

# Compliance and Enforcement Policy

## Annex 1 : Food Safety Enforcement

### 1. Introduction

- 1.1 This annex supplements the Shared Regulatory Services Compliance and Enforcement Policy in establishing a consistent approach to the enforcement of food safety law.
- 1.2 This annex applies to all enforcement action taken by Officers under food safety legislation and must be read in conjunction with the overarching compliance and Enforcement Policy.
- 1.3 Where there is any conflict in interpretation between this annex and the overarching Compliance and Enforcement Policy, the latter will take precedence.

### 2. Primary Authority

- 2.1 All officers considering intervention must check if a business is registered as being in a Primary Authority partnership, whether in its own name or part as part of a co-ordinated partnership through a franchise arrangement or trade association. Regulatory Delivery (part of Department for Business, Energy & Industrial Strategy) co-ordinates the Primary Authority scheme, including approving and registering all Primary Authority partnerships. Where a Primary Authority is registered, any other Local Authority (known as an “enforcing authority” for the purposes of the scheme) proposing to take enforcement action against a business within the scheme, must contact the Primary Authority first unless immediate action is necessary. The Primary Authority may challenge a proposed enforcement action if it believes it to be inconsistent with advice or guidance that it has previously provided. Regulatory Delivery will determine any resulting disputes.
- 2.2 “Primary Authority” means an authority which has entered into a formal agreement, in relation to specified legislative controls, to be the principal source of advice on compliance with these requirements and to co-ordinate enforcement actions.

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### 3. Additional considerations for ships and aircraft

- 3.1 This annex includes the enforcement of relevant food safety legislation in relation to any ship or aircraft as they fall within the definition of premises for The Food Hygiene (Wales) Regulations 2006. However, it should be noted that Schedule 4 to these Regulations which sets out specific temperature control requirements does not, by virtue of paragraph 1b), apply to these means of transport. In addition the Food Hygiene Rating (Wales) Act 2013 will only apply if a vessel is registered as a food business by a Food Authority in Wales and it does not meet the criteria to make it exempt.
- 3.2 For an aircraft or ship that is registered within the UK a check will be made by the Authorised Officer to establish if there is a Home Authority agreement in place and if this is the case will liaise with the Home Authority to advise of any contraventions noted and discuss the possibility of any enforcement action proposed in accordance with the LGA guidelines (unless emergency measures are required.)
- 3.3 For a foreign registered aircraft or ship the Authorised Officer should contact the UK office of the company, or the handling agent if a Hygiene Improvement Notice or Hygiene Emergency Prohibition Notice is served. In respect of ships, the authorised Officer should also contact the Maritime Coastguard Agency (MCA) at the earliest opportunity. Where there is no such UK office or handling agent, the competent authority in the country where the ship or aircraft is registered should be made aware of the defects found.
- 3.4 If the ship or aircraft is registered within another Member State, the procedures set out in Chapter 2.5 “Food Law Code of Practice (Wales)- April 2014” shall be followed. Any difficulties should be discussed with the Food Standards Agency.
- 3.5 If the ship or aircraft is registered in a third country, the Food Standards Agency should be given full details to allow the matter to be raised with the competent authorities in the relevant countries.

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## 4. Definitions

- 4.1 For the purpose of this annex "Authorised Officer" shall mean an Officer who has the relevant delegated powers to operate under the European Communities Act 1972, Food Safety Act 1990, Food Hygiene (Wales) Regulations 2006, Official Feed and Food Control (Wales) Regulations 2009, Trade in Animals and Related Products (Wales) Regulations 2011, Food Hygiene Rating (Wales) Act 2013 and the regulations issued thereunder and has been authorised by the Head of Shared Regulatory Services.
- 4.2 For the purpose of this annex "Partner Authorities" shall mean the following local authorities that collaborate to provide Shared Regulatory Services:
- Bridgend County Borough Council
  - The County Council of the City and County of Cardiff
  - Vale of Glamorgan County Borough Council

