



**ASHFORD**  
BOROUGH COUNCIL

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## **FOOD SAFETY POLICY**

(Incorporating the Food Authority's  
Enforcement and Sampling Policy)

## 1.0 POLICY AIM

**It is the Council's policy to strive to ensure that food intended for sale for human consumption, which is produced, stored, distributed, handled or consumed within the Borough is without risk to the health or safety of the consumer.**

## 2.0 SCOPE

- 2.1 This Policy sets out the way in which the Borough Council (subsequently referred to as the Food Authority) will monitor and deal with the conditions in and under which food is handled, processed, manufactured, sold etc. within food establishments in the Borough. Included within this document are the Food Authority's 'Food Establishments and Enforcement Action' policy and 'Food Sampling and Analysis' policy.
- 2.2 The Policy is relevant to those situations in which the Food Authority has food related statutory duties or discretionary powers under the Food Safety Act 1990, the Animal Health Act 1981, the European Communities Act 1972, the Consumer Protection Act 1987, the Trade Descriptions Act 1968, and directly under EC Regulations.
- 2.3 Section three of this Policy lays down the general principles under which the Food Authority will operate, and subsequent sections define the approach to be followed in specific work areas.

## 3.0 GENERAL PRINCIPLES

### ***National and Local Priorities***

- 3.1 The Food Authority acknowledges that food safety and specifically the prevention of food poisoning is an enforcement priority. Food safety is also recognised as a national priority in the Food Standards Agency Strategic Plan 2015 – 2020 – Food we can trust.
- 3.2 The Food Authority will give due consideration to Ashford Borough Councils Corporate Plan 2015 – 2020 priorities in developing the Community Safety and Wellbeing Service Plan.

### ***Human Rights Act 1998 and the Police and Criminal Evidence Act 1984***

- 3.3 The Food Authority recognises the need to take meet the requirements of any convention rights relevant to this area of policy. Officers will be able to show that they are familiar with the Convention rights, and that decisions that they take are informed by the principles of proportionality and non-discrimination. It will not be considered enough to show that policies and decisions are reasonable and within the scope of statutory powers, without assessing the validity and sufficiency of the reasons given for any action which interferes with human rights. In particular officers will:
- give proper weight to human rights considerations;
  - consider whether a course of action will involve any breach;
  - show that these considerations have been taken into account in decision-making;
  - document the human rights reasoning behind prosecution decisions.
- 3.4 The Convention Rights of particular note in regard to this Policy are Article 6: Right to a fair trial and Article 8: Right to respect for private and family life. The First Protocol Rights of Article 1: Protection of property is also of importance.

- 3.5 The right to privacy and respect for personal property are key principles of the Human Rights Act 1998. Powers of entry, search and seizure will be fully and clearly justified before use because they may significantly interfere with the occupier's privacy. Officer will consider if the necessary objectives can be met by less intrusive means. Officers will ensure that relevant provisions of the Police and Criminal Evidence Act 1984 are observed.

### ***Regulators' Code***

- 3.6 The Food Authority recognises that it has responsibilities to both the consumer and the food trade in the way it discharges its food safety obligations. To the consumer, its obligation is to ensure that food supplied and sold in the Borough is safe and wholesome. To the trade, that enforcement of the law is carried on in an equitable, practical and consistent manner, and is underpinned where appropriate with advice and education. The philosophy of the Regulators' Code<sup>1</sup> as developed by the Regulatory Delivery (RD), now known as the Office for Product Safety and Standards (OPS&S) part of the Department for Business, Energy and Industrial Strategy gives a framework for how regulators should engage with those they regulate and the Food Authority fully embrace this. The aim of the Code is to embed a risk-based, proportionate and targeted approach to regulatory inspection and enforcement among the regulators it applies to.
- 3.7 This enforcement policy has been developed in accordance with the Regulators' Code. It helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens.

### ***Freedom of Information Act 2000, Environmental Information Regulations 2004 and Data Protection Act 2018 (including the General data Protection Regulations 2018).***

- 3.8 The Food Authority will release information as required by the Freedom of Information Act 2000 (FOI) and Environmental Information Regulations 2004 (EIR). The FOI Act gives individuals a legally enforceable general right to know what information is held by public authorities (subject to certain exemptions) and to have this information communicated to them. The EIR 2004 provides a right of public access to a range of environmental information held by public authorities. Requests for copies of food hygiene reports, sampling results, details of complaint investigations etc. about food businesses will normally be dealt with as a request for environmental information under the EIR 2004.
- 3.9 The EIR 2004 has no absolute exemptions on disclosure of information however the reports may attract qualified exemptions i.e. exempt for reasons of law enforcement, commercial interests or confidentiality. Each of these qualified exemptions will be judged against the information held and the public interest test will be applied.
- 3.10 In the event that food hygiene reports (and other similar documents) are made available on the Council's web site it will be emphasised that the information was accurate only at the time of the inspection, remedial action should have been taken to resolve problems and that instances of non-compliance will be of a fairly minor nature so that further enforcement action would not be appropriate. It is acknowledged that EIR 2004 requires a public authority to apply a presumption in favour of disclosure.
- 3.11 Decisions on disclosure will be made having regard to the provisions of the Data Protection Act 1998 and General Data Protection Regulations 2018.

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1 "Regulators' Code", Better Regulation Delivery Office, April 2014

### ***Regional and local liaison***

- 3.12 The Food Authority will be represented at meetings of the regional food liaison group i.e. Kent Food Group, to help maintain enforcement consistency with other authorities. This group includes representation from the County Council Food Authority i.e. Trading Standards, Public Health England (PHE), Food Standards Agency (FSA) and other specialists as necessary.
- 3.13 Matters of legal interpretation and consistency will be discussed with colleagues in the Kent Food Group if appropriate. The Food Authority will avoid taking unilateral decisions on interpretation without seeking the views of other authorities.
- 3.14 The Food Authority will participate in joint exercises and projects with adjoining authorities to improve and assess the consistency of their interpretation and approach. For example by developing joint procedures and operational notes and by undertaking inter-authority auditing exercises.

### ***Liaison with the County Council Food Authority***

- 3.15 The Food Authority will ensure that effective day-to-day liaison agreements are in place with the County Council Food Authority. Such arrangements will be documented as necessary. Further guidance is provided within subsequent sections of the document.

### ***Co-ordination of Advice, Enforcement and the Primary/Home Authority Principle***

- 3.16 The Food Authority recognises that the co-ordination of advice and enforcement is essential to ensure uniformity of enforcement and consistency in dealing with food businesses, especially those that have more than one branch situation in different Food Authority areas.
- 3.17 The Food Authority endorses the Primary and Home Authority Principles<sup>2</sup> and will adopt and implement the principles. In giving advice or taking enforcement action in relation to food businesses that have a Primary/Home Authority, officers will contact the relevant Primary/Home Authority as appropriate.
- 3.19 The Primary Authority scheme gives businesses the right to form a statutory partnership with one Competent Authority, which then provides robust and reliable advice for other Competent Authorities to take into account when carrying out inspections or dealing with non-compliance. A Primary Authority should support its partner business in complying with regulations by issuing assured advice by coordinating enforcement action and by developing an inspection plan.

The Home Authority Principle seeks to maintain and support the essential elements of the regulatory landscape and to rationalise and streamline existing systems of professional support and network communication enabling a coherent framework of business engagement to be developed alongside Primary Authorities. Home Authorities operate in situations when a business does not have a Primary Authority partnership in place (e.g. if a business chooses not to enter into a partnership or is legally unable to have one), but where there remains a clear need for regulatory activity in relation to that business to be co-ordinated.

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<sup>2</sup> The Primary Authority scheme allows businesses to form a statutory partnership with a regulator to obtain advice on compliance with regulations. The principle of Primary Authority is set out in The Regulatory Enforcement and Sanctions Act 2008 and statutory guidance was published by BRDO in September 2013. The Home Authority principle is governed by a Joint Statement of Commitment (JSOC) signed in June 2011 by BRDO, the Trading Standards Institute (TSI) and the Chartered Institute of Environmental Health (CIEH).

## 4.0 FOOD SAFETY OBLIGATIONS

4.1 The Food Authority will meet its obligations by:

- Undertaking food safety inspections of food establishments;
- Approving establishments under Regulation 853/2004 as appropriate;
- Responding to complaints about food and food establishments from or through which it is supplied;
- Providing a response to requests for advice from the public and from food businesses;
- Making available to the public information relating to food establishment inspections through the Food Hygiene Rating Scheme (FHRS);
- Undertaking a programme of food sampling;
- Undertaking, subject to available resources, food safety campaigns including those aimed at healthy eating;
- Providing, subject to available resources, food safety campaigns aimed at helping businesses comply with the law such as Safer Food Better Business;
- Providing, subject to demand and available resources, formalised food hygiene training for food handlers; (See Section 9.1 and 9.2)
- Providing a voluntary food surrender service;
- Acting as a Primary/Home Authority as appropriate;
- Undertaking appropriate enforcement activity.

4.2 All officers will work within the requirements of this Policy. Any significant departure will be exceptional, capable of justification and be fully considered by the Lead Food Officer (LFO), unless it is considered that there is risk to the public in delaying the decision. All officers will be fully acquainted with the requirements of the Policy.

4.3 The Food Authority and individual officers will have regard to the Food Standard Agency (FSA) Food Law Code of Practice<sup>3</sup> (subsequently referred to as the Agency Code of Practice) and other guidance from the FSA and OPS&S. In particular officers will have regard to published UK or EU Industry Guides to Good Hygiene Practice and to other relevant Food Industry Codes of Practice.

4.4 It is expected that authorised officers will be familiar with the law they are appointed to enforce, referring to the law itself as well the Agency Code of Practice and other guidance, understanding what the law actually states and requires, and seeking guidance when either it, or they, are unclear. This requirement also relates to contracted or temporary staff.

