





## ABOUT THE FOOD SAFETY AUTHORITY OF IRELAND (FSAI)

The Food Safety Authority of Ireland (FSAI) is a statutory State agency, independent in the exercise of its functions and established under the Food Safety Authority of Ireland Act, 1998. The principal function of the FSAI is to take all reasonable steps to ensure that food consumed, produced, distributed or marketed in the State meets the highest standards of food safety and hygiene reasonably attainable and to ensure that food complies with legal requirements, or where appropriate with recognised codes of good practice. The FSAI is responsible for the enforcement of all food legislation in Ireland.

*Published by:*

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# 1 INTRODUCTION

This enforcement policy explains how food legislation is enforced in Ireland and describes the consequences of non-compliance. All non-compliance requires remedial action, even if there is no immediate health risk. It is the legal responsibility of food business operators to ensure that the food they place on the market is safe and that all requirements of food law are met.

## Who enforces food legislation?

The FSAI has the statutory responsibility for enforcing food legislation. Enforcement is carried out mainly through service contracts with official agencies who act on behalf of the FSAI. The service contracts outline an agreed level and standard of food safety activity. The official agencies and the food sectors they are responsible for enforcement in are:

- **Department of Agriculture, Food and the Marine** – Large-volume meat slaughterhouses and processors; milk and dairy processors; import of animal-origin food; egg producers and packers; egg products; pesticides; residues; organics; horticulture; quality schemes for agricultural products and foodstuffs.
- **Health Service Executive** – The manufacture and import of non-animal-origin food; distributors; and retailers and caterers
- **Sea-Fisheries Protection Authority** – Fishing vessels; aquaculture; and fish processors
- **Local authorities** – Low-volume meat slaughterhouses and processors
- **National Standards Authority of Ireland** – Food contact material suppliers and recognition of natural mineral water

In the context of this policy and food legislation, enforcement covers all activities of the FSAI and official agencies that are aimed at promoting and ensuring compliance with food legislation. It includes providing support, advice and guidance, regulatory inspections and audits, and formal legal action taken to address non-compliance.<sup>1</sup>

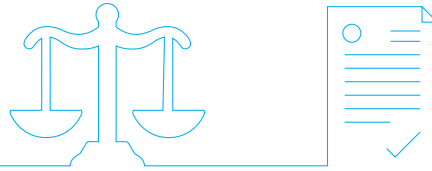
## 1.1 Purpose

This document sets out Ireland's food law enforcement policy.

The purpose of this policy is to:

- Provide assurance that all non-compliance with food law will be dealt with effectively and appropriately
- Provide a framework to facilitate the consistent use of the enforcement provisions contained in food law
- Inform the public and food businesses of the enforcement policy in Ireland.

<sup>1</sup> Adapted from OECD definition, OECD (2014) *Regulatory Enforcement and Inspections, OECD Best Practice Principles for Regulatory Policy*. Paris: OECD Publishing.



## 2 PRINCIPLES OF FOOD LAW ENFORCEMENT

These principles of enforcement of food law take on board the requirements of European Union legislation,<sup>2</sup> national law, regulatory principles from the Government's white paper on regulating better<sup>3</sup> and international best practice.<sup>4</sup> The principles are:

1. To protect consumers' health and interests first and foremost.
2. To promote compliance with food legislation. This is done by engaging with the food industry and providing support, advice, guidance and information.
3. To carry out enforcement in a targeted way, based on risk. This means in general that the food businesses or activities that pose the highest risk receive the highest level of controls.
4. To take effective proportionate and dissuasive enforcement action where food businesses fail to comply. The enforcement action should be legitimate, suitable to achieve the intended outcome, necessary, effective and reasonable in the circumstances.
5. To promote consistency in the enforcement response to non-compliance. However, as non-compliance varies considerably, and as official agencies enforce different food legislation, the enforcement action applied may not be the same in each case.
6. To operate in a fair and accountable manner. Information and guidance relating to enforcement – including legislation, rights of appeal and [complaints](#)<sup>5</sup> procedures – should be available to food businesses and the public. Food businesses should be given information on their legal rights of appeal where such rights exist. The FSAI and the official agencies operate in line with publicly available [customer charters](#)<sup>6</sup> that specify the standards of service to which they operate.
7. To operate in a timely manner when dealing with matters relating to enforcement.
8. To operate in a transparent manner. This includes transparency in how enforcement is carried out and through publishing information on the most serious food law enforcements. Publication of enforcements is done in accordance with legislative constraints. Written reports are provided to food business operators where there is non-compliance detected.
9. For all Government Departments and State agencies to work collaboratively with the aim of enhancing the effectiveness and efficiency of food controls.