## 5. Taking Enforcement Action

- 5.1 Section 8.4 of the SRS Compliance and Enforcement Policy is concerned with decisions on enforcement action and considers the broad range of enforcement options available to the Service. This purpose of this section is to set out the additional enforcement options available that are specific to the administration of food law.
- 5.2 If there is evidence that a food business operator is failing to comply with food safety requirements, the following courses of action will be considered and the most appropriate selected and implemented in accordance with the relevant procedural documents, practice guidance and the Code of Practice issued under the Food Safety Act 1990, the Food Hygiene (Wales) Regulations 2006 and the Official Feed and Food Controls (Wales) Regulations 2007:
- Compliance, advice and support
  - Fixed penalty notices
  - Statutory notices
  - Voluntary closure
  - Seizure and detention of food
  - Simple caution
  - Prosecution
  - Apply for hygiene prohibition order

These are set out in detail from section 6 below

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- 5.3 In deciding upon the type of enforcement action to take, authorised officers must have regard to the nature of the breach and the history of compliance of the food business operator. Unless circumstances indicate a significant risk, officers will operate a graduated and educative approach moving to more formal action where informal action does not achieve the desired effect. In the case of new businesses, an assessment will be made of the food business operator's willingness to undertake the work identified by the officer.
- 5.4 In order to ensure compliance in food establishments run by one of the SRS partner authorities, or where one of the partner authorities has an interest, the Shared Service will carry out its enforcement duties in exactly the same way as it does in other premises. Furthermore, it will ensure that the attention received is in accordance with the criteria applied to other duty holders.
- 5.5 The following procedure is to be adopted where a partner Authority is the proprietor of a food business:
- 5.5.1 Authorised food safety officers will inspect premises where a partner Authority is the proprietor in accordance with the Food Law Code of Practice risk-rating scheme which determines the frequency of inspection. Following the inspection an inspection report indicating statutory contraventions and recommendations will be submitted to the relevant Operational Manager and/or Director, e.g. Catering Services
- 5.5.2 The inspecting officer will follow up the report to ensure any necessary improvements are undertaken as would be the case for any other food business; and recommend enforcement action where appropriate.
- In the event of a failure to address the contraventions identified within a reasonable time period the matter will be escalated and brought to the attention of the appropriate Client Officer of the partner Authority.

## 6. Compliance, advice and support

- 6.1 Sections 6 and 7 of the overarching SRS Compliance and Enforcement Policy is concerned with the provision of advice and guidance to businesses as a means of achieving compliance.
- 6.2 Specifically in connection with food law administration, informal action could include the offering of advice, the issuing of verbal warnings and requirements for action by the use of informal letters and food hygiene inspection reports.

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- 6.3 The following circumstances have been identified as appropriate for the use of informal action to secure compliance with the requirements of food safety legislation or good practice within a reasonable time period:
- Circumstances where the consequence of non-compliance with the contravention identified will not pose a significant risk to public health.
  - Acts or omissions which are not serious enough to warrant formal action.
  - From the food business operator's past history and/or willingness to undertake the necessary work, it can be reasonably expected that informal action will result in compliance.
  - Confidence in management of the business is high.
  - Initial breaches that do not give rise to an imminent risk to public health and which apply to food business associated with voluntary organisations using volunteers.
- 6.4 Each case shall be assessed on its merits and if necessary in consultation with a more senior officer Team Manager or Operational Manager when guidance or advice is required.
- 6.5 A letter shall be sent to the food business operator on each occasion and this shall clearly differentiate between legal requirements and matters recommended as good practice.

## 7. Fixed Penalty Notices

- 7.1 Section 8.4.2.2 of the overarching SRS Compliance and Enforcement Policy considers the use of fixed penalty notices
- 7.2 With respect to food law enforcement, an authorised officer has the discretion to issue a fixed penalty notice for an offence under section 9 of the Food Hygiene Rating (Wales) Act 2013 concerning the display, or failure to display, of the appropriate food hygiene rating scheme score. In addition a fixed penalty notice can be served for an offence under Regulation 5 of the Food Hygiene Rating (Promotion of Food Hygiene Rating) (Wales) Regulations 2016 with regard to failure to comply with requirements for the promotion of ratings on publicity materials.

