

ITEM No ...6.....

REPORT TO: COMMUNITY SAFETY & PUBLIC PROTECTION COMMITTEE – 22 APRIL 2019

**REPORT ON: REVIEW OF ENFORCEMENT AND SAMPLING POLICIES AND OFFICER
AUTHORISATION – REGULATORY SERVICES**

REPORT BY: EXECUTIVE DIRECTOR OF NEIGHBOURHOOD SERVICES

REPORT NO: 142-2019

1.0 PURPOSE OF REPORT

- 1.1 To inform Committee of the revised Enforcement and Food Sampling Policies.
- 1.2 To seek Committee's approval of the authorisation of officers under Section 93 of the Consumer Rights Act 2015.

2.0 RECOMMENDATION

- 2.1 It is recommended that Committee:
- 2.2 Approves the content of this report and the revised documents contained in Appendices 1 and 2.
- 2.3 Authorise the Trading Standards Manager to determine an appropriate penalty and authorise Trading Standards Officers to issue "Notices of Intent" and "Final Notices" in terms of Chapter 5, Part 3 of and Schedule 10 to the Consumer Rights Act 2015 where it appears that, on the balance of probabilities, there has been a breach of section 90 of the Act.

3.0 FINANCIAL IMPLICATIONS

- 3.1 None.

4.0 MAIN TEXT

- 4.1 The Regulatory Services Section of Neighbourhood Services carry out a wide range of statutory and regulatory functions. These include the enforcement of legislation associated with Public Health, Food Safety, Consumer Safety, HMO Licensing, Landlord Registration, Smoking Prohibition, Health & Safety, Fly-Tipping, Dog Fouling etc.
- 4.2 Reference is made to Article No. III of the Minute of the Meeting of the Environment Committee of 9th February 2015 (Report No. 48-2015 refers) which approved the Environmental Protection Enforcement Policy. Following a review of operational procedures, this policy statement has now been widened in its scope to cover the full range of services provided within the Regulatory Services Section and has also been reviewed in line with current legislation and guidance.
- 4.3 In order to ensure that all regulatory services are fair and open in their provision and that the relevant legislation is correctly applied, it is essential that the correct procedures are documented and followed. A copy of the revised document is provided in Appendix 1.
- 4.4 The Food Sampling Policy which sets out the procedures that the Food Safety Team is required to follow when undertaking routine sampling has also been updated to ensure that all sampling is being carried out in accordance with current approved codes

of practice, regulations and guidance. A copy of the revised document is provided in Appendix 2.

- 4.5 Trading Standards Officers already have in place general delegated powers in relation to the Consumer Rights Act 2015. However specific authorisation is required to take enforcement action under sections 90 and 93 of and schedule 10 to the Act, which relate to issuing financial penalties to those involved in the re-selling of tickets for concerts and sporting events through secondary ticket facilities, who fail to provide full information thereby restricting a consumer's choice. The legislation requires that any tickets resold in the above circumstances must display in a clear and comprehensive manner the following information: seat number or standing area; restrictions which limit use eg physical obstructions or difficulties in access for the infirm; the original face value of the ticket.
- 4.6 Section 93(9) stipulates that the enforcement authority can determine the level of financial penalty but this must not be over £5000. The delegation of powers within this report will allow the Trading Standards Manager to determine the level of the penalty to impose.
- 4.7 Where the authority is satisfied, on the balance of probabilities, that a person has breached the Act, it has power to serve a "notice of intent" on them. The notice of intent advises them of the amount of the proposed penalty, the reasons for the penalty, and the procedure for making representations against the notice of intent.
- 4.8 After the expiry of 28 days from the notice of intent, the authority has power to serve a "final notice" imposing the financial penalty. Appeal lies to the First Tier Tribunal for Scotland, on a wide range of grounds, including that the decision to impose a penalty was made based on an error of fact, the decision was wrong in law, the amount of the fixed penalty was unreasonable, or the decision was unreasonable for any other reason.

5.0 POLICY IMPLICATIONS

- 5.1 This report has been subject to an assessment of any impacts on Equality and Diversity, Fairness and Poverty, Environment and Corporate Risk. There are no major issues.

