

## Cabinet Member for a Safer Powys

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10/05/2024

### NOTICE OF INTENDED PORTFOLIO HOLDER DELEGATED DECISION

The Portfolio Holder has received the following report for a decision to be taken under delegated authority. The decision will be taken on **16 May 2024** (i.e. 3 clear days after the date of this note). The decision will be published on the Council's website but will not be implemented until 5 clear days after the date of publication of the decision) to comply with the call-in process set out in Rule 7.35 of the Constitution.

1.	<b>APPROVAL OF UPDATED REGULATORY SERVICES COMPLIANCE AND ENFORCEMENT POLICY</b>
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(Pages 3 - 40)

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**CYNGOR SIR POWYS COUNTY COUNCIL****CABINET MEMBER DELEGATED DECISION**

by

**COUNTY COUNCILLOR RICHARD CHURCH****CABINET MEMBER FOR A SAFER POWYS****May 2024****REPORT AUTHOR: Professional Lead – Environmental Health  
(Commercial) & Trading Standards****REPORT TITLE: Approval of Updated Regulatory Services Compliance  
and Enforcement Policy**

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**REPORT FOR: Decision**

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**1. Purpose**

- 1.1 Approval is sought for the updated Regulatory Services Compliance and Enforcement Policy attached as Appendix A to this report.

**2. Background**

- 2.1 It is the responsibility of Regulatory Services (Trading Standards and Environmental Health Services) to take appropriate actions in the event of a failure by businesses or individuals to comply with the legal requirements of many of the statutes enforced by those services.

These enforcement activities can take many forms and will range from Verbal Warnings, Written Warnings, Notices, Fixed Penalty Notices and Simple Cautions through to Prosecutions in the Magistrates Court or Crown Court. As such it is a requirement that clear policies and procedures are in place to deal with these matters in a consistent and professional manner.

Regulatory Services have had in place for many years, an Enforcement Policy which assists both Managers and Enforcement Officers in the processes involved in these very important aspects of our work. The existing Policy was approved by Cabinet in 2020 and subsequently reviewed in 2021.

The policy has been subjected to a further review to ensure it is up to date and able to stand up to scrutiny. Part of this review has included an additional Annex to include Food Safety Enforcement on the advice of the Food Standards Agency. A summary of the amendments is included in the document review section of the policy.

### **3. Advice**

- 3.1 It is a requirement that the compliance and enforcement policy is approved at the appropriate member level. This report attaches the revised policy for consideration and approval.

### **4. Resource Implications**

- 4.1 The requirements of the policy can be delivered within the resources available to the services as approved in the budget for 2024/25.
- 4.2 The Director of Corporate Services (Section 151 Officer) notes the report and can support the recommendation.

### **5. Legal implications**

- 5.1 Professional Lead – Legal Services – policy has been reviewed as required and taken into account advice from the Food Standards Agency (FSA) on food safety enforcement. Legal Services support regular reviews of the policy in line with changes in legislation and its impact on enforcement by the Authority.
- 5.2 The Head of Legal Services and the Monitoring Officer has commented: “ I note the legal comment and support the recommendation “

### **6. Climate Change & Nature Implications**

- 6.1 There are no implications.

### **7. Data Protection**

- 7.1 The policy itself does not involve the processing of personal data.

### **8. Comment from local member(s)**

- 8.1 No views have been sought from local members; the policy is not particular to specific areas of Powys.

### **9. Impact Assessment**

9.1 An online impact assessment has been completed and noted.

**10. Recommendation**

10.1 It is recommended that the Compliance and enforcement policy in Appendix A to the Report is approved and implemented with immediate effect.

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Head of Service: Gwilym Davies

Corporate Director: Matt Perry

DELEGATED DECISION NEW REPORT TEMPLATE VERSION 4

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**Powys County Council**  
**Regulatory Services**  
**Compliance and Enforcement Policy**

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## **1. Introduction**

- 1.1 Services covered by this policy include Environmental Health, Trading Standards and Licensing functions on behalf of Powys County Council. The services provided include food safety, animal health and welfare, health and safety, fair trading, pollution control, and weights and measures. The Council also has licensing responsibility for a range of matters including alcohol, gambling, explosives (fireworks), petroleum storage (garages) and taxis.
- 1.2 Powys County Council is committed to good enforcement practice. The development of this policy is based upon current legislation, guidance and codes that apply in this context, and in particular the Regulator's Code.
- 1.3 This policy sets out our approach to compliance and enforcement activities and is intended to establish a consistent approach to enforcement, without placing too heavy a burden on local businesses, organisations, and the public. Feedback is always welcomed using the contact details provided below. Consideration will be given to the inclusion of any suggested improvements in future revisions.
- 1.4 In adopting this policy, we will apply legal powers consistently and fairly, whatever the circumstances. Enforcement decisions will not be adversely influenced by the age, gender, disability, language, race, religion or belief, sex or sexual orientation of the subject, victims, or witnesses.
- 1.5 We want to make it easy for you to receive our information. This policy is published in English and Welsh on our website. We are also able to provide the document in alternative formats including audio tape, large print and in community languages if needed. Our address is County Hall, Llandrindod Wells, Powys, LD1 5LG. Our email address is [public.protection@powys.gov.uk](mailto:public.protection@powys.gov.uk).

## **2. Aims of our services**

- 2.1 The National Enforcement Priorities for Wales are:
  - To protect individuals from harm and promote health improvement.
  - To ensure the safety and quality of the food chain to minimise risk to humans and animal health.
  - To promote a fair and just trading environment for citizens and business.
  - To improve the local environment to positively influence quality of life and promote sustainability.
- 2.2 Powys County Council adopts these priorities as it aims to safeguard the health, safety and economic wellbeing of those who live in, work in or those who are visiting the region, while at the same time maintaining a fair and



competitive marketplace where legitimate businesses can thrive. Our actions are also aligned to Powys County Council's Corporate Plan<sup>1</sup>. We say by conducting fair and proportionate enforcement activities we will help to promote good business and good regulation fairly enforced will support legitimate business, allowing them to grow. Our actions will also support the health and wellbeing of our residents in cases where we intervene, for example, on supporting vulnerable persons, on health and safety, food matters and product safety.

2.3 Compliance with the law is encouraged proactively and we will work with business and individuals to promote this goal through:

- the provision of advice and education,
- Intelligence-informed checks on compliance, and
- proportionate responses to regulatory breaches.

Our ultimate purpose is to ensure that the 'marketplace' functions effectively and risks to health, social and economic wellbeing are addressed. When that purpose is undermined, we will use our legal powers to take action to resolve any unsatisfactory situations and ensure that any wrongdoers are held to account. This is what is meant by the term **enforcement action**.

2.4 We are committed to taking firm action in the following situations:

- Against those who disregard the law, or who deliberately or persistently fail to comply,
- Where there is a serious or immediate risk to health and safety, and
- Where it is necessary to protect the more vulnerable in our communities from harm.

### **3. What is this policy for?**

3.1 The purpose of this document is to set out our policy in respect of our compliance and enforcement activities, and to give guidance to those affected by it, in particular - businesses, consumers, and the public. It does not, however, affect the discretion to take legal proceedings when this is considered to be in the public interest.

