

Enforcement Plan and Enforcement Policy

Food Hygiene Regulations

(E U Regulations 852/2004)

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

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

Immediate prosecution action will be indicated where:

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

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

Formal Cautions

(Home Office Circular 18/1994 and LACOTS circular FS 7 94 2)

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

- the contravention is minor and a first offence;
- the contravention, although serious, has been speedily dealt with and steps taken to prevent a recurrence;
- the food business has since closed or the food business operator ceased that occupation;
- The defendant would be unable to pay a fine, costs or compensation.

Formal caution will only be considered where there is sufficient evidence to give a realistic expectation of success if the case went to the courts. It will not be seen as an alternative to prosecution where it is felt the prosecution case is weak.

A caution can only be administered where the suspected offender is prepared to admit the offence. Care will be taken to ensure that the suspected offender understands the significance of the caution and is able to give an informed consent to being cautioned.

The decision to offer a formal caution will be taken by the Principal Solicitor upon receiving the report of the Public Protection Manager (PPM). The PPM is authorised as the "Cautioning Officer" for the purpose of implementing the caution.

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

Home and originating authorities will be notified of formal cautions issued by this authority where appropriate.

Review of Policy

This Enforcement and Prosecution Policy will be reviewed annually or when changes in legislation or centrally issued guidance make this necessary.

Appendices

1. Notes on BRE Regulators Compliance Code of Practice
2. Guidance on enforcement of Article 5 requirement for documented food safety systems.

Annexe 2: Definitions

FLCOP Para 4.1.2.3

'Inspection' means the examination of any aspect of feed, food, animal health and animal welfare in order to verify that such aspect(s) comply with the legal requirements of feed and food law and animal health and welfare rules.

'Monitoring' means conducting a planned sequence of observations or measurements with a view to obtaining an overview of the state of compliance with feed or food law, animal health and animal welfare rules.

'Surveillance' means a careful observation of one or more food businesses, or food business operator or their activities

'Verification' means the checking, by examination and the consideration of objective evidence, whether specified requirements have been fulfilled.

'Audit' means a systematic and independent examination to determine whether activities and related results comply with planned arrangements and whether these arrangements are implemented effectively and are suitable to achieve objective.

'Sampling for analysis' means taking feed or food or any other substance (including for the environment) relevant to the production, processing and distribution of feed or food or to the health of animals, in order to verify thought analysis compliance with feed or food law or animal health rules.

FLCOP Para 4.1.1

'Intervention' is defined as Activities that are designed to monitor, support and increase food law compliance within a food establishment. This includes 'official controls'

FLCOP Para 4.1.2

'Official controls' are defined as any form of control for the verification of compliance with food law. This includes:

- Inspections
- Monitoring
- Surveillance
- Verification
- Audit
- Sampling (where analysis is to be carried out by an Official laboratory).

(These terms are defined in Annexe 3)

FLCOP Para 4.1.2

'**Other interventions**' are also defined and can include Other interventions, i.e. those which do not constitute official controls include:

- Targeted education, advice and coaching at food establishment
- Information and intelligence gathering (including sampling where analysis is not carried out by an Official laboratory)
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NOTE: a visit to an establishment for the purpose of obtaining a sample does NOT constitute a planned intervention unless the sampling activity forms a component part of a wider reaching official control that overall provides sufficient information to allow the officer to determine the level of compliance. .

FLCOP 4.1.3.1

Full Inspection: This is a check on compliance with legal requirement in accordance with elements set out in section 4.2.2 of the Code. A full inspection will consider all aspects of a food business including structure, food safety management and management arrangements.

Partial Inspection: An inspection that covers only certain elements of the inspection as laid down in Section 4.2.2 of the Code.

Where a partial examination is agreed, the reasons for adopting this approach will be documented on the central data base M3 in the agreed format. The scope of the partial inspection will be specified in the inspection report provided to the food business operator.

Planned audits: An audit may be undertaken instead of a partial or full inspection, where any food business operator, including those providing a high risk business has put in place an acceptable documented food safety management system (addressing Article 5 Regulation 852/2004). Details of the system will be required in advance of the audit so the Officer can plan the appropriate audit.

The audit may include one or more of the following elements (FLCOP 4.1.3.1):

- Complete audit of the food safety management system
- Audit of selected elements of the food safety management system where the system is complex
- Partial Audit concentrating on a particular produce
- Operational audit concentrating on certain arrangements such as temperature monitoring.

The reason for this approach will be documented on the M3 data base in the agreed format. The scope of the audit will be specified in the inspection report provided to the food business operator.

FLCOP 4.1.5.2.2

Broadly compliant is defined as neither an establishment that has an intervention rating score of nor more than 10 points under each of the following three parts of Annexe 5:

- Part 2 Level of (current) compliance – Hygiene
 Level of (current) compliance – Structure
- Part 3 Confidence in Management