



**TRAFFORD
COUNCIL**

FOOD SAFETY AND FOOD STANDARDS ENFORCEMENT POLICY

**PUBLIC PROTECTION SERVICE
TRAFFORD COUNCIL**

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Contents

Introduction	Page 3
Section 1 Policy Objectives	Page 4
Section 2 General Principles	Page 5
Section 3 Inspections	Page 11
Section 4 Decision Making	Page 14
Section 5 Enforcement Options	Page 15
Section 6 Documented food safety management systems	Page 33
Section 7 Supervision, Instruction and Training	Page 38

Introduction

Trafford Council carries out a wide range of regulatory roles in meeting its many statutory duties of protecting the public, the environment, and groups such as consumers and workers. The Council has a Corporate Enforcement Policy which outlines the general approach the Council takes when considering enforcement action. It is intended to ensure that we deal with everyone in a consistent way across all the Council's services.

This Policy builds on the Corporate Enforcement Policy, and outlines in detail the approach taken by the Public Protection Service's Environmental Health Team in relation to food safety and food standards enforcement.

This Policy and its related procedures are designed to deliver a consistent and effective food safety and food standards enforcement service. Its provisions will be reviewed regularly and further developed to take account of customer feedback.

Section 1 - Policy Objectives

1.1 Aims and Objectives

1.1.1 It is the Council's aim to ensure that food and drink intended for sale for human consumption, which is produced, stored, sold, distributed, handled, consumed or advertised within the Borough:-

- is without risk to the health or safety of the consumer;
- meets relevant standards for quality, composition, labelling, presentation and advertising.

1.1.2 When undertaking food safety and food standards enforcement, it is the Council's policy to:-

- ensure that we enforce the law in a fair, equitable and consistent manner;
- assist businesses and others in meeting their legal obligations without unnecessary expense;
- focus on prevention rather than cure;
- take firm action against those who flout the law or act irresponsibly;
- respect individual's Human Rights.

1.1.3 The Council has formally adopted the central and local government Concordat on Good Enforcement. This means that we will be open, helpful, fair and careful to ensure that any action we require is proportionate to the risks. In developing this enforcement policy the Council had, and will continue to have, regard to the statutory Regulators' Code, issued by the Better Regulation Delivery Office under section 22 of the Legislative and Regulatory Reform Act 2006. 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.

Section 2 - General Principles

2.1 Underlying Principles

2.1.1 The underlying principles of the Council's policy with respect to food safety and food standards enforcement are:-

- **proportionality** in the application of the law and in securing compliance;
- **consistency** of approach;
- **openness** in how the service operates and what those who are regulated can expect from the service;
- setting **standards** of service and performance;
- **helpfulness** in how to comply with the law, and;
- having a system for making **complaints** about the service.

2.2 Proportionality

2.2.1 The Council will ensure that any enforcement action taken is proportionate to the risks.

2.2.2 Food safety and food standards enforcement action taken by the Council's authorised officers will primarily be based upon an assessment of risk to public health, where risk is the probability of harm to health occurring due to non-compliance with food safety or food standards law.

2.2.3 Enforcement action will not constitute a punitive response to minor technical contraventions of legislation.

2.2.4 The Council will ensure that regulatory effort is directed primarily towards those whose activities pose the highest risk or are likely to give rise to the most serious breaches of legislation.

2.2.5 The Council has systems for prioritising regulatory effort. They include:-

- undertaking food safety and food standards inspections of premises on a risk based approach, and;
- responding to service requests from the community about regulated activities.

2.3 Consistency

2.3.1 The Council aims to carry out its food safety and food standards enforcement duties in a fair, equitable and consistent manner. While officers will exercise their professional judgement with respect to interpretation and enforcement of legislation according to the circumstances of each individual case, we will have arrangements in place to promote consistency.

- 2.3.2 Arrangements include liaison with other Local Authorities throughout Greater Manchester at the Greater Manchester Food Group.. Where the Council's officers are considering taking enforcement action which they believe may be, or have been informed is, inconsistent with that adopted by other authorities or contrary to any advice issued by the Local Government Regulation (formerly LACORS), officers will initially pass the matter to the Greater Manchester Food Group for discussion prior to initiating action.
- 2.3.3 In circumstances where the issue is not resolved, or it is of national significance, or existing guidance is not considered to have taken adequate account of the legal provisions, case law, relevant research or other evidence, the Greater Manchester Food Group will ask Local Government Regulation through its national Food Safety Panel, to consider the issue to ensure consistent enforcement.
- 2.3.4 The Council's officers will always consider and follow:-
- statutory codes of practice issued under Section 40 of the Food Safety Act 1990 and Regulation 26 of the Food Safety and Hygiene (England) Regulations 2013;
 - advice provided by Local Government Regulation;
 - advice from the Food Standards Agency (FSA), and from Central Government Departments.
- 2.3.5 The Council supports the Home Authority Principle and the Primary Authority scheme. Where the Council's officers are considering taking enforcement action which they believe may be contrary to any advice issued by the relevant primary, home and/or originating authorities, officers will discuss the matter with the relevant authorities before taking action. Reference to the primary authority or home authority is essential where enforcement action impacts on aspects of an enterprise's policy which has been agreed centrally by the decision making base of the enterprise.
- 2.3.6 The Council's Environmental Health Team will continue to implement a quality assurance system with respect to it's food safety and food standards service, based upon written procedures and work instructions, internal auditing of these procedures and corrective control.
- 2.3.7 The Council will participate in external inter-authority auditing between Trafford and other Greater Manchester authorities.
- 2.3.8 The Council will ensure that its authorised officers are suitably qualified, experienced and competent to carry out the range of tasks and duties they are authorised to perform. Officers will also receive structured on-going training, which is managed, assessed and recorded. Such training will include new legislation and procedures, and technological developments that may take place in food businesses subject to their inspection. The minimum ongoing training in food matters will be at least 10 hours per year based on the principles of continuing professional development.

2.3.9 The Council will ensure that authorised officers have up to date information readily available to enable them to carry out their duties competently.

2.4 Openness

2.4.1 The Council recognises that openness is important in maintaining public confidence in the Council's ability to regulate food safety and food standards. We will help businesses and individuals to understand what is expected of them and what they should expect from the Council, and make it clear why an officer intends to or has taken enforcement action.

2.4.2 Officers will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

2.4.3 The Council will provide information and advice in plain language on the rules that are applied.

2.5 Standards

2.5.1 The Environmental Health Team will produce a Service Plan (in accordance with FSA guidance) which will set clear standards setting out the level of service and performance the public and business people can expect to receive. We will publish these standards and our annual performance against them. The standards will be made available to businesses and the public.

2.5.2 The Council recognises the need to continually seek ways to improve the quality and efficiency of its food safety and food standards service and recognises the important role played by customers. Customer consultation is central to the Council's aim of defining and refining its services to meet customer expectations, and this will include customer satisfaction surveys of food safety and food standards enforcement activities.

2.6 Helpfulness

2.6.1 The Council believes that prevention is better than cure and that our role therefore involves actively working with business, especially small and medium sized businesses, to advise on and assist with compliance of food hygiene and food standards requirements.

2.6.2 The most significant way the authority will do this is through contacts with businesses on a daily basis. These contacts are made on visits to premises to carry out inspections, other interventions, investigations and service requests, when the businesses can be given advice and guidance on a one-to-one basis, and by telephone.

2.6.3 The Council's officers will be prepared to offer advice where this is appropriate or is requested, and encourage food businesses to adopt good food hygiene and food standards practices. Officers will refer to published UK or EC Industry Guides to Good Hygiene Practice where relevant.

