

**Environmental Health Service**

**Enforcement Guidance**

**April 2016**

**Food Safety**

In accordance with the Food Law Code of Practice (Scotland)[[1]](#footnote-1) and the principles of our Service Charter, Food Safety actions will be taken in accordance with the following table:

|  |  |
| --- | --- |
| **Enforcement Action** | **Conditions which would merit action or occasions when action would be considered most appropriate** |
| Advice | Given on every occasion. |
| Inspections / interventions | Inspections and other interventions are carried out in accordance with the Food Law Code of Practice (Scotland), and at a frequency determined by the appropriate hygiene inspection rating for the premises. |
| Inspection Report | Given on every formal planned inspection and further intervention, differentiating between legal requirements and recommendations. |
| Warning / Advisory Letter | Food complaint which, after consideration of the Food Complaints Prosecution Criteria Guide (Appendix A) does not warrant reporting to the Procurator Fiscal.  Failed informal sample. |
| Revisit or further intervention | Undertaken when the detailed inspection report indicates that significant contraventions relating to food safety (as opposed to minor offences) exist.  Further interventions will also be carried out where premises are deemed not to be broadly compliant and, or, where a business requires further assistance in ensuring compliance.  The inspection report will indicate under the heading ‘Proposed Action’ when the revisit will take place.  Investigation of complaints or incidents notified to East Lothian Council. |
| Hygiene Improvement Notice | Normally when one or more of the criteria below apply:   * Where such action is proportionate to the risk to public health. * Where the history of the premises indicates a record of non- compliance with breaches of food hygiene or food processing regulations. * Where the enforcing officer is not entirely confident that an informal approach will be successful, or where an informal approach has failed on the previous inspection.   **And**   * Where the enforcing officer is satisfied that there would be sufficient evidence to present a case to the Procurator Fiscal. |
| Remedial Action Notice | Significant or continuous breach of hygiene conditions in food establishment. |
| Seizure / Detention | Where voluntary procedures are not considered appropriate:   * Food which has been certified as not being produced or processed in line with ‘Hygiene Regulations’. * Food which is deemed to be unfit or unsafe. * Food which is illegally imported from a third country. |
| Hygiene Emergency Prohibition Notice. (HEPN) | Where the health risk condition is fulfilled and accepting the food business operator’s offer of a voluntary closure is not considered appropriate. |
| Emergency Prohibition Notice (EPN) | Where there is evidence of an imminent risk of injury to health and accepting the food business operator’s offer of a voluntary closure is not considered appropriate. |
| Report to Licensing Board / Committee | For offences resulting in formal enforcement action or a report to Procurator Fiscal, Licensing Board / Committee will be notified in relation to a premises or person holding a relevant Licence. |
| Refusal to Approve an Establishment under  Regulation (EC) 853/2004 | Establishment fails to meet the necessary hygiene and management controls required in legislation. |
| Revocation of Establishment Approval | Continued serious breaches of hygiene and safety requirements. Service of HEPN. |
| Prosecution | See **6. When we will prosecute offenders**, within the Service Charter. |

**Food Safety (within East Lothian Council premises)**

In accordance with the Food Law Code of Practice (Scotland)[[2]](#footnote-2) and the principles of our Service Charter, Food Safety actions will be taken in accordance with the following table:

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| --- | --- |
| **Enforcement Action** | **Conditions which would merit action or occasions when action would be considered most appropriate** |
| Advice | Given on every occasion. |
| Inspections / interventions | Inspections and other interventions are carried out in accordance with the Food Law Code of Practice (Scotland), and at a frequency determined by the appropriate hygiene inspection rating for the premises. |
| Inspection Report | Given on every formal planned inspection and further intervention, differentiating between legal requirements and recommendations. |
| Revisit or further intervention | Undertaken when the detailed inspection report indicates that significant contraventions relating to food safety (as opposed to minor offences) exist.  Further interventions will also be carried out where premises are deemed not to be broadly compliant and, or, where a business requires further assistance in ensuring compliance.  The inspection report will indicate under the heading ‘Proposed Action’ when the revisit will take place.  Investigation of complaints or incidents notified to East Lothian Council. |
| Report to Service Manager | Where a routine inspection or other visit identifies no issues or only minor issues of non-compliance with food safety matters, the normal reporting mechanism, will continue. A copy of the Inspection Report will be left on site with a further copy sent to the relevant manager for the service. Each service area will have identified the members of staff and management they wish correspondence to be sent to. All such individuals should be in a position to ensure appropriate action is taken, if required, following an inspection by officers from Environmental Health. |
| Report to Chief Executive, Depute Chief Executive and Head of Service | Where significant contraventions or continued issues of non-compliance are identified, these matters will be brought directly to the attention of the Chief Executive, Depute Chief Executive and Head of Service. A timeframe for compliance will be identified in this notification. The appropriate staff and management of the affected service will also be included in this notification. Before notification is made, the matter will be fully discussed with the Environmental Health Service Manager.  A further visit will be made by officers from Environmental Health to assess compliance at the expiry of the stipulated timeframe. Matters addressed / not addressed will be confirmed in writing to the Chief Executive, Depute Chief Executive and Head of Service. |