### **4. When does this policy apply?**

4.1 This policy covers broadly the areas of:

- Animal Health and Welfare
- Food Safety

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<sup>1</sup> [Stronger, Fairer, Greener - Our Corporate Plan - Powys County Council](#)

- Food Standards
- Health and Safety
- Fair Trading
- Licensing
- Product Safety
- Pollution Control
- Communicable Disease

4.2 In some instances, we have developed area specific enforcement policies which provide detailed information about how and when those areas will carry out a particular type of enforcement. We have the following policy;

**Annex 1 - Proceeds of Crime Policy**  
**Annex 2 - Food Enforcement**

Should any conflict ever arise between this policy and those area specific documents, then this overarching Compliance and Enforcement Policy will take precedence.

**5. Our approach to compliance and Enforcement**

5.1 We will ensure the allocation of resources and effort is targeted where they would be most effective by assessing the risks against our regulatory outcomes. Such risk assessments will inform our approach to regulatory activity including data collection, inspection programmes, business advice and enforcement sanctions. As part of this risk assessment, we will consider the combined effect of the potential impact of noncompliance on regulatory outcomes and the likelihood of that noncompliance being repeated.

5.2 The Legislative and Regulatory Reform Act 2006, as amended, requires Powys County Council to have regard to the Principles of Good Regulation when our services conduct enforcement duties.

We will exercise our regulatory activities in a way which are:

- **Proportionate** – our activities will reflect the level of risk to the public and seriousness of the offence
- **Accountable** – our activities will be open to public scrutiny, with clear and accessible policies, together with fair and efficient complaints procedures
- **Consistent** – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities
- **Transparent** – we will ensure those we regulate are able to understand what is expected of them and what they can anticipate in return

- **Targeted** – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

5.3 We embrace the principles of good enforcement established in the Regulators Code as amended

[Regulators' Code - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

which sets out the following:

- Regulators should carry out their activities in a way which supports those they regulate to comply and grow,
- Regulators should provide straightforward ways to engage with those they regulate and hear their views,
- Regulators should base their regulatory activities on risk,
- Regulators should share information about compliance and risk,
- Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities,
- Regulators should ensure that their approach to their regulatory activities is transparent.

However, in certain instances we may conclude that a provision in the Regulators' Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned and based on the available evidence.

5.4 We are committed in all aspects of its work to promote equality in accordance with Equality statements and policies of our Council. The Service will seek to adopt best practice in pursuit of that commitment, including in relation to the provision of assistance, information, and advice. During the monitoring and review of our practices under this policy we will make sure that our enforcement activity reflects this commitment. All processing of personal data in the delivery of the services and this policy will be undertaken in compliance with the Data Protection Act 2018 and the General Data Protection Regulation (GDPR).

5.5 In some areas of our work, we have a shared enforcement role with other agencies, some examples being the Health and Safety Executive, National Resources Wales, HMRC and the Police. Sometimes it will be more appropriate for other enforcement agencies or other local authorities to deal with particular breaches of legislation. In these circumstances the service may pass details of offences to such agencies. In circumstances where a shared or complementary role exists, we will still adhere to this Compliance and Enforcement Policy, but the other agencies will retain the right to take whatever action they consider is necessary.

5.6 When we exchange information on enforcement activities with our partner agencies, we will do so in accordance with any established methods of

information sharing and legal requirements, including the General Data Protection Regulations 2018 and the Crime and Disorder Act 1998. We will work closely with other service areas within the council, and appropriate external regulators to promote regulatory compliance in all relevant areas, including food and fair-trading legislation.

## **6. Advising on rules**

- 6.1 Advice to business will be provided proactively and in response to specific requests for guidance. Such advice will be given clearly and in plain language and will be confirmed in writing on request. Legal requirements will be clearly distinguished from best practice, codes of practice, guidance, and other advice.
- 6.2 Officers will be encouraged to promote compliance with legal requirements, by raising awareness of relevant standards by means of media releases, distributing leaflets, social media, face-to-face contact and through business and community partnerships.
- 6.3 In offering advice to businesses, we will act promptly. Those businesses with which it has a Primary Authority agreement will be given priority when heavy demands are placed on limited staff resources. The Primary Authority arrangements of other local authorities will be respected.
- 6.4 The Service supports the Government's 'golden rules' for guidance on regulation and states it should be:
- Based on a good understanding of users
  - Designed with input from users and their representatives
  - Organised around the user's way of working
  - Easy for the intended users to understand
  - Designed to provide users with confidence in how to comply with the law (i.e. no use of legal disclaimers of liability)
  - Issued in good time
  - Easy to access
  - Reviewed and improved
- 6.5 Businesses approaching the Service for advice on any non-compliance can, in the main, do so without fear of automatically triggering enforcement action. Nevertheless, there will be occasion in the circumstances outlined in 2.4 above, or when there is a history of non-compliance or it is deemed necessary, where after due consideration, enforcement action is unavoidable.

## **7. Checking compliance**

- 7.1 Where applicable, services will adopt an intelligence-informed approach to ensure that its resources are most effectively targeted. A number of risk

assessment frameworks across its areas of work will be utilised to determine the frequency of checks on compliance which includes inspections of and other visits to business premises, taking samples, making of test purchases and so on.

- 7.2 Complaints received by the Service about alleged non-compliance will be assessed on an individual, case by case basis and allocated to an appropriate officer for investigation/action as necessary.
- 7.3 After dealing with issues of non-compliance by way of advice, the Service will follow up to ensure that the areas of concern have been rectified and the business is fully compliant.

Where remedial work has been required, an explanation will be given as to why it is required, and over what timescale it has to be completed.

## **8. Responding to Breaches of the Rules**

### 8.1 Overview

- 8.1.1 In responding to breaches of the law, a range of actions is available to the Service, and these are set out in 8.4 below. The appropriate action will be determined following careful consideration of the particular facts of each individual case and having regard to the approach of the alleged offender and any comments they wish to be taken into consideration.

We will normally take a graduated approach within the hierarchy of enforcement, and progress to taking formal action when informal means have failed to achieve the desired effect.

There may be circumstances where it is suspected that an offender has committed offences across a number of local authority areas, it may be more appropriate for another local authority outside of our area to take enforcement action even when an offence has been committed within the Powys County Council area.

Conversely there may be occasions when it would be more appropriate for the Service to take enforcement action in respect of offences that occurred elsewhere. In such circumstances we may enter into a legal agreement for one authority to take the lead role, as appropriate, making use of the provisions of Section 19 of the Local Government Act 2000, Sections 101 and 222 of the Local Government Act 1972 or any other enabling provisions or the provisions of the Consumer Rights Act 2015. The rationale for making these decisions will be documented within the legal process.

### 8.2 Conduct of Investigations

8.2.1 All investigations will be carried out with due regard to the following legislation and any associated guidance or codes of practice, in so far as they relate to Powys.

- the Criminal Procedure and Investigations Act 1996
- the Police and Criminal Evidence Act 1984
- the Regulation of Investigatory Powers Act 2000
- the Criminal Justice and Police Act 2001
- the Human Rights Act 1998
- the Protection of Freedoms Act 2012

These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.