2.6.4 We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage businesses to seek advice/information from us.

2.6.5 We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays. The authority will, wherever it is practicable and appropriate to do so, combine food hygiene and food standards inspections/interventions, and also combine any such inspection/intervention with:-

- a health and safety inspection;
- another visit for food hygiene or food standards purposes (for example, to investigate a complaint or respond to a request for advice).

2.6.6 The authority will also provide advisory leaflets and newsletters, and run training courses and seminars.

2.7 Complaints and Appeals

2.7.1 The Environmental Health Team will fully participate in the Council's corporate complaints scheme.

2.7.2 In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, including details of the process and the likely time-scales involved.

2.7.3 Where formal enforcement action is taken, a written explanation will be given of any rights of appeals and the appeal mechanism.

2.8 Equality and Human Rights

2.8.1 The Council will be objective to ensure that our decisions are not influenced by the gender, ethnic origin, religious or political beliefs, or sexual preferences of any alleged offender.

2.8.2 In carrying out its duties, the Council will respect the rights and freedoms guaranteed to individuals under the Human Rights Act 1998.

2.9 Publicity

2.9.1 The Council will normally issue a press statement following a prosecution.

2.10 Implementation

2.10.1 The Council will ensure that its officers are kept fully acquainted with the provisions of this policy and its procedures. Initial and ongoing training in

respect of the enforcement policy will be included in the Environmental Health Team's 'Training Programme'.

2.10.2 The Council's officers will abide by this policy and its procedures when making enforcement decisions. Any departure from it must be exceptional, capable of justification and be fully considered by the Head of Public Protection or Public Protection Manager (Environmental Health) before the decision is taken, unless it is considered that there is significant risk to the public in delaying the decision. Any departure from this policy should be documented.

2.10.3 The Council will maintain a documented monitoring procedure to help ensure that officers comply with this policy and its procedures when making enforcement decisions.

2.11 Shared Enforcement Role

2.11.1 Although the Environmental Health Team is responsible for both food safety and food standards enforcement, officers will also need to be aware of situations where there is a shared enforcement role. These include:-

- Trafford Council's Trading Standards Service is responsible for the enforcement of provisions of the Trades Descriptions Act 1968 and Weights and Measures legislation as they relate to food;

2.11.2 The Trading Standards Team and the Environmental Health Team will refer any food-related issues (e.g. complaints, service requests or issues noted during premises visits) to one another where appropriate. The Trading Standards Team will also inform the Environmental Health Team if they give any advice to a business that relates to food standards or food safety (including forwarding copies of any correspondence).

2.12 Provision for the Particular Interests of Customers within Trafford

2.12.1 The Council will make provision for the particular interests of customers within Trafford (including business owners, employees and the public) where it is reasonable to do so. For example:-

- The Council will take particular care to work with small businesses, and voluntary and charitable organisations, so that they can meet their legal obligations without unnecessary expense, where practicable;
- Where appropriate, leaflets and courses will be made available in different languages to meet the needs of all our customers. Interpreters are also available where businesses or the public do not have English as a first language;
- As some food businesses operate in the early hours of the morning, late at night or at weekends, officers will undertake inspections and other visits outside normal hours of work from time-to-time when the business is available.

2.13 Premises where the Authority is the Food Business Operator

2.13.1 Arrangements are in place for ensuring compliance with food law in premises where the Local Authority itself is the food business operator. Any breaches of food law which may be detected in such premises, which ordinarily would involve formal action such as service of a Hygiene Improvement Notice or a Hygiene Emergency Prohibition Notice under the Food Safety and Hygiene (England) Regulations 2013, will be brought to the attention of the Chief Executive without undue delay.

2.14 The Authority's approach to the Recording of Food Businesses Registration of Food Business Establishments

2.14.1 Every attempt will be made to advise food business operators of the legal requirement to register and provide them with the necessary application forms for registration. However, the Authority will take legal action, where appropriate, where current food business operators refuse to register their food business establishments.

Section 3 – Inspections

3.1 Food Premises Inspections

- 3.1.1 Food Hygiene and Food Standards inspections will be carried out in accordance with the Food Law Code of Practice (England), the Food Law Practice Guidance (England), and guidance issued by Local Government Regulation, the Food Standards Agency and central government departments.
- 3.1.2 Food Hygiene and Food Standards inspections will only be undertaken by officers authorised to do so. Officers will only be authorised to undertake inspections of premises if they hold the appropriate qualifications, are competent to carry out the inspections and have appropriate detailed knowledge. Further details on officer authorisation are contained in the 'Authorisation Procedure'.
- 3.1.3 The Council will have regard to any communication from the Food Standards Agency that requires rescheduling of the inspection programmes. Any action taken in response to such requests will be documented.
- 3.1.4 Inspections should normally be carried out without prior warning. However, because in some circumstances it may be necessary to give advance notice, officers should exercise discretion in this area. For example, in relatively large manufacturing premises it will generally be necessary to give minimal but prior notice of inspection to ensure that the appropriate management and / or technical representatives are present for the inspection. The over-riding aim should be that of ensuring compliance with food legislation.

3.2 Revisits

- 3.2.1 If contraventions of food hygiene / processing or food standards legislation are found during inspections/interventions, officers will where necessary arrange to carry out an additional follow-up visit to the business to check that the matters identified have been dealt with, in accordance with the Food Law Code of Practice (England).
- 3.2.2 The following circumstances are those which will require a revisit with respect to food hygiene/safety. This list was agreed with other authorities in Greater Manchester in order to improve consistency between authorities. The list is not intended to constitute a comprehensive list, and it is recognised that there will be other circumstances which will require follow-up action. Revisits to check compliance should be carried out for the following:
1. After the service of a Hygiene Improvement Notice or a Hygiene Emergency Prohibition Notice (food hygiene).
 2. After the service of an Improvement Notice or an Emergency Prohibition Notice (food standards).

3. Contraventions of Regulations: As a minimum, revisits should take place where the food business fails to comply with significant statutory requirements. Failure to comply with significant statutory requirements includes:

- failure to comply with a single requirement that compromises food safety, compromises public health or prejudices customers;
- failure to comply with a number of requirements that taken together, indicates ineffective management;
- failure to comply with the requirements of a Hygiene Emergency Prohibition Notice or Order (food hygiene);
- failure to comply with the requirements of an Emergency Prohibition Notice or Order (food standards).

In determining the above, officers should use professional judgement. The following are examples of matters which should be taken into consideration:

Food Safety and Hygiene(England) Regulations 2013:
Regulation (EC) 852/2004

Article 3 Failure to carry out a food business in a hygienic way.
Article 5 HACCP: where inadequate control at Critical Control Points may lead to risks to food safety.

Annex II
Ch I.

Para. 1 Premises not kept clean.
Para. 2(a) Premises do not permit adequate maintenance, cleaning /disinfection
Para. 2(b) Inadequate protection against accumulations of dirt, shedding of particles, mould on surfaces etc.
Para. 2(c) Inadequate protection against cross contamination, pests etc.
Para. 2(d) Temperature conditions not appropriate for hygienic processing.
Para 3 Inadequate number of flush lavatories.
Para. 4 Inadequate number of wash hand basins and inadequate hot and cold water etc. at wash hand basins.
Para. 8 Drainage facilities inadequate
Para. 10 Cleaning agents and disinfectants stored in areas where food is handled.

Ch.II

Para 2/3 Inadequate washing facilities

Ch. V Equipment not kept clean or in good repair.

Ch. VI Accumulations of food waste/inadequate storage

Ch. VII Unsatisfactory water supplies

Ch. VIII

Para. 1 Unsatisfactory personal hygiene

Para. 2 Persons with diseases/infections etc.

