
**TITLE: APPROVAL OF THE DRAFT FOOD AND HEALTH AND SAFETY
 ENFORCEMENT POLICIES FOR CONSULTATION**

Committee: Regulatory and Support Services Committee

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1.0 ISSUE

- 1.1 The Council needs to update its Food and Health and Safety Enforcement Policies to satisfy the 2014 Regulators Code and conform to the Council's general Enforcement Policy.

2.0 RECOMMENDATION(S)

- 2.1 The Committee is asked to consider the draft East Cambridgeshire District Council Food and Health and Safety Enforcement Policies at Appendix 1 and approve them for the purposes 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 and health and safety laws.
- 3.2 Under the Health and Safety Executive National Local Authority (LA) Enforcement Code, the Health and Safety Executive requires East Cambridgeshire District Council to have an enforcement policy.
- 3.3 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.
- 3.4 The Food Standards Agency requires local authorities to present its food policy in accordance with its Framework Agreement Amendment.
- 3.5 If the draft policies are approved, a thorough twelve week consultation exercise will be undertaken with relevant stakeholders and the general public.
- 3.6 All consultation responses would need to be considered by the Council's Regulatory and Support Services Committee before the finalised policies are published.

4.0 ARGUMENTS/CONCLUSIONS

- 4.1 The draft enforcement policies allow the Council to satisfy the requirements of both the Food Standards Agency and Health and Safety Executive to have enforcement policies that satisfy the Regulators Code.

5.0 FINANCIAL IMPLICATIONS/EQUALITY IMPACT ASSESSMENT

- 5.1 The cost of officer time spent collating and circulating the documents and that of reviewing the responses before submitting responses/ amendments to the committee.
- 5.2 Equality Impact Assessment IST completed and attached.

6.0 APPENDICES

- 6.1 Food Safety Enforcement Policy 2015
Health and Safety Enforcement Policy 2015

<u>Background Documents</u>	<u>Location</u>	<u>Contact Officer</u>
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**EAST CAMBRIDGESHIRE
DISTRICT COUNCIL**

**FOOD SAFETY ENFORCEMENT
POLICY STATEMENT**

March 2015.

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Copies of the policy can be provided in an alternative format. Please contact East Cambridgeshire District Council on 01353 665555 to request the format you require, or email foodandsafety@eastcambs.gov.uk or write to Commercial Team, Environmental Services, East Cambridgeshire District Council, The Grange, Nutholt Lane, Ely, CB7 4EE

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 Code..
- 1.2** The Council has a Corporate Enforcement Policy which outlines the general approach the Council take when considering enforcement action. This policy builds on the Corporate Enforcement Policy and outlines in detail the approach taken by the Environmental Health Team in relation to food safety enforcement
- 1.3** In allocating resources, the Council should have regard to the principles of this policy.
- 1.4** The officers who carry out the enforcement of food safety legislation are Council staff or contractors who are authorised in writing to enforce delegated tasks and duties in accordance with the Council’s scheme of delegation. In some instances, external staff may be similarly authorised to enforce such powers and duties on behalf of the Council on a temporary basis.

2. STATEMENT OF INTENT

- 2.1** It is the Council’s policy to strive to ensure that food intended for sale for human consumption, which is produced, stored, distributed, handled, purchased or consumed within the authority, is without risk to the public health or safety of the consumer.
- 2.2** In order to achieve this objective enforcement action will be proportionate to the risk(s) presented, or the seriousness of the contravention of legislation and in accordance with the guidelines of this policy.
- 2.3** In the first instance officers will adopt an educative approach to those responsible for securing compliance with relevant food safety legislation. In the second instance officers will enforce the law by using a range of enforcement options including: verbal and written warnings, use of statutory notices, simple cautions and prosecution. Prosecution will not

normally constitute a punitive response to minor contraventions of food safety legislation.

2.4 This policy recognises and gives support to the specific guidelines and enforcement action contained in the statutory Food Standards Agency (FSA) Code of Practice issued under Section 40 of the Food Safety Act 1990 (the Act) and the Government's Local Better Regulation Delivery Office (BRDO) and Primary Authority scheme.

2.5 All authorised officers shall have regard to this policy and scheme when carrying out their assigned duties.

2.6 Where a significant risk to public health is identified, departures from these policy guidelines will be the exception and only following consultation with the Senior Environmental Health Officer (SEHO) or in his/her absence in consultation with the Environmental Services Manager (ESM).

3. GENERAL PRINCIPLES

3.1 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. The Council's authorised officers will deal with anyone subject to the enforcement process in a courteous, fair and objective manner, and taking into account its policy on equal opportunities and the Council's Corporate Enforcement Protocol.

3.2 Authorised officers will assist businesses and individuals to understand legal 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 the relevant guides to industry, food business codes of practice and relevant legislation. Officers will be sensitive to the needs of business including its requirements for prompt responses, of action and the imposition of minimum burdens consistent with regulatory confines.

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

3.4 Authorised officers will also use formal enforcement measures set out in the relevant food safety legislation including the issuing of statutory notices, simple cautions and by taking prosecutions.

3.5 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. In considering whether good practice has been adopted, the Council's authorised 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.

- 3.6** Some food safety legislation is prescriptive, for example the need for certain types of food operations to be Approved under relevant legislation and meet required standards. Prescriptive law requires that both the operator and enforcer meet its requirements precisely and this removes the opportunity for discretionary interpretation.
- 3.7** 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 issued under the Act.
- 3.8** Where appropriate, the Council reserves its rights to carry out covert surveillance of individuals or organisations. In doing so, officers will comply with the Regulation of Investigatory Powers Act 2000 ('RIPA'), human rights legislation and associated guidance in existence at the time along with any internal policies and procedures.
- 3.9** 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 in accordance with that which is laid down in the Code of Practice issued under the Act and Officers shall only in accordance with authorizations issued under the Council's Constitution. The Council shall also ensure that each officer receives suitable and sufficient structured training that is managed, assessed and recorded on an ongoing basis.
- 3.10** Where resources permit it, 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. PRINCIPLES OF ENFORCEMENT

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

4.1 Standards

The Council remains accountable to central government, the FSA and local taxpayer 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.

4.2 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.

4.3 Helpfulness

The Council believes that prevention is better than cure and that its role therefore involves actively working with businesses, especially small and medium sized businesses, to advise and assist on compliance. It 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. Applications for Approval of establishments, will be dealt with efficiently and promptly. The Council will ensure that, wherever practicable, its enforcement services are effectively co-ordinated to minimise any unnecessary overlaps and time delays.

4.4 Complaints about Service

The Council will provide well publicised, effective and timely complaints procedures easily accessible to businesses, the public, employees and

consumer groups. 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 time-scales involved.

4.5 Proportionality

4.5.1 Proportionality means relating enforcement action to the risks and costs.

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.

4.5.2 Some legal requirements are mandatory i.e. there is no room for discretion or individual interpretation. However, others require action in line with the principles of “reasonableness” or “appropriateness” and the regulatory system often includes the concept of proportionality through such principles. 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. Where a food business operator and the Council cannot reach agreement, the final determination of what is reasonable in particular circumstances may ultimately be made by the Courts. In other instances, it may be appropriate for enforcers to consult with the FSA, or other authorities, such as Local Authorities or Public Health England, to seek clarification.

4.5.3 Some risks may be so serious that they cannot be permitted irrespective of the economic consequences, whilst at the other extreme, some items may be so trivial that it may not be worth spending more to reduce them. In general, risk-reducing measures must be weighted against the associated costs of the proprietor taking appropriate remediating measures, unless the cost of a particular action is excessive compared with the benefit of the risk reduction in terms of its magnitude of probability.

4.5.4 Although not precisely defined, cost effectiveness is an implicit element of practicality when determining ‘due diligence defences.’ Authorised officers must have regard to costs and benefits when determining whether a company has “taken all reasonable precautions and exercised all due diligence” to prevent an offence occurring.

4.6 Consistency

4.6.1 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.

4.6.2 The Council recognises that in practice consistency is not a simple matter. Authorised officers are faced with many variables such as the severity of the hazard, the attitude and competence of management and the associated history of compliance. Each may vary between businesses which otherwise appear similar. Decisions on enforcement are a matter of sound professional judgement when the Council, through its officers, will exercise discretion. It will continue to develop arrangements – including standard procedures in line with national audit requirements – to promote consistency in the exercise of discretions. These will include effective arrangements for liaison with other enforcing authorities through the County Food Liaison Group, consultations with the FSA, Primary and Home Authorities.

4.7 Transparency

4.7.1 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 don't. This means distinguishing between what is a legal requirement and what is recommended (but is not compulsory) through advice or guidance. It also means making clear why an officer intends to or has taken a particular course of action.

4.7.2 This document sets out the general policy framework within which the Council will operate. Businesses need to know what to expect when an authorised officer visits and what rights of complaint are open to them.

- in the case of informal enforcement action the officer will tell the business what to do to comply with the law, explain why, and distinguish legal requirements from best practice advice. Officers will normally confirm any advice in writing. Letters will identify the SEHO (or service manager where the SEHO has carried out the inspection) as being the initial point of contact if businesses wish to query an officer's findings or are unhappy about the standard of service received;
- in the case of Hygiene Improvement Notices and Remedial Action Notices, the authorised officer will normally 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. Details will also be given of the formal appeal procedure at the same time;
- in the case of an Hygiene Emergency Prohibition Notice (HEPN), the notice will explain why the prohibition is necessary.

