



**Falkirk Council**  
*Development Services*

# **Food Safety Enforcement Policy**

**Food & Safety Regulation**

September 2017

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## Abbreviations

EHO	Environmental Health Officer
FBO	Food Business Operator
FSS	Food Standards Scotland
TO	Technical Officer

# 1. Statement of Aims and Objectives

Falkirk Council discharges its regulatory responsibilities as a food authority through its Development Services. References to Falkirk Council, the Council, the Authority or Development Services (and its officers) may consequently be used interchangeably and should be interpreted accordingly. Any reference to officers and authorised officers should be taken to refer to duly authorised officers of the Food & Safety Section of Development Services.

It is Falkirk Council's objective to protect and enhance public health of residents, workers and visitors to the area, by reducing and controlling waterborne, foodborne and communicable diseases.

The purpose of this Enforcement Policy is to ensure the comprehensive, competent and consistent enforcement of food legislation within the Council area and to ensure that authorised officers are aware of their roles and responsibilities to this end. This Enforcement Policy Statement sets out the general principles and approach, which Environmental Health Officers and Technical Officers of Falkirk Council will follow when taking enforcement decisions.

Where possible, the aim of this authority will be to adopt an educational and advisory role to facilitate these objectives, and at the same time ensure businesses comply with the relevant statutes relating to food safety. Where necessary, formal enforcement action such as the service of enforcement notices and the reporting of serious matters to the Procurator Fiscal will be used, to ensure the principal objectives of public safety are achieved.

Development Services will take into account the Scottish Regulators' Strategic Code of Practice when considering whether to initiate enforcement action. This policy has due regard to the advice issued by Central Government, Scottish Food Enforcement Liaison Committee (SFELC) and Food Standards Scotland (FSS). In selecting the appropriate approach to enforcement, the authority will be mindful of the Council's corporate objectives of creating and sustaining an environment in which people want to live, work and visit; enabling our citizens to live healthily and safely; stimulating working partnerships amongst agencies, organisations, citizens and communities; and tackling disadvantage and discrimination in all its forms. We will also conform to the five principles of better regulation i.e. proportionality, accountability, consistency, targeting and transparency.

It is a legal duty of staff involved in this service to comply with the general duty of public authorities defined within the equalities legislation and to proactively work together towards eliminating illegal discrimination and to promote equal opportunities and good relations between people of different race and ethnic origins within Falkirk.

The Enforcement Policy is supported by supplementary internal policy and procedures written by Development Services for associated Food Law Enforcement.

## 2. Statement of Intent

### 2.1 Enforcement

The purpose of enforcement is to:

- prevent food poisoning and food borne illness
- deal immediately with serious risks in the food industry
- promote and achieve sustained compliance with the legislation
- endeavour to report breaches of food safety requirements of a serious nature to the Procurator Fiscal

Enforcement has a wide meaning and applies to all dealings between enforcement authorities and those on whom the legislation places responsibilities, for example, the food business operator, bodies corporate and the officers thereof. It is also distinct from civil action.

### 2.2 Principles of Enforcement

The Council will seek to ensure, through the provision of advice, education, publicity, guidance and, where appropriate, fair, and reasonable formal enforcement action, that food business operators and other duty holders comply with food safety legislation.

Education will usually be the first course of action to secure any necessary improvement. Falkirk Council will work with businesses to help them comply with the law. To this end Development Services shall:

- offer on the spot advice during routine visits and inspections
- ensure an effective and suitable response is made to all queries
- provide or promote training courses or seminars where appropriate
- meet with FBOs, or other business representatives, to assist in compliance with formal technical requirements such as food safety management systems
- maintain a library of guidance notes for distribution to food businesses or other relevant groups
- promote dialogue with business communities

Falkirk Council will enforce the law through the application of the principles of *proportionality* to secure compliance; *consistency* of approach; *targeting* of enforcement action; *transparency* about how we operate and what employers, employees, the self-employed and the public may expect from us; and *accountability* to all stakeholders for our actions.

## 2.2 (i) Proportionality

Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties (duty holders) expect that action taken by Falkirk Council to achieve compliance or bring duty holders to account for non-compliance should be proportionate to any risks to food safety and public health, or to the seriousness of any breach, which includes any actual or potential harm arising from a breach of the law.

In practice, applying the principle of proportionality means that Falkirk Council will take particular account of how far the duty holder has fallen short of what the law requires and the extent of the risks to the public arising from the breach.

## 2.2. (ii) Targeting

Targeting means making sure that resources are targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled.