These may be given where there is no reasonable excuse for non-compliance.

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## 8. Statutory Notices

8.1 It is the policy of Shared Regulatory Services to utilise statutory notices as an option to secure compliance with legislation. Such action will include the issuing of the following notices under the given Regulation of the Food Hygiene (Wales) Regulations 2006: Hygiene Improvement Notices under Regulation 6, Hygiene Prohibition Notices and Hygiene Emergency Prohibition Notices under Regulations 7 and 8 and Remedial Action Notices and Detention Notices under Regulation 9.

### 8.2 *Improvement Notices*

8.2.1 Hygiene/Food Standards Improvement Notices will be used to secure compliance with food safety requirements, within a reasonable time scale in circumstances where the authorised officer is satisfied that there has been a contravention of food safety legislation but the contravention does not pose an imminent risk to health. Those circumstances might include

- Having considered the risk to public health, where the consequences of could pose a potential risk to public health; or
- Where there are significant contraventions of food safety legislation; or
- Where there is a lack of confidence in the food business operator to respond to an informal approach; or
- Where there is a record of non-compliance following the use of an informal approach; or
- Where standards are generally poor with little management awareness of statutory requirements or
- Where a contravention is sufficiently serious to warrant prosecution

8.2.2 The following circumstances have been identified as inappropriate for the use of Hygiene/Food Standards Improvement Notices:

- The contravention presents no risk to public health; or
- In transient situations, where breaches exist which pose a serious risk to public health and where it is considered that swift enforcement action is needed; or
- It would be more appropriate and in the best interests of public health to use an informal approach; or
- Where there is a breach of good hygiene practice but no failure to comply with an appropriate regulation.

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- 8.2.3 Hygiene/Food Standards Improvement Notices shall only be served by authorised officers. An authorised officer shall not sign a Hygiene/Food Standards Improvement Notice unless the contraventions have been witnessed and the relevant criteria satisfied.
- 8.2.4 All Hygiene/Food Standards Improvement Notices shall be issued in accordance with the relevant Code of Practice.
- 8.2.5 Single Hygiene Improvement Notices with suitable numbers of schedules attached shall be served unless the authorised officer is satisfied that:
- There is likely to be an appeal against one or more items contained within the schedule, which may suspend the whole notice; or
  - Separate time limits are more appropriate for the different items contained in the schedule; or
  - In such circumstances suitable numbers of separate notices with individual schedules attached shall be served.
- 8.2.6 Authorised officers must place realistic time limits on notices, having regard to the works which will be specified and the availability of appropriate solutions, preferably after discussions with the food business operator. In any case a minimum time period of 14 days must be given.
- 8.2.7 Failure to comply with a Hygiene Improvement Notice is an offence which will in general result in a recommendation to instigate Court proceedings. Authorised officers must therefore have sufficient evidence available to justify their issue, be prepared to pursue non-compliance in the Courts and be satisfied that proceedings are likely to succeed. The recipients of Hygiene Improvement Notices must be made aware of their right of appeal and of how and where to make an appeal.
- 8.2.8 Requests for an extension of time will only be considered if made in writing and recipients of notices will be advised of this policy at the time of service.
- 8.2.9 Before considering any enforcement action, where appropriate the matter will be discussed with any relevant Primary, home or originating authority.
- 8.2.10 The Service will notify other appropriate enforcement bodies and other relevant interested parties of its action together with advice outlining the remedial action necessary to comply.

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### 8.3 **Remedial Action Notices**

8.3.1 A Remedial Action Notice is a notice in writing served on the relevant food operator or the operator's duly authorised representative which:

- Prohibits the use of any equipment or any part of the establishment specified in the notice;
- Imposes conditions upon or prohibits the carrying out of any process; or
- Requires the operation of the food business to be stopped completely or reduced to such extent as is specified in the notice.

8.3.2 The officer will also consider whether food at the establishment should be detained for the purposes of examination by means of a Detention Notice.