Ch. IX

Paras. 1 & 3 Inadequate protection of food from risk of contamination, inadequate pest control procedures.
Ch. X11 Food Safety Training and training in the application of HACCP principles.

4. Contraventions of the temperature control requirements in Regulation 32 /Schedule 4 of the Food Safety and Hygiene (England) Regulations 2013 which may lead to a risk to food safety.

3.2.3 The timing of the revisit will be a matter of professional judgement, and will be determined by the action taken by the officer as a result of the earlier intervention and subject to discussion (and wherever possible agreement) between the officer and the food business operator/proprietor of the business.

3.2.4 However, it is essential that the timing of the revisit is appropriate to the matters which require attention. For example:

- where there are poor levels of cleanliness or risks of cross-contamination which may pose a risk to food safety, the revisit should take place at a very early stage. This may require immediate action, a visit the following day or a few days later;
- Where food handlers handling high risk open foods require training (i.e. Level 2 Award in Food Safety), it would be appropriate to require this to be carried out in a period which reflects that specified in the Industry Guides.

3.2.5 Where significant breaches of regulations have been identified the revisit should, wherever practicable, be undertaken by the same officer who undertook the original intervention. Where this is not possible and the revisit is carried out by another officer, the officer will be competent and authorised to undertake the revisit.

Section 4 - Decision Making

4.1 Authorisation

- 4.1.1 The Head of Public Protection has powers delegated by the Council to authorise officers to undertake food safety and food standards enforcement actions. The Scheme of Delegation to Officers is set out in Part 3 (Responsibility for Functions) of the Council's Constitution.
- 4.1.2 The majority of food safety and standards enforcement action will be initiated by authorised officers without any reference to the Council's Executive or the Council's Licensing Committee. The Council will therefore ensure that officers who are authorised to initiate enforcement action are suitably qualified, experienced and competent to carry out the range of tasks and duties they are authorised to perform.
- 4.1.3 Further details of the criteria to be used in assessing competence are contained in the 'Authorisation Procedure'.

4.2 Legal Proceedings and Simple Caution

- 4.2.1 The Corporate Director ETO is authorised to issue cautions and, in consultation with the Director of Legal and Democratic Services, to prosecute food safety and food hygiene offences. This authority has been delegated to the Head of Public Protection.
- 4.2.2 Officers will initially need to consult with a Team Leader ((Environmental Health), and subsequently with the Public Protection Manager (Environmental Health) and with Legal and Democratic Services, to secure approval to proceed.
- 4.2.3 A recommendation will then be made to the Head of Public Protection to authorise either a prosecution, or a simple caution and a prosecution in the event that the proposed simple caution is not accepted.
- 4.2.4 If a decision is taken to authorise a prosecution, the matter should be referred, without undue delay, to Legal and Democratic Services, who will commence legal proceedings.

Section 5 - Enforcement Options

5.1 General Principles

- 5.1.1 The underlying principles of the Council's policy with respect to food safety and food standards enforcement are detailed in Section 2.
- 5.1.2 The Council believes that the first step in enforcement is to help prevent contraventions of the law by raising awareness and promoting good practice. This is primarily achieved through day-to-day contacts with businesses and other customers, both on visits to premises and by telephone. Other methods of achieving this include the production of advisory leaflets and newsletters, and running training courses and seminars.
- 5.1.3 The Council will ensure that enforcement decisions are always consistent, balanced, fair and relate to common standards that ensure the public is adequately protected. In coming to any enforcement decision officers will consider many criteria, including:-
- the consequences of non-compliance;
 - the seriousness/nature of the offence/contravention;
 - the enterprise's past history of compliance;
 - the food business operator's/proprietor's willingness to undertake the work identified by the officer (in the case of new businesses);
 - the level of confidence in the management;
 - the likely effectiveness of the various enforcement options.
- 5.1.4 The choices for enforcement action are:
- to take no action;
 - to take informal action;
 - to use Statutory Notices;
 - to use simple cautions;
 - to use prohibition procedures;
 - to prosecute (can be actioned in addition to the service of notices).
- 5.1.5 The full range of enforcement options remains open to the authorised officer or to the authority.
- 5.1.6 Further detail on the authority's policy with respect to enforcement of the requirement for documented food safety management systems based on HACCP principles, the training in the application of HACCP principles, and the training of food handlers are included in Sections 6 and 7.

5.2 Informal Action

5.2.1 Informal action includes:-

- offering advice;
- issuing verbal warnings and requests for action;
- the use of letters, and;
- the issue of inspection reports.

5.2.2 Informal action is appropriate in the following circumstances:-

- The act or omission is not serious enough to warrant formal action;
- The individuals/enterprise's past history is such that it can be reasonably expected that informal action will achieve compliance within a timescale that is reasonable in the circumstances;
- The officer has high confidence in the individual/ enterprise's management involved;
- The consequences of non-compliance will not pose a significant risk to public health.

5.2.3 Even where some of the above criteria are not met, there may be circumstances where an informal approach will be more effective than a formal approach when dealing with businesses associated with voluntary organisations using volunteers, providing that there is no significant risk to public health.

5.2.4 Officers will issue an intervention report after every inspection, even when standards at the time of the inspection are found to be satisfactory.

5.2.5 Where an informal approach is used to secure compliance with food safety or food standards legislation, any written documentation issued or sent to food business operators/proprietors should:-

- contain all the information necessary to understand what work is required and why it is necessary;
- indicate the legislation contravened, measures which will enable compliance with the legal requirements, and that other means of achieving the same effect may be chosen; and
- clearly indicate any recommendations of good hygiene practice, for example, under an appropriate heading, to show that they are not a legal requirement.

5.2.6 Letters will be worded in a way that is clear and easily understood, and will offer the opportunity for discussion or for the food business operator / proprietor to make representations. The names and contact points of the relevant authorised officer and their manager will be included.

5.2.7 Any programme of work required to secure compliance will be discussed, and where possible agreed, with the food business operator / proprietor or his

representative. Officers will offer advice or clarification if requested, and will normally allow sufficient time following the issue of a letter, for the business to consider the matter and seek advice before taking any further action.

5.2.8 Before undertaking informal action, officers will, if appropriate, consult with any designated primary, home or originating authority.

5.3 Hygiene Improvement Notices (Food Safety and Hygiene (England) Regulations 2013, Regulation 6) and Improvement Notices (Food Safety Act 1990, Section 10)

5.3.1 Officers will serve improvement notices and hygiene improvement notices in accordance with the Food Law Code of Practice (England), the Food Law Practice Guidance (England), and Local Government Regulation guidance.

5.3.2 The use of hygiene improvement notices is appropriate when one or more of the following circumstances apply:-

- where formal action is proportionate to the risk to public health;
- where there is a record of non-compliance with breaches of food hygiene regulations (hygiene improvement notices) and food standards or food processing regulations (improvement notices);
- where there is a history of non-compliance with an informal approach, or the authorised officer has reason to believe that an informal approach will not be successful.

5.3.3 The use of improvement notices and hygiene improvement notices is not appropriate in the following circumstances:-

- where the contravention might be a continuing one, for example relating to personal cleanliness of staff, and a notice would only secure an improvement at one point in time;
- in transient situations, where breaches exist which pose an imminent risk of injury to health and it is considered that swift enforcement action is needed, for example a one day festival or sporting event;
- where there is a breach of good hygiene practice but no failure to comply with an appropriate regulation;
- where breaches exist which pose a potential and imminent risk of injury to health and it is considered that swift enforcement action is needed. An Emergency Prohibition Notice would be the only formal remedy which would have immediate effect.