**Workplace Health & Safety**

In accordance with the Enforcement Guide (Scotland)[[3]](#footnote-3) and the principles of our Service Charter, Workplace Health & Safety enforcement will be taken in accordance with the following table:

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| --- | --- |
| **Enforcement Action** | **Conditions which would merit action or occasions when action would be considered most appropriate** |
| Advice | Given on every occasion. |
| Inspections / interventions | Inspections and other interventions are carried out in accordance with the National Code[[4]](#footnote-4) and as part of national, regional and/or local projects and initiatives. |
| Inspection / Intervention Report | Given on every formal planned inspection and intervention. |
| Revisit or further intervention | Undertaken when the detailed inspection report indicates that significant contraventions relating to health and safety (as opposed to minor offences) exist.  The report will indicate under the heading ‘Proposed Action’ when the revisit will take place.  Investigation of complaints or accidents notified to East Lothian Council. |
| Improvement Notice | Officers will utilise the Enforcement Management Model (EMM)[[5]](#footnote-5), which is a framework to help inspectors decide upon a proportionate and effective response. See **Note** below. |
| Prohibition Notice | Officers will utilise the Enforcement Management Model (EMM)[[6]](#footnote-6) , which is a framework to help inspectors decide upon a proportionate and effective response. See **Note** below. |
| Report to Licensing Board / Committee | For offences resulting in formal enforcement action or a report to Procurator Fiscal, Licensing Board / Committee will be notified in relation to a premises or person holding a relevant Licence. |
| Prosecution | Officers will utilise the Enforcement Management Model (EMM)[[7]](#footnote-7) , which is a framework to help inspectors decide upon a proportionate and effective response. See **Note** below and **6. When we will prosecute offenders**, within the Service Charter. |

**Note:**

Inspectors are confronted by a myriad of unique variables when carrying out inspections, assessments and investigations, including different work activities, sectors, organisational structures, contractual relationships etc. Assessing risk and compliance with the law therefore ranges from being relatively straightforward to extremely complex.

The EMM is a straightforward linear model and so cannot truly capture all the nuances and complexities of discretionary decision making in all circumstances. While the EMM provides a framework for driving consistency, it is crucial that inspectors’ discretion is not fettered by artificially constraining all decisions to the EMM.

Occasionally, consideration of all factors may produce an alternative enforcement conclusion. When this occurs, Officers will discuss with the Service Manager, who will record the final decision and the reasons.

**Private Water Supplies**

In accordance with the principles of our Service Charter, private water supplies enforcement action will be taken in accordance with the following table:

|  |  |
| --- | --- |
| **Enforcement Action** | **Conditions which would merit action or occasions when action would be considered most appropriate** |
| Advice | Given on every occasion. |
| Site visits and sampling | Type A and B supplies will be visited and sampled in accordance with requirements of the private water supply legislation and the Service Plan. |
| Warning / Advisory Letter | When water quality fails microbiological and chemical parameters required by legislation and corrective action is required to protect public health. |
| Formal action and Notice | Considerations likely to give rise to the service of notice are serious breach of water quality and safety, having regard to:   * Consultation with the Consultant in Public Health Medicine or appointed Medical Officer of Health. * Linked or direct cause of illness. * Historic data showing poor standard of compliance. * Whether it is reasonable to serve the Notice. * Whether a temporary departure under the 2006 Regulations can be granted. * Improvements carried out to the supply and the time taken for these to be done. * Poor condition of the supply giving rise to a risk to public health. * Details of relevant person(s) and any legal agreements. * Class (Type/Level) of supply/tenure/type of premises. * Lack of co-operation shown by the relevant person(s) and users of the supply. * Availability of alternative supplies and the public mains. * Requirements of other legislation. |
| Further investigations and monitoring | Where further involvement is required to ensure that steps are being taken to protect public health, and or improve water quality and safety. |
| Prosecution | See **6. When we will prosecute offenders**, within the Service Charter. |

