

## **APPENDIX D**

### **SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – ENVIRONMENTAL HEALTH (FOOD SAFETY, HEALTH PROTECTION AND PRIVATE WATER SUPPLIES)**

The purpose of this appendix is to give further guidance on the provisions of the Food Safety Act 1990 and food legislation made under the European Communities Act 1972. The principles of enforcement are clearly set out in the main enforcement policy. The policy will be followed in conjunction with the Food Standards Agency's (FSA) Statutory Codes of Practice including the current Food Law Code of Practice and guidance.

We will work closely with other agencies including the FSA, Public Health England, the Department of Food and Rural Affairs (Defra), Primary Authorities and Home Authorities to ensure consistent and coherent regulation.

The ultimate purpose of the Council's food safety enforcement function is to ensure that those persons with a statutory duty manage and control risks effectively, thus preventing harm.

#### **Food Safety and other policies and information**

More information on the regulation and enforcement of food safety and hygiene can be found at <https://www.middevon.gov.uk/business/food-safety-and-hygiene/>

More information on our sampling and regulation of private water supplies can be found at <https://www.middevon.gov.uk/residents/environment/private-water-supplies/>

More information on infectious diseases can be found at <https://www.middevon.gov.uk/business/food-safety-and-hygiene/infectious-disease/>

#### **General food safety enforcement**

The Council regards prevention as better than cure. As such officers will offer information and advice to those the Council regulates and seek to secure compliance avoiding bureaucracy or excessive cost. Individuals and businesses are encouraged to put food safety first and integrate safe and hygienic practices into normal working methods.

Enforcement action will be based primarily on an assessment of risk to public health. Formal action will be focused on situations where the public is put at risk, where food businesses are negligent of their obligations or intentionally infringe the law.

Only officers who are deemed competent by training, qualification and experience and who meet the criteria in the Statutory Code of Practice will be authorised to undertake enforcement action. The Council will also ensure that all appointed officers are trained in the use of this policy.

The purpose of enforcement is to:

- ensure that businesses take action to deal immediately with serious food safety risks;
- promote and achieve sustained compliance with the law;
- ensure that businesses which breach food safety requirements are held to account. This may include bringing alleged offenders before the courts.

The Council has a range of tools at its disposal in order to secure compliance with the law and to ensure a proportionate response to criminal offences. The powers available include:

### **Preventative / remedial action**

- Informal letter
- Hygiene Improvement Notice
- Hygiene Emergency Prohibition Notice
- Remedial Action Notice
- Seizure/detention
- Refusal / revocation of Approved Premises status

### **Criminal enforcement responses**

- Prosecution
- Simple caution

### **Food safety enforcement notices**

Statutory Notices will be used only where the guidance criteria specified in the Statutory Code of Practice is fulfilled. Authorised Officers will only sign Improvement Notices if they have personally witnessed the contravention and are satisfied that it meets the criteria given in this policy.

The use of a Hygiene Emergency Prohibition Notice will be considered when an imminent risk of injury to health can be demonstrated. The officer will consider the guidance criteria specified in the FSA Statutory Code of Practice concerning the conditions when prohibition may be appropriate before service of the Notice.

Remedial Action Notices will be used if a continuing offence in any food premises requires urgent action owing to a risk to food safety. The officer will consider the guidance criteria specified in the FSA Statutory Code of Practice concerning the conditions when a Remedial Action Notice may be appropriate before service of the Notice.

We will liaise with, where appropriate, other agencies including local authorities involved with the Primary Authority Scheme or Home Authority Scheme, before enforcement action is taken to ensure consistent and coherent regulation.

### **Food detention/seizure**

When food has not been produced, processed or distributed in compliance with the Hygiene Regulations an Authorised Officer may detain or seize the food. Following the detention/seizure the Authorised Officer will follow the advice set out in the FSA Statutory Code of Practice.

Food will be detained where there are suspicions or indications that food at a particular establishment is unsafe and therefore examination is necessary. Such action will be proportionate to the risk to public health and where immediate action is required to ensure food safety. Decisions on whether to release or seize the food will be made as quickly as is reasonably practicable.

The Authorised Officer will provide written notification of the detention/seizure as soon as is reasonably practicable.