5.3.4 The use of improvement notices and hygiene improvement notice will not generally be considered as the first option where breaches of legislation are found on an inspection, unless the circumstances in section 5.3.2 are found.

5.3.5 Improvement notices and hygiene improvement notices will only be signed by officers who have been authorised to do so. Officers will only be authorised to sign improvement notices and hygiene improvement notices if they are suitably qualified, have sufficient experience in food law enforcement, and are

properly trained and competent. To be suitably qualified, officers will need to be environmental health officers holding a Certificate of Registration of the Environmental Health Officers Registration Board (EHORB) or the EHORB Diploma in Environmental Health (or its antecedents), or officers holding the Higher or Ordinary Certificate in Food Premises Inspection issued by the EHORB. Further details on officer authorisation are contained in the 'Authorisation Procedure'.

- 5.3.6 Where officers who are not authorised to sign improvement notices and hygiene improvement notices carry out an inspection, the notice will not be signed on their behalf by other officers. The officer signing the notice must have witnessed the contravention and be satisfied that the appropriate criteria are satisfied.
- 5.3.7 Officers will place realistic time limits for compliance, and will discuss the time limit with the food business operator or their representatives wherever possible before it is determined although the officer may set a limit without the food business operator's/proprietor's agreement. The following factors will be taken into consideration by officers before a time limit is set:
- the risk to public health;
 - the nature of the problem;
 - the availability of solutions.
- 5.3.8 Officers will ensure that notices are worded in a way that is clear and easily understood.
- 5.3.9 Officers will be prepared to discuss the need for the notice and the works that will be required with food business operators/proprietors or their representatives, and fully consider the availability of solutions.
- 5.3.10 Officers will make it clear to the food business operator/proprietor that alternative measures to secure compliance of at least equivalent effect may be chosen. If the officer and the food business operator/proprietor agree on alternative works, the officer should confirm in writing that these have been approved.
- 5.3.11 The food business operator/proprietor will be given written advice (detailed on the back of the notice) that any request for an extension of the time limit should be made in writing before the expiry date of the notice.
- 5.3.12 When deciding on a request for an extension of the time limit the following issues should be taken into account:-
- The risk to public health if an extension were granted;
 - The reason for the request;
 - The remedy involved;
 - The past record of co-operation of the food business operator/proprietor
 - Any temporary action which the food business operator/proprietor

proposes to take in the meantime.

- 5.3.13 Officers will include with the notice the names and contact points of the relevant officer and their manager, and an explanation of the rights of appeal and the appeal mechanism.
- 5.3.14 Failure to comply with an improvement notice or a hygiene improvement notice will result, in general, in prosecution and the person receiving the notice will be made aware of this.
- 5.3.15 Officers will be satisfied before deciding to issue a notice that they have all the required information and sufficient evidence available to justify their issue and form a substantiated case, and be prepared to pursue non-compliance in the courts and be satisfied that proceedings are likely to succeed.
- 5.3.16 The appropriate primary authority, home authority and/or originating authority will be notified of improvement notices and hygiene improvement notices on issues in which they are likely to have an interest.
- 5.3.17 The issue of improvement notices and hygiene improvement notice does not preclude the Council from pursuing prosecution action, at the same time, for breaches of the regulations which are the subject of the notice, where conditions are serious or deteriorating. Where it is intended to recommend prosecution in addition to the service of a notice, this will be made clear to the food business operator/proprietor at the time the notice is served.

5.4 Hygiene Emergency Prohibition Notices/Orders and Hygiene Prohibition Orders (Food Safety and Hygiene (England) Regulations 2013, Regulations 8 and 7), Emergency Prohibition Notices/Orders and Prohibition Orders (Food Safety Act 1990, Sections 11 and 12), and Voluntary Closure

- 5.4.1 Officers will serve emergency prohibition notices and hygiene emergency prohibition notices in accordance with the Food Law Code of Practice (England), Food Law Practice Guidance (England) and Local Government Regulation guidance.
- 5.4.2 A hygiene emergency prohibition notice may be served if an officer believes that the health risk condition is fulfilled i.e. an **imminent risk of injury to health** exists in respect of premises, a piece of equipment or a process. The following situations are examples of such circumstances:-

Premises Prohibition

- Premises or practices which seriously contravene food safety legislation which have been, or are, implicated in an outbreak of food poisoning;
- Serious infestations by vermin resulting in actual food contamination or a significant risk of food 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 actual food contamination or a significant risk of food contamination;

- Drainage defects or flooding of the establishment serious enough to result in actual food contamination or a significant risk of food contamination;
- Any combination of the above, or the cumulative effect of contraventions which, taken together, represent an imminent risk of injury to health.

Equipment Prohibition

- Use of defective equipment, e.g. a retort incapable of achieving the required canning temperature; pasteuriser incapable of achieving the required pasteurisation temperature;
- Use of equipment involving high risk foods which has been inadequately cleaned or disinfected or which is obviously grossly contaminated and can no longer be properly cleaned;
- Use of storage facilities or transport vehicles for primary produce where the storage facilities or transport vehicles have been inadequately cleaned or disinfected.

Process Prohibition

- Serious risk of cross-contamination;
- Inadequate temperature control, for example, failure to achieve sufficiently high cooking temperatures;
- Failure to implement a control at a critical point which presents an imminent risk of injury to health;
- The use of a process for a product for which it is inappropriate.

5.4.3 An emergency prohibition notice may be served if an officer believes that an **imminent risk of injury to health** exists in respect of premises, a piece of equipment or a process. The following situations are examples of circumstances which may involve an imminent risk of injury to health:-

- a process or treatment that introduces a teratogenic chemical (one that damages a developing foetus in the womb) into food, which may cause injury to the developing foetus, but the damage will not be apparent until the baby is born;
- a process or treatment that introduces a genotoxic chemical (one that damages genes or chromosomes) into food the effects of which may not manifest themselves until the effected child develops a malignant tumour at some time in the future.

5.4.4 Once an officer believes that an imminent risk of injury to health exists, it will be appropriate for an officer to issue an emergency prohibition notice or a hygiene emergency prohibition notice where:-

- 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, and that where evidence is required from relevant experts this is obtained (e.g. a food analyst or food examiner);
- there is no confidence in the integrity of an offer made by a food business operator/proprietor to voluntarily close premises or to cease the use of any equipment, process or treatment associated with the imminent risk;
- a food business operator/proprietor is unwilling to confirm in writing his/her offer of a voluntary prohibition.

5.4.5 Emergency prohibition notices and hygiene emergency prohibition notices will only be signed by officers who have been authorised to do so. Officers will only be authorised to sign these notices if they are suitably qualified, have sufficient experience in food law enforcement, and are properly trained and competent. To be suitably qualified, officers will need to be environmental health officers holding a Certificate of Registration of the Environmental Health Officers Registration Board (EHORB) or the EHORB Diploma in Environmental Health (or its antecedents). Officers must also have a minimum of two years post qualification experience in food safety matters and be currently involved in food enforcement. Further details on officer authorisation are contained in the 'Authorisation Procedure'.

5.4.6 Officers will collect sufficient evidence to produce to the court in order to substantiate any enforcement proceedings. This may include evidence from relevant experts, including a food analyst or food examiner.

5.4.7 Before emergency prohibition action involving chemical contamination is taken, officers will seek medical or other expert advice, if necessary. For example, medical advice will be sought where a process or treatment is producing food which appears to be so contaminated by chemicals or by improper use of substances that it may pose an imminent risk of injury to health.

5.4.8 Officers will ensure that once a notice has been issued, an application for an emergency prohibition order or a hygiene emergency prohibition order (as appropriate) is made to the Magistrates' Court within 3 days (the day of service of the notice being day 1). Food business operators will also be given at least one day's notice of the Council's intention to apply for an emergency prohibition order or a hygiene emergency prohibition order.