4.8 Targeting

- 4.8.1** Targeting means making sure that resources are targeted primarily on those whose activities give rise to the most serious risks, or whether 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.
- 4.8.2** The Council will prioritise inspections in accordance with the guidance laid down in Codes of Practice made under the Act. The priorities for interventions in response to complaints from the public about food business activities and food poisoning incidents will take into account the nature and severity of the allegations.
- 4.8.3** Where formal enforcement action is necessary, it will be directed against those who are responsible for preventing the offence from occurring or for carrying out the remedial work. In the case of a Hygiene Improvement Notice, this will be served on the food business operator of the business. Where several individuals share responsibility, the Council will take action against those who can be shown to be in breach.

5. SPECIFIC ENFORCEMENT AREAS

5.1 Inspections and Interventions.

- 5.1.1** Under normal circumstances, inspections and interventions at food premises will be made without prior warning. 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 in order to discuss particular issues or matters arising from a previous visit.
- 5.1.2** Officers will identify themselves at the premises at the time of entry 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.
- 5.1.3** The main purpose of a 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.
- 5.1.4** The officer will state the purpose of the inspection at the start of the visit with the person in charge at that time. Inspections can involve discussions with all or some of the food handlers working at the premises at that time. At the conclusion of all programmed inspections, the officer will offer to discuss their findings and will normally give to the person in charge a completed report of visit form (see section 6.3.7 below) or where one is not left on site, the officer will write to the food business operator confirming their visit

5.1.5 Officers will offer to supply any relevant leaflets or guidance notes at the time of inspection if they have them or send them later, if requested. Letters can be translated into other languages if requested and interpreters can be used if necessary. Where issues of interpretation or inconsistency arise, the authority will liaise with the FSA, Primary Authority, Home authority, or other authorities.

5.1.6 Generally, enforcement will be undertaken in a graduated approach. In the first instance, a discussion of requirements will take place with the proprietor or his representative. When considering formal enforcement, account will be taken as to whether there is evidence of significant breaches of food hygiene requirements. Poor compliance with the requirement to have written food safety management systems in line with HACCP ('hazard analysis and critical control points') and lack of food handler hygiene training would likely lead to other contraventions which are significant. In the absence of other significant breaches, the officer may consider a formal approach where:

- there is a significant risk to public health
- breaches of the requirement to have written food safety management systems in relation to HACCP and training etc. would likely lead to significant breaches of other requirements in the hygiene regulations if not remedied and in doing so gives rise to an unacceptable risk to food safety; or
- the business has already failed to respond to an informal, educative approach.

5.1.7 Offences of a minor nature may be dealt with by way of advice, verbal warning, a follow up letter and a report of visit form, or any combination of these. The type of offence liable to this approach would include the failure to register the food business within the prescribed legal time limit.

5.1.8 If contraventions of poor hygiene practices are found, where resources permit, the authority will arrange for a further visit to be carried out. In the case of compliance issues for Article 5 of EC Regulation 853/2004 (the HACCP requirement) then officers will take a graduated approach to enforcement depending upon the nature, size and risk posed by that business.

5.1.9 Where it is inappropriate for offences to be dealt with by an informal approach, then matters will be discussed between the officer and their line manager. A decision will then be taken as to what course of action to take. These situations might include:-

- where there is an imminent risk to health;
- exposure for sale of food which is unfit for human consumption;
- failure to comply with a Hygiene Improvement Notice;
- failure to comply with a Remedial Action Notice
- failure to comply with a previous informal letter to remedy breaches of legislation;
- a cumulative breaches of food hygiene legislation creating a risk of contamination;
- an act of obstruction.

5.2 Food sampling

The Council's food sampling policy is attached as Appendix A. It outlines the approach that the authority will take when undertaking food sampling that is line with the relevant Code of Practice and legislation issued under the Act.

5.3 Investigations

5.3.1 The Council will respond to, and where appropriate, investigate all complaints about food, food premises, food handling practices etc. with initial contact being made within 3 working days. The response may vary according to the nature of the allegation and its severity. In most cases, it will be appropriate to inform the business that a complaint has been received and the nature of the allegation. Where it is necessary to protect the identity of the complainant e.g. where there may be intimidation, then advice would be sought from the legal team before releasing the complainant's personal details may be withheld pending legal advice.

5.3.2 The Council will respond to all reports of food poisoning received from the Public Health England (PHE) where a food business has been implicated. The response itself and the time taken to respond may vary according to the nature of the allegation, and in most instances where the problem is likely to be ongoing or recent, a visit will be made the same day. Where the business premises is located outside the Council's area, then the relevant authority will be notified.

5.3.3 In responding to complaints from whatever source, the investigating officer will liaise, where necessary, with the originating authority for the food in question. Where resources allow and where necessary, the complainant will be kept informed of the progress of the investigation and notified of the eventual outcome. Sometimes complaints are anonymous in these instances the complainant will not be able to be kept informed.

5.3.4 Where complaints have been received, the food business operator responsible for any offence shall be notified as soon as is reasonably practicable unless it is not appropriate to do so e.g. where it might hinder a separate investigation. The investigating officers will, and in any event when requested, keep the food business operator informed of the progress of the investigation. At the end of the investigation, they will be informed of the outcome and any further action to be taken by the Council.

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

5.4.1 The right to privacy and respect for personal property are key principles of the Human Rights Act 1998. Powers of entry, search and seizure will be fully justified and recorded before use, and officers would consider if the necessary objectives can be met by less intrusive means.

Section 32(4) of the Food Safety Act 1990 and regulation 16(5) of the Food Safety and Hygiene (England) Regulations 2013 permit an authorised officer to take such other persons they consider necessary. The Council will seek assistance from suitably competent and experienced persons to help advise where appropriate.

6. ENFORCEMENT OPTIONS

6.1 There are a number of enforcement options available to the authorised officers where they have identified contraventions of the law. The options include: -

- taking informal action;
- using statutory notices e.g. Hygiene Improvement, Remedial Action and Detention Notices;
- using simple cautions;
- suspending, revoking or refusing to renew an Approval;
- prosecution (which can be taken as well as issuing notices).

6.2 This part of this policy provides detailed guidance on when each of these options may be considered. In each situation, the officer will need to assess the degree of risk, the seriousness of the offence, the technical means of remedying the situation along with the history of compliance and the potential for a successful conviction.

6.3 The decision as to which type of enforcement action is appropriate must always be governed by the particular circumstances of the case. Where appropriate, a staged approach to enforcement should be adopted and in the first instance businesses should be given the opportunity to discuss and remedy problems before action is taken, unless immediate action is required.

6.3 Informal Action

6.3.1 Informal action may consist of any or all of the following:

- giving advice and offering general assistance and guidance;
- issuing verbal warnings of contraventions;
- writing to the business requiring action.

6.3.2 Authorised Officers will use informal procedures as long as they believe such procedures will secure compliance with the law within a time scale that is reasonable in the circumstances. However, the Codes of Practice issued under the Act dictate that certain formal procedures shall be taken in particular situations e.g. where there is an imminent risk to health. These procedures are outlined in the appropriate sections below.

6.3.3 If the officer decides not to use formal procedures (Notices, cautions or prosecution), but prefers to use informal methods such as giving written advice, this should not produce a lower standard of compliance with the Act and ancillary legislation than would be achieved by the use of formal legal procedures.

6.3.4 While the action taken by the officer will depend on the circumstances of the particular case, for guidance purposes only, the Council considers in the following circumstances informal action may be appropriate:-

- the offence is not serious enough to warrant formal action e.g. a minor technical offence which creates little or no risk to health;
- from the past history, it can reasonably be expected that informal action will achieve compliance;
- confidence in the business management involved is reasonably high.

6.3.5 Where informal action has already been adopted in relation to the same Food Business Operator, but without success, officers will consider using a more formal approach. In the first instance, this may include the serving of a Hygiene Improvement Notice subject to any guidance laid down in the Codes of Practice issued under the Act.

6.3.6 Where an officer offers advice following an inspection, they will normally confirm that advice in writing. Copies of correspondence and inspection reports will be sent to the registered office of a limited company, the head office for an unlimited company and for a sole trader the premises visited

or home address depending on the circumstances, especially in respect of small businesses. Correspondence will sometimes be sent by email if an email address is provided by the food business operator .

6.3.7 Inspection reports must be issued following all programmed inspections. This applies even in those circumstances where conditions at the time of inspection are satisfactory. The minimum details which must be included in post inspection reports include: the date and time of inspection, the type of premises, name of the food business operator, address of the premises, persons seen/interviewed, areas inspected, records examined, details of samples procured and a summary of action to be taken by the authority.

6.3.8 All letters sent to businesses following food hygiene inspections will distinguish a legal requirement from a recommendation, give a time scale for compliance and may state the regulation being contravened. It will also give the contact details for the manager and the officer who carried out the inspection and where to write to. Informal post inspection letters will normally be sent out within 10 working days of the inspection.

6.4 Hygiene Improvement Notices

6.4.1 Authorised officers should consider the issue of Hygiene Improvement Notices in accordance with the guidance in the Code of Practice issued under the Act. Hygiene Improvement Notices would normally be appropriate in the following circumstances:

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

6.4.2 The use of Hygiene Improvement Notices would not be appropriate in the following instances:

- where the contravention was an ongoing one e.g. cleaning, personal hygiene and food handling practices;
- in transient situations e.g. one day events where the service of emergency prohibition notices might be appropriate;
- for recommendations as to good practice that go beyond the basic legal minimum standard;
- where there is an imminent risk of injury to health.