Falkirk Council have systems for deciding which inspections, investigations or other regulatory contacts should take priority according to the nature and extent of risks/hazards posed by a duty holder's operations.

## 2.2. (iii) Consistency

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.

Duty holders managing similar risks can expect a consistent approach from Falkirk Council in the advice tendered; the use of enforcement notices; decisions on whether to prosecute; and in the response to incidents.

Falkirk Council recognises that in practice consistency is not a simple matter. Authorised Officers are faced with many variables, including the degree of risk, the attitude and competence of management, any history of incidents or breaches involving the duty holder, previous enforcement action, and the seriousness of any breach, which includes any potential or actual harm to food safety and/or the public health arising from a breach of the law. Decisions on enforcement action are discretionary involving judgement by the enforcer. Falkirk Council has arrangements in place to promote consistency in the exercise of discretion, including effective arrangements for liaison with other enforcing authorities.

## 2.2. (iv) Transparency

Transparency means helping duty holders to understand what is expected of them and what they should expect from Falkirk Council. This includes distinguishing between statutory requirements i.e. what they must do; and advice or recommendations which are desirable but not compulsory.

This statement sets out the general policy framework within which Falkirk Council should operate. Duty holders, their representatives and others also need to know what to expect when an officer calls and what rights of complaint are open to them. Food business operators and their representatives can expect the following when an authorised food safety officer calls to inspect their business:

- When authorised officers offer food business operators information, or advice, face to face or in writing, including any warning, authorised officers will tell the duty holder what to do to comply with the law, and explain why. Authorised officers will, if asked, write to confirm any advice, and to distinguish legal requirements from best practice advice: i.e. recommendations; and
- In the case of formal notices the officer will discuss the notice and, if applicable, resolve points of difference before serving it. The notice will say what needs to be done, why, and by when, and in the officer's opinion what breach of the law has been committed.

## 2.2 (v) Accountability

Regulators are accountable to the public for their actions. This means that Falkirk Council has policies and standards against which they can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints.

Falkirk Council has procedures for dealing with comments and handling complaints which are available from the Council. In particular, they:

- describe a complaints procedure in the case of decisions by officials, or if procedures have not been followed; and
- explain about the right of appeal to the Sheriff Court against the service of Statutory Notices.

The Council is committed to the provision of high quality services through the most economic use of finite resources within particular financial constraints and based on the principles of partnership, equality and accountability, and to deliver best value.

## 3. Inspection

### 3.1 The Focus

The aim of the inspection activity is to ensure the safe production, distribution and service of food within the Falkirk area, targeted on a priority basis. The objective of the inspection regime of the Council is to work with food business operators, duty holders, and other relevant persons to raise food safety standards within Falkirk thereby reducing the occurrence of food poisoning and foodborne illness, and eliminate fraudulent activity / compositional anomalies, whilst achieving satisfactory compliance with the Food Law Code of Practice.

The inspection policy of the Council shall be based on the following:

- the hazards and risks associated with work activities undertaken on premises, etc.
- identification by Environmental Health Officers of contraventions of food safety legislation
- the application of advice and guidance where applicable
- where necessary, the application of enforcement action to secure compliance with the legislation

### 3.2 The Inspection Programme

The priority proactive objective of the Food & Safety Regulation staff will be to ensure all categories of food premises receive a suitable intervention at their required intervals. Where unforeseen demands on the service develop, inspections will be targeted on a priority basis, with Category A and B premises given precedence (as determined in terms of the Food Law Code of Practice). In addition, the Council may set local initiatives and sampling programmes where resources allow.

Officers will execute inspections in accordance with the Officer Procedural Note: Food Safety Inspections.

### 3.3. Other Types of Visits

Further visits/inspections may be carried out which are not related to the risk based programmed inspections and this may occur in any appropriate circumstances including the following:

- request from a duty holder for advice
- to investigate a complaint about a particular business
- to investigate a food related illness notification
- in response to a new premises or change of ownership.
- transient events for which the Council is the enforcing authority in terms of the legislation e.g. pop concert, sporting event etc.
- special enforcement initiatives / projects e.g. sampling programmes

## **4. Complaints**

### **4.1 Complaints received about food safety**

All complaints received about food safety should be dealt with in accordance with the Service's food complaints procedure. The purpose of this procedure is to ensure a transparent, proportional and consistent approach to all complaint investigations.

### **4.2 Complaints regarding an Enforcement Officer**

Any complaints received by Food & Safety Regulation regarding the behaviour, etc. of a particular member of staff while enforcing food safety legislation shall be dealt with in accordance with the Council's Complaints Handling Procedure.