<sup>2</sup> European Commission (2017) Regulation (EU) 2017/625 on Official Controls and Other Official Activities Performed to Ensure the Application of Food and Feed Law. Brussels: European Commission.

<sup>3</sup> Department of the Taoiseach (2004). *Regulating Better A Government White Paper setting out six principles of Better Regulation*. Dublin: Government Publications Office.

<sup>4</sup> OECD (2014) *Regulatory Enforcement and Inspections, OECD Best Practice Principles for Regulatory Policy*. Paris: OECD Publishing.

<sup>5</sup> The complaints procedures of each official agency are available on their websites. The FSAI complaints procedure is available at: [www.fsai.ie/faq/making\\_a\\_complaint.html](http://www.fsai.ie/faq/making_a_complaint.html)

<sup>6</sup> The customer charters of each official agency are available on their websites. The FSAI Customer Charter is available at: [www.fsai.ie/about\\_us/about\\_fsai/customer\\_charter.html](http://www.fsai.ie/about_us/about_fsai/customer_charter.html)

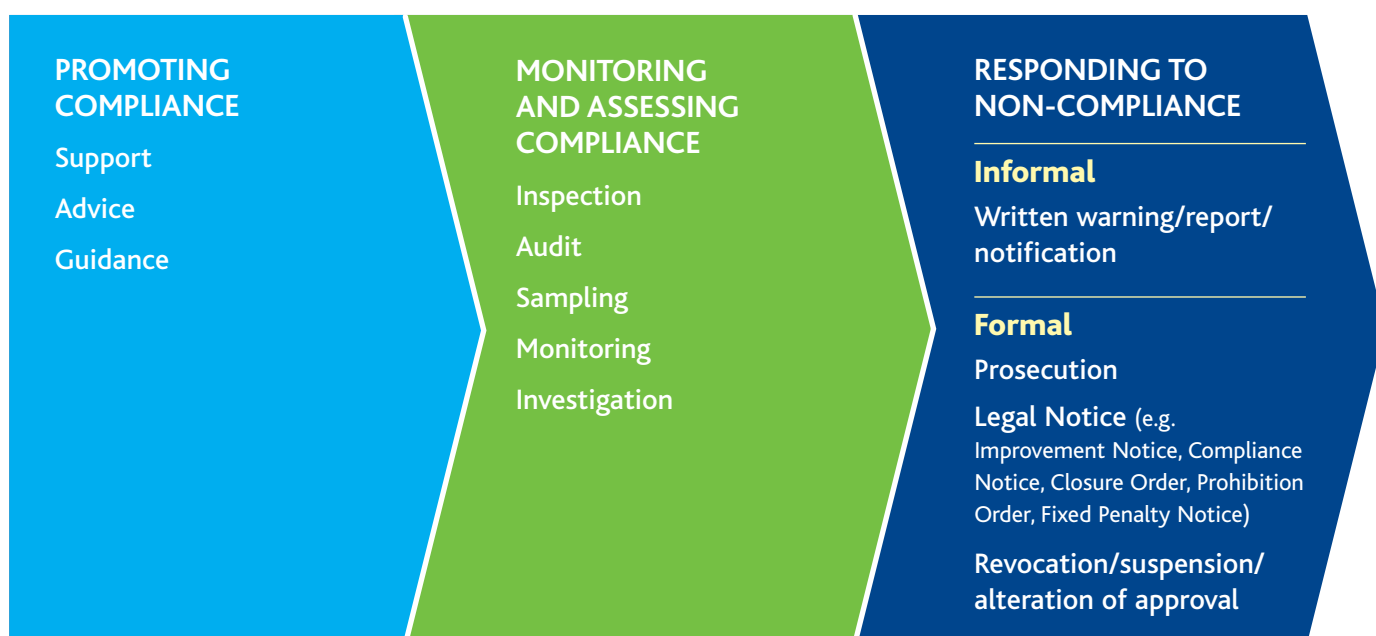
## 3 THE ENFORCEMENT POLICY

### 3.1 The enforcement continuum

The policy for enforcement of food law is based on a compliance and enforcement continuum which includes:

- Promoting compliance
- Monitoring and assessing compliance
- Responding to non-compliance

