



FOOD LAW ENFORCEMENT POLICY

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1. **EXECUTIVE SUMMARY**

- 1.1 East Staffordshire Borough Council is a Food Law Enforcement Authority with responsibilities for local delivery of Official Food Controls. As such, the Council is charged with ensuring that food and drink intended for human consumption, which is produced, stored, distributed, handled or consumed in the Borough is without risk to the health of the consumer and satisfies the requirements of applicable food law.
- 1.2 National arrangements set by the Food Standards Agency in its 'Framework Agreement on Official Feed and Food Controls by Local Authorities' require that every Food Law Enforcement Authority has in place a documented Enforcement Policy.
- 1.3 East Staffordshire Borough Council recognises that fair and effective enforcement is an essential aspect of its role in protecting both public health and economic interests. To this end, it has published a Corporate Enforcement Policy setting out the Council's general approach to compliance and enforcement.
- 1.4 The Corporate Enforcement Policy is supported by a number of more detailed service-specific policies including this Food Law Enforcement Policy.
- 1.5 This Policy sets out what the public and those involved in the food industry can expect from the Council and its enforcement officers in relation to Food Law Enforcement.
- 1.6 The Food Law Enforcement Policy has been formally approved by East Staffordshire Borough Council through an executive decision by the Deputy Leader – Regulatory Services on [Insert Date]
- 1.7 This Policy and other related documents are available on East Staffordshire Borough Council's website at [Insert link]. A paper copy of the Policy can be obtained on request by email to enforcementsupport@eaststaffsbc.gov.uk or in writing to Enforcement Services Manager, East Staffordshire Borough Council, The Maltsters, Wetmore Road, Burton Upon Trent, Staffordshire, DE14 1LS.
- 1.8 On request, a copy of the Policy will be made available in audio, Braille or large type.

2. **INTRODUCTION**

- 2.1 This policy document sets out East Staffordshire Borough Council's approach to its Food Law compliance and enforcement activities – it commits the Council to good enforcement practices with effective procedures and clear policies.
- 2.2 It has been developed having regard to current law and practice and in particular takes account of the following key standards.
- 2.3 **Framework Agreement on Official Feed and Food Controls by Local Authorities**

The '[Framework Agreement on Official Feed and Food Controls by Local Authorities](#)' requires that the Council sets up, maintains and implements a documented enforcement policy, in accordance with the relevant Codes of Practice and other official guidance.

Such a policy must be approved by the relevant Local Authority Member or Member Forum.

The Policy or an accurate summary of the Policy should be readily available to the public and to food businesses in the Borough.

The Council is further required to:

- Set up, maintain and implement documented procedures for follow-up and enforcement actions in accordance with the relevant Codes of Practice and official guidance;
- Carry out Food Law Enforcement in accordance with the relevant Codes of Practice and centrally issued guidance, and
- Ensure that all decisions on enforcement action are made following consideration of the Council's enforcement policy and that the reasons for any departure from the criteria set out in the enforcement policy are documented.

2.4 **Food Law Code of Practice**

East Staffordshire Borough Council has responsibility for enforcement of food legislation and carries out its food enforcement activities having regard to the provisions of the [Food Law Code of Practice](#) which is statutory guidance issued under Section 40 of the Food Safety Act 1990, Regulation 26 of the Food Safety and Hygiene (England) Regulations 2013, and Regulation 6 of the Official Feed and Food Controls (England) Regulations 2009. The Council also has regard to the non-statutory guidance issued by the Food Standards Agency in its [Food Law Practice Guidance](#).

2.5 Principles of Good Regulation

The [Legislative and Regulatory Reform Act 2006](#), requires that the Council has regard to the Principles of Good Regulation when exercising a specified regulatory function. Specified regulatory functions include the Council's Food Law Enforcement activities.

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

- **Proportionate** – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence or breach,
- **Accountable** – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures,
- **Consistent** – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities,
- **Transparent** – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- **Targeted** – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

2.6 Regulators Compliance Code

East Staffordshire Borough Council has had regard to the [Regulators Compliance Code](#) in the preparation of this policy. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

2.7 Enforcement Concordat

East Staffordshire Borough Council has adopted the [Enforcement Concordat and the Principles of Good Enforcement](#): Standards; Openness; Helpfulness; Complaints; Proportionality and Consistency.

2.8 Human Rights Act 1998

East Staffordshire Borough Council is a public authority for the purposes of the [Human Rights Act 1998](#). We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

2.9 Data Protection Act 1998

Where there is a need for us to share enforcement information with other agencies, we will comply with the provisions of the [Data Protection Act 1998](#).

2.10 Code for Crown Prosecutors

When deciding whether to prosecute, East Staffordshire Borough Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

- **Evidential Test** - is there enough evidence against the defendant?
When deciding whether there is enough evidence to prosecute, East Staffordshire Borough Council will consider what evidence can be used in court and is reliable. We must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.
- **Public Interest Test** - is it in the public interest for the case to be brought to court?
East Staffordshire Borough Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits through the consistent use of the Public Interest Matrix.

