

River Tees

PORT HEALTH

Authority



**River Tees Port Health
Authority
Enforcement Policy**

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Introduction

The Enforcement Policy applies to all the functions of River Tees Port Health Authority (RTPHA) and details the Authority's approach to enforcement in accordance with relevant legislation, statutory codes of practice and other guidance.

RTPHA is constituted by the River Tees Port Health Authority Order 2016 and a joint board of seventeen members from the riparian authorities oversees its functions. These governance arrangements are detailed in the Order and the Authority's constitution.

The functions and responsibilities of RTPHA include the inspection of ships, enforcement of food, feed and environmental protection laws, and the prevention and control of infectious diseases.

Redcar and Cleveland Borough Council (RCBC), manages the port health service on behalf of the other riparian authorities of Stockton-On-Tees Borough Council, Middlesbrough Borough Council and Hartlepool Borough Council.

The port health service operates within the Environmental Health (Commercial) Team of RCBC which is managed by the Principal Environmental Health Officer (Commercial).

The policy has been prepared in accordance with relevant legislation and guidance and in particular the Regulators' Code. The Enforcement Policy has received approval from the joint board of RTPHA and will be reviewed annually.

1. Enforcement

Enforcement is defined as including any advice, inspection, action, instruction or warning, caution, prosecution (or other types of court action, for examples a warrant) taken in relation to a person or organisation who is or is believed to be acting unlawfully.

RTPHA will take a graduated approach to enforcement of legislation. All person(s) and companies will be encouraged to understand the nature and extent of their responsibilities and comply voluntarily. The Authority will pursue prosecution where circumstances indicate a significant risk or crime or where formal action is otherwise in the public interest.

In considering whether to initiate enforcement action RTPHA will take account of the following:

- Code for Crown Prosecutors.
- Regulators' Code.
- Police and Criminal Evidence Act 1984 (and associated Code of Practice).
- Criminal Procedure and Investigations Act 1996 (CPIA).
- Regulation of Investigatory Powers Act 2000 (RIPA).
- Regulatory Enforcement and Sanctions Act 2008.
- Legislative and Regulatory Reform Act 2006.
- Powers of Entry Code of Practice.
- Other service specific codes or guidance.

2. Principles of Enforcement

RTPHA will ensure that its approach to regulation is underpinned by the principles of enforcement as follows:

(i) Proportionality in the application of the law and in securing compliance. The Authority will ensure that any action it takes to achieve compliance or bring individuals/companies to account for non-compliance will be proportionate to risks and/or to the seriousness of the breach.

(ii) Consistency of approach and application. The Authority will carry out its activities in a fair, equitable and consistent manner. In each case officers will consider a number of variables including:

- the degree of risk.
- the attitude and competence of management/business operator/duty holder.
- the previous history of the business operator/duty holder.
- the seriousness of the breach.

The Authority will ensure that it has procedures in place to promote and ensure consistency between officers, other authorities and enforcement bodies.

(iii) Transparency regarding the operation of the port health service and that those whose activities are regulated by the Authority know what may expect from the Authority. RTPHA will assist and advise duty holders to understand and fulfil their responsibilities and will provide information on the Authority's role as a regulator.

Individuals or businesses have a right to query or appeal against enforcement action where there are statutory appeal mechanisms. Details of the mechanisms for query or appeal will be provided where appropriate.

(iv) Targeting of enforcement action. The Authority will direct its regulatory effort primarily towards those whose activities give rise to the most serious risk or where the risks are less well controlled. Action will be focused on those directly responsible for any breach and who are best placed to control it.

3. Authorisation of Officers

The Authority has a system for delegating authorisation to individual officers. This delegation is contained in the Authority's constitution which is available upon request or online at <http://www.teesporthealth.co.uk/>.

Only officers who are competent by, qualification training and/or experience will be authorised to take enforcement action.

4. Offences and Penalties

The courts will impose appropriate sentence/s upon conviction in accordance with provisions detailed in legislation and sentencing guidelines. The alleged offences and potential penalties will be made clear to prospective defendants throughout the investigation.

5. Primary Authority Scheme

The Authority is committed to the Primary Authority scheme. The Primary Authority scheme gives companies the right to form a statutory partnership with a single local authority, which then provides robust and reliable advice for other authorities to take into account when carrying out inspections or dealing with non-compliance.

When considering enforcement action officers will notify and agree any legal action with the Primary Authority associated with a business (if such a partnership exists) before taking action unless enforcement action is required to deal with an imminent risk. More information on the Primary Authority scheme is available from:

<https://primaryauthorityregister.info/par/index.php/home>

6. Investigation with other Agencies

Where an enforcement role is shared with another agency, RTPHA will undertake joint enforcement activity in order to minimise any unnecessary duplication and delay. Joint working may be undertaken with agencies including local or port health authorities, the Police, HM Revenue and Customs or any other relevant agency as appropriate.