5.4.9 Notices will not be signed by officers on others' behalf. The officers should have witnessed the matter to which the notice relates.

5.4.10 If a food business operator/proprietor offers to voluntarily cease using premises as a food business, or the use of equipment or of a process, the officer should:-

- Consider whether there is any likelihood of the premises being used as a food business or, of the use of equipment or, of a process, as appropriate, without the officer's knowledge and/or agreement;

- Recognize that there is no legal sanction against a food business operator/proprietor when voluntary procedures are used but are not adhered to;
- Explain to the food business operator/proprietor that, if emergency prohibition action is taken and subsequently found to be unjustified, then compensation would be payable, but that the question of compensation will not arise if voluntary procedures are used.

5.4.11 In extreme circumstances where a food business operator/proprietor or manager of a food business has been convicted of an offence, the officer may consider that a person should be prohibited from participating in the management either of any food business, or of a specified food business. In such circumstances, the officer may draw the court's attention to the power of prohibition. The officer or solicitor must not recommend that the court prohibit a person, but should only draw the power to the court's attention. The appropriate circumstances would include the following:-

- Repeated serious offences such as failure to clean and/or maintain equipment;
- Blatant disregard for health risk or placing the public at risk by knowingly using unfit food.

5.4.12 Where there is a risk to health, but not an imminent risk, a Magistrates' Court may issue a prohibition order or a hygiene prohibition order relating to the premises, equipment or a process. The use of prohibition orders and hygiene prohibition orders should be in accordance with the Food Law Code of Practice (England). The officer or solicitor must not recommend that the court issue a prohibition order or a hygiene prohibition order, but should only draw the power to the court's attention. The circumstances where this is appropriate are as follows:-

- A second or subsequent inspection of premises, prior to a court hearing for an offence under food hygiene/safety regulations, shows that the defect giving rise to the prosecution either has not been remedied or has reoccurred;
- The defect constitutes a risk of injury to health;
- The food business operator/proprietor is convicted of the offence;
- The officer has informed the food business operator/proprietor or his legal representative before the hearing of the intention to remind the court of its power of prohibition;
- Evidence available to the Council has been disclosed to the food business operator/proprietor or his legal representative.

5.4.13 The appropriate primary authority, home authority and/or originating authority will be notified of the issue of hygiene emergency prohibition notices, hygiene emergency prohibition orders or hygiene prohibition orders, and the issue of emergency prohibition notices, emergency prohibition orders or prohibition orders, and in appropriate circumstances will be consulted prior to enforcement action.

5.4.14 As soon as the prohibition of a person takes place the Council will also notify Local Government Regulation and the Chartered Institute of Environmental Health Officers (CIEH) of the required details.

5.5 Suspension or Withdrawal of Approval or Conditional Approval in respect of Approved Establishments (Regulation (EC) 882/2004, Article 31(2)(e))

5.5.1 Only officers authorised to do so will take action in respect of establishments subject to approval under Regulation EC 853/2004.

5.5.2 The immediate effect of the suspension or withdrawal of an establishment's approval is such that the establishment may not be used for any activities which would render it subject to approval under Regulation (EC) 853/2004.

5.5.3 On discovery of non compliance in such establishments, the Local Authority should, before considering suspension or withdrawal, explore other enforcement options to control the food hazards presented by the establishment.

5.5.4 Non-compliance should 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 should be allowed where this is appropriate.

5.5.5 Procedures to suspend an establishment's approval or conditional approval should only be initiated if other enforcement options have been considered and circumstances exist in accordance with Article 31(2)(e) of Regulation (EC) 882/2004. The Local Authority should request that any guarantee regarding future production made by a food business operator in accordance with this Article is made in writing, although this cannot be insisted upon as no requirement exists in law to provide such guarantees in writing.

5.5.6 Procedures to withdraw an establishment's approval or conditional approval should only be initiated 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 (EC) 882/2004.

5.5.7 These may include when an individual or business has:

- Deliberately or persistently breached legal obligations;
- Deliberately or persistently ignored warnings or formal notices;
- Endangered the health of people;
- Obstructed an officer in the course of his/her duties.

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

- 5.5.9 Food business operators should be notified in writing of a decision to suspend or withdraw an establishment's approval or conditional approval. The reasons for the suspension or withdrawal should be given in writing, along with the matters necessary to satisfy the requirements of the Regulation and it should be made clear that activities requiring approval may not be undertaken unless approval or conditional approval is granted. The food business operator should also be advised of the right of appeal against the decision.
- 5.5.10 Following an appeal against a decision of the Local Authority to withdraw an approval, the food business operator who, immediately before such a withdrawal, had been using the establishment concerned may continue to use it, 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.
- 5.5.11 Where there is an imminent risk of injury to health, officers may serve hygiene emergency prohibition notices in accordance with Food Law Code of Practice (England) alongside suspension/withdrawal action.
- 5.5.12 Where any activities undertaken in an establishment pending the result of an appeal may present a risk to public health, the use of other enforcement powers appropriate to the circumstances involved should be considered.

5.6 Remedial Action Notices (Regulation 9 of the Food Safety and Hygiene (England) Regulations 2013)

- 5.6.1 Only officers authorised to do so will serve Remedial Action Notices and Notices of Withdrawal of Remedial Action Notices in respect of establishments subject to approval under Regulation EC 853/2004.
- 5.6.2 These notices may be used in any premises that fall within the scope of Regulation (EC) 853/2004. This includes premises which have not been approved or establishments where approval has been refused, withdrawn or suspended.
- 5.6.3 Similar in effect to a Hygiene Emergency Prohibition Notice the Remedial Action Notice can be applied in wider circumstances within approved establishments. The service of a Remedial Action Notice has immediate effect and it remains in force until the action required by the Notice has been fully taken.
- 5.6.4 However, officers should seek to remedy non-compliance by a graduated enforcement approach. When necessary, Hygiene Improvement Notice provisions or Hygiene Prohibition provisions should be considered. Authorised officers should consider these options before commencing any other enforcement action.
- 5.6.5 Remedial Action Notices and/or Detention Notices may be used when appropriate. Such action should be proportionate to 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.

- 5.6.6 Regulation 9 allows an authorised officer to serve a Remedial Action Notice if any of the requirements of the “Hygiene Regulations” are being breached or an inspection under the Hygiene Regulations is being hampered.
- 5.6.7 The “Hygiene Regulations” are defined by Regulation 2 of the Food Safety and Hygiene (England) Regulations 2013 and include the Food Safety and Hygiene (England) Regulations 2013, Regulation (EC) 852/2004, Regulation (EC) 853/2004, Regulation (EC) 854/2004 and Regulation (EC) 2073/2005.
- 5.6.8 Circumstances which may lead to the service of a Remedial Action Notice in respect of an approved establishment include:
- The failure of any equipment or part of an establishment to comply with the requirements of the “Hygiene Regulations”;
 - The need to impose conditions upon, or the prohibition of, the carrying on of any process breaching the requirements of the Regulations;
 - Hampering adequate health inspection in accordance with the Regulations;
 - Where the rate of operation of the business is detrimental to its ability to comply with the Regulations.
- 5.6.9 If the authorised officer considers it necessary to serve a Remedial Action Notice, then the service of a Detention Notice must also be considered.
- 5.6.10 Once the officer is satisfied that the remedial action specified in the Remedial Action Notice has been taken, the Notice must be withdrawn by the service of a Notice of Withdrawal of a Remedial Action Notice.