8.2.2 Our procedures for interviewing alleged defendants follow the principles set out in the Police and Criminal Evidence Act 1984, as amended, and the relevant associated Codes of Practice.

8.2.3 Enforcement powers are provided by the legislation under which our officers are authorised - staff will use these powers when necessary, but always in a proportionate manner. Officers will reasonably expect co-operation during the investigation of alleged contraventions, and it can be an offence to obstruct an authorised officer in the course of their duties.

8.2.4 Where officers exercise their powers of seizure, the person from whom any goods or documents are seized (or their representative) will be advised of the fact and provided with a receipt. Seized items will be stored securely and in accordance with documented procedures.

8.2.5 Offenders are not normally subject to the possibility of arrest under the law enforced by the services within Powys County Council, however there are some exceptions. These include offences under the Trade Marks Act 1994, and other law, subject to the necessity test of section 24 of the Police and Criminal Evidence Act 1984, for example when the bringing of a case would be hindered by the disappearance of the offender.

8.2.6 All investigations will be completed in a timely fashion and having regard to any time limits for bringing formal action prescribed by specific pieces of legislation.

8.2.7 Where the Council has an interest in a premises it will promote and prioritise compliance in the same way that it does in other premises in which it does not have an interest. Furthermore, it will ensure that the attention received is in accordance with the criteria applied to other duty holders.

8.3 Communication

- 8.3.1 Our staff will always communicate with any Primary Authority or Home Authority at the earliest possible opportunity in an investigation.
- 8.3.2 Those affected by enforcement action, including witnesses and defendants, will be kept informed of the progress of investigations in a clear, appropriate, and timely manner.
- 8.3.3 Where appropriate, the results of our prosecution cases will be published through different media outlets and together with any partners involved in proceedings or the case. Such results may also be drawn to the attention of interested parties including victims and witnesses.

#### 8.4 Decisions on Enforcement Action

A range of enforcement outcomes is available to the Service, as detailed below. The appropriate action will be determined following careful consideration of the circumstances of each individual case.

We will use compliance advice and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter will set out what should be done to rectify the breach and to prevent reoccurrence accompanied by appropriate timescales.

If a similar breach is identified in the future, any previously issued warning letter will be taken into account in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction, but it may be presented in evidence as part of the factual matrix of a bad character application.

We recognise that where a business has entered into a Primary Authority Partnership, the Primary Authority may provide compliance advice and support, and will take such advice into account when considering the most appropriate enforcement action to take. We may discuss any need for compliance advice and support with the Primary Authority.

We will have regard to the Crown Prosecutors Code of Practice with respect to the suitability of disposal of any alleged breach:

There are a number of civil remedies and criminal enforcement actions available to the Service:

##### 8.4.1 Civil Remedies

###### 8.4.1.1 Voluntary Undertakings

We may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. The Service will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

#### 8.4.1.2 Injunctive Actions

In some circumstances the Service may seek an injunction or order from the court that an identified breach is rectified and/or prevented from recurring, or it may control or prohibit a particular activity in the future. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Failure to comply with an injunctive action constitutes contempt of court, a serious offence which may lead to imprisonment.

#### 8.4.1.3 Civil Sanctions

The Regulatory Enforcement and Sanctions Act 2008 enables the government to give local authorities the power to impose various new civil sanctions. These options are:

- The issuing of a fixed monetary penalty notice
- The issuing of a variable monetary penalty notice
- The issuing of a compliance notice
- The issuing of a restoration notice
- The issuing of a stop notice
- Permitting a business to make an enforcement undertaking

In respect of certain laws, local authorities in Wales currently have powers to impose:

##### Fixed Monetary Penalties

The Service may impose Fixed Monetary Penalties, which are capped at a relatively low level and are not intended to be used for more serious cases of non-compliance. Fixed Monetary Penalties are not criminal fines and do not appear on an individual's criminal record. Fixed Monetary Penalties cannot be used in conjunction with any other sanction.

##### Discretionary Requirements

The Service has powers under certain legislation to impose Variable Monetary Penalties and Non-Monetary Discretionary Requirements. Variable Monetary Penalties may be imposed up to a maximum level set out in the relevant legislation. Non-Monetary Discretionary Requirements are requirements to take steps to ensure that a breach does not continue or recur. Where the Service chooses to impose Non-Monetary Discretionary Requirements it will clearly set out what those steps should be and the time period within which they must be completed. A failure to comply with the requirements is likely to result in a financial penalty. Variable Monetary



Penalties and Non-Monetary Discretionary Requirements may be used in combination.

Should the Government make additional sanctions available to the Service, we will comply with the legislative requirements for their use, provide guidance on how we will use these penalties and publicise details of any case in which these sanctions are used.

## 8.4.2 Criminal Enforcement Actions

### 8.4.2.1 Statutory Notices

In respect of many breaches, the Service has powers to issue statutory notices. These include: 'Stop Notices', 'Prohibition Notices', 'Emergency Prohibition Notices', and 'Improvement Notices'. Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/or, where appropriate, the carrying out of work in default (see 8.4.4 below).

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.

### 8.4.2.2 Fixed penalty notice and penalty notice for disorder

The Service has powers to issue fixed penalty notices in respect of certain breaches. These notices give the offender the opportunity to avoid prosecution by payment of the prescribed sum in recognition of the offence. The decision to offer an offender a Fixed Penalty Notice or in respect of underage sales of alcohol a Penalty Notice for Disorder is at the discretion of the investigating officer. They will only be issued where the evidence would have been sufficient to support a prosecution.

Payment of a fixed penalty does not provide an individual immunity from prosecution in respect of similar or recurrent breaches. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issuing of a fixed penalty notice.

### 8.4.2.3 Financial investigations and Confiscation of Assets

We will conduct financial investigation under the Proceeds of Crime Act 2002 and The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 to assist investigations and determine levels of criminal benefit from criminality and any assets available. We will apply for disclosure and enforcement orders to assist this. In cases where a suspect is likely to dissipate assets or where we reasonably deem it proportionate, we will restrain assets where criminal proceedings are being considered. We will not make a decision to institute legal proceedings on the basis of purely seeking to obtain incentivisation monies from POCA actions.

If any monies are received from the Home office incentivisation system then those monies will be held in a reserve account and reinvested in proceeds of crime work and to support crime and disorder strategies relevant to the service that obtained them, as well as community schemes to reduce crime and disorder, and we will produce yearly plans to meet Home Office audits on this work.

#### 8.4.2.4 Enforcement Orders

In some circumstances the Service may seek an order from the Court. Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

The Service is required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, a court order will generally only be sought where there are serious concerns about consenting to, or complying with, voluntary undertakings or a notice.

In some instances, the Service may ask the Court for forfeiture orders in respect of seized goods or articles with a view to their destruction / confiscation.

#### 8.4.2.5 Health and safety offences

When circumstances find that enforcement will be undertaken under health and safety legislation, consideration will also be taken of the Health and Safety Executive's Enforcement Policy Statement:

[Enforcement Policy Statement \(hse.gov.uk\)](https://www.hse.gov.uk/enforcement-policy-statement/)

Furthermore, any enforcement decision for health and safety will have been taken through this Enforcement Management Model.