4.5 The Food Authority will also have regard to the Framework Agreement<sup>4</sup> on Official Feed and Food Controls by Local Authorities.

4.6 Contravention of the Food Safety Act 1990 and other food safety provisions will be dealt with in accordance with the enforcement section of this Policy.

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<sup>3</sup> Particular reference is made to guidance on enforcement action contained the Food Law Code of Practice and Practice Guidance as issued under Section 40 of the Food Safety Act 1990.

<sup>4</sup> "The Framework Agreement on Official Feed and Food Controls by Local Authorities", published and updated by the FSA.

- 4.7 The LFO will arrange for qualitative and quantitative monitoring of fieldwork in accordance with a documented management system. This system will comprise the quality assurance procedure for food safety inspections and this Policy document. The management system will ensure that the interpretation and action taken by officers following an inspection is consistent. Where appropriate joint exercises will be taken with relevant authorities to assess our consistency of interpretation and approach.
- 4.8 The LFO will, in accordance with the relevant Agency Code of Practice, make returns to the FSA in respect to food performance.
- 4.9 The LFO will make other returns as deemed appropriate.

## **5.0 INTERVENTIONS**

### ***Introduction***

- 5.1 Interventions are activities designed to monitor, support and increase food safety compliance within food establishments. Interventions include inspections, monitoring, surveillance, verification, audit and sampling. These are known as Official Controls. Education, advice, coaching and information and intelligence gathering are other forms of intervention but are not classed as Official Controls.
- 5.2 Food hygiene interventions are part of the system for ensuring that food meets the requirements of food hygiene law, including microbiological quality; absence of pathogenic micro-organisms; and safe for consumption.
- 5.3 The Food Authority will document, maintain and implement a food hygiene interventions programme that includes all food establishments. The programme will ensure that establishments within the Borough are normally inspected in accordance with their inspection rating(s) at frequencies laid down in the relevant Agency Code of Practice<sup>5</sup>. See section below on interventions by risk category for detailed guidance.

### ***Carrying out inspections***

- 5.4 The exact nature of an inspection will depend on the type of business involved. New food establishments that come to the attention of the Food Authority for the first time will be subject to an initial inspection following which the intervention rating(s) for the establishment will be determined.
- 5.5 An officer carrying out the initial inspection of a new food establishment will:
- Establish the scope of the business and the relevant food law that applies to the operations taking place;
  - Thoroughly and systematically gather and record information from the observation of practices, procedures and processes, including procedures based on Hazard Analysis Critical Control Points (HACCP) principles<sup>6</sup>, and discussion with food handlers, contractors, food business operators and managers;
  - Determine whether it is necessary to collect samples of raw materials, ingredients etc. for analysis and/or examination;

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<sup>5</sup> Food Law Code of Practice (England) Annex 5 The Food Hygiene Scoring System.

<sup>6</sup> Procedures based on HACCP principles are not required in relation to primary production.

- Identify any actual or potential breaches of food law and, if appropriate, gather and preserve evidence;
- Determine relevant enforcement action and communicate to the business an intention to carry out such action.

5.6 Subsequent food hygiene inspections will depend on the legal requirements and the extent to which the business has documented its food safety management system. In general, an officer conducting a food hygiene inspection will:

- Assess the risk of the enterprise failing to meet food hygiene requirements;
- Assess the hazards posed by the activities of the business, the food business operator's understanding of those hazards, and the application of appropriate controls; having regard to the nature and size of the business;
- Establish whether food is being handled and produced hygienically having regard to subsequent processing;
- Assess and verify appropriate procedures based on HACCP principles appropriate to the nature and size of the business, confirming that controls are in place and operating effectively and that appropriate corrective action is taken when necessary;
- Establish whether food is being handled and produced hygienically; is safe to eat, and that relevant temperature controls are being observed;
- Recommend good food hygiene practice in accordance with EU and UK Industry Guides, relevant sector specific codes, and other relevant technical standards, and promote continued improvement in hygiene standards through the adoption of good practice;
- Check the source and any health or identification marking of raw materials, and the identification marking of destination of finished products.

5.7 In addition to the general requirements detailed above a food hygiene inspection will include if appropriate:

- A discussion with any staff responsible for monitoring and corrective action at critical control points to confirm that control is effective;
- A physical inspection to determine whether critical controls have been identified and whether the controls are in place, and to assess compliance with relevant food law;
- An assessment of compliance with the traceability requirements ;
- A discussion regarding any hazards that have been identified that have not been covered by the business's systems;
- A discussion regarding any failure to implement or monitor any critical controls that have been identified by the business.

5.8 The full scope of the food hygiene inspection is detailed in the relevant inspection form for the business concerned. The officer will draw the food business operator's attention where appropriate to published UK Guides to Good Practice as well as other published recommended industry codes of practice.

5.9 Inspections may also include:

- Revisits to check on the progress of measure required after a previous intervention;
- Visits to investigate food and food establishment complaints where they include verification checks on specific aspects of the food business;

- Inspections that form part of a food award or food hygiene rating system which include the verification of specific aspects of the food business

### ***Intervention ratings***

- 5.10 Following an inspection, officers will consider revising the intervention risk rating of the establishment. Each inspection will be considered on a case by case basis however the intervention risk rating will not normally be revised unless the inspection covers the elements outlined within section 5.5 to 5.7 above.
- 5.11 Inspections types as listed within section 5.9 i.e. revisits and food complaint investigations will not result in revision of the intervention risk rating of the establishment unless this new information leads to a decision to conduct an inspection, partial inspection or audit covering the elements outlined in section 5.5 to 5.7above. In particular the officer must have gathered sufficient information to justify revising the intervention rating and the reasons for revising the rating must be fully documented on the establishment file.
- 5.12 A verification of current compliance must take place before the intervention rating of an establishment is changed. Officers must consider the potential risk posed to public health and use their professional judgement when selecting the type of intervention to use at an establishment.
- 5.13 Where new information arises, in the case for example of a justified complaint or poor sampling result, the Food Authority will reconsider both the intervention rating and intervention choice. The explanation for the choice of intervention will be fully documented in the establishment file in every case.
- 5.14 Food businesses operators will be advised of their intervention risk rating and how this equates to FHRS. See section 9.6 for details of the Food Hygiene Rating scheme.

### ***Interventions by risk category***

- 5.15 **Category A and B establishments** will receive an intervention of an inspection, partial inspection or audit at intervals in accordance with the prescribed frequencies specified in Chapter 5 of the Agency Code of Practice.
- 5.16 **Category C establishments** will receive an intervention of an inspection, partial inspection or audit at intervals in accordance with the prescribed frequencies specified in Chapter 5 of the Agency Code of Practice. Where an officer is satisfied that an establishment in these intervention rating categories is broadly compliant with relevant food law, the officer may choose to alternate between inspection, partial inspection, audit and other official controls as outlined above. In such circumstances the reasons for not carrying out an inspection, the justification for and details of the official control selected will be recorded on the establishment file. Such decisions must have the prior approval by the LFO.
- 5.17 **Category D establishments** will receive an intervention at intervals in accordance with the prescribed frequencies specified in Chapter 5 of the Agency Code of Practice. Depending on the type of food and method of handling rating the intervention can alternate between an official and a not official control.
- 5.18 **Category E establishments** may, after an initial inspection be subject to an alternative enforcement strategy. Such establishments are considered “low risk” in that the inherent hazards are not significant by virtue of the type of food / processes involved or the number of consumers they supply. Such “low risk” establishments will be subject to an alternative intervention no less than once in any three year period. Where an establishment rated category E specifically requests an inspection, this will be undertaken. For example those low risk premises who wish to be included within the FHRS and the consequential requirement for an inspection. Refer to the section on low-risk activities and our alternative enforcement strategy for further details.



### ***Monitoring use of other official controls***

- 5.19 The decision to alternate between an inspection and other official control must have prior approval from the LFO.

### ***Approach to inspections / interventions***

- 5.20 All food hygiene inspections will be conducted in accordance with the Agency Code of Practice, that outlines the structured approach to the inspection, how an inspection is conducted, communication with the food business operator and what needs to be covered at the conclusion of the inspection, for example corrective action and timescales for compliance.
- 5.21 The Food Authority will, as a general rule, carry out inspections without prior warning. When it is necessary that relevant persons are present at the inspection of any establishment, some form of prior notice may be beneficial and will be considered. When it is certain that such persons will be present or it is considered unnecessary for them to be present, or when other considerations take precedence, prior notice will not, in general, apply. Notice may also be necessary when the purpose of the inspection is to see a particular process in operation.
- 5.22 The Food Authority will defer the planned inspection / intervention programme when instructed to do so by the FSA. Such a situation may arise where a food with widespread distribution is found to be contaminated and thereby presents a significant hazard to public health. Other examples are listed within the Agency Code of Practice.

### ***The planned inspection / intervention programme***

- 5.23 All food establishments are included in a food hygiene inspection programme that is managed using the Environmental Health Computer System. As previously stated, the minimum inspection frequencies as set out in the Agency Code of Practice are, as far as practical, observed. It is recognised that some food establishments and businesses will present a greater risk to the consumer than others. The Food Authority's inspection programme recognises that the frequency of the inspection will vary according to the type of food business, the nature of the food, the degree of handling and the size of the business. Those establishments posing potentially a higher risk are inspected more frequently than those with a lower risk. Special regard is given to food businesses that are involved in methods of preparation including processing, cooking and packaging of food that present particular risks.
- 5.24 Inspections will be planned so that businesses are inspected, as far as is reasonably practicable, within the relevant period determined by the inspection rating. The FSA standard of undertaking inspections within a range of 28 days either before or after a due inspection date will be followed whenever practicable. This standard will not however on all occasions be followed in regard to combined inspections. The inspection of higher risk establishments will always take preference over the inspection of lower risk.
- 5.25 There may be circumstances when it is appropriate to bring forward a programmed inspection. Such circumstances may arise when the Food Authority:
- Receives a new registration application;
  - Receives a consumer complaint of a serious nature;
  - Receives a request to change registration details;
  - Becomes aware of a material change in the ownership, management, layout or nature of operation of a food business;
  - Receives a referral under the Primary/Home Authority Principle;
  - Receives a request or other information from the FSA;

- Becomes aware of a possible outbreak of food-borne infection;
- Receives an appeal relating to FHRS;
- Becomes aware that the business may be closed at the time of the due date because of seasonal closure.