## 5. Investigation of Incidents

Falkirk Council uses discretion in deciding whether food related incidents, cases of food poisoning, or complaints should be investigated.

Investigations are undertaken in order to determine:

- causes
- whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law
- what response is appropriate to a breach of the law
- lessons to be learnt and to influence the law and guidance

To maintain a proportionate response, most resources available for investigation of incidents will be devoted to the more serious circumstances. Falkirk Council recognises that it is neither possible nor necessary for the purposes of the legislation to investigate all issues of non-compliance with the law which are uncovered in the course of preventative inspection, or in the investigation of reported events.

In selecting which food related incidents, cases of food poisoning or complaints to investigate and in deciding the level of resources to be used, Falkirk Council will take account of the following factors:

- The severity and scale of potential or actual harm to food safety and/or the public's health
- The seriousness of any potential breach of the law
- Knowledge of the duty holder's past food safety performance
- The enforcement priorities
- The practicality of achieving results
- The wider relevance of the event, including serious public concern

## 6. Enforcement Action

The Enforcement Options available are:

- No action necessary
- Written warning or verbal advice i.e. informal action
- Service of Hygiene Improvement Notices
- Service of Remedial Action Notices
- Service of Hygiene Emergency Prohibition Notices or Voluntary Closure Agreement if appropriate
- Seizure or Detention of Food or Voluntary Surrender/Disposal if appropriate
- Report to Procurator Fiscal

Where enforcement action is being contemplated which is inconsistent with local and national documented advice or guidance then the matter will be referred to the East of Scotland Food Liaison Group and Food Standards Scotland to consider the issue and ensure consistent enforcement.

Where enforcement action impacts upon aspects of a business' policy that has been agreed centrally by the decision making base of the business, then the matter will be referred to the Home Authority for consideration.

At the end of all food safety inspections an authorised officer will issue an instantaneous Inspection Report form detailing what action the officer proposes to take, if any. Only in exceptional circumstances, such as emergency action, will an Inspection Report form not be left at that time. Officers will carry out all inspection work according to the prescribed Officer Procedural Note and Food Law Code of Practice.

## 7. Types of Enforcement Action

### 7.1 Reports and Advisory / Warning letters

Initially Officers will always consider an informal approach i.e. written warnings and/or advice. As detailed above, an Environmental Health Officer will issue a NCR Report at the end of most inspections/visits. This is particularly relevant where contraventions of food safety law are

- cases where the contravention is not serious enough to warrant Statutory Notices
- cases where the individual or company's past history is good and suggests such action will achieve compliance
- cases where confidence in individual's / management's ability to remedy contravention(s) is high
- cases where standards are generally good suggesting a high level of awareness of statutory responsibilities
- cases where the consequences of non-compliance will not pose a significant risk to public health
- cases even where some of the above criteria are not met but where there may be circumstances in which informal action will be more effective than a formal approach.

The NCR Report, advisory / warning letter will inform the duty holder what to do to comply with the law and expected timescales. In the report / letter, it will clearly distinguish legal requirements from best practice advice.

### 7.2 Statutory Notices: Hygiene Improvement Notices, Remedial Action Notices and Hygiene Emergency Prohibition Notices

The use of statutory notices shall in general be related to risk to health, safety or significant technical deficiencies. It will not be appropriate to use statutory notices for minor technical contraventions.

Hygiene Improvement Notices, Remedial Action Notices and Hygiene Emergency Prohibition Notices are served to require food business operators to rectify contraventions within a reasonable time or to cease contravening activities which pose an imminent risk of injury to health.

The service of a **Hygiene Improvement Notice** will be considered by Falkirk Council in the following circumstances, where:

- there are significant contraventions of legislation
- there is a lack of confidence in the proprietor of the undertaking
- there is a history of non-compliance with informal action
- the consequence of non-compliance could be potentially serious

A Hygiene Improvement Notice shall only be signed by a properly authorised officer who has witnessed the contraventions and is satisfied that the foregoing criteria are met. Failure to comply with a Hygiene Improvement Notice will in general result in prosecution.

The service of a **Remedial Action Notice** will be considered by Falkirk Council where there are significant non-compliances in terms of equipment, part(s) of an establishment or rate of operation.