6.0 CONSULTATIONS

- 6.1 The Council Management Team were consulted in the preparation of this report.

7.0 BACKGROUND PAPERS

- 7.1 None.

Elaine Zwirlein
Executive Director of Neighbourhood Services

Tom Stirling
Head of Community Safety & Protection

22nd April 2019

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Enforcement Policy		
Version	2.0	Last reviewed – March 2019

Regulatory Services Section

1 - Introduction

This Enforcement Policy outlines our approach to regulatory activity, how we expect to deal with businesses and individuals, and what happens when we find non compliance with legal requirements. For law enforcement to be fair, it is important that we are open and clear about the basis on which we take action.

Dundee City Council is committed to maintaining a fair and safe environment for businesses and consumers, and protecting the environment and the public, particularly those who may be especially vulnerable. Our regulatory services include the following:

- Food and Feed Safety and Standards (including composition and labelling)
- Private Housing Rental and Housing Repairing Standards
- Health and Safety (on commercial premises)
- Environmental Safety including storage of petroleum, explosives, and poisons
- Pollution control including noise, contaminated land, and air quality
- Public Health Nuisance
- Elements of antisocial behaviour for example littering and fly tipping
- Consumer Safety, including sales of age-restricted products, and tobacco control
- Control of dogs and dog fouling
- Fair Trading, including consumer fraud and deceptive trading practices
- Animal Health and Welfare
- Animal Feed quality, composition and labelling
- Licensing enforcement
- Weights and Measures.

We strive to advise and actively work with businesses and individuals in order to ensure that they comply with legal requirements. We carry out risk based inspections or other appropriate interventions of business premises, respond to complaints and enquiries, test products and equipment, procure samples, make test purchases where appropriate, give talks to consumer and business groups, and publish a range of information on the internet, in the media and in leaflets. Where small businesses, and voluntary and community organisations do not have sufficient resources to research and implement steps that are required to meet their legal obligations, we will seek to assist them in meeting with compliance. The Council aims to

ensure that our authorised officers interpret and apply legal requirements and enforcement policies consistently and fairly.

2 - Regulatory framework

In our regulatory activities we are bound by several requirements, contained within a number of mandatory and voluntary codes, more details of which are contained in Appendix A below, but include:

- The Dundee City Council Customer's Charter
- The Enforcement Concordat
- The Regulators' Code
- Scottish Regulators' Strategic Code of Practice
- Food Law Code of Practice
- Health and Safety Enforcement Code.

3 - What you can expect from our staff

In our regulatory activities you are entitled to expect our staff:

- To be courteous and helpful
- To identify themselves by name and produce identification if requested
- To provide a contact point for any further dealings
- To give clear and simple advice
- To confirm advice in writing on request, explaining the action required and over what time-scale
- To clearly distinguish between what you must do to comply with the law and what is recommended as good practice
- To minimise the cost of compliance by requiring proportionate action
- To give you reasonable time to comply (unless immediate action is necessary in the interest of health and safety or to prevent evidence being lost)
- To notify you if the matter is to be reported for legal proceedings
- To advise you of the procedure for making a complaint or representations in cases of dispute about our actions
- To maintain confidentiality except where we have a legal obligation to disclose information.

4 - How we structure our regulatory activities

This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement which improve regulatory outcomes without imposing unnecessary burdens, either on businesses, individuals, or on public authorities.

Only officers, duly authorised by the Council, who meet current requirements for standards of competence commensurate with their enforcement responsibilities, will carry out the duties described in this Enforcement Policy Statement.

In planning and carrying out our activities we always have regard to the principles in the various codes and standards listed in this policy document.