An inspection may also be brought forward in order to combine it with an inspection for other purposes, for example, a health & safety or licensing inspection.

5.26 The Food Authority acts in accordance with the Agency Code of Practice Food Hygiene Scoring System. This takes into account the following:

- type of food and method of handling;
- method of processing;
- consumers at risk (an additional weighting is added for establishments such as hospitals, nursing homes etc. where more than 20 persons in a vulnerable group are at risk);
- level of (current) compliance;
- confidence in management/control systems (including a judgement on “track record”, attitude of the present management towards, hygiene and food safety, access to technical knowledge including hazard analysis/HACCP and the control of critical points (an additional weighting is added where there is significant risk associated with the contamination and survival of micro organisms or their toxins that are pathogenic to humans);
- satisfactory HACCP based procedures.

5.27 Officer when requested will advise the proprietor of the inspection rating allocated to the business and discuss the scoring applied. It will be emphasised that the inspection rating is a guide to the minimum frequency of inspection.

***Low-risk activities and our alternative enforcement strategy***

5.28 Food businesses that present little or no risk to public health or safety for food hygiene purposes will not normally be subject to inspection. Such establishments will however be subject to an alternative enforcement strategy not less than one in any 3-year period.

5.29 Such establishments shall be contacted at least every three years in order to ensure that they have not changed their trading activity. This will be achieved by issuing a “low-risk” questionnaire. In the event of a questionnaire not being returned a visit will be made to establish the current situation. During the visit the officer will determine whether a “low-risk” assessment remains appropriate. The need for an inspection will also be triggered by criteria other than the planned inspection programme. These criteria include:

- Applications for registration;
- Consumer complaints;
- Changes in management and
- Significant changes in activities.

5.30 Where such an establishment specifically requests an inspection, this will be undertaken. For example those low risk premises who wish to be included within the FHRS and the consequential requirement for an inspection.

### ***New businesses and food registration***

- 5.31 Under Article 6(2) of Regulation 852/2004, food business operators must register their establishment with the appropriate Food Authority unless they are subject to approval under Regulation 853/2004 or fall outside the scope of Regulation 852/2004. A record will be maintained of all registered and approved premises. Details of those premises registered or approved by the Food Authority will be made available for inspection by the general public at all reasonable times.
- 5.32 All new applications for registration under provisions of Article 6(2) of Regulation 852/2004 will be reviewed to determine whether an inspection is necessary or if they can be covered by the alternative enforcement strategy.
- 5.33 Enforcement action will not normally be taken in respect of businesses that have failed to register their business.

### ***Enforcement action and revisits***

- 5.34 Food businesses that fail to comply with significant statutory requirements will be subject to appropriate enforcement action and a revisit inspection. Failure to comply with significant statutory requirements includes:
- Failure to comply with a single requirement that compromises food safety or public health;
  - Failure to comply with a number of requirements that, taken together, indicate ineffective management;
  - Failure to comply with the requirements of a Hygiene Improvement Notice;
  - Failure to comply with the requirements of a Hygiene Emergency Prohibition Notice or Order.
- 5.35 Revisits will focus on the significant statutory requirements that were found to be contravened at the previous intervention.
- 5.36 The timing of the revisit will be determined by the action taken as a result of the earlier intervention. Whenever practicable the revisit will be undertaken by the officer who conducted the original intervention.
- 5.37 The risk assessment score for an establishment will not be amended following a revisit.

### ***Combined visits***

- 5.38 Wherever possible a food hygiene inspection will be combined with another visit to the same establishment in order to make effective use of resources for example, complaints and food sampling.

### ***Trade secrets***

- 5.39 When exercising powers to inspect process records officers are aware that it is an offence to disclose any trade secret unless the disclosure is made in the performance of the officer's duty.

### ***Reports***

- 5.40 On completion of an Official Control / intervention the officer will discuss with the proprietor or representative a summary of the matters which, in the opinion of the officer, breach the requirement of the Food Safety Act 1990 or regulations and any advice on good food hygiene that is necessary. At all times the officer will ensure that they clearly distinguish between matters that are necessary to meet statutory requirements and those which are recommended as good hygiene practice.

- 5.41 A report will be issued following every inspection. This will take the form of the Food Premises Inspection Report.
- 5.42 All reports, documents, leaflets and guidance notes issued by the Food Authority will distinguish between statutory requirements and recommendations.

#### ***Food business establishment records***

- 5.43 The Food Authority's establishment record is computer based and is updated after each intervention. Information following each inspection will be maintained on the following:
- The size and scale of the business and its customer base;
  - The type of food activities undertaken by the business, including any special equipment, processes or features;
  - Copies of any correspondence with the business, including documentation associated with approvals or authorisations;
  - Copies of food sample analysis/examination results;
  - An assessment of the business progress in meeting compliance with procedures based on HACCP principles;
  - Information of hygiene training undertaken by the employees, including any training on the implementation and operation of the food safety management system.
- 5.44 Inspection reports will be retained for a minimum of 6 years, or until the next inspection, whichever period is the longer, unless required for longer retention because of litigation, Local Government Ombudsman review or the document management Policy of the Food Authority, or instruction by the FSA. All information will be maintained electronically.

#### ***Clothing and equipment***

- 5.45 Officers will be provided with the necessary clean protective clothing including headgear consistent with good industry practice. Officers are required to wear protective clothing, give any relevant information on their health status when requested and adhere to any reasonable precautions that are required by the business being inspected. Officers should wear appropriate protective clothing if it is provided by the business.
- 5.46 Officers will be provided with all of the equipment and facilities necessary to enable them to carry out their inspections competently and in accordance with food law and the standards in the Agency Code of Practice. All equipment will be properly maintained and calibrated.

#### ***Timing of inspections***

- 5.47 Inspections will be undertaken at an appropriate time of the day taking into account the hours of operation of the business and seasonal factors (where applicable). The inspection programme will provide for food business establishments to be inspected at times when they are open for business. This will on occasion require inspections to be undertaken outside the Food Authority's normal hours of work. Food business establishments that are only open for business at night, at weekends or in the early hours of the morning will be inspected at these times.

#### ***Interpretation & inconsistency***

- 5.48 Where issues of interpretation and inconsistency arise the areas of difficulty will be discussed within the Food Authority and where necessary with colleagues in other authorities. This will be achieved by referral to the Kent Food Group and if necessary following such referral to FSA.

### ***Specialist food hygiene officers & teams***

- 5.49 The Food Authority will ensure a suitably qualified and experienced Officer is appointed to undertake the role of Lead Officer. Other authorised officers will be appointed to undertake the duties of the Food Authority. The Food Authority will ensure that the FSA is advised of the name of the Lead Officer. A key responsibility for this officer is to ensure compliance with this Policy and to undertake policy review.
- 5.50 Officers will be authorised in writing to act in matters arising under the Food Safety Act 1990 or Regulations made under the Act. With regard to other specific food Regulations made under the European Communities Act 1972, relevant officers will be specially authorised.
- 5.51 The Food Authority will ensure that officers authorised in accordance with a documented procedure are:
- suitably qualified;
  - experienced, and
  - competent to undertake the range of tasks and duties they are required to perform
- to comply with the requirements of the Food Law Code of Practice (England) (issued March 2017) Chapter 4 and the Food Law Code of Practice Guidance Chapter 4 (issued November 2017).
- 5.52 This requirement will be met in relation to those who are directly employed, to temporary staff and to those employed by or as contractors.
- 5.53 Inspections of establishments will only be undertaken by officers who are suitably qualified and experienced. Officers who are inspecting food business operators' procedures based upon HACCP principles will also possess the competencies set out in Appendix A.
- 5.54 New officers and those whose duties are extended will not be authorised unless they meet the requirements of the Food Law Code of Practice and they have met any relevant additional requirements relating to specific duties or enforcement responsibilities.
- 5.55 Inspections of approved establishments under Regulation 853/2004 are only to be undertaken by officers who have detailed knowledge of enforcement in approved establishments.
- 5.56 Officers undertaking the inspection of specialist or complex manufacturing processes will have received additional training and have demonstrated their competence to undertake such inspections. Such officers will also have a detailed knowledge of enforcement in approved establishments. An authorised officer who has no previous experience of a particular process that is the subject of an approval application will be accompanied, during the inspection of that process, by an appropriately qualified and experienced officer.
- 5.57 Officers undertaking alternative enforcement strategies are not required to meet the qualification requirements set out within this Policy but they will be appropriately authorised. Any visits by such officers will be confined to information collection and reporting back. The overall management of alternative enforcement strategies as outlined within the Policy will be under the control of the LFO qualified in accordance with this Policy. Any decisions to take other enforcement action and/or intervene further will also be made by such an officer.
- 5.58 The levels of qualification, experience and competency will equally apply to those who are directly employed, to those employed on a temporary basis and to those employed by or as contractors.

### ***Avoiding potential conflicts of interest***

- 5.59 Article 4(2) (b) of Regulation 882/2004 requires that staff carrying out official controls are free from any conflict of interest. All officers will be aware of potential conflicts of interest that might affect their enforcement judgements. For example:
- Inspections of the Borough Council's own premises;
  - Relevant personal relationships;
  - Relevant history, for example where an officer is appointed whose previous job was with a food business with premises in the Borough;
  - Financial or other interest in a business covered by the food inspection programme;
  - In the case of contractors, the provision of services to businesses covered by the food inspection programme.
- 5.60 Such potential conflicts of interest that might affect an officer's judgement shall be declared in writing to the LFO in order that appropriate action can be taken to avoid a conflict of interest. This requirement is in addition to any Council policies or legal or contractual requirements of relevance to this issue. This requirement will be met in relation to those who are directly employed, to temporary staff and to those employed by or as contractors.
- 5.61 The Food Authority will ensure that potential or actual conflicts of interest do not arise as a result of Primary/Home or originating authority responsibilities and contracting in services for enforcement purposes.