5.7 Detention Notices (Regulation 10 of the Food Safety and Hygiene (England) Regulations 2013)

- 5.7.1 If an authorised officer considers it necessary to serve a Remedial Action Notice, the officer should also consider whether food at the establishment should be detained for the purposes of examination.
- 5.7.2 Regulation 10 also 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.
- 5.7.3 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.

5.7.4 In respect of a Food Detention Notice, after investigations, if the authorised officer is satisfied that the food need no longer be detained, then a Notice of Withdrawal of a Detention Notice must be served.

5.8 Use of Seizure and Detention Notices (Food Safety Act 1990, section 9)

5.8.1 Only officers authorised to do so may use the seizure and detention powers under Section 9 of the Food Safety Act 1990.

5.8.2 Action will be prompted where the authorised officer believes that food fails to comply with the food safety requirements in Article 14 of Regulation (EC) 178/2002.

5.8.3 Under normal circumstances, food will be formally detained using a Detention Notice when it has been implicated in a food poisoning incident or when an instruction or action request has been given to the Authority from an official source, for example as a result of receipt of a Food Alert from the Food Standards Agency to formally detain it pending examination. In these cases, the food will be submitted for examination and the notice will remain in force until the food examiner reports that it is fit or unfit for human consumption. Once the examiner has reported, or in any case, within 21 days, the Notice will be withdrawn by giving notice to the owner by means of a Withdrawal of Detention of Food Notice that the food can be used or appropriate action taken to remove it from the food chain as soon as is reasonably practicable.

5.8.4 Food will normally be seized either following formal detention and subsequent adverse report from the food examiner or public analyst or where it appears to the authorised officer that it is clearly unfit for human consumption. Where food is seized it will be dealt with in accordance with the Food Law Code of Practice (England) i.e. take the food before a Justice of the Peace.

5.8.5 Where food has been formally seized and declared unfit by a Justice of the Peace legal proceedings may follow. The Authority is responsible for ensuring the destruction of food which has been condemned by a Justice of the Peace. If the Justice of the Peace does not condemn the food, the food will be returned to the owner who will be entitled to compensation for any loss suffered.

5.8.6 Where appropriate, the food business operator/proprietor may offer to voluntarily surrender food for destruction or offer to destroy the unfit/potentially unfit food without the officer having to resort to formal seizure. This may be at the instigation of the owner of the food or the result of a suggestion by the officer when the owner agrees the food is not suitable for human consumption. The practice may have some benefits in saving time and avoiding the need to go through the formal seizure process. This informal procedure remains acceptable if the officer has no intention of taking formal action against the food business operator/proprietor for having the food in his possession for sale. The decision of the officer may be influenced by the

general standards of hygiene at the premises, the previous compliance record and the confidence in the management involved.

5.9 Regulation 29 Certificate (Regulation 29 of the Food Safety and Hygiene (England) Regulations 2013)

5.9.1 When an authorised officer believes that food, on inspection, has not been produced or processed or distributed in compliance with the “Hygiene Regulations”, a Certificate may be served to confirm that the food fails to meet food safety requirements. The food is then dealt with using Seizure and Detention powers under Section 9 of the Food Safety Act 1990.

5.10 Imported Foods

5.10.1 Illegally introduced Products of Animal Origin (POAO)

Only officers authorised to do so will serve notices, where POAO present a danger to public or animal health, under Regulation 35 of the Trade in Animals and Related Products Regulations 2011(TARP), on the person in charge of the consignment or product. The product should then be destroyed without undue delay.

5.10.2 Detention of POAO inland

Only officers authorised to do so will detain POAO inland in order to investigate further its safety or compliance.

5.11 Prosecution Policy

5.11.1 The decision to prosecute is a very significant one. Prosecution will, in general, 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.

5.11.2 The use of Legal Proceedings will be in accordance with Food Law Code of Practice (England) and Food Law Practice Guidance (England), Local Government Regulation guidance, The Police and Criminal Evidence Act 1984 and associated Codes of Practice.

5.11.3 The following circumstances are those which are likely to warrant prosecution:-

- Where the alleged offence involves a flagrant breach of the law such that public health, safety or well being is or has been put at risk;
- Where the alleged offence involves a failure by the suspected offender to correct an identified serious potential risk to food safety having been given a reasonable opportunity to comply with the lawful requirements of the officer;
- Where the offence involves a failure to comply in full or in part with the requirements of a statutory notice;

- Where there is a history of similar offences related to risk to public health.

5.11.4 When circumstances have been identified which may warrant prosecution, all relevant evidence and information must be considered to enable a consistent, fair and objective decision to be made.

5.11.5 There are two stages in the decision to prosecute. The first stage is the **evidential test**. If the case does not meet the evidential test, it must not go ahead, no matter how important or serious it may be. If the case passes the evidential test, the second stage is the **public interest test**. Consideration must be given as to whether a prosecution is needed in the public interest. The Council will only start or continue with a prosecution when the case has passed **both** tests.

5.11.6 When decisions are being taken on whether to prosecute, the guidance contained in the Code for Crown Prosecutors, issued by the Crown Prosecution Service, should be considered. This includes detailed guidance on evidential and public interest test criteria.

The evidential test

5.11.7 Before proceeding, the officer must be satisfied that there is relevant, admissible, substantial and reliable evidence that an offence has been committed by an identifiable person or company.

5.11.8 The Council must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. Consideration must be given as to what the defence case may be and how that is likely to affect the prosecution case.

5.11.9 A realistic prospect of conviction is an objective test. It means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged.

The public interest test

5.11.10 The public interest must be considered in each case where there is sufficient evidence to provide a realistic prospect of conviction. When circumstances have been identified which may warrant prosecution, and where there is sufficient evidence to provide a realistic prospect of conviction, a prosecution will usually take place unless there are public interest factors against prosecution which clearly outweigh those in favour.

5.11.11 The Council must balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender. The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. Some factors may increase the need to prosecute, but others may suggest that another course of action would be better.

5.11.12 Before deciding whether a prosecution should be taken, as well as taking into account the public interest principles described in the Code for Crown Prosecutors, the factors detailed in Food Law Code of Practice (England) should be considered. These are:-

- The hierarchy of enforcement structure indicates that a prosecution is appropriate as opposed to use of, say, informal action or use of an enforcement notice;
- The sufficiency of the evidence (the test for which is set out in the Code for Crown Prosecutors). Of particular note is:
- 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;
- The public interest test has been satisfied (again, the test is set out in the Code for Crown Prosecutors). Of particular note is:
 - 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;
 - That the enforcement policy is adhered to.

3.11.13 The above points are those in favour of prosecution. 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);
- Whether any other action, such as issuing a simple caution in accordance with Ministry of Justice guidance would be more appropriate.

5.11.14 Prosecutions should be taken without unnecessary delay. Once a decision to instigate prosecution has been taken, the matter should be referred, without undue delay, to Legal and Democratic Services, who will commence legal proceedings.

5.11.15 A Court must impose a hygiene prohibition order following certain prosecutions if it is satisfied that there is a risk of injury to health (see 5.4.12). An officer must be able to produce sufficient evidence to enable the Court to come to an appropriate decision regarding the existence of a risk of injury to health. This may include evidence from relevant experts, including a food analyst or food examiner, and must satisfy the guidance criteria specified in the Food Law Code of Practice (England), concerning the conditions when prohibition is appropriate.

5.11.16 The appropriate primary authority, home authority and originating authority will be notified of any prosecutions taken and their outcome.