In summary we will:

- Provide advice where practicable
- Keep our regulatory activities and interventions under review to reduce their burden on businesses, especially smaller ones, as much as possible
- Risk assess our regulatory activities so as to target our resources where there is greatest risk
- Carry out inspections only where there is a reason for doing so, for example, where statutory duties require us to do so, as a response to intelligence or as part of our risk assessment process
- Develop 'home authority', 'lead authority' and/or 'primary authority' relationships, where appropriate, with businesses based within Dundee to provide advice and support
- Only require data and information from businesses when it is strictly necessary for us in carrying out our regulatory activities

5 - Action we can take where non compliance is found

When we identify non-compliance we will investigate and, where appropriate, take proportionate action.

Where immediate enforcement action is necessary an explanation will be given at the time and confirmed in writing, usually within 5 working days, and always within 10 working days.

When investigating the most serious offences we may also make financial enquires, or refer such matters to partner agencies, as the courts could order the confiscation of assets where these are considered to be the proceeds of crime.

Dependant upon the provisions of the particular legislation, we are able to take a variety of enforcement actions, including:

- Verbal or written warning
- Issue of Fixed Penalty Charge Notice
- Report to the Licensing Board/Committee
- Suspension, seizure or voluntary surrender of goods
- Improvement, prohibition or other enforcement notices
- Remedial Action Notice
- Default works
- Enforcement Order
- An Assurance or Undertaking which is legally binding

- Report to COPFS [Crown Office & Procurator Fiscal Service]

Some of the above actions provide for appeal and review processes before or following their imposition. When this is the case the affected business will receive full written details of their rights.

In some instances we may share an enforcement role with other agencies e.g. Health & Safety Executive and Police Scotland, and in such situations we will share information on our activities with our partner organisations.

6 - How we decide on legal action

Before any enforcement action is taken there will usually be opportunity for businesses to discuss matters with us. In particular with regard to reserved legislation, where firms have a Primary Authority relationship with another local authority, we will consult/notify them before taking any enforcement action other than in cases where there is a risk of serious personal injury. Where devolved legislation is concerned we may take cognisance of any Primary Authority Assured Advice.

To ensure any action we take is proportionate and targeted only at cases in which action is needed, a number of factors will be taken into consideration, including

- The seriousness of any alleged offence
- Any previous history, issues or offences
- The value involved
- Any statutory defence available and statutory guidance
- Action taken to prevent any recurrence and risk being controlled
- Any explanation offered and, as far as the law allows, the circumstances and attitude of the business towards compliance and the investigators
- What course of action will best serve the public interest.
- The vulnerability of those concerned

Prosecution is much more likely in cases which involve

- serious offences affecting the health, safety or economic interests of the public
- serious offences relating to animal health and welfare
- serious offences involving fraud
- continued or gross negligence, obstruction or wilful non-compliance,
- deceptive or dishonest claims or actions
- targeting or financial abuse of vulnerable people
- breaking statutory prohibitions or court orders
- Non-compliance with Statutory Notices
- Deliberate or repeated non-compliance with written warnings or other Notices
- where national policies or priorities dictate a course of action.

7 – Complaints about our service

All our staff are bound by this policy to ensure we take a consistent approach to our work. Any complaints about our service should be directed through the Dundee City Council complaints procedure which can be found at:

https://www.dundee.gov.uk/forms/dcc_complaint.php

If you have any comments on this Enforcement Policy or would like further information then please contact us.

APPENDIX A

The Dundee City Council Customer's Charter

We will:

- be open and honest and explain our decisions
- deal with your enquiry promptly and explain reasons for any delay
- provide choices around how you access our services
- give you the information you need about our services
- listen to what you have to say
- treat you with respect and courtesy
- aim to get things right first time
- apologise to you when we get things wrong and then put things right

The Enforcement Concordat

The Government introduced the Enforcement Concordat in 1998 in collaboration with business and local and national regulators. The aim is to promote good enforcement that brings benefits to business, enforcers and consumers. The Enforcement Concordat encourages partnership working between enforcers and businesses, and sets out the Principles of Good Enforcement which enforcers should apply in order to achieve higher levels of voluntary compliance. The principles are:

- Standards: setting clear standards
- Openness: clear and open provision of information
- Helpfulness: helping business by advising on and assisting with compliance
- Complaints: having a clear complaints procedure
- Proportionality: ensuring that enforcement action is proportionate to the risks involved
- Consistency: ensuring consistent enforcement practice.

