

TITLE: APPROVAL OF THE DRAFT FOOD SAFETY ENFORCEMENT POLICY FOR CONSULTATION

Committee: Operational Services Committee

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Author: Senior Environmental Health Officer (Commercial)

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Contact Officer: Richard Garnett
Senior Environmental Health Officer (Commercial)
richard.garnett@eastcambs.gov.uk
01353 616472
Rm SF202, The Grange, Ely

1.0 ISSUE

1.1. The Council needs to update its Enforcement Policy in respect of Food Safety.

2.0 RECOMMENDATION

2.1. The Committee is asked to consider the attached Food Safety Enforcement Policy and to approve it for the purpose of consultation with relevant stakeholders and the general public.

3.0 BACKGROUND/OPTIONS

- 3.1. Officers authorised by East Cambridgeshire District Council carry out statutory functions according to Food Safety legislation.
- 3.2. Under the Food Safety Act 1990 and Food Standards Agency Framework Agreement (Amendment No. 5, 2010), the Food Standards Agency requires East Cambridgeshire District Council to have an enforcement policy.
- 3.3. The Food Standards Agency requires local authorities to present its food policy in accordance with its Framework Agreement Amendment.
- 3.4. This was last done in 2015 to ensure that the policies were in line with the Regulators Code of the same year. Since 2015 the Code of Practice and Practice Guidance from the Food Standards Agency have been reviewed and updated. In addition, there has been development of the Primary Authority scheme overseen by Department for Business, Energy & Industrial Strategy.
- 3.5. When the policies were reviewed in 2015, upon committee approval they went out to public consultation. It is envisaged that the same process be followed with the final policies being brought back to this committee later this year.
- 3.6. If the draft policies are approved, a twelve- w e e k consultation exercise will be undertaken with relevant stakeholders and the general public.
- 3.7. All consultation responses would need to be considered by the Operational

Services Committee before the finalised policies are published.

4.0 ARGUMENTS/CONCLUSION(S)

- 4.1. The draft enforcement policies allow the Council to satisfy the requirements of the Food Standards Agency to have an enforcement policy that satisfy the Regulators Code.

5.0 FINANCIAL IMPLICATIONS / EQUALITY IMPACT STATEMENT / CARBON IMPACT ASSESSMENT

- 5.1. The financial implications arising from this report will be that of officer time spent collating and circulating the documents and that for review before the policy is brought back to the Committee.
- 5.2. Equality Impact Assessment (EIA) is not required.
- 5.3. Carbon Impact Assessment (CIA) is not required.

6.0 APPENDICES

- 6.1. Appendix 1 – Food Safety Enforcement Policy Statement (March 2023)

Background Documents:

Food Safety Act 1990
Regulators Code 2014
Food Law Code of Practice (England) (March 2021)
Food Law Practice Guidance (England) (March 2021)

Appendix 1 Food Safety Enforcement Policy Statement

Summary of Changes

1. Simplify the text to ensure that those affected by the policy can understand the processes the Council follows.
2. Ensure that the links to background documentation are up to date and correct.
3. Incorporate the changes from the 2021 edition of the Food Law Code of Practice and Practice Guidance issued by the Food Standard Agency.
4. Incorporate Food Sampling within the overall policy rather than as a standalone policy.
5. Ensure that document can be easily updated and that changes can be tracked before the statement needs redrafting

FOOD SAFETY ENFORCEMENT POLICY STATEMENT

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EAST CAMBRIDGESHIRE DISTRICT COUNCIL

FOOD SAFETY ENFORCEMENT POLICY STATEMENT

1. INTRODUCTION

- 1.1. The purpose of this policy statement is to express the commitment and intentions of East Cambridgeshire District Council (“the Council”) to the principles of consistent and effective enforcement of food safety legislation in accordance with the Regulators Code¹.
- 1.2. The Council has a Corporate Enforcement Protocol² which outlines the general approach the Council takes when considering enforcement action. This policy builds on the Corporate Protocol and outlines in detail the approach taken by the Environmental Health Team in relation to food safety enforcement.
- 1.3. This policy recognises and gives support to the specific guidelines and enforcement action contained in the statutory Food Standards Agency (FSA) Code of Practice and its accompanying Practice Guidance³. It also acknowledges the Primary Authority scheme⁴ currently overseen by the Government’s Office for Product Safety & Standards and the Department for Business, Energy & Industrial Strategy.