The examples given in paragraphs 6.4.1 and 6.4.2 are not exhaustive.

6.4.3 Failure to comply with a Hygiene Improvement Notice will normally result in prosecution. In deciding whether a prosecution shall follow, consideration shall be given to the following:

- any explanation consequently offered by the proprietor;
- the nature and extent of any work that has been carried out as well the likely completion time for the remainder of the work;
- where the notice incorporates a schedule containing more than one contravention, what proportion of the works have been completed and if the outstanding works pose a risk to food safety;
- whether other action, such as issuing a simple caution in accordance with the relevant Home Office circular would be not appropriate or effective.

6.4.4 Where possible, officers will try and agree a reasonable time limit for compliance with a Hygiene Improvement Notice with the food business operator. Once the Notice has been served any requests for extensions of time of time for compliance will need to be made in writing to the officer concerned **before** the notice expires and will only be granted in exceptional circumstances. Officers will normally revisit the premises the next working day after the notice has expired to check compliance.

6.5 Use of Detention Notices and Seizure Powers

6.5.1 The use of the detention and seizure powers under Section 9 of the Act and other regulations made under it, will be used following the guidance outlined in the Codes of Practice issued under the Act. These will be normally be prompted where the authorised officer believes that the food fails to comply with the food safety requirements and has not been produced, processed or distributed in compliance with 'Hygiene Regulations' as defined in regulation 2 of the Food Hygiene (England) Regulations 2006 but it may be as a result of other regulations made under the Act.

6.5.2 Under normal circumstances, food will be formally detained using a Detention Notice where it has been implicated in a food poisoning or food contamination incident, or where an instruction or action request has been given to the Council from an official source e.g. the FSA, to formally detain it pending examination or analysis. In these instances, the food will be submitted for examination or analysis and the Detention Notice will remain in force until the examiner/analyst reports that it meets food safety requirements. Once the examiner/analysis has reported, the Detention Notice will be lifted by advising to the owner of that food that it can be used or appropriate action needs to be taken to remove it from the food chain as soon as is reasonably practicable. Chemical analysis is conducted by the

Public Analyst who will sometimes carry out microbiological examination. The Public Health England London Food Water and Environmental Laboratory Services carry out microbiological examination of food and water.

6.5.3 Food may be seized following an adverse report from the food examiner or public analyst following formal detention or where it appears to the authorised officer that it is clearly unfit for human consumption e.g. a meat pie covered in mould growth. Where food is seized then the officer will deal with it in accordance with the Act and relevant codes of practice i.e. take it before a Justice of the Peace to obtain an order for the destruction of the food.

6.5.4 Where food has been formally seized and declared unfit by a Justice Of The Peace, then consideration will be given to the commencement of legal proceedings for an offence under the Act and if appropriate, regulations made under it. Before commencing a prosecution, consideration will be given to those matters outlined in the Council's Corporate Enforcement Protocol.

6.5.5 It has been accepted practice for food businesses 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 food business operator or person in charge of the food at the time or as the result of a suggestion by the officer. This practice may have some benefits in saving time and avoiding the need to go through the formal seizure process, whilst protecting public health. This informal procedure remains acceptable if the officer has no intention of taking formal action against the food business operator 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, its previous compliance record and the confidence in the management involved.

6.6 Hygiene Emergency Prohibition Notices (HEPNs)

6.6.1 Authorised officers should consider the issue of HEPNs where the use of a premises, a process, a treatment or a piece of equipment represents or involves an imminent risk of injury to health. Regulation 8 of the Food Hygiene (England) Regulations 2006 and the Codes of Practice issued under the Act specify the steps that have to be taken when using HEPNs with the latter giving guidance on the circumstances when they might be appropriate. In considering the use of such notices, the prime consideration should be to protect public health.

6.6.2 The following instances are examples of where an HEPN might be appropriate in respect of premises use:

- where there is serious infestations by rats, mice, cockroaches or other vermin resulting in actual food contamination or a real risk of food contamination;
- serious drainage defects or flooding of the premises leading to actual food contamination or a real risk of food contamination;
- lack of a suitable and sufficient water supply;
- 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 a real risk of food contamination.

This list is not exhaustive.

6.6.3 In certain circumstances, the use of HEPNs would not be appropriate even though the food business was creating an imminent risk of injury to health. An example would be where the risk was discovered at the end of normal trading hours and the food business operator had given assurances that they would be getting a team of cleaners in to improve the position before it re-opened. Under such circumstances the officer would normally revisit before the premises re-opened.

6.6.4 In deciding whether to accept a voluntary offer to close the premises by the food business operator, the officer should obtain confirmation of the undertaking in writing and confirm with the food business operator that they would be relinquishing their rights to compensation.

6.7 Use of Remedial Action and Detention Notices

6.7.1 Remedial Action Notices (RAN) may be served on establishments subject to Approval under Article 4(2) of Regulation 853/2004 where any of the requirements of hygiene regulations are being breached and/or where an inspection under the hygiene regulations is being hampered. Officers will consider graduated approaches to enforcement and Hygiene Improvement Notice provisions before commencing with a RAN or Detention Notice according to FSA guidance.

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

- Failure of any equipment or part of an establishment to comply with the requirements of the 'Hygiene Regulations' as defined by Regulation 2 of the Food Hygiene (England) Regulations 2006
- 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 Hygiene Regulations; and

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

Circumstances which might lead to the issue of a Detention Notice include;

- Where there are indications or evidence of food being unsafe at an establishment, therefore examination/ analysis is necessary, including the taking of samples.

6.7.3 Remedial Action Notices shall be served as soon as practicable stating why the Notice is being served and the Notice will also specify the breach and action needed to remedy it.

6.7.4 As soon as the authorised officer who served the original Remedial Action Notice is satisfied that the action required in the notice has been taken, the notice will be withdrawn by a further notice in writing.

6.7.5 An authorised Officer may at an establishment subject to Approval under Article 4 (2) of regulation 853/2004, serve a Detention Notice on the relevant food business operator or his duly authorised representative a requiring the detention of any food for the purposes of examination/analysis (including the taking of samples)

6.7.6 As soon as the authorised officer who served the original Detention Notice is satisfied that the food need no longer be detained, a further Notice in writing will be served to withdraw the original Detention Notice.

6.7.7 Any person who fails to comply with a Remedial Action Notice or a Detention Notice is guilty of an offence; and legal action will be taken.

6.8 Simple Cautions

6.8.1 The Council may consider issuing a simple caution, in appropriate cases, as an alternative to a prosecution. In doing so, reference will be made to the appropriate Home Office Circular and to the Council's Corporate Enforcement Protocol including the public interest test to determine the most suitable course of action. Under normal circumstances, the purpose of a simple caution is to:-

- deal quickly and simply with less serious first time offences;
- divert less serious offences away from the Courts;
- reduce the chance of repeat offences.

6.8.2 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 18 years of age or over
- the offender admits that they committed the crime and has not raised a defence
- the offender agrees to be given a caution

6.8.3 Where a person declines to accept a simple caution, it will be necessary to consider taking alternative enforcement action. This could include prosecution in accordance with the criteria laid down in the Council's Corporate Enforcement Protocol, the Code for Crown Prosecutors and relevant Home Office guidance.

6.9 Prosecution

Prosecution is only one of a number of enforcement options available to the Council. Each case needs to be judged on its own merits and in accordance with the Council's Corporate Enforcement Protocol and policies and any deviation from policy must be discussed with Senior Managers and or the Legal team and recorded. The prosecution process is attached in Appendix B.

Appendix A

EAST CAMBRIDGESHIRE DISTRICT COUNCIL

FOOD SAMPLING POLICY

1. This policy sets out the general principles and arrangements by which microbiological food sampling is carried out in order to gather information about the microbiological quality and possible presence of harmful micro-organisms in particular foods, food equipment or the food environment which in the District. There will be times when arrangements must be made for the chemical analysis of foods, food equipment or the environment.
2. Food/equipment/environmental sampling for microbiological examination or chemical analysis makes an important contribution to the protection of public health and food law enforcement. Microbiological samples will normally be submitted to the Health Protection Agency (HPA) that is United Kingdom Accreditation Service (UKAS) accredited. However, from time to time, other arrangements may need to be made for food to go other UKAS accredited food examiners. The Council appoints a Public Analyst (PA) who operates from a UKAS accredited laboratory. The PA may undertake microbiological examination but will normally undertake chemical analysis, for example regarding matters involving imported foods with chemical residues.
3. In procuring samples, it is acknowledged that Hazard Analysis Critical Control Point or HACCP has an important role to play in ensuring that food is handled in a way to reduce the risk of microbiological, chemical or physical contamination and that 'end product' testing provides a means of verification. In many cases, sampling takes place for surveillance purposes and as a way of providing confidence that food safety procedures are adequate.
4. The main aims and objectives of food sampling are to:
 - a) 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;
 - b) 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;

- c) Help determine whether advice or enforcement action would be appropriate where it is suspected that poor practices and procedures exist;
 - d) Evaluate the effectiveness of stock rotation and control, and to assess the microbiological quality of food manufactured, distributed or retailed in the local area.
 - e) Identify contraventions of food safety legislation;
 - f) Act as a mechanism to improve hygiene standards through giving advice and guidance in feedback following sampling.
 - g) Investigation of food poisoning outbreaks or individual notifications of food-borne illness
5. In deciding whether to sample a particular food, consideration will be given to any further processing of that food by caterers or consumers that will reduce or eliminate micro-organisms prior to consumption.
6. The actual number of samples submitted for examination may differ from year to year, but the Council aims, where resources allow, to collect and submit samples to the PHE in accordance with an annually agreed sampling programmes.
7. The Council will participate in the following types of sampling:
- a) General and ad hoc local sampling for the following reasons:
 - general food surveillance to assess local food handling practices, local events and initiatives concerning issues particularly relevant within the authority's boundary;
 - in response to food contamination and food poisoning incidents;
 - in response to complaints;
 - in connection with home or originating authority responsibilities;
 - local projects e.g. those instigated by the local PHE ;
 - as part of a food hygiene inspection to help assess hygiene standards and procedures.
 - b) National sampling surveys i.e. participation in EU coordinated control programmes, PHE voluntary coordinated programmes, county or regional sampling programmes where specific foods are targeted.
 - c) Food sampling defined by statute e.g. dairy products and shellfish
8. Samples will be procured by taking a sufficient amount of the sample for examination, normally on the advice of the laboratory or protocol in use.