### ***Enforcement within Local Authority-run establishment***

- 5.62 Local Authority-run establishments will be treated in the same way as all other food establishments within the Borough and inspected in accordance with the Agency Code of Practice and will be included within the FHRS. Any enforcement concerns will be brought to the attention of the Head of Community Safety and Wellbeing and serious breaches of food law will be brought to the attention of the Chief Executive without delay.

### ***Co-ordination of advice and enforcement***

- 5.63 In respect to food businesses that have more than one branch situated in different food authority areas, officers will be guided by the Primary/Home Authority assured advice for the business and follow any inspection plans.
- 5.64 Officers considering giving detailed advice or taking enforcement action in relation to such businesses will consider whether they need to contact the Primary/Home authority before doing so.

### ***Product specific establishments subject to Regulation 853/2004 approval***

- 5.65 Where appropriate, establishments will be approved under Regulation 853/2004. Procedures for food business operators to follow when applying for the approval of their establishment are detailed within the Approved Premises procedure. As far as is practicable nationally recognised approval procedures will be followed.
- 5.66 All applications for approval for a food business operator will be dealt with promptly. In order to ensure consistency the food business operator will be asked to submit applications for approval using the appropriate form.

- 5.67 Applications for approval will only be accepted from food business operators that intend to engage in activities for which approval would be required. Under no circumstances will approval be granted to an establishment which is not subject to approval under Regulation 853/2004. Particular note will be made of the exemption provisions of the Regulations.
- 5.68 All relevant information will be required from the food business operator before an application for approval is determined. This information will be obtained from the food business operator in documentation supplied with the application or during the subsequent on-site visit to the establishment as required by Article 31(2) (b) or Regulation 882/2004. It will be a matter for the officer to decide at which stage of the application this information should be provided.
- 5.69 In considering applications care will be taken to fully consider any exemption that may be available to the applicant e.g. retail, marginal, localised and restricted criteria.
- 5.70 Before reaching a decision on the application an on-site visit will be made. This will take the form of a primary inspection to verify that, where necessary, all systems, procedures and documentation meet the relevant requirements of Regulation 852/2004 and Regulation 853/2004. The inspection will be conducted in accordance with, and cover, all aspects of the relevant inspection form for the business concerned, and consider all issues identified by the Regulation as requiring Food Authority consent.
- 5.71 Conditional approval may be given in those situations where an establishment is assessed as not fully complying with the requirements of Regulation 853/2004, but only if the establishment meets all the infrastructure and equipment requirements. The decision whether or not to grant conditional approval to an establishment which does not fully comply, rests with the Food Authority. Professional judgement will be used in deciding whether it would be appropriate to grant conditional approval, on a case by case basis.
- 5.72 In the situation that conditional approval is granted, a further visit will be carried out within three months of the conditional approval being granted. The visit will be considered a secondary inspection. In appropriate circumstances the approval may be extended but will be restricted to a maximum of six months from the date of the initial granting of conditional approval. Once again these decisions will be made on a case by case basis.
- 5.73 When considering an application the officer will take into consideration all activities carried out in the establishment. Where two or more products are covered by an approval the relevant provisions will apply to areas of the establishment where each type of product is produced. All relevant provisions of the Regulation will apply to those areas of the establishment where facilities are shared.
- 5.74 Approval numbers will be given to each food business. The numbers given utilise the Food Authority's unique two-letter code (AS) followed by a three digit approval number. The approval code should be incorporated into an identification mark which approved establishments are required to apply to their productions.
- 5.75 Approved establishments will be listed on the Food Authority's website.
- 5.76 If it is decided to refuse an application, the applicant will be notified in writing of the decision at the earliest opportunity. Reasons for refusal will be given and the matters necessary to satisfy the requirements will be made clear. It will be stated that the activities requiring approval may not be undertaken. The notification will also make the food business operator aware of their right of appeal against the decision to the Magistrates' Court and provide the address of the Magistrates' Court.
- 5.77 Applicants will be notified in writing of their approval, or conditional approval and of the nature and scope of the approval and any conditional or limitations that apply. A copy of notifications will be held on the relevant establishment file and the FSA will be notified of the approval.

- 5.78 Regulation 853/2004 requires food business operators to provide up-to-date information on significant changes in activities and closures of establishments. Where this does not happen and the Food Authority becomes aware of any significant changes in, for example, ownership or management of the establishment, an inspection will be undertaken and any necessary action taken.
- 5.79 Where the Food Authority becomes aware of a business engaged in activities requiring approval, but that are not approved, it will inform the food business operator, in writing, of the need for approval and consider appropriate enforcement action.

## **6.0 FOOD ESTABLISHMENTS & ENFORCEMENT ACTION**

- 6.1 This section of the Policy contains the Food Authority's approach to food law enforcement. It is by necessity detailed and therefore a summary of the key features is provided at Appendix B. The summary will be available to food business operators and consumers on the Food Authority's website.
- 6.2 If as a result of a complaint or during an inspection an officer decides that enforcement action is necessary the following will be considered:
- verbal advice/education;
  - the use of informal action i.e. letter;
  - the use of Hygiene Improvement Notices;
  - the use of Hygiene Emergency Prohibition Notices;
  - the use of Voluntary Closure Arrangements;
  - the use of Remedial Action / Detention Notices (for approved establishments);
  - the use of Prosecutions
  - the use of Simple Cautions; and
  - a combination of the above.
- 6.3 In all instances enforcement action will be taken which is proportionate to the risks to public health arising from any contravention identified. In deciding the type of enforcement action to be taken regard will be had to the risks arising from contraventions, the nature of the food business and the nature and type of food handled as well as the nature of the contravention and the history of compliance of the proprietor with food safety legislation.
- 6.4 Officers will take account of the full range of enforcement options. This includes educating food business operators, giving advice, informal action, sampling, detaining and seizing food, serving Hygiene Improvement Notices, using hygiene prohibition procedures and undertaking prosecutions. The Food Authority will however ensure that the number of notices etc served or the number of other legal processes such as prosecutions or simple caution is not used as an indicator of performance.
- 6.5 Except where circumstances indicate a significant risk, officers will operate a graduated and educative approach (the *hierarchy of enforcement*) starting with advice and education and only moving to more formal action whether the informal does not achieve the desired outcome. This it is believed will reduce the likelihood of legal challenge.



6.6 In considering whether to initiate enforcement action the Food Authority will take into account the following:

- The Code for Crown Prosecutors;
- The Regulators' Code;
- The Authority's Enforcement Policy as contained within this document.

6.7 In deciding the type of enforcement action to take an authorised officer will have regard to:

- The nature of the breach;
- The history of compliance of the food business operator;
- In the case of new businesses, an assessment of the food business operator's willingness to undertake the work identified as necessary.

#### ***Verbal advice / education***

6.8 Verbal advice will be given when there are only minor items which require rectification. Officers will ensure that there is a clear distinction between matters that are necessary to meet statutory requirements and those which are recommended as good hygiene practices.

#### ***Informal action***

6.9 An informal letter or food premises inspection report (FPIR) will be used when there are contraventions that require rectification and the officer is confident from discussions with the proprietor or from previous dealings with the establishments that the necessary works will be carried out. Reasonable timescales will be given to achieve compliance. Informal approaches to enforcement will make clear all the information that will enable a proprietor to understand that work is necessary and why it is necessary. Letters or FPIR will indicate the measures that in the opinion of the officer will ensure compliance. Details of the actual statutory provisions being breached will be provided. Letters will also clearly indicate recommendations under a separate heading. All letters will make clear that the information may be released under the provisions of the FOI Act or EIR 2004.

#### ***Hygiene Improvement Notices***

6.10 Hygiene Improvement Notices will be served if the authorised officer is satisfied that:

- There has been a significant contravention of one of the relevant food hygiene or food processing regulations;
- The proprietor may not carry out the necessary works without the use of formal notices;
- The contravention, in the opinion of the authorised officer, does not pose an imminent risk to health.

6.11 Hygiene Improvement Notices will also be served in situations where a significant contravention highlighted in an informal letter is found on a subsequent intervention not to have been met and it appears that the proprietor does not intend to undertake the works.

6.12 All Hygiene Improvement Notices will clearly specify both the measures to be taken and the period of time allowed for compliance. The period given for completion of work will be discussed with the proprietor whenever possible. Account will be taken of the nature of the problem, the risk to health and the availability of solutions before a time limit is set. Requests for time extensions received prior to the expiry date of a notice will be considered although there is no specific provision in the Food Safety Act 1990 to extend the time limits on a Hygiene Improvement Notice. The proprietor will be advised, in writing, of the decision and any new time limits reconfirmed.

- 6.13 Hygiene Improvement Notices will not be used in the following circumstances:
- Where the contravention might be a continuing one, for example, personal cleanliness of staff and a notice would only secure an improvement at one point in time;
  - In transient situations, and it is considered that swift enforcement action is needed, for example, a one day festival or sporting event. A Hygiene Emergency Prohibition Notice would be the only formal remedy which would have immediate effect;
  - Where there is a breach of good hygiene practice but no failure to comply with an appropriate regulation.
- 6.14 It will be made clear within all Hygiene Improvement Notices that there is a provision to allow the proprietor to carry out a measure of an equivalent effect to those specified. When the officer and proprietor agree on alternative works the officer will confirm in writing that they have approved the alternative works. In situations where the manager is not the proprietor, and cannot make decisions with regard to structural repairs and replacements, the officer will, if possible, discuss the detail of the works with the person in a position to authorise repair before issuing a notice. Due consideration will be given to any relevant UK or EC Industry Guides to Good Hygiene Practice when assessing compliance.
- 6.15 Hygiene Improvement Notices will make it clear that the proprietor has a right of appeal against the service of a notice. The relevant information is contained within notes attached to the notice. Whilst the proprietor has a right of appeal, an officer will be prepared to discuss the need for the notice and its requirements informally with the proprietor.
- 6.16 The works required will be checked on the day of expiry of a notice, following notification that the works are complete or as reasonably practicable further to the expiry of a notice or notification that works are complete. Whenever possible the authorised officer who served the notice will check that the works have been carried out to the specified standard.