2. STATEMENT OF INTENT

- 2.1. It is the Council’s policy to ensure that food and drink, intended for sale for human consumption is without risk to the public health or safety of the consumer. This includes items that are produced, stored, distributed, handled, purchased or consumed within the authority.
- 2.2. To achieve this objective enforcement action will be proportionate to the risk(s) presented, or the seriousness of any legislative contravention and in accordance with the guidelines of this policy.
- 2.3. Initially, Officers will adopt an educative approach with those responsible for securing compliance with relevant food safety legislation. If that approach does not secure the required improvement Officers will enforce the law by using a range of enforcement options.
- 2.4. Enforcement action can range from verbal and written warnings, to the use of statutory notices, simple cautions, and prosecution. Prosecution will not normally constitute a punitive response to minor contraventions of food safety legislation.
- 2.5. All authorised Officers shall have regard to this policy when carrying out their assigned duties.
- 2.6. Departures from these policy guidelines may be needed where there is an elevated

¹ <https://www.gov.uk/government/publications/regulators-code>

² <https://www.eastcambs.gov.uk/east-cambs-district-council/policy-documents>

³ <https://www.food.gov.uk/about-us/food-and-feed-codes-of-practice>

⁴ <https://www.gov.uk/guidance/local-regulation-primary-authority>

risk to the wider public health. It is anticipated that such cases will be the exception. Any departure will be discussed with the Senior Environmental Health Officer (SEHO) or, in their absence, after consultation with the Environmental Services Manager (ESM).

- 2.7. It should also be noted that from time to time advice or instructions may be given by the FSA where it specifies a particular type of enforcement approach for specific legal requirements. In such instances, the Council will adhere to such instructions when appropriate to do so.

3. GENERAL PRINCIPLES

- 3.1. It is accepted that there should be a quick and effective response to serious breaches of legislation as distinct from an efficient and effective enforcement approach to other breaches. The Council aims to secure full compliance with all relevant food safety legislation that it is responsible for enforcing. Most of its dealings with those responsible for complying with such legislation involves informal action and authorised Officers will seek to offer relevant information and advice in person as well as in writing.
- 3.2. The Council's Officers will deal with anyone subject to the enforcement process in a courteous, fair, and objective manner, and considering its policy on equal opportunities and the Council's Corporate Enforcement Protocol.
- 3.3. Officers will be sensitive to the needs of business including its requirement for prompt, concise, definitive, and timely advice. Any intervention will aim to impose the minimum burden consistent with regulatory confines. Where possible they will assist businesses and individuals to understand any requirements and the obligations imposed by the relevant legislation. They will seek to encourage good practice by businesses in line with that which is contained in any relevant industry guide, code of practice, or relevant legislation. In considering whether good practice has been adopted, Officers will take account of relevant guidance using professional judgement about the extent of the risks and the effort that may have been applied to counter them.
- 3.4. Where food safety legislation is not prescriptive Officers shall work with businesses to ensure that a suitable balance can be drawn between the standards required by law and the demands on the business.
- 3.5. If informal approaches do not achieve the required improvement, Officers will use formal enforcement measures set out in legislation including the issuing of statutory notices, simple cautions and by taking prosecutions.
- 3.6. Where necessary, the Council will use its powers to visit food businesses in other local authority areas to investigate potential offences that have arisen within its own area. This will be carried out in accordance with the Code of Practice.
- 3.7. Where appropriate, the Council reserves its right to carry out covert surveillance of individuals or organisations. In doing so, Officers will comply with the Regulation of Investigatory Powers Act 2000, human rights legislation, and any associated

guidance in existence at the time along with any internal policies and procedures.

- 3.8. Where resources permit, the Council will aim to provide suitable information, for example about compliance with new or emerging legislation to the food trade and associated businesses designed to encourage compliance with the law. This will be particularly relevant where an initial educative approach is appropriate and encouraged by the FSA. Efforts will be made to provide it in languages other than English where there is a demand and where resources facilitate this.