2.11 Regulatory Enforcement and Sanctions Act 2008

The [Regulatory Enforcement and Sanctions Act 2008](#), as amended, established the Primary Authority scheme. We will comply with the requirements of the Act when we are considering taking enforcement action

against any business or organisation that has a registered Primary Authority Partnership. The Act also provides for the publication of a list of enforcement priorities for local authorities. We will have regard to any list of enforcement priorities published by the Better Regulation Delivery Office.

3. **BACKGROUND**

- 3.1 This Food Law Enforcement Policy is at the core of our commitment to delivering our corporate priorities of:
- Tackling the cost of living crisis by “delivering with less”
 - Supporting Economic Growth
 - Promoting Well Being
- 3.2 The Council has a key role to play in establishing a fair trading environment for food business and supporting local economic prosperity. At the same time we have an equally important role in protecting public health and safety and promoting community health and well-being.
- 3.3 Fair and effective enforcement underpins this and ensures that we protect health, safety and quality of life for all those who live, visit and work in the Borough as well as ensuring that businesses are legally compliant.
- 3.4 This Policy commits the Council to good enforcement practice and establishes the framework by which we will ensure a fair and consistent approach to the way that Food Law Enforcement activities are undertaken.
- 3.5 The Policy applies to all Food Law Enforcement activities undertaken by or on behalf of the Council.
- 3.6 It sets out what the public and those engaged in the food industry can expect from the Council and its enforcement officers. It also provides a clear standard that Council officers are expected to abide by when undertaking Food Law Enforcement activities on behalf of the Council.
- 3.7 Often a decision about enforcement action has implications for many people, either directly or indirectly. We want our stakeholders to fully understand the actions that we take and see that we are consistent, transparent, accountable, proportionate and targeted in our approach.
- 3.8 East Staffordshire Borough Council has formally adopted the Enforcement Concordat and Principles of Good Enforcement which set out standards for fair and proportionate enforcement.
- 3.9 The Council will work closely with those that it regulates, and will seek to promote compliance through a range of measures including advisory activities; risk-based and intelligence-led checks on compliance and, proportionate responses to regulatory breaches.
- 3.10 We strive to use advice and persuasion as the main methods to ensure that food businesses comply with legal requirements. We also offer free advice via telephone, personal visit or on our website.

- 3.11 Our enforcement activities are aimed at securing regulatory compliance generally and in particular achieving the following outcomes:
- Protecting the consumer
 - Changing the behaviour of the offender;
 - Eliminating, where possible, any financial gain or benefit from a non-compliance;
 - Being responsive, and appropriate for the particular offender and regulatory issue;
 - Being proportionate to the nature of the offence and the harm caused;
 - Restoring the harm caused by regulatory non-compliance, where appropriate, and
 - Deterring future non-compliance.
- 3.12 The Council is committed to dealing firmly with those that deliberately or persistently fail to comply.
- 3.13 We will measure improvements, restoration of harm, and the number of enforcement actions taken and will provide stakeholders with an annual report outlining enforcement actions and outcomes.

4. WHAT IS ENFORCEMENT?

- 4.1 Enforcement is concerned with ensuring that legal requirements are adhered to. It includes any criminal or civil action taken by the Council, or its authorised officers, aimed at ensuring that individuals or businesses comply with applicable law.
- 4.2 For the purposes of the Regulatory Enforcement and Sanctions Act 2008 the term 'enforcement action' has been given a general statutory definition as follows:
- Action to secure compliance with restriction, requirement or condition in relation to a breach or suspected breach;
 - Action taken in connection with imposing a sanction for an act or omission; and
 - Action taken in connection with a statutory remedy for an act or omission.
- 4.3 In the context of this Policy, the purpose of enforcement is to ensure compliance with Food Law in food businesses in the Borough. As a Food Authority, we must therefore discharge this duty as effectively as possible, using means that are most appropriate to the circumstances.
- 4.4 The effective discharge of this duty relies on authorised officers being familiar with the law they are appointed to enforce, referring to the law itself as well as to the Food Law Code of Practice and other guidance, understanding what the law actually states and requires, and seeking guidance when appropriate to do so.
- 4.5 Enforcement does not just mean taking formal action such as prosecution, but includes checking to make sure that things are as they should be and giving help and advice to businesses and individuals so that they can meet relevant rules and regulations.
- 4.6 We recognise that most food business operators and their employees want to abide by the law. We will assist and advise wherever possible and appropriate to do so, providing a reasonable timescale to secure compliance.

5. **OUR APPROACH TO ENFORCEMENT**

5.1 East Staffordshire Borough Council has adopted the Enforcement Concordat and the Principles of Good Enforcement, and in particular is committed to the following matters:

- **Standards**

We consult with our stakeholders, the public and businesses about the services we provide and our enforcement approach in relation to those services. We set out clearly the levels of service and performance that our customers can expect to receive. We publish service standards which can be obtained in alternative formats.

- **Openness**

We provide accessible information and advice, wherever possible in plain language, on the laws that we enforce. We will be open about how we set about our work, any charges for our services and will explain in a timely manner when and why it is necessary to take enforcement action. Our enforcement activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures.

- **Helpfulness**

We firmly believe that 'prevention is better than cure' and we will actively work to advise and assist individuals and businesses to comply with the law. Our officers will be courteous and efficient, will identify themselves by name and will show identification. We will offer contact details (telephone number and email address) for any further help.