5.12 Prosecution for Non-compliance with Hygiene Improvement Notices

5.12.1 Non compliance with a hygiene improvement notice is considered to be a serious offence and, in general, will give grounds for prosecution with the following exceptions:

- where the main content of the notice has been complied with and the remaining contraventions detailed in the notice are minor and do not pose a risk to public health;
- where the outstanding works are in hand (confirmation from contractor or supplier required) and an extension of time to complete the works would have been granted, if requested.

5.13 Prosecution – Food Complaints

5.13.1 The decision to prosecute for offences relating to the sale of food unfit for human consumption, or not of the nature, substance or quality demanded by the purchaser will be taken at the earliest opportunity.

5.13.2 Prosecution will be considered where :

- the offence has resulted in a risk to public health;
- there is evidence of negligence in failing to adopt basic food hygiene precautions;
- the food business operator has failed to respond to an informal approach to prevent a recurrence of the problem.

5.14 Prosecution - Hygiene Regulations

5.14.1 A decision to prosecute for offences under hygiene regulations will be taken based on the risk to public health presented by the contravention.

5.14.2 Prosecution will be considered where:

- conditions are found that present an imminent risk to public health, whether or not prohibition action is also taken;
- there is a risk to public health presented either by the seriousness or number of contraventions and there is documented evidence that the food business has previously received warnings regarding such contraventions.

5.15 Prosecution - Use By Dates

5.15.1 With respect to expired use by dates, a prosecution or simple caution should be considered where all the following circumstances exist:-

- items are more than one day out of date, and;

- there is a previous history of non-compliance, and;
- the business exceeds the twenty day rule (multiply the number of items by the number of days out of date, for example, four items five days out of date equals twenty days), and;
- some of the foods were in use or available for sale at the time of the visit, or two or more different food lines were involved.

5.15.2 Where there are expired use by dates but all the above circumstances do not apply, informal action should normally be taken.

5.16 Simple Caution

5.16.1 The Council supports the use of simple cautions in accordance with Ministry of Justice guidance on 'Simple Cautions for Adult Offenders' and relevant Local Government Regulation guidance.

5.16.2 In accordance with the Food Law Code of Practice (England), officers should consider issuing a simple caution as an alternative to prosecution. In deciding whether to use simple caution, the officer should consider whether:-

- the circumstances are such that the caution is likely to be effective;
- the caution is appropriate to the offence.

5.16.3 The purposes of the simple caution are:

- to deal quickly and simply with less serious offences;
- to divert less serious offences away from the Courts;
- to reduce the chances of repeat offences.

5.16.4 To safeguard the suspected offender's interests, officers should establish that the following conditions are fulfilled before administering a caution:

- there must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction;
- the suspected offender must admit the offence;
- the suspected offender must understand the significance of a simple caution and give an informed consent to being cautioned.

5.16.5 It is inappropriate to use a simple caution:

- if there is insufficient evidence to consider taking a prosecution;
- where the suspected offender does not make a clear and reliable admission of the offence;
- if the offence is a serious one – the more serious the offence, the less likely it is that a formal caution should be issued, and the more likely it is that a prosecution will be needed;
- where there is no reasonable expectation that a simple caution will reduce the chances of repeat offences.

- 5.16.6 When considering whether a simple caution is in the public interest, officers should take into account the public interest principles described in the Code for Crown Prosecutors.
- 5.16.7 The offender or their representative should be interviewed, whenever Possible, to explain and ensure that they understand the significance of a simple caution, and to ascertain that they agree to the issue of a simple caution. Officers should not apply any pressure on a person to accept a simple caution as there is no legal obligation for the person to do so. The interview will take place after the offender has made a clear, reliable and voluntary Police and Criminal Evidence Act compliant admission to each element of every offence for which it is proposed to issue a caution.
- 5.16.8 Simple cautions will only be signed by the Head of Public Protection.
- 5.16.9 If a person declines the offer of a simple caution, or the offender fails to return the completed simple caution within 14 days of receipt, officers must consider taking alternative enforcement action, which in most cases will be a prosecution.
- 5.16.10 The appropriate primary authority, home authority and originating authority will be notified of any simple cautions which have been issued.
- 5.16.11 Details of the Simple Caution will be notified, in writing, to the CIEH or Local Government Regulation.

Section 6 – Documented food safety management systems

6.1 Introduction

- 6.1.1 This section details the Council's specific policy with respect to enforcement of the requirement for food business operators to put in place, implement and maintain a food safety management procedure or procedures (based on HACCP principles) as laid down in Article 5 of Regulation (EC) 852/2004. This builds on the general enforcement approach detailed throughout the enforcement policy.
- 6.1.2 Enforcement will be graduated and educative.
- 6.1.3 Food premises that present a clear and imminent danger to public health should have formal enforcement action taken against them to secure improvement.
- 6.1.4 For food premises that do not present a clear and imminent danger to public health, the focus of enforcement visits should be to help businesses improve their standards of food safety.
- 6.1.5 With limited time and resources, officers should concentrate on significant hazards to public health, ensuring that the person responsible for food safety understands these hazards and knows how to control and manage them. This is an educative approach.
- 6.1.6 The expectation is that businesses improve their standards over time, taking account of the understanding they gain from the enforcement officer and other sources. Where a business does not improve, given reasonable time and after being offered guidance, hygiene improvement notices and other more formal enforcement activity can be used. This is a graduated approach.

6.2 Critical Controls

- 6.2.1 Where effective controls are not being implemented at critical points, whether or not there has been a systematic analysis, officers will take appropriate and effective enforcement action to ensure that controls are implemented immediately to ensure food safety.
- 6.2.2 The enforcement options where controls at critical points are unsatisfactory are the same as with any significant food safety issue, as detailed in Section 5. Officers will use their professional judgement when deciding what is appropriate and effective enforcement action.
- 6.2.3 An informal approach may be appropriate if an officer is satisfied it will be effective. Officers will consider:-
- changes the food business operator is prepared to make immediately;

- confidence in the food business operator being able to implement and maintain the changes;
- the circumstances when informal action is appropriate, as detailed in Section 5.2.2.

6.2.4 Where an informal approach is taken, this will include confirmation in writing as detailed in Section 5.2, and will normally require a revisit to ensure that controls are being implemented at critical points, as detailed in Section 3.

6.2.5 The use of hygiene improvement notices is described in detail in Section 5.3. Where an analysis has been undertaken but controls identified have not been implemented, then it may be appropriate to serve a hygiene improvement notice requiring the implementation of controls under Article 5 of Regulation (EC) 852/2004.

6.2.6 Where controls have not been implemented and where there is no analysis it may be appropriate for officers to serve hygiene improvement notices for both aspects of non-compliance.

6.2.7 In considering formal approaches to enforcement, officers should take account of whether there is also evidence of a significant breach of other food hygiene requirements. Lack of effective controls being implemented at critical points would normally be expected to lead to significant breaches of other food hygiene requirements. It may be more appropriate to serve hygiene improvement notices for breaches of other food hygiene requirements rather than for non-compliance of the requirement to implement effective control and monitoring procedures at critical points (Article 5).

6.2.8 Ongoing aspects of Article 5 (i.e. ongoing maintenance and ongoing review) should not be included on any notice. As detailed in section 5.3.3, hygiene improvement notices are not appropriate where the contravention might be a continuing one, for example relating to personal cleanliness of staff, when the notice would only secure an improvement at one point in time. However, the use of hygiene improvement notices in relation to practices, including those which might be critical controls, is appropriate. Hygiene improvement notices should not, however, be used to require maintenance of practices.

6.2.9 Officers will place realistic time limits for compliance, and will discuss the time limit with the food business operator or their representatives wherever possible. Hygiene improvement notices requiring the implementation of effective controls at critical points should normally specify a time limit set at the minimum period (14 days).

