

FEED LAW INSPECTION AND ENFORCEMENT POLICY AND PROCEDURE

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1.0 Introduction

- 1.1 This procedure is intended for use by all officers involved in inspections and enforcement relating to feed business establishments.
- 1.2 The Policy and Procedure incorporates the better regulation principles of transparency, accountability, proportionality, consistency and targeted action required by the Legislative and Regulatory Reform Act 2006 and takes account of the Scottish Regulators ‘Strategic Code of Practice and the Regulators’ Code.
- 1.3 The policy is published on the Aberdeenshire Council website. Copies can be obtained by contacting the Trading Standards Service, Gordon House, Blackhall Road, Inverurie AB51 3WA.
- 1.4 Officers should also have regard to the following provisions, documents and procedures –
 - The Regulators’ Code, the Scottish Regulators’ Strategic Code of Practice
 - The Home Authority and Primary Authority Principles
 - Feed Law Enforcement (Scotland) Code of Practice 2016
 - Food Law Enforcement (Scotland) Code of Practice 2015
 - Guide to Primary Production Food and Feed Hygiene Inspections in Scotland
 - Earned Recognition Practical Guidance 2016
 - LACORS Home Authority Principle
 - Aberdeenshire Council Inspection Procedures issued August 2015
 - Aberdeenshire Council Trading Standards Enforcement Policy issued August 2015
 - Aberdeenshire Council Trading Standards Enforcement Guidelines
 - Crown Office, Reports to the Procurator Fiscal – A Guide for Non-Police Reporting Agencies
 - Aberdeenshire Feed Law Internal Audit and Monitoring Policy and Procedure

2.0

Aims

2.1 The primary function of the Feed Service is to ensure that the feed and food chain are safe and secure, to achieve this we will:

- Provide Support and Advice to Feed businesses who seek to comply and carry out proportionate and consistent enforcement when justified
- Seek to build effective relationships with all businesses involved within the feed sector.
- Recognise the principals of earned recognition for compliant businesses and reduce the inspection burden
- Be aware of the wider community when making enforcement decisions
- Ensure all interventions are targeted according to risk
- Pursue the continuous improvement of the feed service

3.0

General

3.1 By virtue of the Council's Scheme of Delegation the Director of Infrastructure Services and the Head of Service (Protective Services and Waste Management), can grant authorisations to officers of the service for performance of statutory functions. All feed enforcement officers are issued with warrants certifying their appointment and authorisation to exercise the powers in relation to the Acts of Parliament and subordinate legislation that are specified therein.

3.2 Officers are expected to gain the necessary qualifications and experience to be authorised to undertake feed hygiene inspections at the level of primary production.

4.0

Compliance and Enforcement

- 4.1 Compliance for feed can be checked by a variety of methods, including;
- Inspection of a feed business
 - Examination of documents at the premises
 - Examination of documents as a desktop assessment
 - Review of online feed businesses
 - Sampling and analysis
- 4.2 Primary and secondary inspections shall be carried out in accordance with the Feed Law Enforcement Code of Practice and the Guide to Primary Production Food and Feed Hygiene Inspections in Scotland, produced by the Food Standards Agency. Inspections will take place to ascertain and secure compliance with specified feed law.
- 4.3 A Primary Inspection is a comprehensive visit covering ;
- scope of the business and relevant legislation which applies
 - gathering and recording information on practices, procedures and processes of the business
 - identifying actual or potential breaches of legislation and providing advice on steps required to achieve compliance, and/or gathering and preserving evidence as appropriate
 - collecting samples for analysis if necessary
- 4.4 Premises inspected will include farms producing and storing feed for their own use (primary production), wholesalers and transporters, manufacturers of compound feed and those putting feed on the market
- 4.5 Inspections are generally conducted with prior notice, appointments are made to ensure most efficient use of staff time. Farm visits are generally carried out by appointment to prevent aborted visits and to make most efficient use of officer time.
- 4.6 Officers will ensure that clean and appropriate protective clothing and footwear is worn and that measures are taken to ensure biological hazards are controlled.

5.0

Targeting

5.1 Programmed Primary Inspections are carried out in accordance with a risk rating scheme as detailed below;

- a) Inspections at primary production establishments are carried out in accordance with the Food Law Code of Practice in Scotland, and currently are at frequencies of 2% or 25% per annum depending on local knowledge of the business gathered during inspections, and whether or not the business is a member of a quality assurance scheme.
- b) Visits to other feed businesses take place at intervals determined by the Local Government Regulation (LGR, formerly LACORS) risk assessment scheme, and currently are at frequencies of 1, 2 or 5 years for high, medium and low risk businesses respectively.

In addition any premises which are registered but have not had an initial visit will be inspected and rated in accordance with the appropriate scheme above.