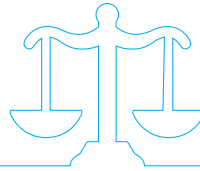
#### Compliance and enforcement continuum



#### Promoting compliance

The FSAI and the official agencies<sup>7</sup> believe that promoting compliance is an effective enforcement tool that can prevent or minimise non-compliance. In many cases, compliance promotion can deliver the intended outcome to consumers' health and interests without the need for enforcement action. The FSAI and the official agencies assist food businesses to comply by providing support, advice, guidance and information on the requirements of food law and best practice and by proactively engaging with the food industry and other stakeholders through workshops, seminars, webinars, training, conferences and targeted events. Inspectors also promote compliance through the advice and support they provide through inspection and enforcement activities.

<sup>7</sup> Department of Agriculture, Food and the Marine, Health Service Executive, Sea-Fisheries Protection Authority, Local Authorities and National Standards Authority of Ireland



## Monitoring and assessing compliance

Compliance is monitored and assessed through official food controls. These controls include:

- Inspections
- Audits
- Investigations
- Taking samples of food and other relevant materials
- Monitoring activities in food businesses, including on the use of food; storage and transport of food; or on any substance, process or material used in connection with that food.

The information attained through monitoring and assessing compliance is used to gain insights which allow enforcement to be reviewed, adapted and focused on reducing risks to public health. Information on official control activity and its effectiveness is made available to the public and food businesses through the [FSAI website](#).<sup>8</sup>

## Responding to non-compliance

Where non-compliance is identified, action will always be taken to ensure that the operator remedies the problem. The objectives of the response to non-compliance are to:<sup>9</sup>

- Protect consumers' health and interests without undue delay
- Be proportionate to the nature of the non-compliance
- Change the behaviour of the non-compliant food business operator
- Eliminate any financial gain or benefit to the food business from non-compliance
- Be responsive and consider what is appropriate for the particular non-compliant food business operator
- Act as a deterrent to future non-compliance in food businesses in general.

It will take account of:

- The risk presented to consumers' health and interests by the non-compliance
- The food business's compliance history
- The food business's response to the non-compliance and proposed remedial actions.

## 3.2 Enforcement tools

In the case of low-risk non-compliance, it will often be sufficient to document the non-compliance, require it to be remedied, and include a time frame for compliance.

Where legal enforcement action is required, there is a wide range of enforcement tools available in food legislation. Inspectors will be guided by the enforcement tools available to them under the legislation relevant to the non-compliance.<sup>10</sup> For example, enforcements under the Food Safety Authority of Ireland Act, 1998 can be used in all food businesses where a serious risk to public health has been identified. Other legislative tools that are specific to a particular type of activity or food business or to a particular aspect of food legislation may be used for other types of non-compliance, for example, related to food labelling or to premises that require approval to operate or to deal with the undeclared presence of food allergens.

<sup>8</sup> Published information on control activities includes all individual enforcement orders and prosecutions and summary information on all official controls activity (see FSAI annual reports), audit reports and results of chemical and microbiological surveillance.