For matters of Health and Safety the Independent Regulatory Challenge Panel will look into complaints regarding advice given which is considered incorrect or goes beyond what is required to control the risk adequately. The challenge panel provides an independent means for any person (whether

companies or individuals) to complain about advice given or actions put upon them by the Health and Safety Executive (HSE) or Local Authority (LA) health and safety regulators. It will not consider the actions taken, or advice given, by the regulator where there are existing statutory mechanisms of appeal. In the first instance complainants should seek to resolve the matter locally with the regulators and their managers. If this is not possible, they can raise their complaint with the panel. The panel will focus on substantive issues only. [The Independent Regulatory Challenge Panel \(hse.gov.uk\)](https://www.hse.gov.uk/independent-regulatory-challenge-panel/)

#### 8.4.2.6 Simple Caution

A simple caution (previously known as a formal caution) is an alternative to prosecution, where the circumstances are such that the caution is likely to be effective and its use is appropriate to the offence. It is an admission of guilt, but it is not a form of sentence, nor is it a criminal conviction.

Simple cautions are issued by a senior officer and can only be given to an offender who is over 18, where:

- There is sufficient evidence of obtaining a realistic prospect of a conviction,
- The offender admits their guilt, and
- It is in the public interest to use a simple caution rather than institute criminal proceedings.

There is no legal obligation for a person to accept the offer of a simple caution, but failure to accept a caution will normally result in prosecution for the offence. Each case will be considered on an individual basis.

Where the offence committed is a recordable offence, a simple caution will appear on an offender's criminal record. It is likely to influence how the Service and others deal with any similar breaches in the future and may be cited if it is relevant to any proceedings in the future. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.

Simple cautions will be used in accordance with guidance on the cautioning of adult offenders:

[Simple cautions: guidance for police and prosecutors - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/simple-cautions-guidance-for-police-and-prosecutors)

For each simple caution, the manager in the case will decide whether it is reasonable to consider a charge be invoiced to the person/business/company subject of the investigation. This will not be conditional on signing the caution but would be issued when one of the following occurs:

- Where there are significant offences, and the service has conducted extensive costs to investigate the offences, and

- Where the Professional lead believes it is proportionate to the offending involved

#### 8.4.2.7 Prosecution

We may prosecute breaches of legislation, particularly in respect of those who disregard the law or who act irresponsibly, or where there is an immediate risk to health and safety. Where other forms of enforcement action, such as voluntary undertakings, statutory notices or a caution have failed to secure compliance, then prosecution is more likely.

As with the preceding enforcement options, a number of factors will be taken into consideration including but not exclusively-

- The seriousness of the offence,
- The previous history of the offender,
- Any statutory defence available,
- Action taken to avoid recurrence,
- Any explanation offered and, if the law allows, the circumstances and attitude of the offender
- What course of action will best serve the public interest,
- Whether there is a realistic prospect of conviction.

The decision as to whether prosecution is the most appropriate course of action in a particular case will be made

- In accordance with this policy,
- In accordance with the code of conduct for Crown Prosecutors [The Code for Crown Prosecutors | The Crown Prosecution Service \(cps.gov.uk\)](https://www.cps.gov.uk) ,
- and in accordance with statutory requirements, taking into consideration all relevant codes of practice, and without any unnecessary delay.

In following the Code for Crown Prosecutors, a prosecution will only be commenced where the Council is satisfied that there is sufficient evidence to provide a realistic prospect of conviction against the defendant(s). In addition, the Council must be satisfied that having considered all the relevant facts and circumstances of the case, and having regard to the criteria established by the Code for Crown Prosecutors, a prosecution would be in the public interest.

Having considered all the relevant facts and circumstances of an individual case, the Head of Service or Senior Manager will decide on the course of action by the local authority, based upon the recommendation of the Professional Lead or Manager for the relevant service, and after taking legal advice.

We will ensure that the constitution of the authority reflects the scheme of delegation for the institution of proceedings and that this is kept up to date.

In certain circumstances such as matters relating to health and safety, the institution of legal proceedings will be in the name of the authorised officer designated as an appropriate inspector.

A successful prosecution will result in a criminal record. There are a range of punishments available to the court depending on the charge, the circumstances of a case and the offender. These include a discharge, a fine, a community order, or a prison sentence in serious cases. The court may order the forfeiture and destruction of non-compliant goods and/or the confiscation of any profits, which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors, or from keeping animals, and may have consequences for individuals seeking certain types of employment and proceeds of crime proceedings. A record of the action will be recorded on internal systems and disclosed to any relevant databases such as the Sanctions Information Database (Trading Standards) and where applicable PNC/PND.

The Head of Service or Senior Manager can review any decisions and consider any further outcomes suggested by the defendant (or their solicitor) if they meet the overriding principles set out in the code of prosecutors.

The Service will also consider applying for other orders on conviction where appropriate, for example a Criminal Behaviour Order.

#### 8.4.3 Other remedies

##### 8.4.3.1 Refusal, Suspension or Revocation of Licences

Powers exist to review, suspend, and revoke a range of licences. Some of these powers are delegated to officers acting under section 113 of the Local Government Act 1972, but where legislation prescribes or the authority has reserved the right under a scheme of delegation, such actions can only be taken by a sub-committee of the relevant participant Council. Licence holders have the right to attend hearings and to be informed of their right of appeal against a decision. When considering future licence applications, the previous breaches and enforcement action will be taken into account.

## 9. **Review of this Policy**

- 9.1 This policy will be updated and developed as required by changes in legislation and guidance to ensure continued accuracy and adherence to it by staff.
- 9.2 Data on equality profiles of those affected by this policy will be collated and monitored for any discriminatory practices.

## 10. Comments and Complaints

- 10.1 Powys County Council is committed to dealing effectively with any concerns or complaints you may have about our services. We aim to clarify any issues you may be unsure about. If possible, we will put right any mistakes we may have made. We will provide any service you are entitled to which we have failed to deliver. If we did something wrong, we will apologise and, where possible, try to put things right for you. We aim to learn from our mistakes and use the information we gain from complaints to improve our services.
- 10.2 Sometimes, you might be concerned about matters that are not covered by this policy e.g. when a legal framework applies, and we will then advise you about how to make your concerns known.
- 10.3 Sometimes your concern or complaint will not be dealt with via the Corporate Complaints Policy, examples include:
- An appeal against a `properly made' decision made by the council,
  - A means to seek to change legislation or `properly made' policy decision,
  - Decisions in respect of which there is a separate right of appeal or review, e.g. via a Magistrates court.
- 10.4 You can express your concern in any of the following ways:
- Ask for your complaint to be logged by the person with whom you are already in contact.
  - Get in touch with our Corporate Complaints Team on 01597 827472 if you want to make your complaint over the phone, or use the form on our website [Comments, Compliments and Complaints - Powys County Council](#)
  - Write to us at the address given in the introduction to this policy.