5.2 There may be circumstances where a premises will receive a full primary inspection outwith those programmed. Such circumstances may include the following;

- when a new registration is received
- when the trading standards service becomes aware of any material change in ownership or nature of the operation of the feed business
- when a complaint is received
- when a referral is received under the Home Authority Principle

5.3 In addition to these, staff may also carry out secondary inspections which may be for the purposes of –

- sampling
- checking the progress of corrective action required at a previous visit
- investigating complaints
- providing advice not as part of a programmed visit.

5.4 In accordance with good regulatory practice, staff will coordinate visits with other agencies such as the Animal Medicines Inspectorate, wherever practicable, to ensure minimum disruption to the business.

5.5 Whenever a primary inspection visit has taken place, an inspection report shall be completed and a copy provided to the feed business operator. This report will clearly distinguish between action to be taken to meet statutory requirements and recommendations on good practice.

5.6 Comprehensive records of all primary and secondary inspections will be maintained. This will include details of any infringements, advice provided and remedial action taken.

- 5.7 Inspections shall also be recorded on the SPPOCS (Scottish Primary Production Official Controls System) Database if required by the Food Standards Agency. This allows for sharing of information on inspections by different agencies and helps coordinate inspection activity.

6.0 Proportional and Consistent Enforcement

- 6.1 Enforcement action taken will be reasonable, proportionate and consistent with good practice.

- 6.2 We support the Home Authority and Primary Authority Schemes, designed to promote uniformity and reduce burden upon business

- 6.3 Our first objective is to help prevent non compliances arising. We will provide advice and guidance to businesses through a variety of means, including the provision of advice leaflets and signposting to internet information but we encourage direct contact from businesses at an early stage so that advice provided takes account of their specific circumstances.

- 6.4 We will ensure compliance through appropriate, proportionate action. There will be occasions where immediate formal action will be required but in general we will seek to achieve compliance through escalating action as appropriate. It is however, the clear responsibility of business operators to be informed on trading standards legislation and to ensure compliance with it.

- 6.5 Enforcement options available to the officer are listed below–

- provide verbal advice/education to the business
- provide written advice to the business
- issue warning letter to the business
- issue statutory notices-
 - Improvement notice (Model Form 1 of Annex 7 of Code of Practice)
 - Emergency prohibition notice (Model Form 2)
 - Detention/seizure of feed notices (Model Forms 3 & 5)
- suspension of registration or approval (Model Form 7)
- revocation of registration or approval (Model Form 8)
- submit a prosecution report to the Procurator Fiscal
- in the case of imported feed
 - detention of feed
 - ordered to be destroyed
 - subject to special treatments detailed in article 20, reg 882/2004
 - re-dispatch outside the Community

NB. Formal enforcement action in relation to feed hygiene breaches at the level of primary production will only be taken by an officer meeting the qualification and experience requirements of the Food Law Code of Practice for Scotland, reference should also be made to the Aberdeenshire Authorisation Policy and Procedure.

6.6 Except where circumstances indicate a significant risk, officers will operate a graduated and educative approach, starting with advice/education and informal action and only moving to more formal action where the informal approach has failed to achieve the desired result.

6.7 The Principal Trading Standards Officer with lead officer responsibility for feed hygiene shall be notified as soon as possible about any formal action taken including issuing warning letters and statutory notices and must be kept updated on the progress of such action.

6.8 Improvement Notices

6.8.1 Improvement notices should be considered in the following circumstances –

- where there is a history of breaches of specified feed law
- where formal action is proportionate to the risk posed to animal or human health
- where the officer believes an informal approach will be unsuccessful
- where the matter does not warrant an emergency prohibition order.

6.8.2 The improvement notice shall be in the form shown in Model Form 1 contained in the annex to the Feed Law Enforcement Code of Practice (hereafter referred to as the Code of Practice) and can be issued by all officers authorised under the Feed (Hygiene & Enforcement) (Scotland) Regulations 2005.

6.8.3 The period given in which the feed business operator must take measures to comply with feed legislation must be not less than 14 days.

6.9 Prohibition Orders

6.9.1 Prohibition orders can only be imposed by a court when a feed business operator has been convicted of an offence under specified feed law and the court is satisfied the health risk condition is fulfilled.

The Health Risk Condition is fulfilled if any of the following involves risk of injury to health (including any permanent or temporary impairment) namely

- a) the use for the purposes of the business of any process or treatment
- b) the construction of any premises used for the purposes of the business, or the use for those purposes of any equipment; and
- c) the state or condition of any premises or equipment used for the purposes of the business

and health means the health of an animal or, through consumption of the products of such animal, human health

6.9.2 Emergency prohibition notices shall be in the form shown in Model Form 2 contained in the Annex to the Code of Practice and may be served by all officers authorised under the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005. This notice effectively bans the use of the premises, process, treatment or equipment described.

6.9.3 They should be used where an officer has evidence that the health risk condition is fulfilled and this risk is immediate, but must be followed within 3 days by an application to the Sheriff for an emergency prohibition order.