- **Proportionality**

We will work with our customers to help them meet their legal obligations without unnecessary expense or administrative burden. Advice will be put clearly and simply, include any timescales and will be confirmed in writing. Any legal requirements will be clearly distinguished from best practice recommendations. Our activities will reflect the level of risk to the public and the seriousness of the offence or breach. We will ensure that any enforcement action that we take or remedial action we require is reasonably proportionate to the breach, act or omission in question.

- **Consistency**

We will carry out our duties in a fair and consistent way. We have arrangements in place to ensure consistency, including liaison with other local authorities and other agencies, particularly where we may share an enforcement role. Our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities.

- **Targeting**

We will focus our resources and enforcement effort towards locally and nationally agreed priorities and towards higher risk enterprises and activities.

- 5.2 The Council will ensure that all officers undertaking Food Law Enforcement activities on its behalf are trained and competent; abide by the requirements of both the Corporate Enforcement Policy and this Food Law Enforcement Policy, and are duly authorised in line with the Council's Constitution and Scheme of Delegation.
- 5.3 The Council will periodically conduct performance and consistency checks to ensure compliance with the commitments made in this Policy.

6. **APPOINTMENT OF OFFICERS**

- 6.1 The Council has in place a documented procedure for the appointment and authorisation of officers involved in Food Law Enforcement.
- 6.2 The Food Safety Act 1990 allows for the authorisation of officers, in writing, either generally or specially to act in matters arising under the Act or Regulations made under the Act.
- 6.3 Officers performing duties under the Food Safety and Hygiene (England) Regulations 2013 and the Official Feed and Food Controls (England) Regulations 2009 are separately authorised in writing to deal with matters arising under these implementing Regulations. With regard to other specific food regulations made under the European Communities Act 1972, where appropriate, relevant officers are specifically authorised for each of those Regulations.
- 6.4 The Council ensures that any officer it authorises in accordance with its documented procedure to carry out Food Law Enforcement is:
- Suitably qualified;
 - Experienced; and
 - Competent to carry out the range of tasks and duties they are required to perform.
- 6.5 The Council will not authorise new officers, or extend the duties of currently employed officers, unless they are qualified in accordance with the relevant provisions of the Food Law Code of Practice and they meet any relevant additional requirements relating to specific duties or enforcement responsibilities.
- 6.6 Officers whose knowledge or practical experience of Food Law Enforcement is out of date will receive structured revision training and be monitored by the lead officer or another experienced food law enforcement officer during the period of training. The extent of the revision training will vary according to the previous experience of the officer and the period that the officer has not been undertaking Food Law Enforcement duties. The minimum revision training is 15 hours based on the principles of continuing professional development.
- 6.7 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, whichever is the longer.
- 6.8 The Council will ensure that all authorised officers receive relevant structured on-going training. That training will cover such matters as new

legislation and procedures and technological developments relevant to food businesses subject to their control. The minimum on-going training is 10 hours per year based on the principles of continuing professional development.

6.9 The Council has appointed a suitably qualified and experienced lead Environmental Health Officer to take lead operational and management responsibility for its Food Law Enforcement functions.

6.10 **Appointment of Officers to carry out food hygiene official controls**

Officers authorised to undertake food hygiene and safety official controls, with the exception of sampling, hold one of the qualifications, or equivalent qualifications set out below and are assessed as being competent to carry out these functions:

- An Environmental Health Officer holding a Certificate of Registration of the Environmental Health Registration Board (EHRB); or a Diploma in Environmental Health (or its antecedents) awarded by EHRB or the Royal Environmental Health Institute of Scotland (REHIS), or
- A Food Safety Officer holding a Higher or Ordinary Certificate in Food Premises Inspection awarded by the Environmental Health Registration Board; the Scottish Food Safety Officers Registration Board (SFSORB); or the Institute of Food Science and Technology (IFST).

Officers authorised to undertake food hygiene and safety official controls of food business establishments have a detailed knowledge of the following:

- The nature and types of food businesses in the Borough and the technology utilised by the businesses that is subject to official control by the officer;
- Relevant food hygiene and safety legislation;
- Requirements in Regulation 882/2004 on official controls for competent authorities with responsibility for enforcement of food law;
- The Food Law Code of Practice;
- The Food Law Practice Guidance accompanying the Code;
- The Council's Food Law Enforcement Policy;
- The Council's Corporate Enforcement Policy;
- UK and EU Guides to Good Practice;

- Relevant guidance issued by the Food Standards Agency and by LGA; and
- Relevant industry codes of practice.

6.11 Inspection of specialist or complex processes

Officers undertaking inspections of specialist or complex manufacturing processes will have received additional training and have demonstrated their competence to undertake such inspections. These will include the following:

- The canning, aseptic packing or thermal processing of low-acid foods;
- The manufacture of cook-chill, ready to eat food which may be consumed without further preparation other than re-heating;
- The manufacture of meat, fish, egg or dairy products; and
- Vacuum packaging (including butchers shops that vacuum-pack meat).

6.12 Inspection of establishments subject to approval under Regulation 853/2004

Inspections for the purposes of the approval of establishments that are subject to approval under Regulation 853/2004 will only be undertaken by authorised officers of the Council who 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, who may be from another Food Authority if necessary.

