation for unjustified action contained in formal emergency prohibition notice procedure.

Arrangements for emergency prohibition and voluntary closure are set out in a separate documented procedure.

4. Follow up visits

Where significant breaches of hygiene regulations have been identified during an inspection, a revisit will be carried out to check on progress towards compliance. Wherever practicable the revisit will be undertaken by the same officer who carried out the original inspection.

5. Remedial Action Notices (Premises approved under EC Regulation 853/2004 only)

Local Authorities must give approval to establishments handling, preparing or producing products of animal origin. There are 16 separate sectors which require approval. Premises must achieve higher standards to gain approved status.

Remedial Action Notices provide for the prohibition of the use of any equipment or any part of the establishment, the imposition of conditions upon, or prohibiting, any process and also allows for the rate of an operation to be reduced or, stopped completely. Circumstances when they will be considered include:

- Any equipment or part of an establishment does not meet food hygiene requirements.
- Other enforcement action, including improvement notices have been considered and are not appropriate.
- There is a need to prohibit or place conditions on the carrying on of any process breaching the requirements of hygiene regulations.
- The rate of operation of a business is detrimental to its ability to comply with hygiene regulations.

6. Suspension/ withdrawal of approval (Premises approved under EC Regulation 853/2004)

Suspension or withdrawal of an establishment's approval will be considered taking into account the following factors:

- Serious deficiencies exist.
- Whether the food business can provide guarantees that the deficiencies will be permanently resolved, and these are acceptable to us.
- Where such guarantees are given, whether these will permanently resolve the deficiencies immediately or within a reasonable period of time.

7. Prosecution

- Prosecution may be considered as an alternative, in addition to, or as a consequence of failure to comply with the previous enforcement options.
- In all cases, the decision to prosecute will be agreed by the Principal Environmental Health Officer after careful consideration of a report from the inspecting officer.
- Prosecution files will be passed to the Council's Legal Services Team for consultation before summonses are issued.
- Primary authorities, where applicable, will be consulted where prosecutions are planned and due regard will be paid to opinion of that authority. Such authorities will be notified of the outcome of prosecutions taken.
- Officers must retain all evidence for disclosure.

The decision to prosecute

Factors that will be considered when deciding to prosecute:

- Whether there is sufficient evidence
- The seriousness of the alleged offence;
- The previous compliance history of the food business;
- The likelihood that a due diligence defence could be established;
- The ability of any important witness and their willingness to co-operate;
- The willingness of the food business to prevent a recurrence of the contravention;
- The probable public benefit of a prosecution and the importance of the case in establishing a precedent;
- Whether other action, such as issuing a simple caution, serving an improvement notice, or imposing a prohibition, would be more appropriate or effective;
- The likelihood of a nominal penalty;
- The offence was a result of a genuine mistake or misunderstanding (balanced against the seriousness of the offence)
- Any explanation offered by the food business.

Non-compliance with notices

Non-compliance with an improvement notice will be considered to be grounds for prosecution although the following situation may have a bearing on the final decisions:

- Where the remaining contraventions detailed in the notice are minor and do not pose a risk to public health;
- Where the outstanding works are in hand, (confirmation from contractor or supplier required), and an extension of time to complete the works would have been granted, if requested.

Non-compliance with requirements in an informal letter will not usually be considered grounds for prosecution, but we will reconsider at this stage the enforcement options available to remedy the contravention using the criteria described above. The failure to respond in the first instance to an informal approach will influence that decision.

Food Complaints

The decision to prosecute for an offence will be taken at the earliest opportunity to avoid unnecessary and time consuming investigations by both authorised officers and food businesses.

The integrity, co-operation, ongoing support and suitability as a witness of a complainant are important considerations for a successful prosecution. The wishes of the complainant regarding prosecution will be respected, unless it is in the public interest and there is sufficient evidence to proceed independently.

Contraventions of specific provisions of EC 852/2004 / EC 853/2004 and Food Information Regulations 2014

A decision to prosecute for offences under the food hygiene regulations will be taken based on the risk to public health presented by the contravention. It is not sufficient for there to be a technical breach of the regulations on a minor matter.

The initial response to contraventions that do not present a risk to public health will be written notification by informal or improvement notices.

Prosecution may be favoured where:

- conditions are found that present an immediate risk to public health, whether or not prohibition action is also taken;
- there is a risk to public health presented either by the seriousness or number of contraventions and there is documented evidence that the food business has previously received warnings regarding such contraventions.

Where a prosecution is prepared for food hygiene regulation contraventions, summonses will generally be issued for a small number of specimen charges, representing the more serious contraventions and demonstrating the element of risk.

Assault and Obstruction

Where Officers are assaulted we will seek police assistance with a view to seeking the prosecution of offenders.

We will seek prosecution of people who obstruct officers from carrying out their duties. A written warning may be given in the first instance, if circumstances deem this appropriate.

8. Simple Cautions

There may be circumstances where evidence exists for a successful prosecution, but where mitigating circumstances are such that nothing is likely to be gained from such action. In such circumstances we will consider the offer of a simple caution as an alternative to prosecution. Circumstances where a caution may be considered are:

- the contravention is low level or a first offence;
- the contravention, although serious, has been speedily dealt with and steps taken to prevent a recurrence;
- the food business has since closed or the food handler has ceased that occupation;
- The offender has not been cautioned or convicted for a similar offence within the last 2 years.

The following criteria must be met:

- There is sufficient evidence of the offence such that there is realistic prospect of conviction if the case went to court;
- The offender admits the offence;
- The offender agrees to accept a caution; and
- The offender is able to give informed consent to the caution and understands its significance.

The decision to offer a caution will be taken by the Principal Environmental Health Officer in conjunction with Legal Services Team after consideration of a report from the inspecting officer.

If the offer of a formal caution is declined, further enforcement action will be considered. This will usually be prosecution

9. Seizure and Detention of food

- Where possible any decision to detain food will only be taken after discussion with either the owner, person in charge or the manufacturer.
- If there are any doubts about the security or physical care of the food it should be moved. If it is to remain in situ arrangements must be made to ensure security and prevent tampering. Only in exceptional circumstances must food be left in the care of anyone who may be the subject of any prosecution in relation to the food.
- Voluntary procedures to remove the food from the food chain may be used. A receipt must be issued and the owner must agree to pay any expenses. Even though the owner may agree to surrender unfit food voluntarily they will be made aware that they could still be prosecuted for possession of unfit food.
- Where Shepway disposes of any unfit food it must be satisfied that it is disfigured sufficiently to ensure that it does not enter the food chain. Food dye will be kept for this purpose. Appropriate documents will be attached to the job to show how the food has been destroyed.

Review of Policy

This Enforcement Policy will be reviewed annually and following any change to either legislation or the Code of Practice.

Links

- ^a Regulators' Code – www.gov.uk
- Food Standards Agency Food Law Code of Practice and guidance^b – www.food.gov.uk
- The Code for Crown Prosecutors^c – www.cps.gov.uk
- Ministry of Justice Guidance – Simple Cautions of Adult Offenders^d – www.justice.gov.uk/downloads/adult-simple-caution-guidance-oocd.pdf
- ^fFood Standards Agency Framework Agreement on Official Feed and Food Controls – www.food.gov.uk
- ^eBetter Regulation Delivery Office Primary Authority scheme – <https://primaryauthorityregister.info> www.gov.uk/government/better-regulation-delivery-office