4. Officers

- 4.1. The SEHO (Commercial) is designated as the Lead Food Officer for the purposes of the FSA.
- 4.2. The Officers who carry out the enforcement of food safety legislation are authorised in writing to enforce delegated tasks and duties in accordance with the Council's scheme of delegation.
- 4.3. The Council will ensure that its Officers are suitably qualified, experienced, and competent with respect to the enforcement duties that they have been authorised to carry out. Such authorisations shall be issued under the Council's Constitution and in accordance with the Code of Practice. Officers shall only act in accordance with their own authorisations.
- 4.4. The Council shall also ensure that each Officer receives suitable and sufficient structured training that is managed, assessed, and recorded on an ongoing basis.

5. PRINCIPLES OF ENFORCEMENT

- 5.1. The enforcement of food safety legislation should be guided by the principles that are contained within the Enforcement Concordat⁵ that has been formally adopted by the Council, in addition to the Code for Crown prosecutors⁶ and the Regulators Code⁷. These documents provide a framework for local authorities to work to by committing them to good enforcement policies and procedures.
- 5.2. The principles of the Enforcement Concordat are as follows:

- Standards

The Council remains accountable to central government, the FSA and local taxpayers for its actions and omissions. This means that it must have clear policies and standards against which it can be judged. The Council will consult with businesses and other relevant interested parties, including technical experts where appropriate, and draw up these standards setting out the level of service and performance the public and business can expect to receive. These standards will then be made available to those who are regulated.

⁵<https://publications.parliament.uk/pa/ld199899/ldselect/lddereg/111/11107.htm>

⁶ <https://www.cps.gov.uk/publication/code-crown-prosecutors>

⁷ <https://www.gov.uk/government/publications/regulators-code>

- Openness

The Council will provide information and advice in plain language on the law that it enforces and will disseminate this as widely as possible. It will also be open about how it sets about its work, including any charges that are made for specific activities. Officers will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

- Helpfulness

The Council recognises that its role involves actively working with businesses, especially small and medium sized businesses, to advise and assist on compliance. Officers will provide a courteous and efficient service and the staff will identify themselves by name. Officers will provide a contact point and telephone number for further dealings with the Council and will encourage businesses to seek advice/information from them. The Council will ensure that, wherever practicable, its enforcement services are effectively co-ordinated to minimise any unnecessary overlaps and time delays.

- Complaints about Service

In cases where disputes cannot be resolved, any rights of complaint or appeal will be explained by the Officer, with details of the process and the timescales involved. The Council will provide a publicised, effective, and timely complaints procedures that is easily accessible to both businesses and the public.

- Proportionality

Both those whom the law protects and those in whom it places a duty expect that action taken by the Council to achieve compliance should be proportionate to the food safety risks posed to consumers and to the seriousness of any breach of the legislation or relevant licensing conditions. Deciding what is reasonable or appropriate to control risks involves the exercise of judgement by businesses and, when the law permits, discretion by enforcers based on sound professional judgement.

- Consistency

Consistency of approach does not mean uniformity; it means taking a similar approach in similar circumstances to achieve similar ends. Food businesses managing similar risks expect a consistent approach from enforcing Officers in the advice provided, the use of powers, issuing of approvals, decisions on appropriate enforcement action and response to food-related incidents.

To promote consistency, discussions are held with other members of the County Food Liaison Group⁸. There are also effective arrangements for liaison with other enforcing authorities, the FSA, and any Primary/Home Authorities.

- Transparency

⁸ Meeting attended by the Lead Food Officers of the Cambridgeshire Authorities together with Peterborough City.

Transparency means helping businesses and the public to understand what is expected of them and what they should expect from the Council. It means making it clear to businesses not only what they have to do but, where this is relevant, what they do not. Officers will distinguish between what is a legal requirement and what is recommended when issuing advice or guidance. Officers will also explain why they intend to or have taken a particular course of action.

- Targeting

Targeting means making sure that resources are targeted primarily on those whose activities give rise to the most serious risks, or where hazards are least well controlled; and that action is focused on the businesses who are responsible for the risk and who are best placed to control it.