7. Equality and Diversity

RTPHA will ensure that decisions are not influenced by the gender, disability, religion or political belief, language, ethnicity or sexual preferences of offenders, victims or witnesses. The Authority will provide translators for interviews where the interviewee's first language is not English and consider the provision of correspondence in other languages. Officers will also carry out visits outside of normal office hours when the business concerned operates at those times.

When dealing with juveniles or people who are vulnerable due to learning difficulties, mental illness or any other factor, due regard will be taken.

8. Consultation and Review

RTPHA will consult and inform its stakeholders of any changes to legislation and the implications of those changes. The Authority will provide the mechanisms for those whose activities are regulated by the Authority to comment on the service they have received and/or the actions taken by the Authority. The Authority will act upon any comments or complaints about the service or the conduct of its officers in an appropriate manner and in accordance with the policies of RTPHA and/or Redcar and Cleveland Borough Council.

9. Powers of Entry

When exercising their statutory powers officers will have regard to the following:

- Police and Criminal Evidence Act 1984 (and associated Code of Practice).
- Regulation of Investigatory Powers Act 2000 (RIPA).
- Powers of Entry Code of Practice.
- Food Law Code of Practice.
- Feed Law Code of Practice.

10. Primary Legislation

Agriculture Act 1970

European Communities Act 1972 and relevant Regulations made in accordance the Act

Public Health (Control of Disease) Act 1984

Food Safety Act 1990

Environmental Protection Act 1990

International Health Regulations 2005

11. Enforcement Options

Imported food, feed and relevant products	Qualifying Criteria for Option (please note the use of each option will only be considered when one or more of the criteria apply)
No Action	Products from the member states will not routinely be examined and no enforcement action is likely to be taken.
Document Check	Document checks will be carried out in accordance with the requirements of legislation relevant to the products being introduced through Tees Port.
Identity Check	Identity checks will be carried out in accordance with the requirements of legislation relevant to the products being introduced through Tees Port. Particular attention shall be given where officers suspect non-compliance is likely. A risk-based approach shall be taken.
Physical Check	Physical checks will be carried out in accordance with the requirements of legislation relevant to the products being introduced through Tees Port. Particular attention shall be given where officers suspect non-compliance is likely. A risk-based approach shall be taken.
Deferred examination	Deferred examination to other Local Authorities will not apply to foods not of animal origin subject to enhanced import controls. The decision to defer examination will only be made in exceptional circumstances and where RTPHA considers there is a valid reason for deferral.
Detention / Notices	Food and feed that fails to comply with food/feed safety requirements shall be detained pending special treatment, destruction, re-dispatching outside the EU or use for other purposes. Notices shall be served in accordance with the relevant legislation relating to the food or feed imported through Tees Port.
Simple caution	Simple Cautions will be used under the following circumstances: <ul style="list-style-type: none"> • To deal quickly and simply with less serious offences. • To divert offenders where appropriate from appearing in criminal courts. • To reduce the likelihood of re-offending. • Simply cautions are issued in accordance with Home Office Circular 30/2005.
Prosecution	Prosecutions will be taken under the following circumstances: <ul style="list-style-type: none"> • The offence is serious. • There is a poor history of compliance. • There has been a failure to comply with a statutory notice or there has been a repetition of a breach that was subject to a simple caution. • False information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk. • Officers have been intentionally obstructed in the lawful course of their duties.

Public Health Controls	Qualifying Criteria for Option (please note the use of each option will only be considered when one or more of the criteria apply)
No Action	Public health enforcement options shall not be considered where there is no risk to public health.
Inspection	Ships not requiring a ship sanitation certificate shall be subject to risk based inspection and enforcement action taken in accordance with the Food Law Code of Practice, the general enforcement policy, and the International Health Regulations. The service of statutory notices shall be in accordance with the

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Public Health Controls	Qualifying Criteria for Option (please note the use of each option will only be considered when one or more of the criteria apply)
	food safety and food standards enforcement policy and in consultation with the Maritime and Coast Guard Agency and the Food Standards Agency.
Ship Sanitation Exemption Certificate	Such certificates shall be issued where conditions on a vessel are compliant with international health regulations.
Ship Sanitation Control Certificate	Such certificates shall be issued where conditions on a vessel are non-compliant with international health regulation.

Environmental Controls	Qualifying Criteria for Option (please note the use of each option will only be considered when one or more of the criteria apply)
No Action	Enforcement options shall not be considered where there is no risk to public health from statutory nuisance or prescribed process at the port.
Informal action This may take the form of: • Advice • Verbal warning • Written information Inspection reports	<ul style="list-style-type: none"> • The act or omission is relatively minor. • From the individual/businesses' past history it can be reasonably expected that informal action will achieve compliance. • Confidence in the individual/business's management practices is high. • The consequence of non-compliance will not pose a significant risk to those affected by the activities of the business.
Formal Action	<ul style="list-style-type: none"> • Formal action is proportionate to the risk to public health. • There is a record of non-compliance with breaches of legislation enforced by the Authority. The authorised officer has reason to believe that an informal approach will not be successful.
Simple Caution	Simple Cautions will be used under the following circumstances: <ul style="list-style-type: none"> • To deal quickly and simply with less serious offences. • To divert offenders where appropriate from appearing in criminal courts; and • To reduce the likelihood of re-offending. • Simply cautions are issued in accordance with Home Office Circular 30/2005.
Prosecution	Prosecutions will be taken under the following circumstances: <ul style="list-style-type: none"> • The offence is serious. • There is a poor history of compliance. • There has been a failure to comply with a statutory notice or there has been a repetition of a breach that was subject to a simple caution. • False information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk. • Officers have been intentionally obstructed in the lawful course of their duties.