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

- 6.17 Hygiene Emergency Prohibition Notices will be used if an authorised officer has evidence that the health risk condition is fulfilled i.e. there is an imminent risk of injury to health. In such situations, a Hygiene Emergency Prohibition Notice will be served on the food business operator, followed by an application to a Magistrates' Court for a hygiene emergency prohibition order.
- 6.18 The use of a Hygiene Emergency Prohibition Notice will only be considered in one or more of the following circumstances:-
- 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. This might include evidence from relevant experts, including a food analyst or food examiner;
  - The guidance criteria, specified in the relevant statutory Agency Code of Practice, concerning the conditions when prohibition may be appropriate, are fulfilled;
  - There is no confidence in the integrity of an unprompted offer made by a proprietor voluntarily to close the establishment or cease the use of any equipment, process or treatment associated with the imminent risk, and
  - A proprietor is unwilling to confirm in writing their unprompted offer of a voluntary prohibition.
- 6.19 The following are examples of situation where use of a Hygiene Emergency Prohibition Notice may be appropriate:
- Infestation by rats, mice, cockroaches, birds or other vermin, serious enough to result in the actual contamination of food or a significant risk of contamination;

- Very poor structural condition and poor equipment and/or poor maintenance or routine cleaning and/or serious accumulations of refuse,
- filth or other extraneous matter resulting in the actual contamination of food or a significant risk of food contamination;
- Drainage defects or flooding of the establishment, serious enough to result in the actual contamination of food or a significant risk of food contamination;
- Premises or practices which seriously contravene food law and have been or are implicated in an outbreak of food poisoning;
- Any combination of the above, or the cumulative effect of contraventions which, taken together, represent the fulfilment of the health risk condition.

6.20 A Hygiene Emergency Prohibition Notice may also be appropriate for dealing with defective equipment or for unsafe processes that for example pose a serious risk of cross contamination.

### ***Voluntary closure arrangements***

6.21 Voluntary procedures to remove a health risk condition may be used at the instigation of the food business operator, when the food business operator agrees that a health risk conditions exists i.e. there is an imminent risk of injury to health.

6.22 The officer will suggest that the food business operator takes legal advice concerning any offer to voluntarily close their food establishment. The officer will explain that by making the offer to close any right to compensation is lost.

6.23 Any voluntary closure must be confirmed in writing by the food business operator or manager and the authorised officer. Such confirmation shall include an undertaking that the establishment will not re-open without the officer's prior approval. If the manager of a food business offers to close voluntarily, the officer should confirm that the manager has the authority of the food business operator to agree to such action.

6.24 In advising the food business operator the authorised officer will appreciate that there is a risk that the establishment could be re-opened without the Food Authority's knowledge or agreement and recognise that there is no separate legal sanction against a food business operator who re-opens (although enforcement action for the actual breaches remains available).

### ***Remedial Action / Detention Notices***

6.25 Remedial Action Notices are used in respect of establishments subject to approval under Regulation 853/2004. They are used if any of the hygiene requirements are breached or an inspection is being hampered. More specifically this provision provides for the prohibition of the use of any equipment or any part of the establishment, the imposition of conditions, upon, or prohibiting, any process and also allows for the rate of an operation to be reduced or, stopped completely. Detention Notices provide for the detention of any food, including the taking of samples for examination.

6.26 Note there are powers to suspend or withdraw the approval or conditional approval of an establishment. Refer to section 6.48 to 6.52 below.

### ***Prosecutions***

6.27 In general, the decision to prosecute will be restricted to those persons who blatantly disregard the law, refuse to achieve even the basic minimum legal requirements and who put the public at serious risk. The decision to initiate a prosecution will be taken at the earliest opportunity.

6.28 Before deciding whether a prosecution should be taken the Food Authority will consider a number of factors:

- Whether there is a sufficiency of the evidence (the test for which is set out in the Code for Crown Prosecutors). Of particular note are:
  - The likely cogency of any important witness, and their willingness to cooperate;
  - The alleged person or persons responsible have been identified;
  - Any explanation offered by the suspect;
  - The likelihood of the suspect being able to establish a defence – in particular a due diligence defence.
- Whether the public interest test has been satisfied (again, the test is set out in the Code for Crown Prosecutors). Prosecutors must note that unless the Evidential Test is satisfied, the Public Interest Test is irrelevant. If the evidence is not present, no amount of argument in favour of it being in the public interest will suffice to justify launching the prosecution, as the Prosecutor will already have decided that it is more likely than not that it will fail in Court on the available evidence.
- Using the hierarchy of enforcement structure, whether a prosecution is more appropriate as opposed to the use of, say, informal action or an enforcement notice. (Officers will be aware, however, that if a Hygiene Improvement Notice or similar is used, it too is a matter which can go before the Court, and the officer must be able to justify their actions. The criteria below are of assistance).
- That this Enforcement Policy has been adhered to.
- Whether any other action, such as issuing a simple caution in accordance with Home Office Circular would be more appropriate<sup>7</sup>.

6.29 Factors favouring prosecution include:

- The seriousness of the offence;
- The prevalence of that type of offence in the area in which it was committed (if the offence is not serious in itself);
- The suspect's previous convictions or cautions.

6.30 There are various factors against prosecution including:

- The likelihood of a nominal penalty;
- The offence was committed as a result of a genuine mistake or misunderstanding (this must be balanced against the seriousness of the offence).

6.31 Officers will explain the reason for bringing a prosecution and record that reason, which may later be referred to in open Court. The reasons will be documented.

6.32 The sufficiency of the evidence to support proceedings will be a matter of judgement for Ashford Borough Council Legal Services. Authorised officers will however ensure they brief their legal advisers fully on the public health aspect of the case in hand, including the public health basis for the legal requirements which have been breached, so that they can, in turn, if a prosecution is taken impress upon the Court the seriousness of the charges.

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<sup>7</sup> Home Office Circular 016/2008 on the Simple Cautioning of Adult Offenders.

### ***Simple cautions***

- 6.33 The purpose of a simple caution is to deal quickly and simply with less serious offenders, to divert them from the criminal courts and to reduce the chances of their re-offending.
- 6.34 The following conditions must be met before a caution can be administered:
- there must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction;
  - the offender must admit the offence;
  - the offender must understand the significance of a caution and give informed consent to being cautioned.
- 6.35 When deciding whether to issue a caution the following will be considered:
- the nature of the offence;
  - the likely penalty if the offender was convicted by a court;
  - the offender's age and state of health;
  - any previous criminal history;
  - the offender's attitude towards the offence and steps taken to prevent a recurrence.
- 6.36 If there is insufficient evidence to consider taking a prosecution, then by implication the conditions are not satisfied for the use of a simple caution, it will also be inappropriate to use a simple caution where the suspected offender does not make a clear and reliable admission of the offence. There is no legal obligation for any person to accept the offer of a simple caution and no pressure will be applied to the person to accept a caution. However, where a person declined the offer of a simple caution it will normally follow that a prosecution will be taken.

### ***General guidance on enforcement provisions***

- 6.37 In instances where a risk to public health exists and a prosecution is to be undertaken it may still be appropriate to serve Hygiene Improvement or Hygiene Emergency Prohibition Notices. In addition, if any notices are not complied with within the time period given it will be necessary to consider prosecuting the proprietor for non-compliance with the notice. Where it is intended to prosecute in addition to the service of a Hygiene Improvement Notice this will be made clear to the proprietor at the time the notices are served.
- 6.38 If a notice is not complied with by the date specified, a letter will be sent to the person on whom the notice was served stating that formal action will be progressed.
- 6.39 Statutory notices will only be served by authorised officers.
- 6.40 Hygiene Emergency Prohibition Notices, Remedial Action Notices and Detention Notices will only be served by officers properly qualified, competent and duly authorised.
- 6.41 In all situations where a notice is not complied with the case officer will liaise with a representative of the Legal Services Section.
- 6.42 If the enforcement action undertaken was initiated as a result of a complaint, the complainant will be contacted at the close of the investigation and informed of the outcome.
- 6.43 Included with all statutory notices served on persons who are not English speaking will be an advice note in their own language.

- 6.44 Where a Primary/Home Authority partnership exists the officer will liaise with the Primary/Home Authority before embarking upon legal action. This helps to provide the officer with essential background information and take note of pre-existing remedial actions.
- 6.45 All legal proceedings are subject to the provisions of the Police and Criminal Evidence Act 1984 and the Agency Code of Practice. Reference will be made to these in relation to the procedures for gathering evidence.
- 6.46 During preparation of the case regular discussions will be held with a representative of Legal Services.
- 6.47 Power to authorise prosecutions and simple cautions rests with the Head of Community Safety and Wellbeing. The appropriate authority is given within The Constitution.

### ***Inspection, Detention and Seizure of Food***

The inspection of food and any decision to detain or seize food will only be taken by appropriately authorised officers.