The Council will prioritise inspections in accordance with the guidance laid down in the Code of Practice. The priorities for interventions in response to complaints from the public about food business activities and food poisoning incidents will consider the nature and severity of the allegations.

6. INSPECTIONS AND INTERVENTIONS

- 6.1. Under normal circumstances, inspections and interventions at food premises will be made without warning and at a time when a range of food handling practices may be observed. In instances where it is appropriate to do so, appointments may be advisable e.g., where it is prudent that the proprietor or manager is on site to discuss particular issues or matters arising from a previous visit.
- 6.2. Where a food business is based at a domestic premises the law requires that at least 24 hours notice of an inspection is given.
- 6.3. Officers will identify themselves unless for operational reasons the purpose of the visit is for surveillance purposes or to make a 'silent' test purchase. Officers will show their authorisation.
- 6.4. The Officer will state the purpose of the inspection at the start of the visit. The main purpose of any food hygiene inspection is to: establish if the food is being handled or produced hygienically, establish if it is safe to eat having regard to further processing, and to identify foreseeable incidences of food poisoning or injury as a consequence of consuming the food.
- 6.5. At the conclusion of any intervention, the Officer will offer to discuss their findings and will normally give to the person in charge a completed report of visit form. The Officer may choose to write to the food business operator confirming their visit if the issued report requires further detail.
- 6.6. If serious contraventions or poor hygiene practices are found, or when there is low confidence that the business will address the issues, a revisit will be carried out.

7. Food Sampling

- 7.1. Food, equipment, and environmental sampling for microbiological examination or chemical analysis makes an important contribution to the protection of public health

and food law enforcement. Samples may be procured for microbiological examination or for chemical analysis.

7.2. The main aims and objectives of food sampling are to:

- Examine high risk foods that pose a hazard to the consumer because they may contain significant levels of pathogenic bacteria; harmful chemicals or physical contaminants;
- Evaluate temperature control, food handling and processing practices at food premises in relation to hazard analysis, including evaluating the efficiency and effectiveness of cleaning and disinfection;
- Help determine whether advice or enforcement action would be appropriate where it is suspected that poor practices and procedures exist;
- Evaluate the effectiveness of stock rotation and control, and to assess the microbiological quality of food manufactured, distributed, or retailed in the local area.
- Identify contraventions of food safety legislation;
- Investigation of food poisoning outbreaks or individual notifications of food-borne illness

7.3. In deciding whether to sample a particular food, consideration will be given to any sampling defined within legislation, or any further processing of that food by caterers or consumers that will reduce or eliminate micro-organisms prior to consumption.

7.4. Depending on the sampling survey being carried out, the sampling Officer may purchase food as would a member of the public. At other times, the sampling Officer will declare themselves to the food business operator, their representative, or the person in charge of the food at the time. Full payment will be offered for any sample not bought.

7.5. When a food sample has been examined/analysed and the sampling Officer shall, as soon as is reasonably practicable notify the manufacturer/supplier or food business operator.

8. Investigations

8.1. The Council will respond to, and where appropriate, investigate all complaints about food, food premises, food handling practices etc. The response will vary according to the nature of the allegation and its severity.

8.2. We can consider anonymous complaints if the complainant is independently verifiable. In these circumstances the identity of the complainant is not a relevant factor. If the Officer decides that there is sufficient information to proceed and it is reasonable and in the public interest to do so, the complaint can proceed without a complainant.

- 8.3. In most cases, it will be appropriate to inform the business that a complaint has been received and the nature of the allegation. The details of the complainant will not be revealed to the business unless agreed with the complainant beforehand. Where it is thought necessary to protect the identity of the complainant advice would be sought from the Council's legal team.
- 8.4. The Council will respond to all reports of food poisoning received from the United Kingdom Health Security Agency (UKSHA)⁹ where a food business has been implicated. The response will vary according to the nature of the allegation.
- 8.5. The complainant will be kept informed of the progress of the investigation and notified of the eventual outcome unless the complaint was anonymous.
- 8.6. At the end of the investigation, the complainant and the business will be informed of the outcome and any further action to be taken by the Council.