Food Hygiene and Standards	Qualifying Criteria for Option (please note the use of each option will only be considered when one or more of the criteria apply)
No Action	Enforcement options shall not be considered where there is no risk to public health from the activities of food businesses operating at the port.
Informal action	<ul style="list-style-type: none"> • The act or omission is relatively minor.

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Food Hygiene and Standards	Qualifying Criteria for Option (please note the use of each option will only be considered when one or more of the criteria apply)
This may take the form of: <ul style="list-style-type: none"> • Advice • Verbal warning • Written information Inspection reports	<ul style="list-style-type: none"> • From the individual/businesses' past history it can be reasonably expected that informal action will achieve compliance. • Confidence in the individual/business's management practices is high. • The consequence of non-compliance will not pose a significant risk to those affected by the activities of the food business.
Hygiene Improvement Notice	<ul style="list-style-type: none"> • Formal action is proportionate to the risk to public health. • There is a record of non-compliance with breaches of food hygiene regulations. • The authorised officer has reason to believe that an informal approach will not be successful.
Improvement Notice	<ul style="list-style-type: none"> • Formal action is proportionate to the risk to public health. • There is a record of non-compliance with breaches of food laws relating the labelling, composition, promotion and advertisement of food. • The authorised officer has reason to believe that an informal approach will not be successful.
Voluntary Closure (food hygiene)	<ul style="list-style-type: none"> • Closure required to remove an imminent risk of injury to health. • Taken in agreement with the food business operator. • Officer is confident that premises will not reopen without prior consent of the officer.
Hygiene Emergency Prohibition Notice	<ul style="list-style-type: none"> • There is an imminent risk of injury to health. • Informal voluntary closure is considered inappropriate due to the nature or severity of the health risk conditions. • Immediate action is required to protect public health. • The service of an Hygiene Emergency Prohibition Notice will be followed by an application to the Magistrates court for a Hygiene Emergency Prohibition Order.
Emergency Prohibition Notice	<ul style="list-style-type: none"> • There is an imminent risk of injury to health. • Informal voluntary closure is considered inappropriate due to the nature or severity of the health risk conditions. • Immediate action is required to protect public health. • The service of an Emergency Prohibition Notice will be followed by an application to the Magistrates court for an Emergency Prohibition Order.
Remedial Action/Detention Notices – only applicable to approved premises.	Remedial Action/Detention Notices will be considered if: <ul style="list-style-type: none"> • There is a breach of the Hygiene Regulations. • An inspection under the Hygiene Regulations has been hampered. • There are indications or suspicions that food at an establishment is unsafe and requires examination. • Immediate action is required to ensure food safety. • Continuing offences require urgent action and corrective actions have been ignored.
Simple Caution	Simple Cautions will be used under the following circumstances: <ul style="list-style-type: none"> • To deal quickly and simply with less serious offences. • To divert offenders where appropriate from appearing in criminal courts; and

Food Hygiene and Standards	Qualifying Criteria for Option (please note the use of each option will only be considered when one or more of the criteria apply)
	<ul style="list-style-type: none"> • To reduce the likelihood of re-offending. • Simply cautions are issued in accordance with Home Office Circular 30/2005.
Prosecution	<p>Prosecutions will be taken under the following circumstances:</p> <ul style="list-style-type: none"> • The offence is serious. • There is a poor history of compliance. • There has been a failure to comply with a statutory notice or there has been a repetition of a breach that was subject to a simple caution. • False information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk. • Officers have been intentionally obstructed in the lawful course of their duties.

Seizure and Detention of Food

Officers may detain any food they suspect fails to comply with food safety requirements or food that they suspect has not been produced or distributed in accordance with hygiene laws.

The seizure and detention of food will be carried out in accordance with the administrative provisions of Section 9 of the Food Safety Act 1990.

Officers may certify any food that has not been produced, processed or distributed in accordance with the Hygiene Regulations, by use of Regulation 29 of the Food Safety and Hygiene (England) Regulations 2013, and then seize the food by the use of Section 9 of the Food Safety Act 1990.

12. Relevant Guidance

- Food Standards Agency Food Law Code of Practice and Practice Guidance.
- Food Standards Agency’s Inland Enforcement of Imported Feed and Food Controls Resource Pack.
- Industry Guides to Good Hygiene Practice.
- Food Standards Agency Feed Law Code of Practice.
- WHO, Handbook for inspection of ships and issuance of ship sanitation certificates.
- Better Regulation Delivery Office, Regulators’ Code.
- Home Office Powers of Entry Code of Practice.