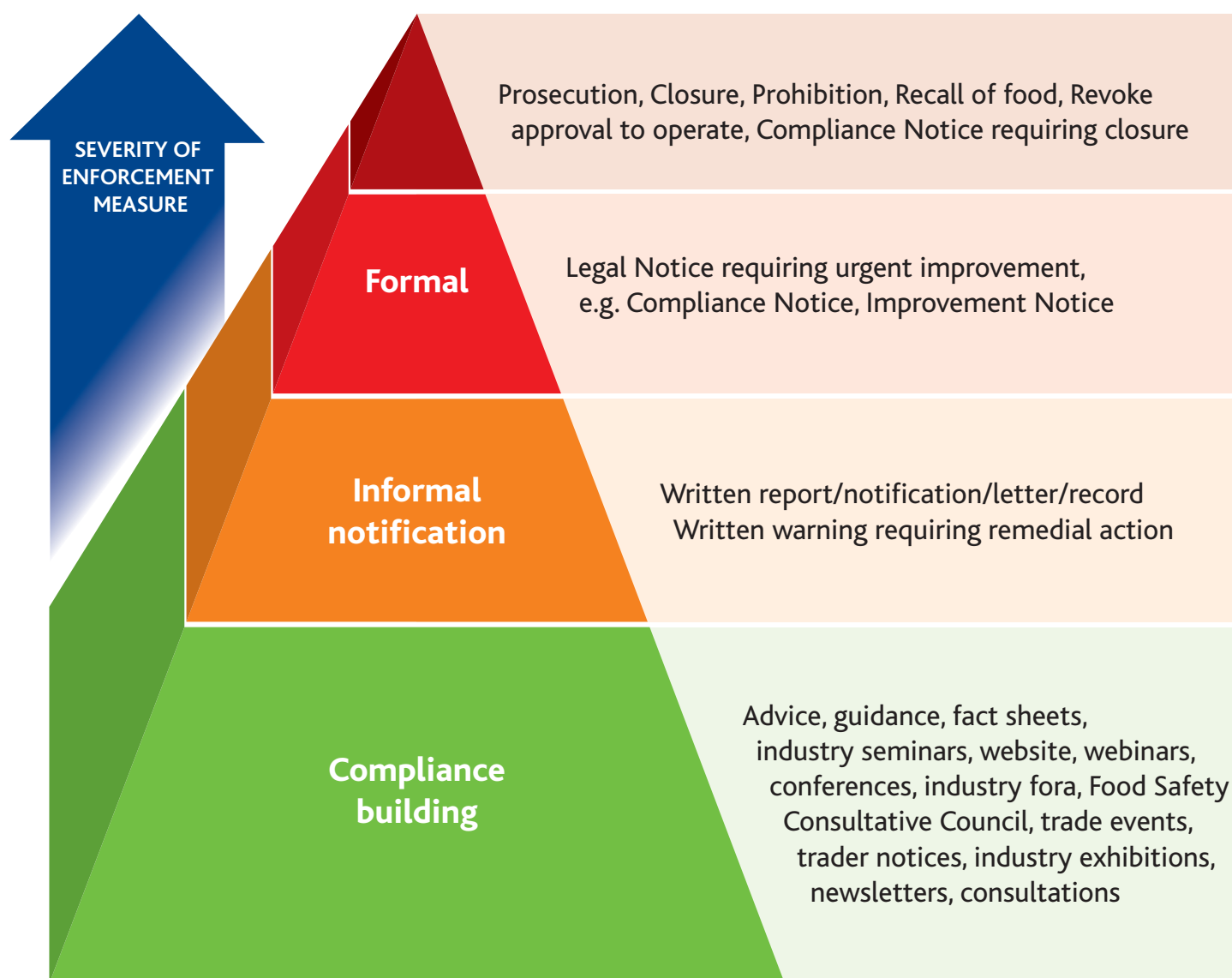
<sup>9</sup> Adapted from Macrory RB (2006) *Regulatory Justice: Making Sanctions Effective. Final Report*. London: Better Regulation Executive. Available at: <http://webarchive.nationalarchives.gov.uk/20121212135622/http://www.bis.gov.uk/files/file44593.pdf>

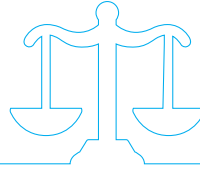
<sup>10</sup> FSAI Guidance Note No. 1, Rev. 2 outlines the specific action that will be taken where non-compliance is identified by the Health Service Executive (HSE).

The Enforcement pyramid illustrates the range of enforcement tools, their relative severity and relative frequency of use.

## Enforcement pyramid

(Adapted from Ayres and Braithwaite (1992) *Responsive Regulation: Transcending the Deregulation Debate*. New York: Oxford University Press)





## Prosecutions

As well as taking immediate enforcement action to deal efficiently and effectively with risks to public health and interests, each year a small number of prosecutions are initiated where there are significant breaches of food law. Prosecutions may also be initiated where there is intentional or reckless endangerment of public health. Taking prosecutions also supports the objective of enforcement as a deterrent to future non-compliance in food businesses in general.

## Financial penalties

Food businesses who do not comply with the law can incur the additional sanction of direct financial costs, including:

- Fees for additional official controls – businesses can be charged for the expenses arising from any additional official controls that were necessary to follow up non-compliance.
- Court-imposed penalties arising from a prosecution.
- Costs associated with destruction of non-compliant foods.
- Administrative fines such as fixed penalty notices.

## Website publication of enforcements

Enforcement Orders are published on the FSAI website, in line with food legislation. It is recognised that publication of enforcements is in itself a significant sanction. Food alert and food allergen alert notifications are also published to bring the details of the non-compliant or potentially unsafe food to the attention of the general public, food inspectorate and food businesses. Further information is available at [www.fsai.ie](http://www.fsai.ie).







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