9. **Food Safety Enforcement Actions**

- 9.1. Authorised Officers will consider the most appropriate course of action including enforcement action during all interventions. All relevant information and evidence will be considered.
- 9.2. It is important that the full range of enforcement options remains open to an authorised officer.
- 9.3. The choices of action are:
 - No action
 - Informal action and advice, including written warnings
 - Statutory Notices - Hygiene Improvement Notice, Hygiene Emergency Prohibition Notice or Remedial Action Notice
 - Voluntary closure
 - Service of Regulation 29 Certificate
 - Detention and seizure of food
 - Suspend or revoke an approval
 - Issue a Simple Caution
 - Prosecution

The actions may be used singularly or, more usually, in combination.

- 9.4. Before formal action is taken, officers will provide the food business operator with an opportunity to discuss the circumstances of the case and, if possible, resolve

⁹ United Kingdom Health Security Agency, formally Public Health England

points of difference, unless immediate action is required.

9.5. Where there are rights of appeal against formal action, advice on the appeal mechanisms will be clearly set out in writing at the time the action is taken.

9.6. If a Primary Authority partnership is in place, the officer must liaise with the Primary Authority about any proposed enforcement action except in circumstances where the need to act swiftly is critical.

9.7. No Action

Where there is full compliance with relevant legislation no further action will be required other than to issue a report of inspection proforma as identified by the Food Law Code of Practice.

There will be circumstances where a contravention may not warrant action, or it may be inappropriate. Any discussion surrounding such cases will be documented

9.8. Informal Action

Informal action to secure compliance with legislation includes offering verbal advice, the issue of a handwritten food hygiene inspection report at premises following an inspection, and the issue of a post inspection letter, also known as an informal written warning.

At the conclusion of an inspection, the officer will discuss any contravention of food law discovered, any corrective action necessary, the timescale for remedy and any recommendations of good practice the officer considers appropriate.

A hand-written inspection report will be issued at the conclusion of all programmed inspections and revisits. If there are only a small number of minor contraventions or recommendations, the inspection report alone may be sufficient. If there are more substantial issues to be addressed, a letter will also be issued, detailing any contraventions and the action to be taken. Informal advice or information pertinent to matters noted at the time may also be included within the letter.

Officers will use this approach as long as they believe this will achieve compliance with food safety legislation within a timescale that will protect the public health and ensure safe food production.

The circumstances when it is appropriate to use verbal and informal written warnings are:

- The act or omission is not serious enough to warrant formal action.
- From the individual's/businesses past history it can be reasonably expected that the warning will achieve compliance.
- The officer has confidence in the management of the business.
- The consequences of non-compliance will not pose a significant risk to public health.

This list is not a comprehensive list and there may be circumstances in which a warning will be more effective than a formal approach.

When an informal approach is used to secure compliance with food safety legislation, any written documentation issued or sent to proprietors will:

- Contain all the information necessary to understand what work is required and why it is necessary.
- Indicate the regulations contravened and the measures which will enable compliance with the legal requirement.
- Clearly distinguish between matters which are necessary to meet statutory requirements and those which are recommended practice.
- Copies of letters and reports of inspection will be sent to the registered or head office where this is not the premises visited.

Food businesses that come within the scope of the Food Hygiene Rating Scheme will also be provided with details of the scheme, their rating, the right to reply, right to request a revisit and how to appeal. There is a separate procedure covering the operation of the Food Hygiene Rating Scheme.

9.9. Hygiene Improvement Notices

Hygiene Improvement Notices will be served by authorised officers based on their opinion that there is a contravention of the law at the time of the visit or that there had been a contravention and that it is likely that the contravention will continue or be repeated.

The circumstances when it is appropriate to issue a Hygiene Improvement Notice include those situations where one or more of the criteria below apply:

- 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/or
- The authorised officer has reason to believe that an informal approach will not be successful.

The officer will discuss the notice and, if possible, resolve points of difference before serving it. The notice will say what needs to be done, why and by when. Timescales will be realistic and details of appeal mechanisms and requests for extensions of time will accompany the notice.

Hygiene Improvement Notices will be signed by an appropriately authorised officer who has witnessed the contravention.

Non-compliance with a Hygiene Improvement Notice will generally result in prosecution.