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 the person in charge of the food at the time. Where the quantity or frequency of sampling is likely to give rise to significant financial consequences, the officer will consider making a nominal payment if the samples are not purchased. There may be occasions when for legal reasons, full payment will be made for the sample. In any event, the officer should offer to give the food business operator, their representative or the person in charge of the food at the time a receipt for, or sign a record of all samples that they have taken or purchased.

9. When a food sample has been examined/analysed and the sampling officer has evidence that an alleged offence has been committed under the relevant regulations, they shall, as soon as is reasonably practicable notify the manufacturer/supplier or food business operator of the food in accordance with requirements of the relevant codes of practice issued under the Act.

Appendix B

EAST CAMBRIDGESHIRE DISTRICT COUNCIL

FOOD SAFETY PROSECUTION POLICY

1. Introduction

1.1 Officers will have regard to the Corporate Enforcement Protocol and use discretion to determine the most appropriate course of action. The Council's Constitution determines who has delegated authority to make the decision to prosecute for food safety matters. As part of considering the case for the prosecution, the Environmental Services colleagues, expert professionals / witnesses and authorised officers will be consulted as part of the decision making process.

1.2 Dependant on the case in question, the following people may also need to be consulted as appropriate: -

- Fully authorised food safety enforcement officers;
- External professional/experts in connection with food safety issues e.g. food examiners and food analysts.

1.3 Officers will gather evidence and prepare the enforcement case. Officers will normally do this in consultation with the Senior Environmental Health Officer (SEHO) and, where appropriate, the Environmental Services Manager and the Council's legal services team. The decision to prosecute is kept under continuous review. This ensures that any new facts or circumstances, in support of or undermining the Council's case, are taken into account in the decision to continue or terminate the proceedings. Prosecutions must be authorised by the relevant Director or Service Lead and the decision on the action to be taken if any will be taken by the Principal Solicitor in consultation with the Environmental Health Department

2 The Prosecution Policy

2.1 This part of this document outlines the prosecution policy of the Council and describes, in broad terms, the criteria and basis of taking matters before a court of law. In relation to food safety, the Council's Corporate Enforcement Protocol forms part of the overall strategy for enforcement and for dealing with offences. The Council conforms to the Regulators Code and Enforcement Concordat and this policy is consistent with these. The overall enforcement strategy of the food safety enforcement function is detailed within the remainder of this document.

- 2.2 This Council takes its obligations including those arising from human rights legislation seriously. It will endeavor at all times to act compatibly with this legislation and give due regard to the rights of the individual.
- 2.3 It is the policy of the Council when dealing with all offences to:
- ensure, consistency and evenhandedness;
 - specify and to observe the criteria for alternative courses of action; and
 - take action which assists the prevention of potential, continuing or recurring offences of a similar nature.
- 2.4 Enforcement action ranges from giving advice and issuing informal warnings, to cautioning and prosecution. Decisions on the type of action that will be taken in relation to a particular offence are based on the following criteria:
- the nature of the alleged offence;
 - the seriousness of the alleged offence;
 - the status, circumstances, previous history etc. of the alleged offender;
 - the reliability and scope of the evidence, including the likelihood of the alleged offender being able to establish a statutory defence.
 - the importance of the case, in terms of benefit to the community, of a particular course of action;
 - the prevalence of the class of alleged offence and whether a prosecution could act as a deterrent and encourage compliance generally;
 - regard to authoritative advice, guidelines and recommendations; any explanation offered by the alleged offender and their willingness to prevent a recurrence;
 - any previous advice given to the alleged offender by this, or another authority;
 - if a complainant or employee is involved, the effect (financial, physical, psychological etc.) which the offence creates and their willingness, or otherwise, to cooperate with an investigation.
- 2.5 The Council recognises that most businesses wish to comply with the law. However, there are occasions when action, including prosecution, will be considered against those who have flouted the law, or acted irresponsibly. Those matters that involve intentional, repeated or reckless acts and those concerned with public safety will be specifically reported and considered for prosecution.
- 2.6 In accordance with the Council's Corporate Enforcement Protocol when considering a prosecution, the Council will have regard to the Code for Crown Prosecutors. This means the following criteria will be considered: i)

whether the standard of evidence is sufficient for there to be a realistic prospect of conviction

ii) whether a prosecution is in the public interest:

Public interest factors include (but this is not an exhaustive list)

- The likely penalty, i.e. if the Court is likely to impose a very small or nominal penalty this is a factor against prosecution;
- Currency i.e. the time which has elapsed since the date of any alleged offence;
- Youth, whether the prosecution would have an adverse impact on his / her future prospects that is disproportionate to the seriousness of the offending
- Old age; infirmity, or other medical condition, in particular, whether the accused is fit to stand trial.

2.7 Having decided to prosecute, the policy of the Council is to proceed without any unnecessary delay and to select offences that:

- reflect the seriousness of the case;
- enable a court to exercise adequate sentencing powers; and
- permit the case to be presented in a clear and precise manner.

2.8 Once the prosecution has been determined by a court of law, the Council will contact its witnesses to tell them the outcome.

Add Glossary

APPENDIX C - GLOSSARY

Approved Premises	A product specific premises subject to the approval rules of Regulation EC No 853/2004
CCDC	Consultant in Communicable Disease Control
CIEH	The Chartered Institute of Environmental Health
HEPN	Hygiene emergency prohibition notice served under Regulation 8 of the Food Hygiene (England) Regulations 2006 requiring something to stop such as an activity or the use of a piece of equipment, part or all of a premises.
Hygiene Improvement Notice	A Notice issued under either Regulation 6 of the Food Hygiene (England) Regulations 2006 or Section 10 of the Food Safety Act 1990 stating what is contravened, what must be done to rectify the matters and giving a time period in which to put matters right.
PACE	Police and Criminal Evidence Act 1984
PHE	Public Health England
Primary Authority	A statutory scheme, established by the Regulatory Enforcement and Sanctions Act 2008 (the RES Act). It allows an eligible business to form a legally recognised partnership with a single local authority in relation to regulatory compliance.
Remedial Action Notice	RAN or Remedial Action Notice is served under Regulation 9 of Regulation EC No 853/2004 requiring compliance with food safety law in establishments subject to approval under those regulations.

East Cambridgeshire District Council

HEALTH AND SAFETY ENFORCEMENT POLICY

March 2015

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East Cambridgeshire District Council

HEALTH AND SAFETY ENFORCEMENT POLICY

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 risk-based, consistent and effective enforcement of health and safety legislation. The Council through its authorised officers will have regard to the Central and Local Government Concordat on Good Enforcement; the National Local Authority (LA) Enforcement Code; the Legislative and Regulatory Reform Act 2006; the Regulators Code; the Regulatory Enforcement and the Sanctions Act 2008 (and Orders made under it). Authorised officers will carry out duties in accordance with guidance issued by the Health and Safety Executive (HSE), as required by the Section 18 Standard of the Health and Safety At Work etc Act 1974 (HSAW).
- 1.2** The Council has a Corporate Enforcement Policy which outlines the general approach the Council take when considering enforcement action. This policy builds on the Corporate Enforcement Policy and outlines in detail the approach taken by the Environmental Health Team in relation to health and safety enforcement
- 1.3** This policy is designed to set out the arrangements by which the principles of proportionality, consistency, transparency, helpfulness, openness, accountability and targeting of resources will be incorporated into actions.
- 1.4** The officers who carry out the enforcement of health and safety legislation are Council staff or contractors who are authorised in writing to enforce specific tasks and duties in accordance with the Council’s scheme of delegation. In some instances, external consultants may be authorised to enforce such powers and duties on behalf of the Council. All authorised officers are to be appropriately trained and experienced for the duties that they are asked to perform. Promotion of consistency and competency of staff is to be ensured through continual monitoring and review including annual review of performance and appraisals and the implementation of recognised training needs.
- 1.5** Where chemical, biological or radiological contamination etc. poses a potential health and safety concern, officers will, where appropriate, seek medical or other expert advice from organisations such as the Public Analyst (PA), Public Health England (PHE) and Employment and Medical Advisory Service (EMAS).

2. STATEMENT OF INTENT

- 2.1** It is the Council's policy to strive to ensure that the risks to peoples’ health and safety from work activities (for which it is the enforcing authority) within the Council’s District are properly controlled and managed, in order to reduce risks associated with work to the lowest level which is reasonable practicable.