6.3 Analysis

6.3.1 The informal educative approach will embrace a number of strategies, including:-

- i) Discussion with the food business operator during an inspection including understanding of Article 5 and its implications for the

- business, assessment of any hazard analysis undertaken, identification of particular elements of non-compliance with Article 5, and what action the food business operator should take to effect compliance;
- ii) Confirmation in writing, following an inspection or other visit, which should:-
 - detail what action is necessary;
 - explain why the action is necessary;
 - indicate the measures required to be taken in order to secure compliance;
 - explain the contraventions;
 - distinguish legal requirements and good practice;
 - include agreed timescales.
 - iii) Giving the food business operator an opportunity during the inspection to ask questions on how to apply Article 5 to his/her individual business;
 - iv) Provision of nationally produced advisory material, for example:-
 - the Food Standards Agency's manual "Safer Food Better Business";
 - the Department of Health's booklet 'Assured Safe Catering – A Management System For Hazard Analysis';
 - v) Provision of locally produced advisory material to help businesses comply with Article 5, namely "Your Guide to HACCP" (Tdoc 652);
 - vi) Referral to any relevant officially recognised Industry Guide to Good Hygiene Practice;
 - vii) Referral to an appropriate industry code of practice and/or other industry-focused material, such as those listed by the Institute of Food Science and Technology;
 - viii) Information on other publications, e.g.
 - 'Assured Safe Catering'
 - 'Systematic Assessment for the Food Environment (SAFE) – a practical guide for restaurateurs and caterers';
 - ix) Information about relevant training courses and local providers;
 - x) Details of other sources of information, e.g.
 - the food business operator's trade association;
 - food safety consultants;
 - xi) Invitation to attend local HACCP seminars that provide specific information and advice on compliance with Article 5, or local "Safer Food Better Business" seminars;
 - xii) Liaison with the primary authority or home authority, if necessary, when dealing with local businesses whose decision-making base is located in another authority's area.

6.3.2 In undertaking a graduated informal approach, officers may, where appropriate, take a time-based staged approach towards achieving compliance. In such cases, the timescales for each stage in developing a food safety management system will be discussed (and agreed where possible) with the food business operator or his representative. Timescales will be based on the risk presented by the business and their progress to date

in developing a system. This staged approach will not obscure a food business operator's full responsibilities, and failure of a food business operator to progress within agreed timescales will result in an officer considering a formal approach.

6.3.3 Where there has been no systematic analysis, documents do not exist but where effective controls are being implemented at critical points, and there is no evidence which indicates a significant breach of other food hygiene requirements, officers may consider a formal approach to enforcement where:-

- The business involves high-risk operations;
- The breaches of HACCP requirements would be likely to lead to significant breaches of other food hygiene requirements, if not remedied, and in so doing give rise to an unacceptable risk to food safety. This might occur, for example, where there is a high risk process with many operational stages, a significant number of staff involved in critical controls or a high staff turnover;
- The food business has failed to respond to an informal, educative approach.

6.3.4 The use of hygiene improvement notices is described in detail in Section 5.3. With notices relating to HACCP principles it is essential that officers ensure that hygiene improvement notices are worded in a way that is clear and easily understood, and that, where appropriate, the notice is accompanied by a referenced letter and other relevant guidance so that the food business operator understands:-

- what to do to ensure compliance;
- why the action is necessary;
- the measures available to achieve compliance.

6.3.5 Officers will place realistic time limits for compliance, and will discuss the time limit with the food business operator or their representatives wherever possible. Hygiene improvement notices requiring compliance with the analysis requirement will normally require a longer period of at least 28 days.

6.3.6 Where there has been no systematic analysis, documents do not exist and:-

- effective controls are being implemented at critical points, and;
- officers are confident that effective control measures will be maintained, and;
- the business does not involve high-risk operations, and;
- the breaches of requirements relating to hazard analysis would be unlikely to lead to significant breaches of other food hygiene requirements, if not remedied, and therefore would not give rise to an unacceptable risk to food safety;

then it will not normally be appropriate for officers to take formal enforcement action, even when a food business has failed to respond to an informal approach. In such circumstances officers should:-

- record on file the non-compliance issues;
- confirm in writing to the food business operator any non-compliance issues, including any reasonable and necessary steps that should be taken to effect compliance with Article 5;
- confirm in writing the importance of carrying out a review of operations when processes or menu items change;
- assess progress towards compliance at the next programmed visit.

6.4 Records

6.4.1 Lack of records or lack of documentation is an offence, unless the business is especially low risk (e.g. sweet shop, greengrocer) presenting only basic hygiene hazards. In such circumstances, it may be sufficient that the business has a guide to good hygiene practice and understands and applies it. Documentation and record keeping may not be necessary. However, officers will, where appropriate, require food business operators to document their food safety management system and keep records, particularly those food premises undertaking specialist or complex high risk activities. Records should include any corrective action that has been taken.

6.4.2 Officers will maintain detailed records for each business of assessments of compliance with hazard analysis and HACCP requirements. Records should include:-

- Who was interviewed;
- The scope and relevant details of any discussions and inspection;
- An assessment of the business's compliance with Article 5;
- Areas of compliance as well as non-compliance that were noted;
- Records seen, if any;
- Matters identified as requiring further action, and timescale.

6.4.3 The following methods will be used to record this information:-

- The inspection report form (Qdoc 900);
- The aide-memoire/visit record sheet (Tdoc 108);
- Any letter or formal notice;
- The inspection record on the Flare computer system.

Section 7 – Supervision, Instruction and Training

7.1 Supervision, Instruction and Training

- 7.1.1 When assessing compliance with the requirements of supervision and instruction and/or training of food handlers, as required by Regulation (EC) 852/2004, officers will have regard to:-
- the relative risk of operations;
 - any relevant Industry Guide to Good Hygiene Practice.
- 7.1.2 In giving any advice or guidance on the training of food handlers, officers should not state or imply that attendance at any particular course provided by any training organisation is an express requirement, including any training course run by the Council.
- 7.1.3 Officers should adopt a graduated approach to ensure that businesses comply with the requirements of supervision and instruction and/or training of food handlers. As the first step towards securing compliance, the officer should adopt an informal, educative approach and discuss the requirements of the legislation.
- 7.1.4 In considering formal approaches to enforcement, officers should take account of whether there is also evidence of a significant breach of other food hygiene requirements. Clear breaches of requirements relating to supervision and instruction and/or training of food handlers would normally be expected to lead to significant breaches of other food hygiene requirements.
- 7.1.5 Where the requirements relating to supervision and instruction and/or training of food handlers are not being met, but where there is no evidence which indicates a significant breach of other food hygiene requirements, officers may consider a formal approach to enforcement where:-
- the business involves high-risk operations;
 - the breaches of requirements relating to supervision and instruction and/or training of food handlers would be likely to lead to significant breaches of other food hygiene requirements, if not remedied, and in so doing give rise to an unacceptable risk to food safety;
 - the food business has failed to respond to an informal, educative approach.
- 7.1.6 Where officers find it necessary to adopt a formal approach to the enforcement of the requirements relating to supervision and instruction and/or training of food handlers, they should not invite the business to participate in food hygiene training which is provided by the authority because of the potential conflict of interest.

7.2 Training in the application of HACCP principles

7.2.1 When assessing compliance with the requirements of training in the application of HACCP principles, as required by Regulation (EC) 852/2004, officers will have regard to the following (in addition to 7.1):-

- The food business operator and/or manager of a business, as appropriate, should have the skills necessary to maintain a documented food safety management system proportionate to the business and not simply be trained in HACCP principles;
- Staff in a business should have the skills needed to undertake their duties and follow the food safety procedures in the business.