### ***Enforcement options in product-specific establishments***

- 6.48 In addition to the general enforcement powers, authorised officers have additional provisions in respect of product-specific establishments. Powers to suspend or withdraw the approval or conditional approval of an establishment are provided within the Regulations. In considering use of these powers the immediate effect of the suspension or withdrawal on the business will be considered. Other enforcement options will be explored as appropriate and necessary to control the food hazards presented by the establishment. Non-compliance will not necessarily be considered sufficient to justify the immediate suspension or withdrawal of an establishment's approval or conditional approval, and a reasonable opportunity to achieve compliance will be allowed where this is appropriate.
- 6.49 In the case of a suspension of approval or conditional approval, the food business operator can make guarantees about future production. These guarantees must be considered by authorised officers.
- 6.50 An establishment's approval or conditional approval will normally only be withdrawn in circumstances where the food business operator is unable to satisfy the Food Authority to the extent that it has a reasonable expectation that the identified deficiencies will be rectified and acceptable standards will be maintained in the future.
- 6.51 Decisions to suspend or withdraw an establishment's approval or conditional approval will be notified in writing to the food business operator. Reasons for the decision will be given. The notification will also make the food business operator aware of their right of appeal against the decision to the Magistrates' Court and provide the address of the Magistrates' Court.
- 6.52 Following an appeal against a decision to refuse or withdraw and approval the food business operator may continue to use the establishment, pending the results of the appeal, subject to any conditions imposed for the protection of public health. This provision does not extend to appeals against the suspension of an approval. If it is considered that any activities undertaken in an establishment pending the result of an appeal may present a risk to public health, the use of other relevant enforcement powers shall be considered.

## **7.0 APPROACH TO ENFORCEMENT OF REQUIREMENTS RELATED TO HAZARD ANALYSIS SYSTEMS, FOOD HYGIENE TRAINING AND OTHER REQUIREMENTS**

7.1 Guidance contained within Agency Code of Practice will be followed.

### **Hazard analysis systems**

7.2 A graduated approach will be adopted with respect to hazard analysis and food hygiene training. The first step towards securing compliance will be an educative approach and the officer will discuss the requirements of the legislation relating to hazard analysis and training and supervision with the proprietor. The aim will be to encourage the adoption of a preventive approach to food safety, even where there is no immediate risk to public health apparent at the time of the inspection.

7.3 In considering formal approaches to enforcement, account will be taken of whether there is also evidence of a significant breach of other food hygiene requirements. Clear breaches of requirements relating to hazard analysis systems and food hygiene training would normally be expected to lead to significant breaches of other food hygiene requirements. The objective of a hazard analysis system, for example, should be to have effective food hygiene controls in place. Where effective controls are in place which achieve food safety and meet other food hygiene requirements, but a satisfactory hazard analysis system or food hygiene training are not in place, formal enforcement action will be based largely on a judgement of the effect of these breaches on the future safety of food within the business. Officers will take particular care with enforcement action in these situations for low risk businesses. Care will also be taken to avoid an undue emphasis on documentation of hazard analysis systems.

7.4 In the absence of any evidence which indicates a significant breach of other food hygiene requirements a formal approach to enforcement may be considered where:

- the businesses involve high risk operations;
- the breaches of requirements relating to hazard analysis systems or those relating to training and/or supervision would be likely to lead to significant breaches of other food hygiene requirements if not remedied; and
- the business has failed to respond to an informal, educative approach.

7.5 In respect to hazard analysis enforcement, officers will give due consideration to Industry Guides and will have regard to advice issued by the FSA.

### **Food hygiene training**

7.6 Where it is necessary to adopt a formal approach to the enforcement of the regulations relating to the training and/or supervision of food handlers, businesses will be invited to participate in food hygiene training that is provided by the Council. Because of the potential conflict of interest in such situations alternative providers will also be brought to the attention of the business.

7.7 Any assessment of training levels will give due consideration to relevant UK or EC Industry Guides to Good Hygiene Practice. In assessing whether the level and content of any training provided meets legal requirements consideration will be given to the relative risk of operations. It is recognised that suitable written or oral advice and active supervision may be sufficient to satisfy legal requirements with respect to low risk food establishments.

7.8 In giving any advice or guidance on the training of food handlers, officers will not imply that any particular examination or course provided by any training organisation is a mandatory requirement.

### **Other requirements**

- 7.9 It is recognised that while certain requirements of the Regulations impose minimum hygiene standards that apply to all relevant businesses, many other requirements are explicitly related to risk. Officers will have regard to food businesses' own hazard analysis, in determining how the Regulations apply to food businesses.
- 7.10 Regard will be given to the risk presented to the safety and wholesomeness of foodstuffs when assessing the way in which a food business should comply with that requirement. When determining the risk to the safety and wholesomeness of a food, officers will have regard to the manner in which it is handled and packed, and any process to which the food is subjected before supply to the final consumer and the condition under which it is displayed.
- 7.11 Officers will give due consideration to any relevant UK or EC Industry Guide to Good Hygiene Practice in determining how the Regulations apply to food businesses and particularly when the terms "where appropriate" or "where necessary" are used in the Regulations.

## **8.0 FOOD SAMPLING AND ANALYSIS**

- 8.1 The Food Authority believes that effective routine food sampling is an essential part of a well-balanced enforcement service and undertakes to provide the resources necessary to carry out a food sampling programme. Whilst food safety legislation provides a framework for food sampling which is carried out specifically with a view to pursuing legal action, it is important to appreciate that samples are taken for the purposes of surveillance, monitoring and providing advice to food business operators.
- 8.2 The Food Authority will deliver an organised and comprehensive microbiological sampling programme.
- 8.3 Sampling will be carried out in accordance with this policy and programme and will follow a set, documented procedure. This procedure is based on the Kent Food Sampling Protocol for microbiological sampling and includes guidance from PHE and relevant government Food Standards Agency Code of Practice and Practice Guidance.
- 8.4 The Food Authority will participate in European Community Co-ordinated Food Control Programmes and programmes organised nationally through the FSA and the Public Health Laboratory. The Food Authority will also take part in sampling programmes organised by Kent Food Technical Group, as agreed by Kent Environmental Health Managers.
- 8.5 Locally, the Food Authority will target sampling at approved and high-risk businesses and processes, particularly those for which we act as Primary/Home or originating authority and which distribute foods outside the Borough. The sampling programme may include imported foods entering the Borough.
- 8.6 The Food Authority will continue to support the 'shopping basket' approach to food examination, therefore food sampling and environmental swabbing of food premises will be an integral part of food hygiene inspections to help assess hygiene standards and processes. Food sampling will also be used as an important tool when appropriate in the investigation of food complaints and food poisoning incidents.
- 8.7 Central government funding for microbiological food and water samples is allocated by the PHE directly to the Council. This allocation does not cover the cost of sample collection, purchase or any chemical analysis.
- 8.8 Officers carrying out food sampling will ensure that they co-ordinate activities with colleagues in other Food Authorities and related professions such as Trading Standards. The purpose being to prevent duplication of work and share relevant results and findings.



- 8.9 All results and explanations regarding sampling will be given to food businesses or manufacturers as soon as possible. Unsatisfactory results will be followed up as necessary with advice or formal action as appropriate. If food is manufactured outside the Borough, the producer and relevant local authority will be contacted where necessary. Where national food safety is at risk the Food Standards Agency will be consulted and food alerts issued.
- 8.10 In addition to undertaking surveillance and monitoring samples, the Food Authority will take formal samples if necessary. The owner of the food will be notified of any formal sampling activity. The notice will normally be given prior to the sample being taken. Where a certificate of examination indicates that the food does not comply with legal requirements, the Food Authority will refer to and implement any relevant provisions of the Agency Code of Practice and the Primary/Home Authority Principle. A copy of the certificate of examination will if requested is supplied to the owner of the food.
- 8.11 The food sampling programme will be under the direct control of the Lead Food Sampling Officer. All samples will be taken by authorised officers who are properly trained in appropriate techniques and competent to carry out the duties assigned to them. Refer to FSA Code of Practice for detailed qualification requirements.
- 8.12 Details of all food and environmental samples are maintained on the Services Computer System.
- 8.13 Microbiological samples will be analysed at the PHE Food and Water Laboratory. The laboratory is accredited by United Kingdom Accreditation Service.
- 8.14 Chemical and physical contamination samples will be analysed at the laboratories of either the PHE Food and Water Laboratory or Kent Scientific Service (County Analyst). The Kent Scientific Service laboratory is accredited by UKAS.
- 8.15 In addition to food sampling, certain types of water samples will be taken for analysis at the PHE Food and Water Laboratory.

## **9.0 FOOD HYGIENE TRAINING AND FOOD SAFETY PROMOTION**

### ***Food hygiene training***

- 9.1 The Food Authority will offer a programme of food hygiene training. The main course offered is the Chartered Institute of Environmental Health (CIEH) Foundation Certificate in Food Safety. This is a nationally recognised qualification.
- 9.2 Courses will be provided by accredited trainers appointed by the Food Authority. All courses provided or facilitated by the Food Authority will generate a profit for the Council. The LFO will determine the basic charge for all courses. The LFO has the discretion to offer reductions in the fees if necessary for competitive advantage after consultation with the Financial Services Manager and subject to the proviso that the course will not be run at a loss to the Council (Environmental Health & General Purposes Committee 8 June 1993 minute no. 117 refers).

### **Food safety promotion**

- 9.3 The Food Authority will adopt a balance of techniques and approaches in order to achieve its policy aims and does not rely on any one method. It is believed that assisting businesses to comply with the law is every bit as important as detecting non-compliance. It is for this reason that the service emphasises its advisory and promotional work. This Policy is in accordance with FSA guidance.
- 9.4 The primary method of advising businesses is through our intervention programme and by responding to direct enquiries. In addition the Food Authority provides advice on food safety on the Council's website and when necessary issues a food safety newsletter to businesses.

9.5 The major food safety promotional programmes are:

- FHRs. This is a national scheme that gives consumers the chance to make informed choices about where they eat or buy their food. FHRs provides a way of finding out about the food hygiene standards of local food businesses which are now given a rating based on how well they meet hygiene criteria with the results available on the Internet. The better the standard, the higher the rating. The FHRs is supported by the FSA and is seen as an important tool for local councils committed to improving food safety. Any business that comes within the scope of FHRs are given a score on how well they perform in terms of hygiene, building structure and confidence in management. The scores range from 5 (very good) to no stars (urgent improvement necessary). The score given to each business reflects the conditions found on the day of inspection.
- Food Safety Week – this is a FSA national scheme primarily aimed at educating the general public about food hygiene and safety issues.