The service of a **Hygiene Emergency Prohibition Notice** will be considered by Falkirk Council where there is an imminent risk of injury to health and immediate action needs to be taken in the public interest to protect the public health and food safety. It should only be necessary to consider the use of Hygiene Emergency Prohibition Notices in one or more of the following circumstances:

- cases where the consequences of not taking immediate and decisive action to protect the public health would be unacceptable
- cases where the imminent risk of injury to health can be demonstrated. This might include evidence from relevant experts, including a Public Analyst, or Food Examiner
- cases where the guidance criteria specified in the relevant statutory Code of Practice concerning the conditions where prohibition may be appropriate are fulfilled
- cases where there is no confidence in the integrity of a proprietor to close premises voluntarily or take such appropriate action as required to eliminate immediate risk.
- cases where a proprietor is unwilling to confirm in writing his/her voluntary action to eliminate immediate risk.

Any accepted voluntary closure must be confirmed in writing by the authorised officer and the food business operator in the knowledge that the voluntary closure will stay in effect until the officer is satisfied that the premises no longer present a serious risk to public health.

Where consideration will be given to possible financial implications of formal action on the Council, these considerations will not outweigh any identified need to take action in the interests of protection of the public health.

### 7.3 Reports to the Procurator Fiscal

Falkirk Council, in the public interest, may submit a report to the Procurator Fiscal following an investigation or other regulatory contact. This will, in general, be restricted to those persons who blatantly disregard the law, refuse to achieve even the basic minimum legal requirements and/or who put the public or other groups at serious risk.

Circumstances which are likely to warrant a recommendation to prosecute include:

- cases where the alleged offence involves a breach of the law which is serious to such an extent that health is or has been put at risk
- cases where significant contraventions are blatant or repetitious
- cases where there has been a blatant breach of the law in respect of product description, packaging, food fraud or associated issue
- cases where the alleged offence includes a failure by the suspected offender to correct an identified serious potential risk to health, having been given reasonable opportunity to comply with lawful requirements of an authorised officer
- cases where the offence involves a failure to comply in full or part with the requirements of a statutory notice
- cases where there is a history of similar offences related to risk to health, or breach of food standards requirements
- an Authorised Officer has been intentionally obstructed in carrying out his/her duty.

Where an Authorised Officer is assaulted while carrying out his/her duties in terms of the legislation, the Council will seek police assistance, with the view of seeking the prosecution of the offenders.

Any decision to report a matter to the Procurator Fiscal will not preclude the issue of Statutory Notices relating to the same issue, with the underlying principle that a significant uncontrolled risk to the health of any person should not be allowed to continue unabated.

Compliance with a Statutory Notice prior to the submission of a report to the Procurator Fiscal may, in some cases, be sufficiently persuasive as to result in a report not being submitted. However, all of the circumstances, including those factors mentioned above, will be taken into consideration in any decision as to whether or not to submit a report. The service of, and any compliance with, any Statutory Notice relating to the alleged offence/s will be incorporated into the report to the Procurator Fiscal.

#### 7.4. Seizure & Detention

Falkirk Council has powers to seize and detain unfit and unsafe food to prevent harm or illness to the public. When food is seized or detained by an authorised officer of the Council the relevant provisions of the Food Law Code of Practice will be met.

Voluntary surrender or disposal may be used where an Authorised Officer deems that voluntary procedures would be equally effective.

#### 7.5. Publicity

Falkirk Council will consider publicising any conviction which could serve to draw attention to the need to comply with food safety requirements, or deter anyone tempted to disregard their duties under food safety law.

## **8. Quality Management of the Service**

### **8.1. Premises Database**

Officers will maintain the M3 Database of all known businesses in the area for which the Council has a responsibility for food safety.

### **8.2. Allocation of Premises for Inspection**

Environmental Health Officers and Technical Officers will receive their programmed inspections on a quarterly basis from the Food & Safety Coordinator.

### **8.3. Monitoring of Inspections Carried Out by Authorised Officers**

The Food & Safety Coordinator will monitor the consistency and quality of inspections in line with the Internal Monitoring Policy. Any failures to follow this Policy or a procedure will result in action being taken to remedy the failure.

The Food & Safety Co-ordinator will ensure that Food Safety Liaison Group minutes etc. and issues are communicated to the team to ensure consistency.

### **8.4. Inspection Frequency Targets**

In addition to quarterly dissemination of inspections to area Enforcement Officers, Quarterly Reports will be presented to senior management to enable managers to make informed decisions timeously about the Service.

### **8.5. Staff Training**

This paragraph relates to both internal and external training activities. The Council understands the pivotal role that training / development of all Enforcement Officers plays in this Service's success. Thus, it will endeavour to comply with the requirements of the Food Law Code of Practice regarding the training and competence of the staff delivering this service. Environmental Health Officers and Technical Officers will be given the opportunity to attend courses, seminars etc. to meet their training needs.

The Achievement & Personal Development Scheme (APDS) tool will be used to identify staff training needs.