Examples include –

- infestation by vermin resulting in contamination or a significant risk of contamination of feed
- poor cleaning procedures creating cross contamination or a significant risk of contamination of feed posing an actual risk to the health of animals or humans
- Serious risk of cross contamination with undesirable substances.

6.9.4 Copies of the feed business emergency prohibition notice and emergency prohibition order shall be affixed in a conspicuous place on the premises as soon as practicable.

6.9.5 Emergency prohibition notices will cease to have effect if no application has been made to the court for an order within 3 days.

6.9.6 Emergency prohibition notices and orders will cease to have effect on the issue of a certificate by an officer to the effect that the health risk condition is no longer fulfilled. An example certificate is contained in the Annex to the Code of Practice as Model Form 6.

6.9.7 The above does not preclude the authority accepting voluntary closure of the premises or cessation of the use of equipment or processes at the instigation of the feed business operator where there is agreement that the health risk condition exists.

6.10 Seizure and Detention of Feed

6.10.1 An officer may seize or detain feed if it appears to that officer, either on inspection or on analysis of a sample taken that it fails to comply with the requirements of specified feed law.

6.10.2 Feed that has been seized must be brought before the court and dealt with by the Sheriff. He must condemn the feed if it appears to him that it fails to comply with the requirements of specified feed law.

6.10.3 A detention notice should be used where a voluntary agreement to withhold the feed or to surrender the feed to the local authority cannot be achieved and more time is required to establish whether or nor there is a contravention of feed law.

- 6.10.4 Once a detention notice has been served the authorised officer must, within 21 days, establish whether the detained material complies with specified feed law and either issue a withdrawal notice (Model Form 4 of Annex 7 to the Code of Practice) or apply to a Sheriff for a condemnation order.
- 6.10.5 A detention notice must be signed by the officer detaining the feed. An example notice is contained in the Code of Practice – Model Form 3 in Annex 7.
- 6.10.6 A seizure notice should be used
- where a voluntary agreement to surrender the feed to the local authority cannot be achieved
 - where evidence has been obtained that the material fails to comply with the requirements of specified feed law and
 - where treatment or processing will not rectify the problems with the feeding stuff.
- 6.10.7 A seizure notice shall be in the form shown in Model Form 5 of Annex 7 of the Code of Practice.
- 6.10.8 If the feeding stuff is seized, the person in charge of the material and anyone liable for prosecution must be informed of the intention to apply for a condemnation order. This order should normally be applied for within 2 working days of seizure.
- 6.10.9 The feed authority is responsible for ensuring the destruction of feed that has been condemned or voluntarily surrendered.

6.11 Suspension or Revocation of Registration and Approval

- 6.11.1 Suspension or revocation of registration or approval should only be considered where a feed business has consistently breached the requirements of specified feed law and other enforcement action has not been successful in achieving an improvement. The decision to suspend or revoke will be taken by the lead officer quality standards.
- 6.11.2 Model Forms 7 and 8 of Annex 7 of the Code of Practice should be used to notify the business of such a decision. These forms include information on the right to appeal.

6.12 Reports to the Procurator Fiscal

- 6.12.1 The decision on whether or not to submit a report to the Procurator Fiscal shall be made in line with the criteria laid down in the Aberdeenshire Council Trading Standards Enforcement Policy Statement.

6.12.2 Reports shall be drafted using the advice provided in the Aberdeenshire Council Trading Standards Enforcement Guidelines and the Crown Office, Reports to the Procurator Fiscal- A guide for non-police reporting agencies.

7.0 Monitoring and Review

- 7.1 Inspection practices and procedures are subject to regular review and revision where necessary, especially in the light of new legislative requirements or changes to best practice or other guidance.
- 7.2 Review and monitoring of this Policy and Procedure shall be in accordance with the Aberdeenshire Feed Law Internal Audit and Monitoring Policy and Procedure
- 7.3 The Lead Feed Officer shall continually review the actions of staff enforcing feed legislation.
- 7.4 The Lead Feed Officer shall review the feed policy and procedure and update the Trading Standards Management Team at the annual Year ahead meeting in January of each year.

8.0 Transparency

- 8.1 The Trading Standards Team Plan is prepared each year and includes details of feed enforcement work. The plan includes performance indicators, customer satisfaction and operational activities in all relevant areas including feed
- 8.2 A Food and Feed Plan and review is reported to the ISC committee annually. The plan and review are published on the service website
- 8.3 Officer enforcing feed legislation are given powers of entry, inspection and seizure. The powers are provided by statute and officers are authorised through the Council's Scheme of Delegation

9.0 Comments and Complaints

- 9.1 Businesses who feel we have failed to comply with this policy or who are dissatisfied with any action we have taken can raise the matter with the officer concerned or their line manager. If this does not resolve the matter a formal complaint may be lodged using the Council's complaints procedure Have Your Say. Details are contained on the Council website at <http://www.aberdeenshire.gov.uk/haveyoursay/>.