8.3.3 Circumstances which may lead to the issue of a Remedial Action Notice in respect of an establishment include:

- The failure of any equipment or part of an establishment to comply with the requirements of the food hygiene regulations;
- Cross contamination issues;
- The need to impose conditions upon or the prohibition of the carrying on of any process breaching the requirements of the regulations or hampering adequate health inspection in accordance with the regulations; or
- Where the rate of operation of the business is detrimental to its ability to comply with the regulations.

8.3.4 Any Remedial Action Notice must be served as soon as practicable and must state why it is being served. In the event that the authorised officer relies upon any breach of any requirements of the Hygiene Regulations, the notice must specify the breach and the action needed to remedy it.

8.3.5 When an authorised officer serves a Remedial Action Notice at an establishment subject to approval under Article 4(2) of Regulation 853/2004, the officer should also consider whether food at the establishment should be detained for the purposes of examination by means of a Detention Notice under Regulation 9 of the Food Hygiene (Wales) Regulations 2006. Circumstances which might lead to the issue of a Detention Notice include where there are indications or suspicions that food at an establishment is unsafe.

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8.3.6 Once an authorised officer is satisfied that the remedial action has been taken to comply with Remedial Action Notice served, he or she must withdraw the notice by serving a further notice in writing upon the food business operator or the duly authorised representative of the food business operator.

8.3.7 The use of Remedial Action Notices and Detention Notices should be proportionate to the risk to public health and where immediate action is required to ensure food safety.

8.3.8 All Remedial Action Notices and Detention Notices shall be issued in accordance with the relevant Code of Practice. The recipient of a Remedial Action Notice must be made aware of the right of appeal to the Magistrates' Court.

#### 8.4 ***Hygiene Emergency Prohibition Notices***

8.4.1 The following circumstances have been identified as appropriate for the use of Hygiene Emergency Prohibition Notices following the identification of an imminent risk to health:

- The consequences of not taking immediate and decisive action to protect public health would be unacceptable.
- An imminent risk of injury to health can be demonstrated, e.g. evidence from relevant experts such as a Food Analyst or Food Examiner.
- The guidance criteria specified in the relevant Code of Practice, concerning the conditions when prohibition may be appropriate, are fulfilled.
- The food business operator is unwilling to confirm in writing any suggested offer of a voluntary prohibition.

8.4.2 Hygiene Emergency Prohibition Notices shall only be signed and served by an appropriately authorised Commercial Services Officer, who shall notify the Team Manager as soon as possible of their actions.

8.4.3 An authorised Commercial Services Officer shall not sign Hygiene Emergency Prohibition Notices unless the situation has been witnessed and the relevant criteria satisfied.

8.4.4 All Hygiene Emergency Prohibition Notices shall be issued in accordance with the relevant Code of Practice. The recipient must be made aware of the right of appeal to the Magistrates' Courts.

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- 8.4.5 The Solicitor of the relevant Legacy Authority and appropriate Operational Manager shall be advised immediately of the service of a Hygiene Emergency Prohibition Notice.
- 8.4.6 Once a Hygiene Emergency Prohibition Notice has been served, an application for a Hygiene Emergency Prohibition Order must be made to the Magistrates' Court within 3 working days of the service of the Notice and the food business must be given at least one day's notice of the intention to do this.
- 8.4.7 The food business operator of premises that has been subject to a Hygiene Emergency Prohibition Notice must be served with a Notice of Application for a Hygiene Emergency Prohibition Order at least one day before the date of the application to a Magistrates' Court. The notice will give details of the time and date of the application.
- 8.4.8 Failure to comply with a Hygiene Emergency Prohibition Notice is an offence and will result in the matter being referred for consideration of prosecution.
- 8.4.9 The Authority will notify other enforcement bodies and other relevant interested parties of its action.