6.13 Service of Hygiene Improvement Notices

Hygiene Improvement Notices served under Regulation 6 of the Food Safety and Hygiene (England) Regulations 2013 are issued only by officers who have been authorised to do so by the Council. To maintain a consistent approach, the Council has arranged that these notices are issued only by qualified officers with experience in Food Law Enforcement, who are properly trained and competent. These will be one of the following:

- Environmental Health Officers enforcing food hygiene or food processing regulations;

- Holders of the Higher Certificate in Food Premises Inspection who are authorised to carry out food hygiene inspections;
- Holders of the Ordinary Certificate in Food Premises Inspection in relation to the premises they are authorised to inspect.

The officer who signs the notice must have witnessed the contravention and be satisfied that it constitutes a breach of the Food Safety and Hygiene (England) Regulations 2013.

6.14 Service of Hygiene Emergency Prohibition Notices

Hygiene Emergency Prohibition Notices served under Regulation 8 of the Food Safety and Hygiene (England) Regulations 2013 are issued only by Environmental Health Officers who:

- Have two years post qualification experience in food safety matters;
- Are currently involved in food law enforcement; and
- Are properly trained, competent and duly authorised.

6.15 Service of Remedial Action Notices/Detention Notices

Remedial Action Notices or Detention Notices served under Regulation 9 of the Food Safety and Hygiene (England) Regulations 2013 will be issued only by Environmental Health Officers who:

- Have two years post qualification experience in food safety matters;
- Are currently involved in Food Law Enforcement, and
- Who are properly trained, competent and duly authorised.

6.16 Quality assurance systems

Before being authorised to undertake food inspections of establishments risk-rated category A (as defined in the Food Law Code of Practice Annex 5 'Food Establishment Intervention Rating Schemes') and which are engaged in the manufacture and processing of foodstuffs with documented quality assurance systems, an officer will have been appropriately trained and be able to demonstrate that they are competent to assess quality assurance systems.

6.17 **Inspection, detention and seizure of foodstuffs**

The inspection of food and any decision to detain or seize food through the application of Section 9 of the Food Safety Act 1990 (including as directed by Regulation 29 of the Food Safety and Hygiene (England) Regulations 2013) will only be taken by appropriately authorised officers. Such officers will be either authorised Environmental Health Officers or holders of the Higher Certificate in Food Control (limited to food placed on the market).

6.18 **Alternative enforcement strategies**

Officers undertaking alternative enforcement strategies are not required to meet any specific qualification requirements but will be appropriately authorised. Any visits by such 'unqualified', but appropriately authorised, officers undertaken as part of an alternative strategy, will be confined to information collection and reporting back. The overall management of alternative enforcement strategies will remain the responsibility of a Food Law Enforcement Officer qualified in accordance with the preceding paragraphs, and decisions to take other enforcement action and/or intervene further will be made by that officer.

6.19 **Powers of entry, search and seizure: Human Rights Act 1998/Police and Criminal Evidence Act 1984 (PACE)**

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.

Officers will always consider if the necessary objectives can be met by less intrusive means.

Section 32(4) of the Food Safety Act 1990 and Regulation 16(5) of the Food Safety and Hygiene (England) Regulations 2013 permit an authorised officer to take with them such other persons as they consider necessary. This would include, for example, any suitably qualified or skilled person, or an expert in a particular field whose presence is needed to help accurately identify the material sought or to advise where certain evidence is most likely to be found and how it should be dealt with. It does not give an authorised officer any right to force entry to search or seize property but it does give the *other person* the right to be on the premises during the search without the occupier's permission.

In all cases authorised officers will:

- Exercise their powers courteously and with respect for persons and property; and

- In circumstances where a warrant has been obtained and is appropriate, only use reasonable force when this is considered necessary and proportionate to the circumstances.

6.20 **Avoiding potential conflicts of interest**

Article 4(2) (b) of Regulation 882/2004 requires that officers carrying out official controls are free from any conflict of interest.

The Council will ensure that its officers are aware of potential conflicts of interest that may arise in an enforcement situation through promotion of the Food Authority's services.

Officers will not provide their own services, e.g. training, in their own time within the Borough.

The Council will ensure that potential or actual conflicts of interest do not arise as a result of Home or Originating Authority responsibilities and contracting in services for enforcement purposes.

The Council and its officers will avoid promoting the Food Authority's services exclusively if other providers of those services exist in the area or the services offered by a particular organisation, e.g. food hygiene training.

7. ADVISING ON REGULATORY COMPLIANCE

- 7.1 We firmly believe that 'prevention is better than cure' and we will actively work to support, advise and assist businesses to comply with Food Law.
- 7.2 We will proactively seek to advise and educate individuals and businesses in relation to specific regulatory matters; this will include provision of information and resources on the Council's website, distribution of advisory literature and the delivery of food hygiene training courses.
- 7.3 We will respond to requests for advice in relation to regulatory compliance issues and will stand by that advice.
- 7.4 We will work with other Food Authorities to ensure that the advice that we give is consistent and we will respect advice that has been provided by other Food Authorities.
- 7.5 We will respond to requests for advice on non-compliance without the request directly triggering enforcement action. Clearly, in some circumstances the Council will be under a duty to act irrespective of the means by which it became aware of the offence or breach.