## **Annex 1 - Proceeds of Crime Policy**

### **About this policy**

- 1.1. This policy explains how Powys County Council will approach Financial Investigations. This document is primarily aimed at those staff who investigate criminal offences and those who have been accredited by the National Crime Agency as Financial Investigators.
- 1.2. Powys County Council recognises that the investigation of offences that are to the detriment of consumers and businesses, and the utilisation of the powers given within the Proceeds of Crime Act 2002 (POCA), can make a significant contribution to the disruption of criminal enterprises through the use of money laundering investigations to complement and aid criminal investigations and through the recovery of criminal assets.
- 1.3. Powys County Council is, therefore, committed to maintaining fraud/financial investigation capability, incorporating money laundering and confiscation capability to tackle offenders at all levels of criminal activity.

### **General principles**

- 2.1. Powys County Council, in considering the need for utilising the powers under POCA, has taken account of:
  - its contribution to local crime and disorder strategies and other corporate priorities,
  - the need to consider pre-conviction orders as part of the prosecution process in connection with money laundering investigations and the need to consider post-conviction orders as part of confiscation investigations,
  - its role in tackling 'lifestyle criminals' such as counterfeiters, persistent rogue traders and loan-sharks,
  - the need to ensure that crime doesn't pay and is seen not to pay,
  - helping to meet the expectations of legitimate businesses and consumers.
- 2.2. Powys County Council will promote the use of financial investigations as an integral part of criminal investigations which may lead to confiscation. Confiscation is not just for serious criminals but applies in every case of acquisitive crime.
- 2.3. Acquisitive crime describes offences where the perpetrator derives material gain from criminal activity. This encompasses crime types such as fraud, car cloning, rogue trading and counterfeiting.

- 2.4. When a person has benefited from their crime, the objective is to secure a criminal conviction and remove any benefit derived from criminal activity. A confiscation order made under POCA is an effective way of achieving this.
- 2.5. Our investigators are aware of the opportunities for money laundering and confiscation proceedings, which are normally undertaken by Financial Investigators, and any actions they can take to support the process.
- 2.6. Investigators will refer suitable cases for financial investigation and are reminded that failure to follow this policy, in referring acquisitive crimes to the appointed financial investigator may result in the true extent of the criminal activity not being uncovered, the correct perpetrators being prosecuted and reduction of the amount of assets seized and thereby reduce the deterrent aspect which is required to assist in reducing crime.
- 2.7 Where it is prudent to do so Powys will conduct financial investigations for other local authorities or bodies.

### **Statement of policy**

- 3.1. The appointed financial investigator will carry out a financial investigation for all cases where there are alleged or convicted offences of an acquisitive crime, with a view to making an application to court for a confiscation order to be made to the value of the benefit derived from crime.
- 3.2 Referrals to the financial investigator will be considered on merit but will be prioritised with reference to one or more of the following factors:
  - propensity of the defendant(s) to commit offences nationally,
  - where the victims are deemed to be particularly vulnerable or at risk from the defendant(s) criminality,
  - where the criminal investigation would struggle to deal with the defendant, or their offending effectively, without the financial investigator's parallel support,
  - where financial benefit from the defendant's criminality is clearly significant and realisable assets have already been identified.
- 3.3 In special circumstances, e.g. in appropriate cases where the benefit calculated is significant, but assets cannot be found, it may be prudent to pursue confiscation proceedings in order to obtain a 'nominal order' of say £1. POCA allows cases to be revisited in the future so where assets subsequently come to light then the 'available amount' may be re-calculated in terms of satisfying the order using the recently discovered assets. The use of nominal orders may also deter defendants from re offending.
- 3.4 Powys County Council will seek to use the provisions of the Proceeds of Crime Act 2002 and seize cash of £1,000 and above if it is found whilst lawfully on premises, or whilst searching any person or vehicle. The seizure can only be



carried out by Police officers and/or an accredited financial investigator. The appointed financial investigator will investigate the origins of any cash so seized with a view to requesting its forfeiture at the Magistrates' Court.

- 3.5 Financial investigators are committed to applying for forfeiture under POCA; after confiscation under POCA has been considered.

## **Implications of the policy**

### 4.1 Financial Implications

- 4.1.1. The full implementation of this policy involves a significant opportunity to have a proportion of the amounts confiscated under POCA returned to the Authority under the incentive scheme operated by the Home Office. Any funds received as a result of the incentivisation scheme must be used for specified purposes.

### 4.2 Staffing and training

- 4.2.1. All Financial Investigators receive training from the Proceeds of Crime Centre of the National Crime Agency and must receive this training before being accredited. Financial Investigation training should form part of Powys County Council's routine training and development programme for designated management and investigation personnel.

- 4.2.2. Managers do not necessarily require the level of training and awareness provided by financial investigation-specific courses but will meet the requirements of the FISS system. However, it is essential that a manager is familiar with the procedures relating to financial investigation and is designated a Senior Appropriate Officer (SAO).

### 4.3 Existing Partnership Agreements

- 4.3.1. There are many law enforcement agencies that conduct financial investigations. Powys County Council will actively work with these agencies to ensure it maximises the amount of money and assets seized under POCA legislation.

### 4.4 Risk assessments

- 4.4.1. This policy is compliant with the requirements of health and safety legislation and internal health and safety procedures. The risk assessment for Investigating Officers applies and will be reviewed annually.

## **Monitoring / review**

- 5.1. The Senior Appropriate Officer will ensure that all referrals under POCA are fully investigated and where appropriate confiscation or forfeiture of assets is applied for.
- 5.2. This policy will be reviewed in conjunction with the Compliance & Enforcement policy and will consider any changes to legislation, legal challenges, and any discrepancies raised with regard to the policy.

### **Related policies and information sources**

- 6.1 The following policies and information provide guidance on the approach taken to financial investigations:
  - Proceeds of Crime Act 2002 - Guidance Under Section 2A (National Crime Agency, January 2018) [Publications - National Crime Agency](#)
  - Effective Financial Investigation (College of Policing, October 2013) [Effective financial investigation \(college.police.uk\)](http://college.police.uk)

### **Legal basis**

- 7.1. The legal basis within which this policy is to operate can be found in:
  - Criminal Justice Act 1993;
  - Proceeds of Crime Act 2002;
  - Terrorism Act 2000;
  - HMRC Gateway Procedure;
  - The Police and Criminal Evidence Act 1984;
  - The Human Rights Act 1998;
  - The Criminal Procedure and Investigations Act 1996 (CPIA);
  - The Regulation of Investigatory Powers Act 2000 (RIPA);
  - The Data Protection Act 2018 (DPA);
  - The Freedom of Information Act 2000.

# Annex 2 - Food Safety Enforcement

## Introduction

- 1.1 This annex supplements the Powys County Council Powys County Council Compliance and Enforcement Policy in establishing a consistent approach to the enforcement of food safety law.
- 1.2 This annex applies to all enforcement action taken by Officers under food safety legislation and must be read in conjunction with the overarching Compliance and Enforcement Policy.
- 1.3 Where there is any conflict in interpretation between this annex and the overarching Compliance and Enforcement Policy, the latter will take precedence.