- 2.2** Interventions will be risk –based. When considering the appropriate course of action to be taken following an intervention, this Policy must be read in conjunction with relevant guidance from the HSE, and relevant guidance from other bodies such as PHE and the Chartered Institute of Environmental Health (CIEH).
- 2.3** All officers, when making enforcement decisions, must follow this Policy. They must also have regard to, and follow as appropriate, relevant Service Operating Procedures (SOPs).
- 2.4** In the first instance, officers will usually adopt an educative approach to those responsible for securing compliance with relevant health and safety legislation (the duty holders). Officers will provide clear information, guidance and advice from recognised trade associations, the HSE and other professional bodies. Where matters continue, officers will enforce the law by using a range of enforcement options including: verbal and written warnings, use of statutory notices, simple cautions and prosecution. Prosecution will not normally constitute a punitive response to very minor contraventions of health and safety legislation.
- 2.5** This policy recognises and the specific guidelines contained in Approved Codes of Practice (ACOPs) and guidance issued by those bodies listed in paragraph 2.2 above and supports the Primary Authority principle (see Appendix A).
- 2.6** It is expected that departures from these policy guidelines will be rare and only following consideration by the Environmental Services Manager in consultation with the service Director. Where appropriate, liaison will take place with other enforcement agencies where there may be a common interest and/or to clarify enforcement responsibility or interpretation.
- 2.7** In enforcing health and safety legislation, the Council will strive to fulfil the relevant HSE enforcement objectives to reduce risks to health and to protect people. The Council will also strive to implement HSE aims and priority programmes.

3. GENERAL PRINCIPLES

- 3.1** The Council believes in firm but fair enforcement of health and safety law and officers will take account of relevant ACOPs and guidance about the extent of the risks and the effort that has been applied to control them by duty holders.
- 3.2** This Council believes that the enforcement of health and safety law should be informed by the principles of proportionality in applying the law and securing compliance; consistency of approach; targeting of enforcement action; transparency about how it operates and accountability for the Council's actions.

4. PRINCIPLES OF ENFORCEMENT

The enforcement of health and safety legislation is guided by the principles that are contained within the Central and Local Government Concordat on Good Enforcement, which has been adopted by the Council and Regulators' Code. This constitutes a framework for local authorities to work to by committing them to good enforcement policies and procedures. The principles are as follows:

4.1 Standards

The Council remains accountable to Central Government, the HSE and the public 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 business 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.

4.2 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 be prepared to discuss general issues, specific compliance failures or problems with duty holders, employees and their representatives.

4.3 Helpfulness

The Council believes that prevention is better than cure and that its role therefore involves actively working with business, especially small and medium sized businesses, to advise and assist on compliance. It will provide a courteous and efficient service and the staff will identify themselves by name. Officers will provide a contact point for further dealings with the Council and will encourage business to seek advice/information from them. Applications for licences, registrations, etc, will be dealt with efficiently and promptly. The Council will ensure that, wherever practicable, its enforcement services are effectively coordinated to minimise any unnecessary overlaps and time delays.

4.4 Complaints about Service

The Council has a Complaints procedure which is available to the public in case of complaints made against it or its officers. Where disputes cannot be resolved, any rights of appeal or complaint will be explained by the officer, along with details of the process and the time-scales involved.

4.5 Proportionality

- 4.5.1** Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties (duty holders) expect that action taken by the Council to achieve compliance or bring duty holders to account for non-compliance should be proportionate to any risks to health and safety, or to the seriousness of any breach, which includes any actual or potential harm arising from a breach of the law. In practice, applying the principle of proportionality means that the Council will take particular account of how far the duty holder has fallen short of what the law requires and the extent of the risks to people arising from the breach.
- 4.5.2** Some health and safety duties are specific and absolute. Others require action so far as is “reasonably practicable”. The Council will apply the principle of proportionality in relation to both kinds of duty. Deciding what is “reasonably practicable” to control risks involves the exercise of judgement. Where duty holders must control risks so far as is reasonably practicable, the Council, in considering protective measures taken by duty holders must take account of the degree of risk on the one hand, and balance this against the cost, time or trouble,

involved in the measures necessary to avert the risk. Unless it can be shown that there is gross disproportion between these factors and that the risk is insignificant in relation to the cost, the duty holder must take measures and incur costs to reduce the risk.

- 4.5.3** The Council will expect relevant good practice to be followed such as is found in HSE and industry Guidance. Where relevant good practice in particular cases is not clearly established, health and safety law effectively requires duty holders to establish explicitly the significance of the risks to determine what action needs to be taken. Ultimately, the courts determine what is reasonably practicable in particular cases.
- 4.5.4** Some risks may be so serious that they cannot be permitted irrespective of the consequences.

4.6 Consistency

- 4.6.1** Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.
- 4.6.2** Duty holders managing similar risks expect consistency from the Council. This includes any advice that is given, the use of enforcement notices, decisions on prosecution and in the response to accidents /incidents at work.
- 4.6.3** The Council recognises that in practice consistency is not a simple matter, inspectors are faced with many variables including the degree of risk, the attitude and competence of management, any history of incidents or breaches involving the duty holder, previous enforcement action, and the seriousness of any breach, which includes any potential or actual harm arising from a breach of the law. Decisions on enforcement action are discretionary, involving judgement by the enforcer. This Council will have arrangements in place to promote consistency in the exercise of discretion, including effective arrangements for liaison with other enforcing authorities

4.7 Transparency

- 4.7.1** Transparency means helping duty holders to understand what is expected of them and what they should expect from the Council. It also means making clear to duty holders not only what they have to do but, where this is relevant, what they don't. That means distinguishing between what is a legal requirements and what is recommended (but is not compulsory) through advice or guidance.
- 4.7.2** Transparency also involves the Council having arrangements for keeping employees, their representatives, and victims or their families informed. These arrangements must have regard to legal constraints and requirements (including data protection).
- 4.7.3** This statement sets out the general policy framework within which the Council should operate. Duty holders, employees, their representatives and others also need to know what to expect when an inspector calls and what rights of complaint are open to them. The Complaints procedure is set out on the Council's website.
- 4.7.4** In addition all Council officers are required to issue the HSE leaflet "*What to expect when a health and safety inspector calls*" to those they visit. This explains what employers and employees and their representatives can expect when a

health and safety inspector calls at a workplace. Officers will follow Standard Operating Procedures on enforcement action and in particular:

- when officers offer duty holders information, or advice, face to face or in writing, including any warnings, officers will tell the duty holder what to do to comply with the law, and explain why. Inspectors will, if asked, write to confirm any advice, and to distinguish legal requirements from best practice advice;
- in the case of improvement notices 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, and that in the inspector's opinion a breach of the law has been committed;
- in the case of a prohibition notice the notice will explain why the prohibition is necessary.

4.8 Targeting

- 4.8.1** Targeting means making sure that resources are targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled; and that action is focused on the duty holders who are responsible for the risk and who are best placed to control it – whether employers, manufacturers, suppliers, or others.
- 4.8.2** The Council has systems for deciding which inspections, investigations or other regulatory contacts should take priority according to the nature and extent of risks posed by a duty holder's operations. The duty holder's management competence is important, because a relatively low hazard site poorly managed can entail greater risk to workers or the public than a higher hazard site where proper and adequate risk control measures are in place.
- 4.8.3** Any enforcement action will be directed against duty holders responsible for a breach. This may be employers in relation to workers or others exposed to risks; the self-employed; owners of premises; suppliers of equipment; or employees themselves. Where several duty holders have responsibilities, the Council may take action against more than one when it is appropriate to do so in accordance with this policy.

5. SPECIFIC ENFORCEMENT AREAS

5.1 Routine Inspections

- 5.1.1** The Council will have regard to the National Local Authority (LA) Enforcement Code and guidance contained within the HSE Circular LAC 67/2 (Rev 4) which requires the Council to prioritise interventions according to activities identified in Annex A of the circular in setting out work plans. Category A premises (high risk) will be inspected according to the frequency found in HSE LAC 67/2 (rev 4) guidance.
- 5.1.2** Inspections and visits to premises and work activities may be made by appointment or without prior warning. Appointments may be advisable e.g. where it is prudent that the duty holder or manager is on site in order to discuss particular issues or matters arising.

- 5.1.3** Officers will normally identify themselves at the start unless for justifiable reasons this will defeat the object of the visit e.g. the visit is for surveillance purposes. In any event, officers will show their identification, if asked, and provide means of checking that identity if necessary.
- 5.1.4** The officer will state the purpose of the inspection at the start of the visit with the person in charge at that time. Inspections can involve discussions with all or some of the employees and contractors working at the premises at that time. At the conclusion of inspection, the officer will offer to discuss their findings with the employees and their representatives, complete and give the person in charge a completed Report of Inspection form, inviting them to sign this.
- 5.1.5** Officers will offer to supply any relevant leaflets or guidance or email links to that guidance at the time of inspection or afterwards. Letters can be translated into other languages if requested and interpreters can be arranged where necessary. Where issues of interpretation or inconsistency arise, the authority will liaise with the Primary Authority (where a duty holder has this in place) if appropriate, or the Health and Safety Executive (HSE).
- 5.1.6** Written evidence should be issued following all site interventions. This applies even in those circumstances where conditions at the time of inspection are satisfactory. The minimum details which must be included in post- inspection reports include: Date and time of inspection, address of the premises, persons seen/interviewed, any items requiring attention and a summary of action to be taken by the officer.
- 5.1.7** If contraventions are found and based on risk, the Council may arrange for a further visit to be carried out to ensure that significant breaches have been remedied. If notices are served, officers may visit to monitor compliance whilst the notice is in place and will visit immediately following the expiry of the notice.