## 9. Voluntary Closure

- 9.1 Voluntary procedures to remove a health risk condition may be used as an alternative to the service of a Hygiene Emergency Prohibition Notice. This approach could be at the instigation of the food business operator or the authorised officer.
- 9.2 The food business operator or manager and the authorised officer should confirm any voluntary closure agreement in writing, with an undertaking by the food business operator or manager not to re-open without the officer's prior approval. The food business operator will be advised that by offering to close voluntarily, any right to compensation is lost. A voluntary closure agreement will not preclude legal proceedings being undertaken for non-compliance with food safety legislation.

## 10. Seizure and retention

- 10.1 If while inspecting food, or because of other information from a reliable source the authorised officer believes that the food fails to comply with the food safety requirements, the officer may detain or seize the food under Section 9 Food Safety Act 1990. Reliable sources may include Food Standards Agency, the PHE, PHW, CCDC.

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- 10.2 Seizure and detention may also be necessary after food has been certified as not being produced, processed or distributed in accordance with Regulation 27 of the Food Hygiene (Wales) Regulations 2006.
- 10.3 If the authorised officer has good reason to suspect that the food does not satisfy food safety requirements then a detention of food notice may be served.
- 10.4 A decision to detain food should only normally be taken if it has been discussed with the owner or person in charge of the food and, if appropriate, with the manufacturer. Where the authorised officer has served a detention of food notice, professional judgment will be used to determine whether food should be detained where it is, or moved elsewhere. If the officer has any doubts about the security or physical care of the food, the detention notice should specify a place to which the food is to be moved. The officer will organise periodic monitoring of the food throughout the period of detention.
- 10.5 The authorised officer will act as quickly as possible when evidence or information indicates that detained food can be released, and in any case within 21 days. A Withdrawal of Detention of Food Notice will be served.
- 10.6 It is presumed under food law that all food is intended for human consumption until it is proved to the contrary. When considering whether to seize food an officer will consider whether the food in question can be treated or processed before consumption and if so, whether the food, after treatment or processing would be sound and wholesome and satisfy food safety requirements. Food previously detained by an officer may be seized and subject to condemnation after receipt of adverse findings.
- 10.7 When an officer makes a decision to seize food a food condemnation warning notice will be served on the person in charge of the food, or the owner. This notice will provide warning of the intention to take the food before a Justice of the Peace and apply for its condemnation.
- 10.8 Food that has been seized should be dealt with by a Justice of the Peace as soon as is reasonably practicable, normally within 2 days. Cases involving highly perishable food should be dealt with at the earliest opportunity. If necessary the time scale may be extended to ensure that parties and or their representatives have an opportunity to attend. However, action will not be delayed if the owner cannot be traced or contacted.

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## 10.9 Dealing with Batches, Lots and Consignments

10.9.1 The decision to seize or detain a batch, lot, or consignment requires careful consideration before a notice is served. The authorised officer will use professional judgment and expert advice, if necessary, to decide whether to detain or seize the whole or part of the batch, lot or consignment. The authorised officer will consider:

- The evidence available;
- The nature of the contamination;
- The nature and condition of the container holding the food;
- The risk to health;
- The quantity of food involved in relation to any sampling that has been undertaken.

## 11. Compensation

11.1 In the event of a detention notice being withdrawn or if a Justice of the Peace fails to condemn seized food Shared Regulatory Services will consider compensation to the owner for any depreciation in its value resulting from the action taken by the authorised officer.

## 12. Voluntary Surrenders

12.1 Voluntary procedures to remove food that is not suitable for human consumption from the food chain may be used; either at the instigation of the owner of the food or at the suggestion of the authorised officer when the owner of the food agrees the food is not suitable for human consumption.

12.2 A receipt should be issued for food that is voluntarily surrendered to the Authority for destruction. The receipt should indicate that the food has been voluntarily surrendered to Shared Regulatory Services for destruction and be signed and counter-signed by the authorised officer and the person surrendering the food respectively.

## 13. Destruction and Disposal

13.1 Shared Regulatory Services, by agreement, may charge the owner of the food for the destruction and disposal of voluntarily surrendered foodstuffs.

13.2 Shared Regulatory Services will usually make an application to the Justice of the Peace for costs associated with the destruction and disposal of seized food.