**Smoking in Public Places**

In accordance with the principles of our Service Charter, smoking in public places enforcement action will be taken in accordance with the following table:

|  |  |
| --- | --- |
| **Enforcement Action** | **Conditions which would merit action or occasions when action would be considered most appropriate** |
| Advice | Given on every occasion. |
| Inspections / interventions | Inspections and other interventions are carried out in conjunction with other visits to premises by officers of Environmental Health or in response to queries and/or complaints. |
| Informal Action | Informal action to secure compliance includes offering verbal advice, verbal warnings, requests for action and the use of advisory letters or included within inspection/intervention reports. Such circumstances would include premises that have not been subject to a visit previously and legislative breaches do not involve people smoking within the premises. |
| Formal Action – Fixed Penalty Notices | Served where informal approach is not considered appropriate, in that:   * Informal action has been taken previously and non-compliance continues; and * Evidence of individuals smoking or being permitted to smoke in a public place. |
| Report to Licensing Board / Committee | For offences resulting in formal enforcement action or a report to Procurator Fiscal, Licensing Board / Committee will be notified in relation to a premises or person holding a relevant Licence. |
| Prosecution | See **6. When we will prosecute offenders**, within the Service Charter. |

**Public Health, Housing, Pollution and Pests**

In accordance with the principles of our Service Charter, **Public Health** **statutory nuisance** enforcement action will be taken in accordance with the following table:

|  |  |
| --- | --- |
| **Enforcement Action** | **Conditions which would merit action or occasions when action would be considered most appropriate** |
| Informal action | Informal action to secure compliance includes offering verbal advice, verbal warnings, requests for action and the use of advisory letters.  Such circumstances include:   * Cases where the level of nuisance is not established as statutory but advice is required to prevent circumstances deteriorating further. * Cases where the consequences of non-compliance will not pose a significant or immediate risk to public health. * Cases where previous compliance has been established by informal means and this will be more effective than formal approach. |
| Statutory notice – S.80 Environmental Protection Act 1990 | Informal approach has failed to ensure compliance and a statutory nuisance exists.  Statutory nuisance is deemed to exist and present a significant or immediate risk to public health. |
| Works in default and recovery of costs. | At the discretion of East Lothian Council, works can be carried out to remove statutory nuisance if the notice period has expired. |
| Fixed penalty notices – Environmental Protection Act 1990. | Issued for non-compliance with statutory notice as alternative sanction to report being sent to the Procurator Fiscal. Failure to accept alternative sanction will result in prosecution being considered. |
| Public Health (Scotland) Act 2008 – notices and powers for disinfection, disinfestations, decontamination of premises and things, and destruction of things. | Where there is deemed to be a risk to public health from infectious disease or contamination from a premises or anything in or on premises, and the informal approach has not been successful or the risks determine more immediate formal action. |
| Fixed penalty notices – Public Health (Scotland) Act 2008 – Section 105 | Where an operator has failed to comply with the requirements of the legislation in regard to sunbeds informally – section 95, 98, 100 and 101 of the act. |
| Prosecution. | See **6. When we will prosecute offenders**, within the Service Charter. |

In accordance with the principles of our Service Charter, **noise pollution / nuisance** enforcement action will be taken in accordance with the following table:

|  |  |
| --- | --- |
| **Enforcement Action** | **Conditions which would merit action or occasions when action would be considered most appropriate** |
| Informal action | Informal action to secure compliance includes offering verbal advice, verbal warnings, requests for action and the use of advisory letters.  Such circumstances include:   * Cases where the level of nuisance is not established as statutory but advice is required to prevent circumstances deteriorating further. * Cases where the consequences of non-compliance will not pose a significant or immediate risk to public health. * Cases where previous compliance has been established by informal means and a reasonable time period has elapsed since previous problem. * Cases where informal procedure must be followed before taking formal action, e.g. dealing with audible intruder alarms of property and vehicles. |
| Statutory notice – S.80 Environmental Protection Act 1990 | Informal approach has failed to ensure compliance and a statutory nuisance exists, or a nuisance is anticipated. |
| Fixed penalty notices – Environmental Protection Act 1990. | Issued for non-compliance with statutory notice as alternative sanction to report being sent to the Procurator Fiscal.  In cases of recurrence of noise nuisance for each time conditions of notice are breached. This will be up to a maximum of three occasions at which time further breaches will result in a report to the Procurator Fiscal.  Failure to accept alternative sanction will result in prosecution being considered. |
| Prosecution. | See **6. When we will prosecute offenders**, within the Service Charter. |

In accordance with the principles of our Service Charter, **housing standards and defective buildings** enforcement action will be taken in accordance with the following table:

|  |  |
| --- | --- |
| **Enforcement Action** | **Conditions which would merit action or occasions when action would be considered most appropriate** |
| Informal action | Informal action to secure compliance includes offering verbal advice, verbal warnings, requests for action and the use of advisory letters.  Such circumstances include:   * Cases where the level of problem is not established as risk to public health or safety but advice is required to prevent circumstances deteriorating further. * Cases where the consequences of non-compliance will not pose a significant or immediate risk to public health. * Cases where previous compliance has been established by informal means and this will be more effective than formal approach |
| Works Notice | Circumstances where a domestic dwelling fails to meet the tolerable standard requirements of the Housing (Scotland) Act 1987 and 2006 or is deemed substandard. |
| Closing Order | Circumstances where a domestic dwelling fails to meet the tolerable standard requirements of the Housing (Scotland) Act 1987 and 2006 or is deemed substandard. This would apply to a house that only forms part of a building and the building does not comprise only of houses which do not meet the tolerable standard. |
| Demolition Order | Circumstances where a domestic dwelling fails to meet the tolerable standard requirements of the Housing (Scotland) Act 1987 and 2006 or is deemed substandard. This would apply only to a building which is a single dwelling or contains a majority of homes not meeting the tolerable standard. |
| Defective Buildings Notice – Environmental Protection Act, Building (Scotland) Act 2003, Civic Government (Scotland) Act 1982, s.87(3) | Where serious disrepair is identified in any house or non-domestic building and previous informal action has failed to ensure effective repair is carried out. Immediate service for water ingress to ensure effective repair is carried out. |
| Works in default and recovery of costs | Works in default may be considered appropriate in circumstances where the terms of certain notices have not been complied with. Circumstances may also include emergency access to a property to effect repair. |
| Prosecution | See **6. When we will prosecute offenders**, within the Service Charter. |

In accordance with the principles of our Service Charter, **vehicle pollution and idling** enforcement action will be taken in accordance with the following table:

|  |  |
| --- | --- |
| **Enforcement Action** | **Conditions which would merit action or occasions when action would be considered most appropriate** |
| Informal action | Informal action to secure compliance includes offering verbal advice, verbal warnings, requests for action and the use of advisory letters.  Such circumstances include:   * Cases where vehicle emissions are outwith legal parameters and the owner has sought assistance to make improvements. * drivers of idling vehicles are co – operative when approached by officers. * campaigns to maximise awareness of damage caused by vehicle emissions (including ongoing advertising and establishment of phone and text lines). * offering free vehicle emissions checks. * establishment of system to work with bus companies to reduce the amount of idling carried out by buses. * liaison with schools over the four partnership areas to reduce vehicle idling outside schools. * all idling complaints dealt with ensuring all parties involved understand the legal and social reasons behind the campaign and a line of communication opened for use in the future. * “hotspots” established in all partnership areas (these are monitored regularly and action taken when vehicles found idling). * ongoing monitoring of taxis, haulage and council vehicles with action being taken where necessary. Good working relationship established with management and drivers where possible. * switch off signs erected at known problem locations and where authority is given for their use. |
| Fixed Penalty Notice | Where informal action to ensure compliance has not achieved the required result and the implementation of this sanction has been adopted by the Council. |
| Report to the Traffic Commissioner | The Traffic Commissioner receives a copy of the ‘East Central Scotland Vehicle Emissions Partnership’ annual report and is aware of the campaign. |

East Lothian, Falkirk, Midlothian and West Lothian Councils work together as the East Central Scotland Vehicle Emissions Partnership, to provide a voluntary Vehicle Emissions Testing Programme which aims to raise awareness of vehicle emissions and air quality among the general public.