5.2 Investigations

- 5.2.1** The Council will respond to, and where appropriate, investigate all complaints about health and safety at work within 3 working days. The response may vary according to the nature of the allegation and its seriousness. It may be necessary to protect the identity of the complainant e.g. where that person is an employee or where there is a risk of intimidation. Investigation will be undertaken to determine:
- causes;
 - whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law;
 - lessons to be learnt and to influence the law and guidance;
 - what response is appropriate to a breach of the law.
- 5.2.2** The Council will respond to accidents or incidents that are reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR). In selecting which complaints or reports of incidents, injury or occupational ill health to investigate and in deciding the level of resources to be used, the Council will take account of the HSE Enforcement Management Module (EMM) and the following factors:

- the severity and scale of potential or actual harm;
- the seriousness of any potential breach of the law;
- knowledge of the duty holder's past health and safety performance;
- the enforcement priorities;
 - the practicality of achieving results;
 - the wider relevance of the event, including serious public concern.

5.2.3 In the case of serious accidents or incidents, including fatalities or where the problem may be of a serious ongoing nature, a visit will be on the same day. If there are special reasons why a same- day visit cannot be made, this will be recorded.

5.2.4 In responding to complaints and carrying out interventions, the officer will liaise with the Primary Authority (where the duty holder has one).

5.2.5 Where the matter is of a serious nature or the complainant /injured person requests this, they will be kept informed of the progress of the investigation (subject to the ongoing nature of any formal investigation) and notified of the eventual outcome.

5.2.6 The officer will keep the duty holder or their representative informed of the progress/outcome of the investigation (subject to the ongoing nature of any formal investigation).

5.3 Other Intervention Strategies

5.3.1 The Council will have regard to the National Local Authority (LA) Enforcement Code and guidance contained within the HSE Circular LAC 67/2 (Rev 4) which requires the Council to prioritise interventions according to activities identified in Annex A and the HSAW Section 18 Standard, in setting out work plans.

5.3.2 Officers will “hazard spot” at other interventions including those for food hygiene and follow matters up in the same way as when full inspections are undertaken.

5.3.3 The Council may inspect certain local activities based on risk.

6. ENFORCEMENT OPTIONS

6.1 Having regard to the National Local Authority (LA) Enforcement Code and HSE Enforcement Management Module (EMM) generally, enforcement will be undertaken in a graduated approach. There are a number of enforcement options available to authorised officers where they have identified contraventions of the law. These options include: -

- taking informal action;
- using statutory notices e.g. Improvement, Prohibition;
- simple cautions;
- prosecution.

6.2 This part of this policy provides detailed guidance on when each of these options may be considered. In each situation, the officer will have regard to the EMM and need to assess the degree of risk, the seriousness of the offence and the technical means of remedying the situation along with the history of compliance. The decision

as to which type of enforcement action is appropriate must always be governed by the particular circumstances of the case. Where appropriate, a staged approach to enforcement should be adopted. In the first instance, businesses should be given the opportunity to discuss and remedy problems before any formal action is taken (unless it is of a serious nature and requires immediate action).

6.3 Informal Action

6.3.1 Informal action may consist of any or all of the following:

- giving advice and offering general assistance and guidance;
- issuing verbal warnings of contraventions;
- writing a letter requiring action.

6.3.2 Officers will use informal procedures as long as they believe these will secure compliance with the law within a time scale that is reasonable in the circumstances.

6.3.3 If the officer decides to use informal methods such as giving written advice, then this should not produce a lower standard of compliance with the Act and ancillary legislation than would be achieved by the use of formal legal procedures.

6.3.4 While the action taken by the officer will depend on the circumstances of the particular case, for guidance purposes only, the Council considers the following circumstances where it may be appropriate to take informal action:

- the offence is not serious enough to warrant formal action e.g. a minor technical offence which creates little or no risk to health and safety;
- from the past history, it can reasonably be expected that informal action will achieve compliance;
- confidence in the business management involved is reasonably high.

6.3.5 Where informal action has already been adopted in relation to the same proprietor, but without success, officers will consider using a more formal approach. The options may include the serving of Notices and or prosecution.

6.3.6 Where an officer offers advice following an inspection, they should wherever possible confirm that advice in writing with a copy being enclosed for the site manager, employees and / or their representatives. The letter will be sent to the registered office for a limited company or head office for an unlimited company. A sole trader may request correspondence be sent to his or her home address instead of the place of work.

6.3.7 All letters sent to duty holders following interventions will distinguish a legal requirement from a recommendation, give a time for compliance and state the legislation being contravened. It will also give the contact details for the officer and who to contact in the event of needing further advice or wanting to contest matters with the officer's line manager.

6.4 Improvement Notices

6.4.1 Having regard to the Enforcement Management Model (EMM), officers will normally consider issuing Improvement notices in the following circumstances:

- where there are significant contraventions of legislation;

- where formal action is proportionate to the risks to the health and safety of employees or others;
- where there is a record of non-compliance with informal action for breaches of the Health and Safety at Work etc. Act 1974, ancillary legislation, and regulations made under it;
- where the authorised officer has reason to believe that an informal approach will not be successful;
- where health and safety standards are generally poor with little management awareness of statutory requirements;
- the consequences of non-compliance could be potentially serious to the health and safety of employees or others;
- although it is intended to prosecute, effective action also needs to be taken as quickly as possible to remedy conditions that are serious or deteriorating.

6.4.2 Before issuing a notice officers will take steps to ensure that the notice is being served on the right person(s) consider all the relevant guidance in codes of practice and any relevant advice issued by the HSE, PHE and CIEH. This would include any Primary Authority.

6.4.3 Failure to comply with an improvement notice will normally result in prosecution. The Council will use discretion in deciding whether to proceed with any court case. The decision whether to prosecute should take account of the evidential stage and the relevant public interest factors set down by the Director of Public Prosecutions in the Code for Crown Prosecutors. No prosecution should go ahead unless there is sufficient evidence to provide a realistic prospect of conviction, and a decision is taken that a prosecution is in the public interest. In deciding whether a prosecution should follow, consideration will be given to the following:

- any explanation consequently offered by the recipient;
- the nature and extent of any work that has been carried out as well the likely completion time for the remainder of the work;
- what proportion, if any, of the works have been completed, and whether the outstanding works pose a risk to health and safety;
- whether other action, such as issuing a simple caution in accordance with the relevant guidance would not be appropriate or effective.
- The Enforcement Management Model will also be consulted when making a decision as to the most appropriate course of action.

6.4.4 Where possible, officers will try and agree a reasonable time limit for compliance with an improvement notice with the duty holder. Once the notice has been served any requests for extensions of time for compliance will need to be made in writing to the officer concerned **before** the notice expires and will only be granted in exceptional circumstances. Information on the appeal procedures will be included with the notice. Officers will normally re-visit the premises the next working day after the notice has expired to check compliance. Notices will be included on the Register of Notices held under the Environment and Safety

Information Act 1988 where they are required to be, which is available on request.

6.5 Prohibition Notices

6.5.1 Officers will identify where there are risks normally requiring immediate formal enforcement action (these are known as “Matters of Evident Concern” (MECs)) or other risks present that could lead to multiple fatalities or multiple causes of ill-health (these are known as “Matters of Potential Major Concern” (MPMC)s). When Officers are considering the use of a prohibition notice the officer must consider:

- The consequences of not taking immediate and decisive action to protect the health and safety of employees or others would be unacceptable;
- The officer has no confidence in the duty holder that the hazard/risks will be abated without the service of such a notice.
- The Enforcement Management Model (EMM) may also be consulted to support the service of a prohibition notice.

6.5.2 A deferred prohibition notice would be appropriate where stopping the activity immediately would introduce additional risks.

6.5.3 In all cases where an officer considers that the service of a prohibition notice is the only course of action, wherever possible, the seriousness of the situation must be explained to the duty holder and/or person responsible for securing compliance with the notice.

6.5.4 Officers will contact any Primary Authority for the duty holder but on grounds of seriousness and speed, this may take place after the service of the prohibition notice and its outcome.

6.5.5 In a situation where serious or imminent danger to the health and safety of persons at or connected with a workplace from any article or substance, action may be taken to remove that danger under Section 25 of the Health and Safety at Work etc. Act 1974 subject to the same considerations outlined in 6.5.1 above.

6.5.6 Officers may need to serve improvement notices at the same time as prohibition notices regarding sustained compliance.

6.6 Simple Cautions

6.6.1 The Council may consider issuing a simple caution, in appropriate cases, as an alternative to a prosecution. In doing so, reference will be made to the appropriate Home Office circular. Officers will have regard to the Council’s Corporate Enforcement Protocol including the public interest test to determine the most suitable course of action. Under normal circumstances, the purpose of a simple caution is to:

- deal quickly and simply with less serious first time offences;
- divert less serious offences away from the Courts;
- reduce the chance of repeated offences.

6.6.2 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 18 years of age or over;**
- **the offender admits they committed the crime and has not raised a defence;**
- **the offender agrees to be given a caution**

6.6.3 Where a person declines to accept a simple caution, it will be necessary to consider taking alternative enforcement action. This could include prosecution in accordance with the Council's Corporate Enforcement Protocol, the Code for Crown Prosecutors and relevant Home Office guidance.