## Primary Authority

- 2.1 All officers considering intervention must check if a business is registered as being in a Primary Authority partnership, whether in its own name or part as part of a coordinated partnership through a franchise arrangement or trade association. The Office for Product Safety and Standards (OPSS) (part of the Department for Business and Trade) co-ordinates the Primary Authority scheme, including approving and registering all Primary Authority partnerships. Where a Primary Authority is registered, any other Local Authority (known as an “enforcing authority” for the purposes of the scheme) proposing to take enforcement action against a business within the scheme, must contact the Primary Authority first unless immediate action is necessary. The Primary Authority may challenge a proposed enforcement action if it believes it to be inconsistent with advice or guidance that it has previously provided. OPSS will determine any resulting disputes.
- 2.2 “Primary Authority” means an authority which has entered into a formal agreement, in relation to specified legislative controls, to be the principal source of advice on compliance with these requirements and to co-ordinate enforcement actions.

## Definitions

- 3.1 For the purpose of this annex "Authorised Officer" shall mean an Officer who has the relevant delegated powers to operate under the European Communities Act 1972, Food Safety Act 1990, Food Hygiene (Wales) Regulations 2006, Official Feed and Food Control (Wales) Regulations 2009,

Trade in Animals and Related Products (Wales) Regulations 2011, Food Hygiene Rating (Wales) Act 2013 and the regulations issued thereunder and has been authorised in accordance with Schemes of Delegation.

## Taking Enforcement Action

- 4.1 The overarching Compliance and Enforcement Policy is concerned with decisions on enforcement action and considers the broad range of enforcement options available to the Service. This purpose of this section is to set out the additional enforcement options available that are specific to the administration of food law.
- 4.2 If there is evidence that a food business operator is failing to comply with food safety requirements, the following courses of action will be considered and the most appropriate selected and implemented in accordance with the relevant procedural documents, practice guidance and the Code of Practice issued under the Food Safety Act 1990, the Food Hygiene (Wales) Regulations 2006 and the Official Feed and Food Controls (Wales) Regulations 2007:
- Compliance, advice and support
  - Fixed penalty notices
  - Statutory notices
  - Voluntary closure
  - Seizure and detention of food
  - Simple caution
  - Prosecution
  - Apply for hygiene prohibition order.

These are set out in detail from section 6 below.

- 4.3 In deciding upon the type of enforcement action to take, authorised officers must have regard to the nature of the breach and the history of compliance of the food business operator. Unless circumstances indicate a significant risk, officers will operate a graduated and educative approach moving to more formal action where informal action does not achieve the desired effect. In the case of new businesses, an assessment will be made of the food business operator's willingness to undertake the work identified by the officer.
- 4.4 In order to ensure compliance in food establishments run by or where Powys County Council has an interest, the service will carry out its enforcement duties in exactly the same way as it does in other premises. Furthermore, it will ensure that the attention received is in accordance with the criteria applied to other duty holders.

## **Compliance, advice and support**

- 5.1 The overarching Compliance and Enforcement Policy is concerned with the provision of advice and guidance to businesses as a means of achieving compliance.
- 5.2 Specifically in connection with food law administration, informal action could include the offering of advice, the issuing of verbal warnings and requirements for action by the use of informal letters and food hygiene inspection reports.
- 5.3 The following circumstances have been identified as appropriate for the use of informal action to secure compliance with the requirements of food safety legislation or good practice within a reasonable time period:
- Circumstances where the consequence of non-compliance with the contravention identified will not pose a significant risk to public health.
  - Acts or omissions which are not serious enough to warrant formal action.
  - From the food business operator's past history and/or willingness to undertake the necessary work, it can be reasonably expected that informal action will result in compliance.
  - Confidence in management of the business is high.
  - Initial breaches that do not give rise to an imminent risk to public health and which apply to food business associated with voluntary organisations using volunteers.
- 5.4 Each case shall be assessed on its merits and if necessary, in consultation with a more senior officer when guidance or advice is required.
- 5.5 A letter shall be sent to the food business operator on each occasion, and this shall clearly differentiate between legal requirements and matters recommended as good practice.

## **Fixed Penalty Notices**

- 6.1 The overarching Compliance and Enforcement Policy considers the use of fixed penalty notices.

- 6.2 With respect to food law enforcement, an authorised officer has the discretion to issue a fixed penalty notice for an offence under section 9 of the Food Hygiene Rating (Wales) Act 2013 concerning the display, or failure to display, of the appropriate food hygiene rating scheme score. In addition, a fixed penalty notice can be served for an offence under Regulation 5 of the Food Hygiene Rating (Promotion of Food Hygiene Rating) (Wales) Regulations 2016 with regard to failure to comply with requirements for the promotion of ratings on publicity materials.

These may be given where there is no reasonable excuse for non-compliance.

## Statutory Notices

- 7.1 It is the policy of Powys County Council to utilise statutory notices as an option to secure compliance with legislation. Such action will include the issuing of the following notices under the given Regulation of the Food Hygiene (Wales) Regulations 2006: Hygiene Improvement Notices under Regulation 6, Hygiene Prohibition Notices and Hygiene Emergency Prohibition Notices under Regulations 7 and 8 and Remedial Action Notices and Detention Notices under Regulation 9.

### 7.2 *Improvement Notices*

- 7.2.1 Hygiene/Food Standards Improvement Notices will be used to secure compliance with food safety requirements, within a reasonable time scale in circumstances where the authorised officer is satisfied that there has been a contravention of food safety legislation, but the contravention does not pose an imminent risk to health. Those circumstances might include.

- Having considered the risk to public health, where the consequences of could pose a potential risk to public health; or
- Where there are significant contraventions of food safety legislation; or
- Where there is a lack of confidence in the food business operator to respond to an informal approach; or
- Where there is a record of non-compliance following the use of an informal approach; or
- Where standards are generally poor with little management awareness of statutory requirements or

- Where a contravention is sufficiently serious to warrant prosecution

7.2.2 The following circumstances have been identified as inappropriate for the use of Hygiene/Food Standards Improvement Notices:

- the contravention may be a continuing one and a notice would only secure an improvement at one point in time, for example, personal cleanliness of staff.
- The contravention presents no risk to public health.
- In transient situations, where breaches exist which pose a serious risk to public health and where it is considered that swift enforcement action is needed.
- It would be more appropriate and in the best interests of public health to use an informal approach.
- Where there is a breach of good hygiene practice but no failure to comply with an appropriate regulation.

7.2.3 Hygiene/Food Standards Improvement Notices shall only be served by authorised officers. An authorised officer shall not sign a Hygiene/Food Standards Improvement Notice unless the contraventions have been witnessed and the relevant criteria set down in the Regulations and Practice Guidance satisfied.

7.2.4 All Hygiene/Food Standards Improvement Notices shall be issued in accordance with the relevant Code of Practice.

7.2.5 Single Hygiene Improvement Notices with suitable numbers of schedules attached shall be served unless the authorised officer is satisfied that:

- There is likely to be an appeal against one or more items contained within the schedule, which may suspend the whole notice; or
- Separate time limits are more appropriate for the different items contained in the schedule; or

- In such circumstances suitable numbers of separate notices with individual schedules attached shall be served.

7.2.6 Authorised officers must place realistic time limits on notices, having regard to the works which will be specified and the availability of appropriate solutions, preferably after discussions with the food business operator. In any case a minimum time period of 14 days must be given.