Dundee City Council is a signatory to the Enforcement Concordat

The Regulators' Code

The Regulators' Code is a statutory code made under the Legislative and Regulatory Reform Act 2006. It was introduced on 6 April 2014 and aims to improve the way regulation is delivered at the front line. It sets out a clear framework for transparent and accountable regulatory delivery and establishes clear principles for how local authorities should interact with those they are regulating. The Code is underpinned by the statutory principles of good regulation, which provide that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent and should be targeted only at cases in which action is needed. The Regulators' Code applies to reserved legislation.

Scottish Regulators' Strategic Code of Practice

The Regulatory Reform (Scotland) Act 2014 seeks to promote consistent, proportionate and effective regulation and places a statutory duty on listed regulators to exercise functions in a way which contributes to achieving sustainable economic growth. This empowers regulators to align their activities and approach with the Government's purpose of sustainable economic growth, and take economic factors appropriately into account. The Scottish Regulators' Strategic Code of Practice, made under the 2014 Act, requires regulatory functions to be exercised in accordance with the principles of better regulation, this includes advice, guidance, licensing, permissions and consent, inspections, monitoring and enforcement. The Code is predicated on existing good practice and supports the outcome-based approach which is integral to the Government's National Performance Framework. The Code also promotes an approach whereby regulators seek to understand those they regulate, including taking into account economic and business factors appropriately. The Code was laid before Parliament on 12 January 2015 and applies to devolved legislation only.

In addition there are sector specific codes of practice such as the:

Food Law Code of Practice [including animal feed]

This Code of Practice issued by the FSA sets out instructions and criteria to which local food authorities should have regard to when engaged in the enforcement of food and feed law. Food authorities must follow and implement the provisions of the code that apply to them and they include the EU Food Hygiene and Official Feed and Food Controls Regulations and the national implementing regulations relating to Scotland.

Food Standards Scotland have established a food crime investigation unit to work in partnership with local authorities in improving intelligence, detection and enforcement in regard to food fraud and criminal activity. During routine inspections and sampling, officers inspect for evidence of any attempts to mislead consumers or provide food which is dangerous.

Health and Safety Enforcement Code

Dundee City Council has responsibility for enforcement of Health and Safety legislation and carries out its activities in accordance with the HSE 'Standard for Health and Safety Enforcing Authorities' and Regulators' Code.

Dundee City Council Neighbourhood Services Department		
Issue 4	Date Issued: 28 May 2004 Date last reviewed: 1 April 2013 Date of latest review: March 2019	Standard: 12.3
Authorisation: Lindsay Matthew, Food and Health & Safety Manager		
Title: Food Sampling Policy		

Dundee City Council is required to undertake routine sampling, with any sampling being undertaken in accordance with current approved codes of practice, regulations and guidance.

The Council believes that sampling is an important, and integral tool in food law enforcement for the following reasons:

- Protecting public health
- Detecting and deterring fraudulent activities
- Verifying that official control checks are effective
- Giving customers sufficient information to make informed choices
- Ensuring that food standards are maintained
- Informing the enforcement approach
- Providing product quality advice to the producer
- Promoting fair trade and deterring bad practice

Sometimes sampling is the only way of fulfilling these objectives; often it is a support to other interventions by authorised officers.

Sampling has particular benefits in supporting work on food complaints, food safety and standards inspections (including process monitoring), the Home Authority Principle and surveys. There is also a role in the Council's involvement in special investigations and local initiatives.

Organisation of sampling

Food law enforcement and sampling, is a function carried out by the Environmental Health Section of Neighbourhood Services. The service is managed by Lindsay Matthew who is the Council's Lead Officer for food safety.

All sampling will be undertaken in accordance with relevant legislation and codes of practice, as well as guidance and procedures issued under this policy.

Sampling Programme and prioritisation of sampling

A Sampling Programme will be produced every year. The programme will be discussed with the council's Public Analyst and will be informed by guidance from the Scottish Food Enforcement Liaison Committee (SFELC).