6.7 Prosecution

Prosecution is only one of a number of enforcement options available to the Council. Each case will be judged on its own merits in accordance with the Council's Corporate Enforcement Protocol and Policies and any deviation from policy must be discussed with senior managers and or the legal team and recorded.

6.8 Public information on Notices

Where required by the Environment and Safety Information Act 1988 safety improvement, prohibition and deferred prohibition notices are made available on request to the general public but the information will be withheld if the Council considers that a disclosure could cause harm or prejudice; or be in breach of the law.

6.9 Health and Safety Prosecution Policy

- 6.9.1** Officers will have regard to the relevant codes and rules listed in paragraph 1.1 of this Policy and the Council's Corporate Enforcement Protocol and use discretion to determine the most suitable course of action. The Council's Constitution determines who has delegated authority to make the decision to prosecute for health and safety matters. As part of considering the case for prosecution, the Environmental Services Manager, legal services colleagues, expert professionals/witnesses and authorised officers will be consulted as part of the decision-making process.
- 6.9.2** Officers will gather evidence and prepare the enforcement case. Officers will normally do this in consultation with the Senior Environmental Health Officer (SEHO) and, where appropriate, the HSE Liaison officer and the Council's legal services team. The decision to prosecute is kept under continuous review. This ensures that any new facts or circumstances, in support of or undermining the Council's case, are taken into account in the decision to continue or terminate the proceedings. Prosecutions must be authorised by the relevant Director or Service Lead and the decision on the action to be taken if any will be taken by the Principal Solicitor in consultation with the Environmental Health Department..
- 6.9.3** While the primary purpose of the enforcing authorities is to ensure that duty holders manage and control risks effectively, thus preventing harm, prosecution is an essential part of enforcement. This Council takes its obligations seriously including those arising from the human rights legislation. It will endeavour, at all times, to act compatibly with this legislation and give due regard to the rights of the individual.

6.9.4 It is the policy of the Council when dealing with all offences to:

- ensure uniformity, consistency and even -handedness;
- specify and to observe the criteria for alternative courses of action; and
- take action which assists the prevention of potential, continuing or recurring offences of a similar nature.

6.9.5 Enforcement action ranges from giving advice and issuing informal warnings, to cautioning and prosecution. Decisions on the type of action that will be taken in relation to a particular offence are based on the following criteria:

- i) The seriousness/gravity of the alleged offence, including the following considerations:
 - the risk or harm to the health, safety and welfare of employees or others;
 - failure to comply with a statutory notice served for a significant breach of legislation;
 - disregard of the health, safety and welfare of employees or others for financial reward.
 - The outcome of the Enforcement Management Model process.
- ii) The previous history of the party concerned, including the following considerations:
 - offences following a history of similar offences;
 - failure to respond positively to past warnings;
 - failure to comply with any formal notices.
- iii) The credibility of any important witnesses and their willingness to co-operate;
- iv) The willingness of the party concerned to prevent a recurrence of the problem;
- v) The importance of the case - e.g. whether it may establish a legal precedent in other companies or in other geographical areas and to deter others from similar failures to comply with the law; the general advice is, the graver the offence, the more likely the public interest factors are to be in favour of formal prosecution action;
- vi) Whether other action, such as issuing a simple caution in accordance with the relevant Home Office circular or an improvement notice or prohibition notice, would be more appropriate or effective. Note: It is possible to prosecute as well as issue a notice where a risk to health and safety still exists. Failure to comply with that notice would then become an additional offence.
- vii) Any explanation offered by the company or the suspected offender. It is always recommended that suspected offenders are invited to offer an explanation before prosecution decisions are taken and that would normally happen during an interview being held under the rules of the Police and Criminal Evidence Act 1984.
- viii) If a complainant or employee is involved, the effect (financial, physical, psychological etc.) which the offence creates and their willingness, or otherwise, to cooperate with an investigation.

6.9.6 Serious offences for which prosecution would be appropriate are illustrated by the following examples:

- where there is blatant disregard for the law, particularly where the economic advantages of breaking the law are substantial and the law abiding are placed at a disadvantage to those who disregard it;
- when there appears to have been reckless disregard for the health and safety of employees or others;
- where there have been repeated breaches of legal requirements in an establishment, or in various branches of a multiple outlet concern, and it appears that management is neither willing nor structured to deal adequately with these;
- where a particular type of offence is prevalent in an activity or an area;
- where, as a result of a significant contravention, there has been a serious accident or a case of ill-health;
- where a particular contravention has caused serious public harm;
- where there are persistent poor standards for control of health hazards.

6.9.7 The Council recognises that most businesses wish to comply with the law. However, there are occasions when action, including prosecution, will be considered against those who have flouted the law, or acted irresponsibly. Those matters that involve intentional, repeated or reckless acts and those concerned with public safety will be considered for prosecution.

6.9.8 In accordance with the Council's Corporate Enforcement Policy when considering prosecution, the Council will have regard to the Code for Crown Prosecutors. This means that the following criteria will be considered:

- i) Whether the standard of evidence is sufficient for there to be a realistic prospect of conviction;
- ii) Whether a prosecution is in the public interest;

Public interest factors include (but this is not an exhaustive list):

- The likely penalty, i.e. if the Court is likely to impose a very small or nominal penalty this is a factor against prosecution;
- Currency i.e. the time which has elapsed since the date of any alleged offence;
- Youth, whether prosecution would have an adverse impact on his / her future prospects that is disproportionate to the seriousness of the offending
- Old age; infirmity, or other medical condition, in particular, whether the accused is fit to stand trial.

6.9.9 Having decided to prosecute, the policy of the Council is to proceed without any unnecessary delay and to select offences that:

- i) Reflect the seriousness of the case;
- ii) Enable a court to exercise adequate sentencing powers; and
- iii) Permit the case to be presented in a clear and precise manner.

6.9.10 Once the prosecution has been determined by a court of law, the Council will contact its witnesses to inform them of the outcome.

6.9.11 Prosecution to Ensure Prevention

In keeping with its preventative role, the Council may use prosecution as a way to draw attention to the need for compliance and the maintenance of good standards in relation to the health, safety and welfare of employees. The Council may consider prosecution if a breach has significant potential for harm, regardless of whether it caused an injury.

6.9.12 Prosecution of Individuals

The Health and Safety at Work etc. Act 1974 allows for the prosecution of individuals who have committed offences under health and safety legislation. It is the Council's policy to identify and prosecute individuals if a conviction is warranted and can be secured. This may for example be appropriate where, despite adequate management controls, an employee blatantly ignores health and safety instruction and places either himself or his fellow workers in considerable danger. There may be occasions when individual directors have failed in their legal duties and prosecution may be appropriate.

6.9.13 Death at Work

Officers will have regard to 'Work-Related Deaths: A Protocol for Liaison'. This protocol has been agreed between the Health and Safety Executive (HSE), Local Government Association, the Association of Chief Police Officers (ACPO), the Crown Prosecution Service (CPS) and other relevant bodies. It sets out the principles for effective liaison between the Health and Safety Executive, Police Forces and the Crown Prosecution Service in relation to work related deaths, in particular if there is evidence that the crime of manslaughter or corporate manslaughter may have been committed. Where there has been a breach of the law leading to a work-related death and there is a potential for a charge of manslaughter, the Council will liaise with the Police, Coroner and Crown Prosecution Service (CPS).

If the Police or the CPS determine not to pursue a manslaughter case, the Council may consider prosecuting for health and safety offences if that is appropriate.

6.9.14 Encouraging action by the courts

Health and safety law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and in some cases imprisonment may be imposed by higher courts. The Council will continue to raise the courts' awareness of the gravity of health and safety offences and encourage them to make full use of their powers.

7. ACCIDENT INVESTIGATION POLICY

7.1 It is East Cambridgeshire District Council's policy to ensure that, where the Council is the enforcing authority, incidents; accidents; dangerous occurrences and reportable diseases are investigated using a systematic approach which takes into account the Council's Health and Safety Enforcement Policy and HSE Guidance.

7.1.1 The Council will allocate sufficient time and resources for reactive work to investigate accidents, dangerous occurrences and cases of occupational ill health based on risk. It will not be possible, nor is it necessary, to investigate all

incidents and this policy ensures that the most serious receive appropriate attention in accordance with HSE objectives and priorities.

7.2 Investigations

Investigations include telephone calls, notes, correspondence, advice and site visits made to premises where the HSAWA applies.

7.3 Reasons for investigation:

- i) to investigate the cause of a breach of health and safety law ;
- ii) to determine whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law;
- iii) to determine whether any specific breaches of legislation have occurred;
- iv) to increase the knowledge and awareness of the employer/employee;
- v) to determine whether lessons can be learnt;
- vi) to achieve any publicity arising from the incident which would have a beneficial effect is increasing knowledge and awareness of the management, general workforce and public.

7.4 Factors to consider when deciding whether to investigate:

- i) the severity and scale of potential for or actual harm;
- ii) the seriousness of any potential breach of the law;
- iii) knowledge of the duty holder's past health and safety performance;
- iv) the current HSE enforcement priorities;
- v) the practicality of achieving results;
- vi) the wider relevance of the event, including serious public concern.