A Food Condemnation Notification will be given to the person in charge and/or the owner of the food where the officer intends to have the food dealt with by a Justice of the Peace. If the Magistrate does not condemn the food, it will be returned to the owner, who will be entitled to compensation for any loss encountered,

A Withdrawal of Detention of Food Notice will be served as quickly as possible when evidence or information indicates that detained food can be released, and in any case within 21 days.

### **Revocation of food approvals**

Certain food premises that handle products of animal origin require the approval of the Council prior to conducting a business. Formal action will be taken against those premises which require approval but knowingly fail to gain approval before operation.

The Council has the power, in certain circumstances, to revoke a premises approval. To warrant revocation of approval, the individual or organisation must have engaged in one or more of the following criteria;

- engaged in fraudulent activity,
- deliberately or persistently breached legal obligations, which were likely to cause harm to others,
- deliberately or persistently ignored written warnings or formal notices,
- obstructed an officer during the course of their duty,
- endangered, to a serious degree, the health or safety or well-being of the public.

### **Health protection and infectious diseases**

Three sets of Health Protection regulations which came into force in 2010 complement the updated Public Health (Control of Disease) Act 1984, which was substantially amended by the Health and Social Care Act 2008.

#### **Part 2A Orders**

The Regulations of the Public Health Act include legal powers, available to enforce actions to protect public health: Part 2A Orders. They are available to local authorities and involve an application to a magistrate.

We will typically use these powers in consultation with other organisations, such as Public Health England, Devon County Council Public Health consultants, the NHS or the emergency services.

In undertaking any action under the Health Protection regulation will we follow guidance published by The Department of Health and Health Protection Agency (now Public Health England), in consultation with the Chartered Institute of Environmental Health. The guidance explains notification requirements of registered medical practitioners and laboratories testing human samples as well as health protection powers available to us as the Local Authority and justices of the peace.

## **Private Water Supplies**

The Water Industry Act 1991 requires local authorities like us, to check the wholesomeness and sufficiency of private water supplies provided to premises in their area. We will work closely with formal guidance provided by the Drinking Water Inspectorate (DWI) to ensure consistent and coherent regulation.

The regulations under which Private Water Supplies (PWS) are inspected are The Private Water Supply Regulations 2016. The regulations require us to complete a risk assessment of all private water supplies, except for supplies to single non-commercial domestic dwellings. This had to be done within five years of the regulations coming into force and subsequently every five years thereafter.

Risk assessments involve looking at the whole private water supply including the source, any storage tanks, any treatment systems and the premises using the supply.

Large supplies (greater than 10m<sup>3</sup>/day) and supplies that provide water for commercial activities require check and audit sampling to be carried out. Check sampling involves looking at a suite of basic parameters; audit sampling covers a much larger suite of parameters. The frequency of these sampling suites depends upon the volume of water used from the supply. For example:

- ≤ 10m<sup>3</sup>/day - sampling frequency 1 sample per year
- >10 ≤ 100m<sup>3</sup>/day - sampling frequency 2 samples per year
- > 100 ≤ 1,000 - sampling frequency 4 samples per year
- > 1,000 ≤ 2,000 - sampling frequency 10 samples per year

There are also procedures that we must follow if a private water supply is determined as being unwholesome under the regulations. This includes a requirement to investigate the cause of any failures, inform users of the supply if it poses a potential danger to human health and giving advice to users to minimise any such potential dangers. Additional enforcement powers are available if needed.

The private water supply regulations enable us to charge for risk assessments and all sampling within rules set out by the Government. The current charges can be seen on our website at the link for private water supplies set out above.

## **What is a private water supply?**

In general terms a 'private water supply' is any water supply which is not provided by a Water Company. It is not a mains supply and no water rates are paid, although the person who owns the supply may make a charge. There are no laws controlling the charges or other conditions connected with private supplies. The owner or person who uses the supply is responsible for repairing and maintaining it. Private supplies are commonly used in the rural parts of Mid Devon.

A private water supply could serve just one property or it could be a large supply with a network of pipes supplying water to many properties. The water may come from a spring, well, borehole, pond, river or stream.

## **Quality standards for water**

Good quality water is very important to everyday life. Every house must have a good supply of clean, fresh water for it to be fit for occupation.

To make sure that water used in the home and for producing food is of the high quality required to protect public health, the government has set legal quality standards which all water used for drinking, washing and cooking or used in businesses which produce food or drink must meet. Private supplies are more likely to be contaminated because the sources are more likely to be unprotected from contamination and they are generally not treated to the same standard as public supplies.