## 10.0 FOOD COMPLAINTS/COMPLAINTS ABOUT FOOD ESTABLISHMENTS

10.1 The Food Authority will investigate and take enforcement action in cases relating to the microbiological quality of food, contamination by microorganisms and their toxins, and contamination by foreign matter. The Food Authority will also deal with cases relating to chemical contamination when this presents or could present an imminent risk to health. Other cases of chemical contamination are dealt with by the County Council Food Authority i.e. Trading Standards, who also deal with composition, adulteration and labelling matters. Medical and other expert advice will be sought as necessary to establish whether contamination by chemicals is likely to pose an imminent risk to health. In cases where a clearly identified risk to health has been notified by means of a Food Alert issued by the FSA either the District Council or County Council or both may be required to investigate. In such situations responsibility will be defined in the Food Alert.

10.2 As a general rule any person who is liable to be prosecuted as a result of a customer complaint will be notified that the complaint has been made as soon as reasonably practicable.

10.3 As soon as preliminary investigations suggest that the complaint may be well founded and that prosecution may follow the retailer, supplier, manufacturer or importer will be notified. The initial notification may be oral and will be followed by notification in writing. The written notification will describe the date and nature of the complaint. Other potential defendants will be notified as they emerge.

10.4 Exceptionally there may be circumstances in which notification could impede the progress of further investigations. In these circumstances notification will take place as soon as can be achieved without prejudicing further investigations.

10.5 In a case where malicious contamination is suspected the FSA will be contacted in accordance with Guidance Document – Principles for Preventing and Responding to Food Incidents.

10.6 The complainant will be kept informed of the progress of the investigation.

### **Involvement of other food authorities**

10.7 If an investigation of a complaint brings to light a food hazard or potential food hazard outside the area of the Council, the other appropriate authorities directly affected (for example the FSA, the authority where the food was manufactured and/or the authority where a company's decision making base is located) will be informed as soon as possible.

10.8 If a complaint investigation identifies food that has the potential to cause an adverse effect on the health of consumers and the problem may affect a wide geographical area, the FSA will be

informed. Officers will have due regard to the Agency Code of Practice. See section 14 for more details.

### **Investigation of complaint samples**

- 10.9 Authorised officers will need to consider whether any scientific investigation is to be undertaken. If there is any doubt consultations will be held with the Kent Scientific Services (County Analyst) and/or PHE Food and Water Laboratory who will give advice on the form of scientific investigation which may be appropriate for that complaint sample.
- 10.10 All complaint samples will be properly stored and handled. The following points will be noted:
- the storage of samples will ensure that their condition does not deteriorate significantly before inspection by the retailer, manufacturer or importer or before it is sent for further analysis.
  - the sample will be put in a suitable container and sealed.
  - the container or sample will be sealed and marked for identification
  - the sample will be submitted for analysis as soon as possible
  - the retailer, manufacturer or importer will be informed that the sample has been sent for analysis.
- 10.11 Upon receipt of results from the analysis full details will be sent to the retailer, manufacturer or importer.
- 10.12 A Company under investigation may ask that samples be made available to help with an internal inquiry into the complaint. The Council will attempt to comply with any reasonable request provided that it does not impede the proper storage, examination or evidential value of the samples, or otherwise prejudice the Council's position as regards the possible institution of legal proceedings.

## **11.0 PROSPECTIVE PURCHASERS OF FOOD BUSINESSES**

11.1 The following policy will be adopted in respect to advising prospective purchasers of food businesses:

- Officers will not normally undertake site visits prior to the purchase of a business;
- If there are outstanding works the officer will inform the prospective purchaser of their existence and provide relevant documentation as necessary. The release of information will be in line with the requirements of the FOI Act and EIR 2004. The prospective purchaser will also be advised to contact the business proprietor as appropriate. Where a site visit to discuss outstanding works is requested by a prospective purchaser and supported by the current owner an officer will visit.

11.2 The intention of this approach is to ensure that officers do not unfairly interfere in the negotiation between a purchaser and vendor. Where appropriate a letter offering general advice on standards enforced in food establishments will be sent to the prospective purchaser.

11.3 In the situation where a letter is sent to a prospective purchaser to indicate that there are no outstanding works, the letter will clearly state the date of the last inspection undertaken.

## **12.0 HEALTH CERTIFICATES**

12.1 Health certificates may at the request of a food business be issued by the Food Authority for food products which are manufactured within the Borough and are to be exported to countries outside the EC. The requirement for the issue of a certificate is that the establishment has been

inspected by an officer who can certify that the establishment meets the requirements of relevant food safety legislation enforced by the Council.

12.2 A charge is made for this service set at a level to recover costs.

### **13.0 VOLUNTARY SURRENDER OF FOOD**

13.1 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. A receipt should be issued for food that is voluntarily surrendered to the Food Authority for destruction. The receipt should indicate that the food has been voluntarily surrendered to the Food Authority for destruction and be signed and counter-signed by the authorised officer and the person surrendering the food respectively. The receipt should include space for recording the time, place and method of destruction of the food, and these details should be recorded on the office copy by the authorised officer in due course and retained by the Food Authority.

13.2 The Food Authority will secure, as part of the voluntary surrender, an agreement by the owner to pay the reasonable expenses of destruction or disposal as necessary. A charge is made for this service set at a level to recover actual costs.

13.3 In dealing with a voluntary surrender of food, the authorised officer will ensure the total destruction of the food by incineration or some other appropriate method. If total destruction is not possible, the officer will ensure such a degree of disfigurement that the food could never re-enter the food chain, e.g. by flattening tin cans for disposal in a suitably licensed landfill site, having regard to the requirements of relevant waste disposal legislation.

13.4 A copy of the waste transfer note must be obtained and kept on file for any food that has been disposed of by a licensed waste disposal contractor under these arrangements.

### **14.0 FOOD INCIDENTS, HAZARDS AND ALERTS**

14.1 A food incident occurs when a Food Authority or the FSA becomes aware that food fails or appears to fail to meet food law requirements. An incident can be a relatively minor matter or a major food hazard. A food hazard is a food incident involving a biological, chemical or physical agent in, or condition of, food with the potential to cause an adverse effect on the health or safety of consumers.

14.2 Food Hazards will be further categorised according to the following criteria:

- A localised food hazard – one in which food is not distributed beyond the boundaries of the Borough and is not deemed to be a serious localised hazard;
- A serious localised food hazard - one in which food is not distributed beyond the boundaries of the Borough but which involves *E. coli* 0157, other VTEC, *C. botulinum*, *Salmonella typhi* or *Salmonella paratyphi* or which the Food Authority considers significant because of, for example, the vulnerability of the population likely to be affected, the numbers involved or any deaths associated with the incident;
- A non-localised food hazard - one in which food is distributed beyond the boundaries of the Borough.

### ***Food hazards associated with foodborne illness***

- 14.3 If a food hazard has resulted in an outbreak of foodborne illness, the Food Authority will consider with the PHE Consultant in Communicable Disease Control the activation of the Outbreak Control Plan.
- 14.4 Serious localised outbreaks will also be notified immediately to the appropriate contacts at the PHE and the FSA.
- 14.5 Arrangements are in place to ensure that the PHE Food Examiner and Public Analyst are able to notify the Food Authority promptly if they identify a food hazard during the course of the analysis or examination of a food sample. These arrangements include notification outside normal working hours.
- 14.6 The Food Authority will have regard to the FSA guidance on the management of outbreaks of foodborne illness.<sup>8</sup> This guidance provides a framework for health professionals to assist them in the management of outbreaks of infectious intestinal disease caused by the ingestion of microbiologically contaminated food.

### ***Action by the Food Authority – Food Hazards***

- 14.7 Once a food hazard has been identified, the Food Authority will immediately carry out an assessment to determine the likely scale, extent and severity of the risk to public health or safety of the hazard, involving other agencies as appropriate. For example, Primary/Home, originating and neighbouring authorities, medical specialists, Food Examiners, Public Analysts and microbiologists.
- 14.8 Where the Food Authority becomes aware of a food hazard action will be taken to protect public health and safety at the earliest opportunity, including, if necessary, detaining or seizing the food implicated if it is located within the Borough.
- 14.9 Localised food hazards will be dealt with as necessary but will not be reported to the FSA.
- 14.10 Serious localised food hazards and non-localised food hazards will be reported to the FSA and other relevant agencies at the earliest opportunity and by the quickest available means. Notifications will be confirmed in writing using the appropriate FSA Incident Report Form.

### ***Action by the Food Authority – Food Incidents***

- 14.11 Food incidents that are contraventions of food law, but not hazards will be normally resolved by the Food Authority and the food business operator, through the Primary/Home or originating authority as appropriate.

### ***Food Alerts***

- 14.12 A food alert is a communication from the FSA to a Food Authority concerning a food hazard or other food incident. A food alert may or may not require the Food Authority to take action. This will be made clear by the FSA on a case-by-case basis.
- 14.13 The Food Authority will ensure than any action specified by the FSA in a food alert is undertaken promptly and in accordance with any risk assessment carried out by the FSA. Any proposal to undertake alternative action will be discussed with the FSA. If the food Authority anticipates difficulties in complying with a request for action given in an alert, it will contact the FSA's Food Incident Team immediately.

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<sup>8</sup> Kent, Surrey and Sussex Public Health England Outbreak / Incident Control Plan December 2014.

- 14.14 The Food Authority will as appropriate ensure liaison with the County Council i.e. Trading Standards, over the handling of food incidents that have implications for both authorities. Liaison arrangements as developed and coordinated by the Kent Food Group will be followed. Note the split in responsibilities between the Food Authority and Council.
- 14.15 Details of food incident investigations will be held on the Services Computer System.
- 14.16 The Food Authority will have appropriate facilities to receive food alerts and updates from the FSA by electronic mail.
- 14.17 Out of hours the LFO may be contacted via the duty officer system. Appropriate contact numbers are provided to the FSA.
- 14.18 The Food Authority will deal with food incidents, hazards and alerts in accordance with the Operational Note – Food Hazard Warnings.