8. THE CRITERIA FOR INVESTIGATION

8.1 Accidents or dangerous occurrences or diseases which will always be investigated:-

8.1.1 Fatalities

The police will normally be informed immediately if there has been a serious accident that may result in the death of an individual. Investigations will be conducted in accordance with 'The Work- Related Deaths: A Protocol for Liaison'. The protocol, agreed between the HSE, the Association of Chief Police Officers (ACPO), the Crown Prosecution Service (CPS) and other relevant bodies, sets out the principles for effective liaison between the agencies in relation to work related deaths, particularly if there is evidence that the crime of manslaughter or corporate manslaughter may have been committed. Liaison will take place with the police, coroner and CPS to determine the agreed roles of each organisation in the investigation. Where there is evidence suggesting manslaughter such evidence will be passed to the police or where appropriate the CPS. Where the police or CPS do not proceed with a manslaughter case an investigation under the HSAWA the Council may proceed if appropriate with a health and safety prosecution

8.1.2 Major Injuries as defined in the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR), irrespective of cause:

- all amputations of digits past the first joint

- amputation of hand/arm or foot/leg
- serious multiple fractures
- crush injuries leading to major organ damage
- serious head injuries including loss of consciousness
- full skin thickness burns and scalds
- permanent blinding of one or both eyes
- scalping

8.1.3 All notified instances in the following categories:-

- workplace transport incidents
- electrical incidents
- falls from a height of greater than 2m
- confined space incidents

8.1.4 Loss of consciousness caused by asphyxia or exposure to a harmful substance or biological agent.

8.1.5 All reported cases of disease that meet the criteria for reporting under RIDDOR, except those arising from circumstances/situations which are already under investigation.

8.2 Accidents and incidents where investigation is dependant on the circumstances

Investigation of accidents and incidents not falling within paragraph 8.1 above is optional, dependent on the circumstances and a subjective assessment is required.

The following will normally be investigated: -

- (i) All incidents which are likely to give rise to serious public concern.
- (ii) Irrespective of the potential for serious public concerns, any incident where there is serious breach of health and safety law. Dangerous occurrences will be investigated where it appears from the report that the outcome, potential outcome, or apparent breach of law is serious.
- (iii) Accidents or incidents which have been repeated at a particular premises.
- (iv) Accidents involving young persons or children.

8.3 Training of Officers

Accidents and incidents may be investigated outside the above criteria to assist training of officers.

9. WORKING WITH OTHERS: EXAMPLES

(i) Police and Crown Prosecution Service (CPS)

In any fatality, critical injury or suspected manslaughter, the Council and the police will work together until it is agreed which party will go forward with any prosecution.

(ii) The Coroner

Officers will liaise, provide information to and attend hearings according to the requirements of the Coroner. Any Council- led prosecution will normally take place after the coroner's inquest and any public enquiry.

(iii) Health and Safety Executive (HSE)

Officers will liaise with Inspectors at the HSE when specialist advice is required or, officers identify a potential offence for which the HSE is the enforcing authority.

(iv) Primary Authority

Officers will liaise with the Primary Authority where a relationship exists between the duty holder and that Primary Authority.

(v) Outdoor Activity Centres

Where appropriate, officers will liaise with the Adventure Activities Licensing Authority

(vi) Sports Grounds

Where appropriate, officers will liaise with the Sports Grounds Safety Authority and refer to the Guide to Safety at Sports Grounds (Department for Culture, Media and Sport –DCMS) “Green Guide”.

(vii) Care Quality Commission (CQC) & OFSTED

Officers will liaise with the registering body according to the relevant Memorandum of Understanding between the authorities.

APPENDIX A - GLOSSARY

ACOP	Approved Codes of Practice which are designed to maintain and improve standards of health and safety carrying greater authority because they have been formally approved.
CCDC	Consultant in Communicable Disease Control
CIEH	The Chartered Institute of Environmental Health
Duty holder	That person on whom the law places a duty or obligation.
EMAS	The Employment and Medical Advisory Service
EMM	Enforcement Management Module
HASWA	The Health and Safety at Work Act etc. 1974.
HELA	Health and Safety Executive Local Authority Liaison unit.
HSE	The Health and Safety Executive
PHE	Public Health England
Improvement Notice	A notice under Section 21 of HASWA which is served requiring specified improvements to be carried out within prescribed period of time.
Primary Authority	A statutory scheme, established by the Regulatory Enforcement and Sanctions Act 2008 (the RES Act). It allows an eligible business to form a legally recognised partnership with a single local authority in relation to regulatory compliance.
Prohibition Notice	A notice under Section 22 of HASWA served by officers when they are of the opinion that a person is carrying on or likely to carry on activities that involve a risk of serious personal injury
RIDDOR	The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013

EQUALITY IMPACT ASSESSMENT – INITIAL SCREENING TEMPLATE (IST)

Initial screening needs to take place for all new/revised Council policies. The word ‘policy’, in this context, includes the different things that the Council does. It includes any policy, procedure or practice - both in employment and service delivery. It also includes proposals for restructuring, redundancies and changes to service provision. This stage must be completed at the earliest opportunity to determine whether it is necessary to undertake an EIA for this activity.

Name of Policy:	Draft Food and Safety enforcement policies
Lead Officer (responsible for assessment):	Senior Environmental Health Officer
Department:	Environmental Services
Others Involved in the Assessment (i.e. peer review, external challenge):	Environmental Services Manager
Date Initial Screening Completed:	16 March 2015

- (a) **What is the policy trying to achieve?** i.e. What is the aim/purpose of the policy? Is it affected by external drivers for change? What outcomes do we want to achieve from the policy? How will the policy be put into practice?

East Cambridgeshire District Council authorises officers to carry out statutory functions in certain premises in the Council's district. The statutory functions include the enforcement of food safety laws in food undertakings in the district. Officers enforce health and safety legislation in premises for which the Local Authority is the enforcing authority only (reference Health and Safety (Enforcing Authority) Regulations 1998).

The draft food safety and health and safety policies are required by the Food Standards Agency and Health and Safety Executive to support the statutory functions of the Commercial Team of Environmental Services.

The drafts are being submitted to the Regulatory and Support Services Committee on 13 April 2015.

- (b) **Who are its main beneficiaries?** i.e. who will be affected by the policy?

Existing and proposed businesses. Note that the Council is the enforcing authority for health and safety in only some businesses.

- (c) **Is this assessment informed by any information or background data?** i.e. consultations, complaints, applications received, allocations/take-up, satisfaction rates, performance indicators, access audits, census data, benchmarking, workforce profile etc.

The Council must conform to statutory functions. Both the Food Standards Agency and Health and Safety Executive require the Council to have enforcement policies. The Food Standards Agency sets out a Framework for the food safety policy. The draft document will be made available to the Council's Consultation Register.

The draft has been prepared having regard to East Cambridgeshire Equality framework.

- (d) Does this policy have the potential to cause a positive or negative impact on different groups in the community, on the grounds of any of the protected characteristics (please tick all that apply):

Ethnicity

☒

Age

☒

Gender
Disability
Gender Reassignment
Pregnancy & Maternity

X
X

Religion or Belief
Sexual Orientation
Marriage & Civil Partnership
Caring Responsibilities

X

Please explain any impact identified: i.e. What do you already know about equality impact or need? Is there any evidence that there is a higher or lower take-up by particular groups? Have there been any demographic changes or trends locally? Are there any barriers to accessing the policy or service?

These are updated documents. There is no evidence that there is higher or lower take up by particular groups; changes in demographics or local trends. The policies may impact on groups as follows:

Age

There are specific laws in health and safety applying to the safety of young persons. Laws require the ability of an individual to be considered. For example, authorised Council officers may need to enforce requirements for specific risk assessments that are required for young persons or a person who, by virtue of their age is less familiar with the potential dangers of work places.

Disability

Legislation dictates that some applications must be made in writing: An applicant may be visually impaired and therefore unable to complete the application forms his/herself. A physically or mentally disabled person may have special needs in health and safety legislation, for example, in risk assessments for the auditory impaired; ensuring that a work place has safe access and egress for the physically disabled; persons with mental health problems is not faced with unnecessary stress in their working environment. Where a person with a disability is invited to attend a recorded interview under the rules of PACE (Police and Criminal Evidence Act 1984), they may need "signing" support or to have the interview conducted at another premises and not the Council Offices.

Ethnicity

Where English is not be the first language of the worker or person running a business, translation services may be required and can be provided. Local knowledge will often identify premises more likely to be where English is a second language.

Religion and Belief

Authorised officers understand religious holidays and practices. For example, officers would be aware of the regular time for prayer when workers may attend their place of worship; to allow time during a long intervention for workers to pray and to avoid, where possible, interventions at some premises on dates of religious festivals or during fasting periods. Local knowledge will often identify premises at which workers and business operators are more likely to support religious customs such as Ramadan.

- (e) Does the policy affect service users or the wider community?
- (f) Does the policy have a significant effect on how services are delivered?
- (g) Will it have a significant effect on how other organisations operate?
- (h) Does it involve a significant commitment of resources?
- (i) Does it relate to an area where there are known inequalities, e.g. disabled people's access to public transport etc?

NO

NO

NO

NO

NO

If you have answered **YES** to any of the questions above, then it is necessary to proceed with a full equality impact assessment (EIA). If the answer is **NO**, then this judgement and your response to the above questions will need to be countersigned by your Head of Service and then referred to the

Council's Equal Opportunities Working Group (EOWG) for scrutiny and verification. Please forward completed and signed forms to the Principal HR Officer.

Signatures:

Completing Officer: _____ ***Date:*** _____

Head of Service: _____ ***Date:*** _____