9.10. Improvement Notices

Improvement Notices can be issued by appropriately authorised officers under Section 10 of the Food Safety Act 1990 as applied and modified by Regulation 12 of the Food Information Regulations 2014.

The County Council has a duty to enforce the Food Information Regulations 2014. The Council has a power, but not a duty, to enforce certain provisions for the allergen labelling requirements for non-pre-packed foods and officers are expected to carry out these checks, of mainly catering premises, as part of their routine inspections.

If an officer has reason to believe that an informal approach will not achieve a successful outcome, an authorised officer can issue an Improvement Notice, but under normal circumstances will liaise with the County Council Trading Standards Department, as the enforcing authority.

9.11. Hygiene Emergency Prohibition Notices

Authorised officers will consider the issue of Hygiene Emergency Prohibition Notices where the use of a premises, a process, a treatment of a piece of equipment represents or involves an imminent risk of injury to health.

Regulation 8 of the Food Safety and Hygiene (England) Regulations 2013 and the FSA Food Law Code of Practice and the Practice Guidance specify the steps that have to be taken when using Hygiene Emergency Prohibition Notices.

In considering the use of such notices, the prime consideration should be to protect public health. The following instances are examples of circumstances that could show the health risk condition exists, such that there is an imminent risk of injury to health:

- Premises or practices which seriously contravene food law and have been or are implicated in an outbreak of food poisoning;
- Serious 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 of 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 premises serious enough to lead to actual contamination of food or a significant risk of contamination;
- 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;

- 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 grow;

The list is not exhaustive and it may be a combination of factors that together represent an imminent risk of injury to health.

The effect of the Hygiene Emergency Prohibition Notice is to immediately close the premises, or prevent use of equipment, or the use of a process or treatment. The authorised officer must apply to a magistrate's court for a Hygiene Emergency Prohibition Order within three days of the Hygiene Emergency Prohibition Notice being served, the day of service being day one. The officer must give the food business operator at least one day (24 hours) notice of the intention to apply to the court for a Hygiene Emergency Prohibition Order.

An Officer may consider that a voluntary closure will achieve the same aims and is more appropriate in the circumstances. Voluntary procedures to remove a health risk condition may be used at the instigation of a food business operator, when the food business operator agrees that a health risk condition exists, ie there is an imminent risk of injury to health.

Any voluntary closure agreement must be confirmed in writing by the food business operator or manager who has the authority to agree such action, with an undertaking not to re-open without the officer's prior approval.

The offer to voluntarily close will only be accepted where the authorised officer is satisfied that there is no likelihood of the premises being used as a food business, or the use of equipment, or of a process without the express agreement of the officer.

9.12. Remedial Action Notices

Where a premises approved under Regulation (EC) 853/2004 is found to be non-compliant with food hygiene regulations, and a graduated approach to enforcement actions has proved unsuccessful, authorised officers may issue a Remedial Action Notice (RAN) under Regulation 9 of the Food Safety and Hygiene (England) Regulations 2013.

Circumstances which may lead to the issue of a RAN include:

- The 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.

- Where the rate of operations of the business is detrimental to its ability to comply with the Regulations.

If a RAN is served the officer must also consider whether to use powers under Regulation 10 to detain food produced in the establishment where there are indications or suspicions that food is unsafe and therefore examination is necessary, including the taking of samples.

As soon as the authorised officer who served the notice is satisfied that the specified action has been taken, the notice must be withdrawn by means of a further notice in writing.

9.13. Regulation 29 Certificate

When food has not been produced, processed or distributed in compliance with the Hygiene Regulations, a certificate under regulation 29 of the Food Safety and Hygiene (England) Regulations 2013 may be served by an authorised officer.

Service of the certificate confirms the food fails to meet the Hygiene Regulations. The food must then be dealt with using powers of seizure under Section 9 of the Food Safety Act 1990 as food failing to comply with the food safety requirements.

9.14. Use of Seizure and Detention Notices

The use of detention and seizure powers under Section 9 of the Food Safety Act 1990 will be initiated in accordance with the Food Law Code of Practice and the Practice Guidance.