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- 13.3 If food is to be disposed of Shared Regulatory Services, will make every effort to ensure that this is done in a suitable manner and that there is no possibility of food returning to the food chain.

## 14. Simple Caution

- 14.1 See section of 8.4.2.5 of Shared Regulatory Services Compliance and Enforcement Policy.

## 15. Prosecution

- 15.1 See section of 8.4.2.6 Shared Regulatory Services Compliance and Enforcement Policy.

## 16. Hygiene Prohibition Order

- 16.1 If a food business operator is convicted of an offence under the Food Hygiene (Wales) Regulations 2006 and the Court is satisfied that the health risk condition is fulfilled with respect to the food business concerned, the Court has the power to impose a Hygiene Prohibition Order against the appropriate prohibition, under Regulation 7 of the Food Hygiene (Wales) Regulations 2006.
- 16.2 Following a successful prosecution, the Court has the power to impose the appropriate prohibition if they are satisfied that there is a risk of injury to health as defined in Regulation 7 (2) and (3) of the Food Hygiene (Wales) Regulations 2006. The Court is required to impose an appropriate Hygiene Prohibition Order which may relate to prohibition of a process or treatment, or the use of a premises or equipment for the purpose of a food business.
- 16.3 Following a successful prosecution against the food business operator of a food business the Court may, by virtue of Regulation 7 (4) of the Food Hygiene (Wales) Regulations 2006, impose a Hygiene Prohibition Order on the food business operator participating in the management of any food business, or any food business of a class or description specified in the order.
- 16.4 The authorised officer shall as soon as practicable after the making of the Hygiene Prohibition Order, serve a copy of the Hygiene Prohibition Order on the food business operator of the business and in the case of a Hygiene Prohibition Order served under Regulation 7 (1) of the Food Hygiene (Wales) Regulations 2006, affix a copy of the order in a conspicuous position on the premises.

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- 16.5 Failure to comply with a Hygiene Prohibition Order is an offence and will result in being forwarded with a view to prosecution.
- 16.6 Other interested bodies, including the Food Standards Agency and the Chartered Institute of Environmental Health shall be advised of the issue of a Hygiene Prohibition Order issued under Regulation 7 (4) of the Food Hygiene (Wales) Regulations 2006.

## 17. Ship Sanitation Controls

### 17.1 Ship Sanitation Inspection

A Master/Operator of a ship which during its voyage has been in a foreign port will be required to produce a valid ship sanitation certificate on boarding by an authorised officer. If the Master/Operator is unable to produce a valid certificate, or makes a request for a new certificate, an authorised officer may inspect the ship in order to issue a valid ship sanitation certificate which is a requirement under the International Health Regulations.

### 17.2 Ship Sanitation Control Exemption Certificate

If the authorised officer finds no evidence of public health risks or spread of infection a Ship Sanitation Control Exemption Certificate will be issued. This certificate will be valid for up to 6 months. The port health authority will make a charge for certificates which will be based on those recommended by the Association of Port Health (APHA).

### 17.3 Ship Sanitation Control Certificate

A ship sanitation control certificate will be issued when evidence of a public health risk, including sources of infection and contamination, are detected on-board and the required control measures have been satisfactorily completed. The certificate records the evidence found, the control measures taken and the results. If the control measures cannot be completed within the port the authority will make a note on the certificate and notify the next port of the required control measures.

If the Master/Operator has a valid ship sanitation certificate the authorised officer will amend this to show the evidence, controls applied and results. If the Master/Operator does not have a valid ship sanitation certificate the authorised officer will complete a new Ship Sanitation Control Certificate and a charge will be made based on those recommended by APHA. A ship sanitation control certificate will be valid for six months.

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#### 17.4 Extension of Ship Sanitation Certificates

Sanitation certificates issued by a port authorised by the World Health Organisation are valid for a maximum of 6 months. An authorised officer may extend a certificate if an inspection or the control measures cannot be accomplished at the port. If, however, the ship constitutes a serious risk for the spread of disease the authority will inform the next port so the effective control measures can be carried out without delay.

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