7.2.7 Failure to comply with a Hygiene Improvement Notice is an offence which will in general result in a recommendation to instigate Court proceedings. Authorised officers must therefore have sufficient evidence available to justify their issue, be prepared to pursue non-compliance in the Courts and be satisfied that proceedings are likely to succeed. The recipients of Hygiene Improvement Notices must be made aware of their right of appeal and of how and where to make an appeal.

7.2.8 Requests for an extension of time will only be considered if made in writing and recipients of notices will be advised of this policy at the time of service.

7.2.9 Before considering any enforcement action, where appropriate the matter will be discussed with any relevant Primary, home or originating authority.

7.2.10 The Service will notify other appropriate enforcement bodies and other relevant interested parties of its action together with advice outlining the remedial action necessary to comply.

### 7.3 **Remedial Action Notices**

7.3.1 A Remedial Action Notice is a notice in writing served on the relevant food operator or the operator's duly authorised representative which:

- Prohibits the use of any equipment or any part of the establishment specified in the notice;
- Imposes conditions upon or prohibits the carrying out of any process; or
- Requires the operation of the food business to be stopped completely or reduced to such extent as is specified in the notice.

7.3.2 The officer will also consider whether food at the establishment should be detained for the purposes of examination by means of a Detention Notice.

7.3.3 Circumstances which may lead to the issue of a Remedial Action Notice in respect of an establishment include:



- The failure of any equipment or part of an establishment to comply with the requirements of the food hygiene regulations.
- Cross contamination issues.
- The need to impose conditions upon or the prohibition of the carrying on of any process breaching the requirements of the regulations or hampering adequate health inspection in accordance with the regulations; or
- Where the rate of operation of the business is detrimental to its ability to comply with the regulations.

7.3.4 Any Remedial Action Notice must be served as soon as practicable and must state why it is being served. In the event that the authorised officer relies upon any breach of any requirements of the Hygiene Regulations, the notice must specify the breach and the action needed to remedy it.

7.3.5 When an authorised officer serves a Remedial Action Notice at an establishment subject to approval under Article 4(2) of Regulation 853/2004, the officer should also consider whether food at the establishment should be detained for the purposes of examination by means of a Detention Notice under Regulation 9 of the Food Hygiene (Wales) Regulations 2006. Circumstances which might lead to the issue of a Detention Notice includes where there are indications or suspicions that food at an establishment is unsafe.

7.3.6 Once an authorised officer is satisfied that the remedial action has been taken to comply with Remedial Action Notice served, he or she must withdraw the notice by serving a further notice in writing upon the food business operator or the duly authorised representative of the food business operator.

7.3.7 The use of Remedial Action Notices and Detention Notices should be proportionate to the risk to public health and where immediate action is required to ensure food safety.

7.3.8 All Remedial Action Notices and Detention Notices shall be issued in accordance with the relevant Code of Practice. The recipient of a Remedial Action Notice must be made aware of the right of appeal to the Magistrates' Court.

#### **7.4 Hygiene Emergency Prohibition Notices**

7.4.1 The following circumstances have been identified as appropriate for the use of Hygiene Emergency Prohibition Notices following the identification of an imminent risk to health:

- The consequences of not taking immediate and decisive action to protect public health would be unacceptable.
- An imminent risk of injury to health can be demonstrated, e.g. evidence from relevant experts such as a Food Analyst or Food Examiner.
- The guidance criteria specified in the relevant Code of Practice, concerning the conditions when prohibition may be appropriate, are fulfilled.
- The food business operator is unwilling to confirm in writing any suggested offer of a voluntary prohibition.

7.4.2 Hygiene Emergency Prohibition Notices shall only be signed and served by an appropriately authorised Officer, who shall notify their Manager as soon as possible of their actions.

7.4.3 An authorised officer shall not sign Hygiene Emergency Prohibition Notices unless the situation has been witnessed and the relevant criteria satisfied.

7.4.4 All Hygiene Emergency Prohibition Notices shall be issued in accordance with the relevant Code of Practice. The recipient must be made aware of the right of appeal to the Magistrates' Court.

7.4.5 The Solicitor of the Council and appropriate Manager shall be advised immediately of the service of a Hygiene Emergency Prohibition Notice.

7.4.6 Once a Hygiene Emergency Prohibition Notice has been served, an application for a Hygiene Emergency Prohibition Order must be made to the Magistrates' Court within 3 working days of the service of the Notice and the food business must be given at least one day's notice of the intention to do this.

7.4.7 The food business operator of premises that has been subject to a Hygiene Emergency Prohibition Notice must be served with a Notice of Application for a Hygiene Emergency Prohibition Order at least one day before the date of the application to a Magistrates' Court. The notice will give details of the time and date of the application.

7.4.8 Failure to comply with a Hygiene Emergency Prohibition Notice is an offence and will result in the matter being referred for consideration of prosecution.

- 7.4.9 The Authority will notify other enforcement bodies and other relevant interested parties of its action.

## **Voluntary Closure**

- 8.1 Voluntary procedures to remove a health risk condition may be used as an alternative to the service of a Hygiene Emergency Prohibition Notice. This approach could be at the instigation of the food business operator or the authorised officer.
- 8.2 The food business operator or manager and the authorised officer should confirm any voluntary closure agreement in writing, with an undertaking by the food business operator or manager not to re-open without the officer's prior approval. The food business operator will be advised that by offering to close voluntarily, any right to compensation is lost. A voluntary closure agreement will not preclude legal proceedings being undertaken for non-compliance with food safety legislation.

## **Seizure and retention**

- 10.1 If while inspecting food, or because of other information from a reliable source the authorised officer believes that the food fails to comply with the food safety requirements, the officer may detain or seize the food under Section 9 Food Safety Act 1990. Reliable sources may include Food Standards Agency, the UK Health Security Agency, Public Health Wales, Consultant in Communicable Disease Control.
- 10.2 Seizure and detention may also be necessary after food has been certified as not being produced, processed or distributed in accordance with Regulation 27 of the Food Hygiene (Wales) Regulations 2006.
- 10.3 If the authorised officer has good reason to suspect that the food does not satisfy food safety requirements then a detention of food notice may be served.
- 10.4 A decision to detain food should only normally be taken if it has been discussed with the owner or person in charge of the food and, if appropriate, with the manufacturer. Where the authorised officer has served a detention of food notice, professional judgment will be used to determine whether food should be detained where it is or moved elsewhere. If the officer has any doubts about the security or physical care of the food, the detention notice should specify a place to which the food is to be moved. The officer will organise periodic monitoring of the food throughout the period of detention.

- 10.5 The authorised officer will act as quickly as possible when evidence or information indicates that detained food can be released, and in any case within 21 days. A Withdrawal of Detention of Food Notice will be served.
- 10.6 It is presumed under food law that all food is intended for human consumption until it is proved to the contrary. When considering whether to seize food an officer will consider whether the food in question can be treated or processed before consumption and if so, whether the food, after treatment or processing would be sound and wholesome and satisfy food safety requirements. Food previously detained by an officer may be seized and subject to condemnation after receipt of adverse findings.
- 10.7 When an officer makes a decision to seize food a food condemnation warning notice will be served on the person in charge of the food, or the owner. This notice will provide warning of the intention to take the food before a Justice of the Peace and apply for its condemnation.
- 10.8 Food that has been seized should be dealt with by a Justice of the Peace as soon as is reasonably practicable, normally within 2 days. Cases involving highly perishable food should be dealt with at the earliest opportunity. If necessary, the time scale may be extended to ensure that parties and or their representatives have an opportunity to attend. However, action will not be delayed if the owner cannot be traced or contacted.