The Council views sampling as an important component of all enforcement work but particular benefits are linked to complaints.

When prioritising sampling the Council will prioritise sampling in three categories.

Priority 1 - Samples required to meet statutory obligations

- Complaint samples
- Scottish Food Enforcement Liaison Committee coordinated surveys
- Food Liaison Group surveys
- Imported food sampling by port health authorities

Priority 2 - Samples required for effective food safety enforcement

- Microbiological samples from high risk (Category A & B) food hygiene premises
- Chemical sampling (including those taken during food standards inspections) from producers, packers or importers sending food outwith Dundee
- Microbiological samples of high risk foods from other food hygiene premises
- Sampling of foods or from premises highlighted by national sample collation
- Imported food sampling by inland authorities

Priority 3 - Samples which give added value or which support local initiatives and projects

- LA surveys
- Sampling to support local initiatives
- Sampling to support other LA services

The Council aims to prioritise samples falling into Priority 1 and Priority 2 classifications. Resources will be devoted to Priority 3 samples whenever possible.

Resourcing sampling

Food sampling is carried out by officers in the Community safety & Protection Division. As well as staff resources, the Council will ensure adequate resources are provided for:

- sample collection
- sampling equipment
- transport of samples
- analysis or examination of samples

In ensuring the most effective use of sampling resources the council will seek to follow any advice from the Scottish Food Enforcement Liaison Committee and other agencies.

The Council believes that local authorities working together can pool resources and gain added value from their sampling work. The Council participates in the Food Surveillance System UK (FSSUK) which is a Food Standards Agency funded sample and result collation mechanism. Data from FSS is used to target sampling activity and guide councils on achieving best value from sampling resources.

Sampling and Enforcement

Food samples are an enforcement tool and results are considered in terms of the Council's Food Safety Enforcement policy as well as our procedures for dealing with the results of food samples.

Dundee City Council Neighbourhood Services Department	
Date Issued: 28 May 2004 Date last reviewed: 1 April 2013 Date of latest review: March 2019	
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Review

This sampling policy, and any programme, guidance, or procedure issued thereunder, will be periodically reviewed and/or whenever there are substantial changes to the activities to which it relates and not later than 2 months from the anniversary of its inception

If it is established that the sampling policy and programme are not being adhered to, the appropriate staff will be re-trained and/or the policy/programme reviewed to more accurately reflect the activities being carried out.

Planned Chemical Sampling Programmes

The planned sampling programmes for chemical analysis of foods are planned and co-ordinated in conjunction with Tayside Scientific Services and representatives from Angus and Perth and Kinross Councils. These are reviewed throughout the year and adjusted as necessary depending on whether Food Alerts or other sources of intelligence dictate the need for further investigation and sampling.

The co-ordinated approach is intended to be effective and efficient by ensuring, as far as possible, best use of resources in that the Tayside authorities sample national food stores and baby brands as follows:

Authority	National Store	Baby Milk/Food
Dundee	Lidl, Sainsburys, Asda	Cow and Gate
Angus	Morrisons, Somerfield, Co-op	SMA and organic
Perth & Kinross	Tesco, M&S, Aldi, Boots	Aptimil

Imported Food/Food Standards

50% of all foodstuffs are imported from outwith the E.U. Under the direction of the Food Standards Agency and working with other Local Authorities, we will increase our monitoring of imported foods.

The link between diet and health is well established. The developing public policies on the presentation and content of food will play a greater role in our Food Standards work.

Sample Integrity

Issues concerning the prevention of deterioration or damage to samples whilst EH control are detailed in **Procedure 8 - Control, Maintenance and Calibration of Equipment - Procedure.**

Dundee City Council Neighbourhood Services Department	
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Appointment of Public Analyst and Food Examiner

The appointed Public Analyst and Food Examiner is Tayside Scientific Services (TSS). The laboratory is accredited to BS EN ISO/IEC 17025:2005 - General requirements for the competence of testing and calibration laboratories, by the United Kingdom Accreditation Service (UKAS) and meets the requirements for EC Official Laboratory status for both analysis and examination of food.