8. **CHECKING COMPLIANCE**

8.1 The Council conducts risk-based compliance checks and employs a range of mechanisms for checking regulatory compliance, summarised as follows:

- Inspecting premises, processes and practices;
- Examining food and drink commodities;
- Sampling and testing food and drink commodities;
- Examining equipment;
- Examining packaging and materials;
- Examining and auditing records;
- Investigating specific issues, alleged breaches and complaints;
- Talking to witnesses and conducting interviews;

8.2 Interventions that constitute 'official controls' include:

- Inspections;
- Monitoring;
- Surveillance;
- Verification;
- Audit; and
- Sampling where the analysis/examination is to be carried out by an Official Laboratory.

Other interventions, i.e. those which do not constitute official controls include:

- Education, advice and coaching provided at a food establishment; and
- Information and intelligence gathering (including sampling where the analysis or examination is not carried out by an Official Laboratory).

- 8.3 It is recognised that more than one type of intervention may be carried out during a single visit to a food business establishment. It is also recognised that the intervention approach used may be influenced by the findings during a visit to an establishment. In these cases, the Council will record the basis for the choice of intervention(s) used in the establishment file, and for monitoring purposes, will record the most appropriate intervention
- 8.4 Wherever possible we will arrange for our checks to be undertaken at times that are convenient and where it is appropriate to do so we will give advance notice of our intentions.
- 8.5 Clearly though there will be circumstances where to give advance notice would defeat the objective of the check and in such circumstances no advance notice will be given.
- 8.6 Where an officer acting on behalf of the Council seeks to exercise their powers of entry and is denied then appropriate action will be taken to secure entry, this might include gaining a warrant to enter (which may require officers to be accompanied by the police) or instigating proceedings for an offence of obstruction.
- 8.7 Where an officer acting on behalf of the Council is threatened in any way appropriate formal action will be taken and again this may require the involvement of the police.
- 8.8 All investigations will be carried out under the following generally applicable legislation and in accordance with Food Law and the Food Law Code of Practice, in so far as they relate to the investigation in question:
- [Police and Criminal Evidence Act 1984](#)
 - [Criminal Procedure and Investigations Act 1996](#)
 - [Regulation of Investigatory Powers Act 2000](#)
 - [Criminal Justice and Police Act 2001](#)
 - [Human Rights Act 1998](#)
- 8.9 These Acts and associated guidance control how evidence is collected and used and afford a range of protections to those being regulated.

9. ENFORCEMENT OPTIONS

9.1 Where the Council becomes aware of instances of non-compliance it has a range of enforcement options available:

9.2 Compliance Advice and Support

The Council uses compliance advice and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter, to assist food business operators in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action.

A warning letter will set out what should be done to rectify the breach and to prevent a recurrence, with a timescale for any remedial action and clear advice on what will happen in the event that the breach is not resolved within that timescale.

If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence.

A revisit will be undertaken following an inspection if significant and serious failings are identified and/or levels of previous compliance are poor. Where appropriate, a revisit will be unannounced and once the compliance time within the warning letter has expired.

A revisit to assess compliance with a warning letter will only usually be confirmed verbally with the food business operator unless breaches are left unresolved.

Where a business fails to comply, consideration will be given for further formal action, usually in the form of a notice, which will be notified in writing.

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

Where more formal enforcement action, such as a simple caution or prosecution, is taken, the Council recognises that there is likely to be an ongoing need for compliance advice and support, to prevent further breaches.

9.3 Voluntary Undertakings

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

9.4 **Issue of Hygiene Improvement Notices (Food Safety and Hygiene (England) Regulations 2013, Regulation 6)**

Hygiene Improvement Notices may be appropriate in any of the following circumstances or a combination thereof:

- Formal action is proportionate to the risk to public health;
- There is a record of non-compliance with breaches of the food hygiene regulations; and
- The authorised officer has reason to believe that an informal approach will not be successful.

The Hygiene Improvement Notice procedure is inappropriate in the following circumstances:

- Where the contravention might be continuing, 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); and
- Where there is a breach of good hygiene practice but no failure to comply with an appropriate regulation.

9.5 **Hygiene Emergency Prohibition Procedures (Food Safety and Hygiene (England) Regulations 2013, Regulation 8)**

Unless the use of Voluntary Procedures is more appropriate in the circumstances, Hygiene Emergency Prohibition Procedures will be used if an authorised officer has evidence that the health risk condition is fulfilled. If the appropriate evidence is found, a Hygiene Emergency Prohibition Notice may be served on the food business operator, followed by an application to a Magistrates' Court for a Hygiene Emergency Prohibition Order.

The following paragraphs provide examples of circumstances that may show that the health risk condition exists as defined by Regulation 8(4) i.e. there is an imminent risk of injury to health, and where an authorised officer may therefore consider the use of such prohibition powers. These examples are in no way prescriptive or exhaustive and are for illustrative purposes only.

Health risk conditions where prohibition of premises 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, or
- Any combination of the above, or the cumulative effect of contraventions which, taken together, represent the fulfilment of the health risk condition.