## **15.0 MONITORING**

- 15.1 The LFO will arrange for qualitative and quantitative performance monitoring in order to ensure compliance with this policy and the targets contained within it.
- 15.2 The Food Authority will maintain a documented procedure for monitoring progress of the planned intervention programme and the quality and consistency of interventions undertaken by officers, or staff supplied under contract, to ensure, so far as practicable, that interventions are carried out competently. The procedure will include arrangements for recording in-year changes to the planned intervention programme, newly opened establishments, closed establishments and establishments for which the intervention rating is changed. The monitoring system will include measures to review:
- Adherence to the planned intervention programme;
  - The priority given to interventions with businesses according to intervention ratings;
  - Compliance with FSA guidance;
  - The consistent assessment of intervention ratings;
  - Appropriate use of relevant inspection forms;
  - Compliance with internal procedures and policies;
  - That the interpretation and action taken by officers following an intervention is consistent within the Authority and the FSA guidance;
  - That officers are aware of and have access to published industry codes of practice;
  - That officers have due regard to published UK or EU Guides to Good Practice.

## **16.0 OFFICER TRAINING & DEVELOPMENT**

- 16.1 Appropriate resources will be made available to provide training for officers to enable them to successfully fulfil their food safety duties as detailed within this policy. Relevant structured on-going training will be made available. The minimum ongoing training will be 10 hours per year and be based on the principles of continuing professional development.
- 16.2 Officers whose knowledge or practical experience of food law enforcement is out of date will receive structured revision training and be monitored by the LFO or another authorised food law enforcement officer during the period of training. The revision training will vary according to the experience of the officer and the period that the officer has not been involved in food law

enforcement duties. The minimum revision training should be 15 hours based on the principle of continuing professional development.

- 16.3 Officers will be required to satisfy other relevant continuing professional development training requirement appropriate to their qualification in order to maintain their competency and authorisation. Each officer will be responsible for maintaining records demonstrating this achievement.
- 16.4 The LFO will retain a copy of certificates of registration, qualifications and other documents required by this section of the Policy and record on-going and revision training undertaken by their authorised officers.
- 16.5 Officers that are newly qualified or are returning to food law enforcement duties after an absence of more than three years will be monitored for at least three months or for the duration of their revision training period which ever is longer.
- 16.6 The LFO will ensure that contracted or temporary staff meets the same qualification and experience requirements as directly employed by the Food Authority.
- 16.7 The LFO will keep copies of certificates of registration, qualifications and documents required by the FSA Code of Practice.

## 17.0 PERFORMANCE TARGETS

17.1 The following performance targets are set in relation to this Policy:

Performance Area	Target
Percentage of food establishments inspections undertaken against those scheduled for inspection	99%
Period between inspecting a food establishment and writing to the proprietor	10 working days
Period between the receipt of a food complaint/food establishment complaint and the initial response	5 working days
Maximum period between receiving sampling results and sending the result letter to the food business	10 working days
Maximum period to process a request for a health certificate	24 hours
Percentage achievement of food sampling plan	100%

## 18.0 POLICY REVIEW

- 18.1 This Policy will be reviewed and amended as required and amendments approved by Cabinet.
- 18.2 Amendments to the Policy will only be made upon joint agreement of the LFO and the Head of Community Safety and Wellbeing.





## **APPENDIX A : HACCP Evaluation Competencies**

### **Standards of Competence for Food Authority Officers in relation to procedures based on HACCP principles**

In additional to the qualifications presented within this Policy as relevant to the inspection of food establishments, all officers will be able to demonstrate the following competencies.

1. To identify, through the conduct of an audit, the need for improved food safety control in establishments having regard to the nature and size of the business.
  - 1.1 Assess the quality of food safety hazard identification in a food business.
  - 1.2 Assess the quality of critical control point (CCP) identification in a food business.
  - 1.3 Assess the suitability of controls in place and their monitoring at CCPs.
  - 1.4 Assess the verification and review by business operators of procedures based on HACCP principles.
2. To promote and support the implementation of procedures based on HACCP principles appropriate to the nature and size of the business.
  - 2.1 Explain the principles of hazard analysis to food business operators or managers in terms appropriate to the nature and size of the business.
  - 2.2 Specify targets for improved control of food safety hazards.
  - 2.3 Provide advice on carrying out hazard analysis and implementing controls in terms appropriate to the nature and size of the business.
  - 2.4 Explain where appropriate, the relationship between HACCP systems (based on Codex) and other procedures based on HACCP principles.
3. To secure compliance with procedures based upon HACCP principles as required by legislation, appropriate to the nature and size of the business.
  - 3.1 Explain the legal requirements in relation to procedures based on HACCP principles.
  - 3.2 Secure progress towards compliance by discussion and persuasion.
  - 3.3 Secure compliance by the issue of notices. Secure compliance through the courts (and gather and preserve evidence in a food usable in court).

## **APPENDIX B :**

### **SUMMARY OF ASHFORD BOROUGH COUNCIL'S FOOD LAW ENFORCEMENT POLICY**

#### **1.0 Introduction**

1.1 This policy sets out the Council's principles for enforcing and executing its duties as a Food Authority under The Food Safety Act 1990 and other relevant food safety legislation.

1.2 Duties fall under three main headings, as follows:

- The regular inspections of all food premises within the Borough to ensure compliance with the law. The minimum frequency of these inspections is laid down by the Food Standards Agency (FSA) according to the risk each premises present.
- The investigation of complaints about unsatisfactory food or food premises.
- The regular sampling of food intended for sale in the Borough to ensure that it meets food safety standards.

#### **2.0 Aim of Policy**

2.1 The Council aims to protect public health and safeguard food standards by ensuring compliance with the relevant legislation whilst recognising the needs of local businesses.

#### **3.0 Policy**

3.1 The protection of public health will be paramount when enforcing the law, but the difficulties of food businesses in interpreting legal requirements will also be given due consideration. This will apply particularly to smaller businesses that will probably not have the specialist advisors that are available to larger companies.

3.2 All enforcement action taken will be proportional to the risk any situation presents and will be in accordance with statutory Codes of Practice, Council procedures, and official guidance from central and local government bodies.

3.3 Every effort will be made to ensure compliance with the law by a process of advice and education. Formal action will only be considered in the following circumstances:-

- Where there is a serious risk to public health;
- Where there is a blatant or deliberate contravention of the law;
- Where there is a history of non-compliance or co-operation for an informal approach is not forthcoming.
- Where food businesses fail to take action in the timescales agreed within an informal process.

#### **4.0 Informal Action**

4.1 During an inspection of a food premises or process, the officer will give the proprietor verbal advice on how to remedy any contraventions of the law and on general good practice.

4.2 Timescales will be agreed to carry out any necessary work and at the end of the visit, the proprietor will be given an Inspection Report stating what action will be taken as a result of the inspection.

4.3 If the running of the business is satisfactory or there are only limited minor problems, verbal advice may be sufficient.

- 4.4 If however, there are more substantial issues to be addressed, a letter will be written to the proprietor of the business, detailing work that has to be carried out and within what timescale.
- 4.5 A clear distinction will be made in the letter between what is required by law and what is recommended good practice.
- 4.6 The premises will be revisited to ensure that the necessary action has been taken.

## **5.0 Formal Action**

5.1 If formal action is required under the criteria listed in paragraph 3.3, the following options are available according to the circumstances:-

- Hygiene Improvement Notices. These are statutory notices used when a food business is failing to comply with food hygiene or food processing regulations. They require the necessary remedial action to be taken by a proprietor of the food business in a relatively short space of time (a minimum of 14 days). A realistic timescale is set to comply with the Notice, which is discussed with the proprietor or their representatives, and wherever possible agreed with them taking into account the risk to public health and the relevant practicalities. The hygiene improvement notice itself can be appealed against, and an extension of time to comply with it can be requested if there are legitimate reasons. Failure to comply with the Notice however is an offence and would normally result in prosecution.
- Hygiene Emergency Prohibition Notices. Where there is an imminent risk of injury to health posed by a food premises or a process, the authorised officer will serve a Hygiene Emergency Prohibition Notice. This ensures the immediate closure of the premises or stops a particular process. An application must then be made within 3 days in Court to have the Notice confirmed with an Emergency Prohibition Order. If the Court is not satisfied that there was an imminent risk of injury to health at the time the Notice was served, compensation may be payable to the business concerned by the Council.

## **6.0 Prosecutions**

- 6.1 Where formal action is required under the circumstances specified in Paragraph 3.3, a prosecution may be necessary if the alleged offence is serious enough. Any decision to prosecute will be taken strictly in accordance with the Code for Crown Prosecutors, the Regulators' Enforcement Code and FSA Codes of Practice on prosecutions.
- 6.2 In considering a prosecution, the following factors will be taken into account:
- The previous history of the party concerned.
  - The willingness of the party to prevent a recurrence of the problem.
  - The probable public benefit of a prosecution.
  - The likelihood of the defendant being able to establish a due diligence defence, i.e. that they did all they could to prevent the offence and it was someone else who should be proceeded against or they took all reasonable steps to avoid the offence.
  - Whether the issuing of a simple caution would be more appropriate or effective.

## **7.0 Complaints and Appeals Procedures**

- 7.1 The Council's complaints procedure will be followed for complaints concerning the officer.
- 7.2 Hygiene Improvement Notices have a statutory appeals procedure, and proprietors of food businesses are entitled to appeal against any refusal of the Council to lift a Hygiene Emergency Prohibition Order.
- 7.3 A business has the right of appeal to the LFO with regard to the rating they received under FHRS. If not satisfied with the result of this appeal they may seek a judicial review.