The Partnership provides a service between March and October at sites in Musselburgh, Haddington and Dunbar.

Together with the educational element to emissions, air quality and idling, this proactive programme helps East Lothian residents ensure that their cars will pass the MOT emissions test and be road legal.

In accordance with the principles of our Service Charter, **pest control** enforcement action will be taken in accordance with the following table:

|  |  |
| --- | --- |
| **Enforcement Action** | **Conditions which would merit action or occasions when action would be considered most appropriate** |
| Informal action | Informal action to secure compliance includes offering verbal advice, verbal warnings, requests for action and the use of advisory letters.  Such circumstances include:   * Cases where consequences of non-compliance will not pose a significant or immediate risk to public health. * Cases where previous compliance has been established by informal means and this will be more effective than a formal approach. |
| Formal Notices – Prevention of Damage by Pests Act | Where an informal approach has failed to secure appropriate action by a landowner or occupier to remove rats and mice.  An infestation which poses a significant or immediate risk to public health. |
| Works in default | Where landowner or occupier has failed to comply with the requirements of the formal notice and work is required by East Lothian Council to remove the problem. The completion of the work remains at the discretion of East Lothian Council. |

**Appendix A - Food Complaints Prosecution Criteria Guide**

**Food Complaints Prosecution Criteria Guide**

1. **Is there, or is there likely to be, sufficient evidence to prepare a report to the Procurator Fiscal?**
   1. **If Yes, continue with decision criteria**
   2. **If No, deal with the investigation as efficiently and effectively as possible**
2. **Has the investigation identified failure to comply with legal Notices?**
   1. **If Yes, prepare a report to the Procurator Fiscal**
   2. **If No, continue to decision criteria**

|  |
| --- |
| Premises: |
| Location: |

**Decision Criteria**

**SCORE**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Officer to circle and total Score: |  | **NO** |  | **YES** |
| **Nature of Offence**  Serious (e.g. unfit food) score (3), Significant (e.g. not of the nature) score (2), Minor (e.g. labelling) score (1). |  | **1** | **2** | **3** |
| **Record of Compliance**  Have similar complaints gone unattended to in the past? |  | **1** | **2** | **3** |
| **Public Interest/Prevalence**  Is it in the public interest to report the incident? |  | **1** | **2** | **3** |
| **Willingness to Comply**  Is there a poor record of willingness to comply? |  | **1** | **2** | **3** |
| **Chronic Poor Hygiene Standard**  Does the record of the business indicate poor hygiene and food safety standards? |  | **1** | **2** | **3** |
| **Foreseeability**  Should the business have been able to identify the risk leading to the complaint? |  | **1** | **2** | **3** |
| **Hazard Analysis**  Had the proprietor failed to assess and control the potential hazards involved? |  | **1** | **2** | **3** |
| **Due diligence**  Is it likely that the company would fail in relation to producing due diligence defence? |  | **1** | **2** | **3** |
| **Benefit to Accused**  Has the accused benefited from failure to comply? |  | **1** | **2** | **3** |
| **TOTAL:** | | | | |

**Guidance**

**Score 0 – 18 Inclined not to proceed with Report**

**Score 19 – 22 Use officer discretion / discuss with Principal EHO**

**Score 23+ Proceed with Report – inform Principal EHO**

|  |
| --- |
| Inspecting Officer (Signed):  Principal Officer (Signed):  Date: |

1. <http://www.foodstandards.gov.scot/sites/default/files/CoPFood-FSS-final.pdf> [↑](#footnote-ref-1)
2. <http://www.foodstandards.gov.scot/sites/default/files/CoPFood-FSS-final.pdf> [↑](#footnote-ref-2)
3. <http://www.hse.gov.uk/enforce/enforcementguidesc/index.htm> [↑](#footnote-ref-3)
4. <http://www.hse.gov.uk/lau/la-enforcement-code.htm> [↑](#footnote-ref-4)
5. <http://www.hse.gov.uk/enforce/emm.pdf> [↑](#footnote-ref-5)
6. <http://www.hse.gov.uk/enforce/emm.pdf> [↑](#footnote-ref-6)
7. <http://www.hse.gov.uk/enforce/emm.pdf> [↑](#footnote-ref-7)