Health risk conditions where the prohibition of equipment may be appropriate

- Use of defective equipment, e.g. a pasteuriser incapable of achieving the required pasteurisation temperature;
- Use of equipment for the processing of high-risk foods that has been inadequately cleaned or disinfected or which is grossly contaminated and can no longer be properly cleaned;
- Dual use of complex equipment, such as vacuum packers, slicers and mincers for raw and ready-to-eat foods, or
- Use of storage facilities or transport vehicles for primary produce where the storage facilities or transport vehicles have been inadequately cleaned or disinfected.

Health risk conditions where prohibition of a process may be appropriate

- Serious risk of cross contamination;
- Failure to achieve sufficiently high processing temperatures;
- Operation outside critical control criteria, for example, incorrect pH of a product which may allow *Clostridium botulinum* to multiply, or

- The use of a process for a product for which it is inappropriate.

Voluntary Procedures

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 condition exists as defined by Regulation 8(4) i.e. there is an imminent risk of injury to health.

An officer may suggest this option to the food business operator, but only when they are able to use Regulation 8.

Any voluntary closure agreement will be confirmed in writing by the food business operator or manager and the authorised officer, with an undertaking by the food business operator or manager not to re-open without the officer's prior approval.

If the manager of a food business offers to close voluntarily, the officer will need to confirm that the manager has the authority of the food business operator to agree to such voluntary action.

The officer will ensure that frequent checks are made on the establishment to ensure that it has not re-opened.

If the food business operator offers to close voluntarily, the officer will:

- Consider whether there is a risk of the establishment being re-opened without the officer's knowledge and/or agreement (if this were to cause food poisoning, the Food Authority could be criticised for not having used statutory powers);
- Recognise that there is no separate legal sanction against a food business operator who re-opens for business after offering to close, although enforcement action for the actual breaches e.g. unsafe food, similar processing as before etc. remains available; and
- Explain to the food business operator that, by making the offer to close, any right to compensation is lost.

Hygiene Prohibition Order made against a person (Regulation 7(4))

Where a Hygiene Prohibition Order is made by a Court against a person the Council will notify the Chartered Institute of Environmental Health as soon as possible provided the order is not the subject of an appeal, and the period allowed for appeal has expired, supplying the following information:

- Case number;
- Court details;
- Date of Prohibition Order;

- Date(s) of offence;
- Nature of offence(s);
- Regulation/Section number under which offence was made;
- Penalties;
- Name of food business operator or manager;
- Name of the business;
- Food business establishment address including post code;
- Business type/main activity (e.g. catering, retail etc.); and
- Details of assumed names.

9.6 **Seizure and Detention (Food Safety and Hygiene (England) Regulations 2013, Regulation 29)**

When food has not been produced, processed or distributed in compliance with the “Hygiene Regulations” as defined in Regulation 2 of the Food Safety and Hygiene (England) Regulations 2013, an authorised officer may use Regulation 29 to seize the food by the use of Section 9 of the Food Safety Act 1990.

Detention of food

Unless the circumstances require immediate action, a decision to detain food will only normally be taken if it has been discussed with the owner or person in charge of the food and, if appropriate, with the manufacturer.

Where the authorised officer has served a Detention of Food Notice, professional judgement will be used to determine whether food should be detained where it is, or moved elsewhere. If the officer has any doubts about the security or physical care of the food, the Detention Notice will specify a place to which the food is to be moved.

If food is to be removed to another Food Authority’s area the officer will notify that Food Authority and make any necessary arrangements for the food to be checked while it is being detained.

In all cases, but especially with highly perishable food, the officer will act expeditiously at every stage and provide full information to those required to carry out analysis or examination of samples of the food.

If food is to be detained where it is found, the authorised officer will need to be satisfied that adequate arrangements can be made to ensure its security and prevent tampering. The officer will organise periodic monitoring of the food throughout the period of detention. Before making such arrangements, the officer will have regard to the nature of the food, the quantity, any health hazard that it represents, and the ownership of the establishment where it is located. The officer will generally avoid leaving it in the charge of, or in an establishment owned by, any person who may be prosecuted for an offence under Food Law.

Seizure of food

When considering whether to seize food that has been detained, authorised officers will consider whether the food in question can be treated or processed before consumption and if so, whether the food, after treatment or processing, would be sound and wholesome and satisfy food safety requirements.

Arrangements for the treatment or processing of food in these circumstances will be agreed by the authorised officer, and the owner or the person in control of the food and will be subject to a signed, written undertaking.

Any arrangement that involves food being moved to the area of another Food Authority for treatment or processing should be accepted by the receiving Food Authority before the agreement is concluded.

Arrangements will be made for that Food Authority to take steps to ensure the processing or treatment is carried out, including the service of a Detention of Food Notice if appropriate.

If the receiving Food Authority is unable to accept responsibility for ensuring that the food is properly processed or treated, the arrangement should not proceed.

Unless the preceding paragraphs apply, or the use of Voluntary Procedures is more appropriate, food will be seized if an authorised officer has evidence that it does not satisfy food safety requirements.

If evidence indicates that food that has already been detained should be seized, the officer will serve a Food Condemnation Notification, warning of the intention to take the food before a Justice of the Peace and apply for its condemnation.