## 9. Authorisation of Officers

In accordance with the Food Law Code of Practice, this Council recognises that only those officers who are appropriately qualified and experienced should participate in food safety enforcement (food hygiene and food standards).

Environmental Health Officers and Technical Officers will be appointed and authorised by the Council.

These officers, when undertaking enforcement duties, will produce their respective authorisation. In circumstances where an officer is considering taking formal action any person accompanying that officer to a workplace for the purpose of inspection, investigation etc. must also be authorised by the Council.

The Council also recognises that, if formal action is contemplated, only those officers who are experienced, qualified and authorised should initiate such action. The following table outlines the degree of authority afforded to the various different types of Environmental Health Officer and Technical Officer. More information is provided in the Authorisation of Officers Procedure.

Area of Work	Scope of Legal Discretion of Officer	Comments/Conditions
Service of advisory and warning letters	EHOs and TOs* (those with less than 6 months experience in food safety enforcement will work under management supervision until considered competent)	All correspondence is subject to the requirements of this policy and the Food Law Code of Practice. Trainee EHOs may sign reports under supervision.
Service of Hygiene Improvement Notices	EHOs and TOs* currently involved in food law enforcement with at least 6 months post qualification experience in food safety matters	All notices will be discussed with and scrutinised by the Food & Safety Coordinator prior to serving.
Service of Remedial Action Notices	EHOs and TOs* currently involved in food law enforcement with at least 2 years post qualification experience in food safety matters	Food & Safety Coordinator and/or Manager will be immediately informed in all cases. Where possible, Notices will be subject to scrutiny by the Food & Safety Coordinator prior to service. Otherwise, Notices will be examined following service.
Service of Hygiene Emergency Prohibition Notices Voluntary Closure Agreements	EHOs and TOs* currently involved in food law enforcement with at least 2 years post qualification experience in food safety matters	Food & Safety Coordinator and/or Manager will be immediately informed in all cases. Notices will be subject to scrutiny by the Food & Safety Coordinator following service.

Seizure and Detention	EHOs currently involved in food law enforcement with at least 2 years post qualification experience in food safety matters	Food & Safety Coordinator and/or Manager will be immediately informed in all cases. All Notices and documentation will be subject to scrutiny by the Food & Safety Coordinator / Manager prior to service.
Voluntary Surrender	EHOs and TOs* currently involved in food law enforcement with at least 6 months post qualification experience in food safety matters	Food & Safety Coordinator and/or Manager will be immediately informed in all cases.
Reports to Procurator Fiscal	EHOs and TOs*. The decision to submit the Report will be taken by the reporting officer and Management	Food & Safety Coordinator and / or Manager will monitor the preparation of all reports to the Procurator Fiscal.

\* Applicable to Higher Certificate in Food Premises Inspection and Higher Certificate in Food Standards

## **10. Home Authority**

The Council shall support the Home Authority Principle and will adopt and implement its provisions.

Food Authorities in England may be a Primary Authorities. While the Primary Authority scheme does not extend to Scotland in relation to food, officers will treat a Primary Authority as if they were the Home Authority.

The Council shall liaise with the home authority of a company whose premises have been inspected and offences identified which are, or appear to be, associated with the company's centrally defined policies and procedures.

The Council shall have regard to any information or advice it has received from any liaison with home and/or originating authorities.

The Council, having initiated liaison with any home and/or originating authority, shall notify that authority of the outcome.

The Council shall provide advice for businesses on legal compliance where it acts as home and / or originating authority.

## **11. Communication**

Officers shall ensure that all communication, including advice, on enforcement issues is clear, structured, relevant and capable of being understood by the recipient.

Where it appears to an officer that an operator's ability to communicate in English may be a barrier to compliance, he/she will:

- arrange for a translator to act on the Council's behalf in subsequent meetings
- enclose with all communication an offer of help with translation written in the operator's own language
- provide, where appropriate and available, information leaflets in the operator's own language.

## **12. Conflict of Interest**

Local Authorities are both duty holders and enforcing authorities within some establishments in terms of the food safety legislation. The Council will therefore ensure that there will be no conflict of interest in these respective roles when enforcing the legislation in terms of this Policy. Any serious breaches of food law that may be detected in such establishments should be brought to the attention of the Chief Executive, in writing, without delay, in line with the Food Law Code of Practice.

Officers shall avoid other conflicts of interest e.g. where services such as food hygiene training and pest control are available via the Council. Officers shall not promote these services exclusively as other providers exist in the area.

Officers will not provide their own services in their own time within Falkirk Council, unless they have written permission from senior management.