Authorised officers can detain or seize food where they believe that the food fails to comply with the food safety requirements in Article 14 of Regulation EC 178/2002.

Detention

Foodstuffs may be detained if an authorised officer has good reason to suspect that food does not satisfy food safety requirements. This will ensure that food is not used for human consumption and is either held where it is if security is not compromised, or moved to a specified place pending further information, for example, results of tests on samples.

Unless the circumstances require immediate action, any proposed action will be discussed in full with the owner or person in charge of the food so they are fully informed about the decision to detain and the progress of the investigations.

Seizure

If an authorised officer is in possession of evidence or adverse information concerning the foodstuffs they may be seized and notice given that condemnation by a Justice of the Peace will be applied for. This will ensure that food is not used for human consumption and is either held where it is or not moved except to a specified place.

Food will be brought before a Justice of the Peace as soon as possible. If the Justice of the Peace does not condemn the food, the owner may be entitled to

compensation for any loss suffered.

Voluntary procedures to remove food that is not suitable for human consumption from the food chain can be used in some circumstances, either at the instigation of the owner of the food or at the suggestion of the authorised officer when the owner agrees that the food is not suitable for human consumption.

9.15. Suspend or Withdraw an Approval

Authorised officers have powers to withdraw or suspend approval or conditional approval of an establishments subject to approval under Regulation 853/2004.

On discovery of non-compliance in establishments subject to approval Officers must, before considering suspension or withdrawal, explore other enforcement options to control the food hazards.

Food business operators will be given a reasonable opportunity to address deficiencies and achieve compliance where this is appropriate.

The food business operator will be notified in writing of any decision to suspend or withdraw approval or conditional approval. The reasons for the suspension or withdrawal will be specified, together with the matters necessary to satisfy the requirements of the Regulations.

The operator will be informed that activities requiring approval cannot be undertaken and will be made aware of their right of appeal.

Where the Council are informed that an establishment has closed any Approval issued must be Withdrawn.

9.16. Simple Cautions

A simple caution is a formal warning that may be given to persons aged 18 or over who admit committing an offence. The simple caution scheme is designed to provide a means of dealing with offending without a prosecution where there is evidence of an offence.

Officers may consider the use of simple cautions as an alternative to prosecutions to:

- deal quickly and simply with less serious offences where the offender has admitted the offence;
- divert less serious offences away from the courts, and reduce the chances of repeat offences.

When a simple caution is under consideration, the following conditions must be fulfilled before it is offered:

- there is sufficient evidence to provide a realistic prospect of conviction if the offender were to be prosecuted;
- the offender is over 18 years of age;
- the offender admits that they have committed the crime and
- the offender agrees to be given the caution.

Any decision to offer a simple caution will be made in consultation with Legal Services. In offering a simple caution, account will be taken of the Ministry of Justice guidelines on Simple Cautions for Adult Offenders and the Code for Crown Prosecutors.

A caution will remain on record for a period of two years and may be cited in Court should a further offence be committed and prosecuted during that time.

Where an offender declines to accept a simple caution, the case should be sent for prosecution.

9.17. Prosecution

Prosecution may be considered as an alternative, in addition to, or as a consequence of failure to comply with the above enforcement procedures.

The decision to prosecute is a significant one and will only be taken where that course of action is proportionate to the risk presented to public health by the contravention.

Before initiating any prosecution proceedings, the Council must be satisfied that there is relevant, admissible, substantial and reliable evidence that an offence has been committed by an identifiable defendant. In all cases, legal advice will be sought before recommending any prosecution and any decision to prosecute will be ratified by the Director of Legal Services

Home and Primary Authorities will be consulted where prosecutions are planned and due regard will be paid to the opinion of that authority.

Where a food business operator has been convicted of an offence the court may prohibit them from the management of a food business. The Council, as the prosecutor, will draw the court's attention to this power where appropriate, and provide the necessary information and evidence to support this action.

10. **Amendments and Review**

10.1. The policy will be reviewed by the SEHO on an annual basis and any minor amendments will be detailed in the Amendment Log.

10.2. Should the document require a major review, or such is required by the review of any supporting documentation, then the SEHO will undertake such action is necessary and consult on any changes.