Food that has been seized should be dealt with by a Justice of the Peace as soon as is reasonably practicable, normally within two days, but if necessary longer to ensure that parties attend and be represented should they so choose. Highly perishable food should be dealt with by a Justice of the Peace at the earliest opportunity.

The person in charge of the food or the owner will be given the opportunity of being present and represented, should they so choose, when the food is dealt with by the Justice of the Peace, although this action will not be delayed if the owner cannot be traced or contacted.

A Detention or Seizure of Food Notice will be signed by the officer who takes the decision to detain the food.

When food is seized, written notification of the seizure will be issued as soon as is reasonably practicable. This notification will include details of the

type and quantity of the food seized, including any distinguishing marks, codes, dates etc.

A Food Condemnation Notification will be given to the person in charge of the food when the officer intends to have the food dealt with by a Justice of the Peace. The notification will, where possible also be given to the owner of the food.

Voluntary Procedures

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 will be issued for food that is voluntarily surrendered to the Council for destruction. The receipt will indicate that the food has been voluntarily surrendered to the Food Authority for destruction and will be signed and counter-signed by the authorised officer and the person surrendering the food respectively.

The receipt will 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.

The Council will seek to secure, as part of the voluntary surrender, an agreement by the owner to pay the reasonable expenses of destruction or disposal.

Destruction or disposal of food

The Council is responsible for ensuring the destruction of food that has been seized or voluntarily surrendered, and arrangements will be made for the food to be supervised until it can be dealt with in the appropriate manner. Where possible and if there is likely to be some delay before destruction, the food will be disfigured so as to prevent any possibility of it being returned to the food chain.

The Council will ensure the total destruction of the food by incineration or some other appropriate method, or if total destruction is not possible, 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.

A copy of the waste transfer note will be retained on file for any food that has been disposed of by a licensed waste disposal contractor under these arrangements.

9.7 **Issue of Remedial Action Notices and Detention Notices in Approved Premises**

Powers to issue Remedial Action Notices and Detention Notices in respect of establishments subject to approval under Regulation 853/2004 are provided by Regulation 9 & 10 of the Food Safety and Hygiene (England) Regulations 2013.

Authorised officers will seek to remedy non-compliance in establishments subject to approval under Regulation 853/2004 by a graduated approach to enforcement.

When necessary, the Hygiene Improvement Notice provisions in Regulation 6 will be considered. Authorised officers will consider these options before commencing any other enforcement action. However, Remedial Action Notices and/or Detention Notices as provided for by Regulation 9 & 10 of the Regulations may be used, when appropriate.

Remedial Action Notices/Detention Notices

Regulation 9 provides for authorised officers to serve a Remedial Action Notice if any of the requirements of the “Hygiene Regulations”, as defined by Regulation 2 of the Food Safety and Hygiene (England) Regulations 2013, are being breached or an inspection under the “Hygiene Regulations” is being hampered. More specifically, this provision provides, through the service of a Remedial Action Notice 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.

Regulation 10 includes the provision for the detention of any food, including the taking of samples for the purposes of examination, by the service of a Detention Notice.

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

- Failure of any equipment or part of an establishment to comply with the requirements of the “Hygiene Regulations” as defined by Regulation 2 of the Food Safety and Hygiene (England) Regulations 2013;
- The need to impose conditions upon or the prohibition of the carrying on of any process breaching the requirements of the Regulations or hampering adequate health inspection in accordance with the Regulations; and
- Where the rate of operation of the business is detrimental to its ability to comply with the Regulations.

Circumstances which might lead to the issue of a Detention Notice include where there are indications or suspicions that food at an establishment is unsafe and therefore examination is necessary, including the taking of samples.

Such action will be proportionate to the risk to public health and where immediate action is required to ensure food safety. A Remedial Action Notice may be used if a continuing offence requires urgent action owing to a risk to food safety or when corrective measures have been ignored by the food business operator and there is a risk to public health.

Once the officer is satisfied that the action specified in a Remedial Action Notice has been taken, the notice will be withdrawn by means of a further notice in writing.

Similarly, in respect of a Food Detention Notice, if the authorised officer is satisfied that the food need no longer be detained, the relevant notice must also be withdrawn by means of a further notice in writing.

The use of Remedial Action Notices and Detention Notices is governed by Regulation 9 & 10 of the Food Safety and Hygiene (England) Regulations 2013. If an authorised officer considers it necessary to serve a Remedial Action Notice owing to the conditions or practices found on the inspection of an establishment subject to approval under Regulation 853/2004, the officer will also consider whether food at the establishment should be detained for the purposes of examination by means of a Detention Notice under Regulation 10.

9.8 **Simple Caution**

The Council has the power to issue simple cautions (previously known as ‘formal cautions’) as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, the Council is likely to consider prosecution.

A simple caution will appear on the offender’s criminal record. It is likely to influence how the Council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.

Simple cautions will be used in accordance with [Home Office Circular 016/2008](#) and other relevant guidance.

9.9 **Prosecution**

The Council may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether

to prosecute we will have regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

Prosecution will only be considered where the Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s).

Before deciding that prosecution is appropriate, the Council will consider all relevant circumstances carefully.