### **10.9 Dealing with Batches, Lots and Consignments**

10.9.1 The decision to seize or detain a batch, lot, or consignment requires careful consideration before a notice is served. The authorised officer will use professional judgment and expert advice, if necessary, to decide whether to detain or seize the whole or part of the batch, lot or consignment. The authorised officer will consider:

- The evidence available;
- The nature of the contamination;
- The nature and condition of the container holding the food;
- The risk to health;
- The quantity of food involved in relation to any sampling that has been undertaken.

## **Compensation**

10.1 In the event of a detention notice being withdrawn or if a Justice of the Peace fails to condemn seized food Powys County Council will consider

compensation to the owner for any depreciation in its value resulting from the action taken by the authorised officer.

## **Voluntary Surrenders**

- 11.1 Voluntary procedures to remove food that is not suitable for human consumption from the food chain may be used; either at the instigation of the owner of the food or at the suggestion of the authorised officer when the owner of the food agrees the food is not suitable for human consumption.
- 11.2 A receipt should be issued for food that is voluntarily surrendered to the Authority for destruction. The receipt should indicate that the food has been voluntarily surrendered to Powys County Council for destruction and be signed and counter-signed by the authorised officer and the person surrendering the food respectively.

## **Destruction and Disposal**

- 12.1 Powys County Council, by agreement, may charge the owner of the food for the destruction and disposal of voluntarily surrendered foodstuffs.
- 12.2 Powys County Council will usually make an application to the Justice of the Peace for costs associated with the destruction and disposal of seized food.
- 12.3 If food is to be disposed of Powys County Council, will make every effort to ensure that this is done in a suitable manner and that there is no possibility of food returning to the food chain.

## **Simple Caution**

- 13.1 See the overarching Powys County Council Compliance and Enforcement Policy.

## **Prosecution**

- 14.1 See the overarching Powys County Council Compliance and Enforcement Policy.

## Hygiene Prohibition Order

- 15.1 If a food business operator is convicted of an offence under the Food Hygiene (Wales) Regulations 2006 and the Court is satisfied that the health risk condition is fulfilled with respect to the food business concerned, the Court has the power to impose a Hygiene Prohibition Order against the appropriate prohibition, under Regulation 7 of the Food Hygiene (Wales) Regulations 2006.
- 15.2 Following a successful prosecution, the Court has the power to impose the appropriate prohibition if they are satisfied that there is a risk of injury to health as defined in Regulation 7 (2) and (3) of the Food Hygiene (Wales) Regulations 2006. The Court is required to impose an appropriate Hygiene Prohibition Order which may relate to prohibition of a process or treatment, or the use of a premises or equipment for the purpose of a food business.
- 15.3 Following a successful prosecution against the food business operator of a food business the Court may, by virtue of Regulation 7 (4) of the Food Hygiene (Wales) Regulations 2006, impose a Hygiene Prohibition Order on the food business operator participating in the management of any food business, or any food business of a class or description specified in the order.
- 15.4 The authorised officer shall as soon as practicable after the making of the Hygiene Prohibition Order, serve a copy of the Hygiene Prohibition Order on the food business operator of the business and in the case of a Hygiene Prohibition Order served under Regulation 7 (1) of the Food Hygiene (Wales) Regulations 2006, affix a copy of the order in a conspicuous position on the premises.
- 15.5 Failure to comply with a Hygiene Prohibition Order is an offence and will result in being forwarded with a view to prosecution.
- 15.6 Other interested bodies, including the Food Standards Agency and the Chartered Institute of Environmental Health shall be advised of the issue of a Hygiene Prohibition Order issued under Regulation 7 (4) of the Food Hygiene (Wales) Regulations 2006.

<b>Document version and approval</b>		
<b>Date</b>	<b>Issue number</b>	<b>Approved by</b>
21 <sup>st</sup> January 2020	1.1	PCC cabinet
13 <sup>th</sup> August 2021	1.2	Portfolio holder
** **** 2024	1.3	Portfolio Holder

<b>Document review</b>		
<b>Date</b>	<b>Part of document</b>	<b>Changes</b>
12 <sup>th</sup> April to 2 <sup>nd</sup> August 2021	Title	Changed to 'Compliance and Enforcement Policy'
	Various	Corrected spelling and grammatical mistakes
	Para 1.3	Removed reference to consultation
	Para 1.5	Added general office address and generic email
	Para 2.1	Corrected to move words 'promote sustainability' to end of previous bullet point
	Para 2.3	First sentence re-worded to improve clarity
	Para 5.4	Sentence removed to address potential confusion over investigations involving defendants with protected characteristics. Sentence included regarding DPA compliance
	Para 8.2.7	Clarified to ensure that compliance will be pursued equally irrespective of any PCC interest, given that the service cannot issue proceedings against itself
	Para 8.3.2	Wording simplified regarding keeping people updated
	Para 8.4.2.6	Amended '...Head of Service <u>or Senior Manager</u> will decide on a course of action...' Added '(disqualified) from keeping animals'
	Para 10	Re-worded in line with new complaints policy (April 2021)
Annex 1	Changed Powys Trading Standards to Powys County Council	
Annex 1 (various)	Changed 'financial investigation unit' to 'appointed financial investigator'	

	Annex 1, paras 3.3 & 3.4	Renumbered 3.4 and 3.5 to allow for previous paragraph to be numbered 3.3
	Annex 1, para 4.1.1	Removed specific purposes and added 'specified purposes'
	Annex 1, para 4.22	Replaced 'Senior Manager' with 'Manager' and deleted specific officer name
	Annex 1 para 4.3.2	Deleted paragraph naming other organisations
	Annex 1, para 4.5	Deleted paragraph on policies
	Annex 1, para 5.1	Deleted paragraph on consultation
	Annex 1, para 5.2	Amended review timetable to align with main policy. Re-numbered 5.2 as para 4.5.1, and new heading '4.5 Other policies' added.
	Annex 1, paras 6 onwards	Renumbered to take account of above
	Annex 1, para 6.1	Related policies and information updated
	All	Document footer added
August 2023 to May 2024	Para 1.1	Add text 'explosives(fireworks) and petroleum storage (garages)'
	Para 2.2	Link to PCC Corporate Plan added
	Para 2.3 (and others)	'intelligence informed' substituted for 'intelligence led'
	Whole document	Minor amendments to text without affecting general purpose
	Para 4.2	To include ref to Annex 2 Food Enforcement
	Para 9.1	Amended to remove annual review as document will be reviewed as and when required, which may be on a more regular basis if changes so required.
	Annex 2	Included to specifically cover the food enforcement options required by the FSA.
	Generally	Amend references to Public Protection to reflect new service description/title of Regulatory Services.