A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches a prison sentence.

The court may also impose a Hygiene Prohibition Order against a person convicted of serious breaches.

9.10 **Enforcement Options in Product-Specific Establishments Subject to Approval**

Authorised officers have other powers available to them under the Official Feed and Food Controls (England) Regulations 2009 in respect of product-specific establishments, subject to approval under Regulation 853/2004.

Powers to withdraw, or suspend, the approval or conditional approval of an establishment subject to approval under Regulation 853/2004, are provided by Article 31(2)(e) of Regulation 882/2004.

On the discovery of non-compliance in establishments subject to approval under Regulation 853/2004, the Council will, before considering suspension or withdrawal, explore other enforcement options 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.

Suspension of approval or conditional approval

The Council will only initiate procedures to suspend an establishment's approval or conditional approval if other enforcement options have been considered, and circumstances exist in accordance with Article 31(2)(e) of Regulation 882/2004.

The Council will request that any guarantee regarding future production made by a food business operator in accordance with this Article is made in writing.

Withdrawal of approval or conditional approval

The Council will only initiate procedures to withdraw an establishment's approval or conditional approval if other enforcement options have been considered, including suspension of the approval and if circumstances exist in accordance with Article 31(2)(e) of Regulation 882/2004.

An establishment's approval or conditional approval will only be withdrawn in circumstances where the food business operator is unable to satisfy the Council to the extent that it has a reasonable expectation that the identified deficiencies will be rectified, and an acceptable standard will be maintained in the future.

Notifications of suspension or withdrawal of approval or conditional approval

Under Article 54(3)(a) of Regulation 882/2004, the Council must notify the food business operator in writing of its decision to suspend or withdraw an establishment's approval or conditional approval.

The Council will state the reasons for the suspension or withdrawal in writing, the matters necessary to satisfy the requirements of the Regulation, and make it clear that activities requiring approval may not be undertaken.

Such notification will also advise the food business operator aware of their right of appeal against the decision and provide the address of the Magistrates' Court where such an appeal may be made.

The Council will also notify the Food Standards Agency when an establishment's approval or conditional approval has been suspended or withdrawn.

10. **ENFORCEMENT DECISIONS**

10.1 In deciding what enforcement action is necessary and proportionate consideration will be given to, amongst other things:

- The seriousness of the breach or compliance failure and any harm caused;
- The views of those affected by the offence(s);
- The past and current conduct of any business and/or individual concerned;
- Any mitigating factors;
- Any obstruction on the part of the alleged offender;
- The risks being controlled;
- The requirements of any applicable statutory guidance;
- The recommendations of any applicable codes of practice;
- Any legal advice;
- Any national or local enforcement priorities, and
- The existence of a Primary Authority Agreement

10.2 Where appropriate, decisions about what enforcement action to take may involve consultation between :

- Investigating Officer(s);
- Senior Managers;
- Council's Solicitor
- Appropriate elected Member(s) e.g. Portfolio holder or Chair of relevant committee.
- Partner enforcement agency.

10.3 All enforcement decisions will be taken by those with the delegated authority to do so in accordance with the Council's Constitution and Scheme of Delegation.

10.4 Once a determination has been made about what enforcement action is to be taken this will be communicated to the business or individual(s) concerned. Confidentiality will be maintained and any personal information

will only be released to a court when required and/or in accordance with a request made under the Data Protection Act 1998.

- 10.5 Where appropriate details of the enforcement decision will be communicated to third parties, such as witnesses, complainants, victims and partner enforcement agencies.

11. **EQUALITY STATEMENT**

- 11.1 We believe in equality of opportunity for all people. When conducting compliance checks or making enforcement decisions we will ensure that there is no discrimination against any individual(s) on the grounds of age, race, colour, ethnic or national origin, nationality, religion and belief, gender, marital status, employment status, disability, sexual orientation, social class, responsibility for children or dependents, trade union membership, unrelated criminal convictions or any ground that cannot be justified.
- 11.2 The Council will ensure that all its services, facilities and resources are accessible and responsive to the people and communities of the Borough.
- 11.3 We understand that some members of the community may have specific difficulties, which will need extra advice and assistance. Careful explanation will be given and if necessary the services of an interpreter may be used. We will work in accordance with the Council's Single Equality Scheme.
- 11.4 If requested, we will arrange for appropriate documents to be translated into alternative formats or languages and we will provide practical help for people with impaired hearing, vision or other impairment.

12. **COMMENTS AND COMPLAINTS**

- 12.1 We encourage comments on the content and application of this Policy; any such comments will be used to assist in improving how we deliver our Food Law Enforcement activities.
- 12.2 Where a person is concerned that any enforcement action taken by us is not in accordance with this Policy they can complain. Any complaint will be dealt with in line with the Councils Complaint Procedures. In the first instance the complaint will be passed to the Manager of the service for investigation.
- 12.3 Where the Council's Complaints Procedure has been exhausted and the person remains aggrieved they may ask the Local Government Ombudsman to look into the matter.

13. MONITORING AND REVIEW

- 13.1 We will monitor our performance against the requirements of this Policy and publish our findings on an annual basis.
- 13.2 We will use these findings, along with any changes in law and practice, to assist in the periodic review of the Policy.