



## **PORT HEALTH & PUBLIC PROTECTION PROCEDURE.**

### **Food Safety Enforcement Policy**

**The Enforcement Policy provides information on how the Local authority enforces Food Safety legislation. It also states what to expect from Enforcement Officers when they visit businesses, and what guides them when carrying out inspections and dealing with breaches in the law. This Procedure has been written in accordance with the following.**

**[Food Standards Agency Framework Agreement with Local Authorities;](#)  
[Food Law Code of Practice \(England\) issued March 2021](#) and  
[Food Law Practice Guidance March 2021.](#)**

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## 1. Aim

The aim of this policy is to ensure that food intended for sale for human consumption, which is produced, stored, handled, consumed, or distributed into or through the District (including the port) is without risk to the health or safety of the consumer through effective enforcement of food safety legislation.

## 2. Scope

This policy sets out the way in which Dover District Council and Port Health Authority (subsequently referred to as the Competent Authority) will monitor and deal with the conditions in and under which food is handled, processed, manufactured, imported, sold etc. within food establishments in the District and/or by importers through the port.

This policy covers the following functional areas:

- Undertaking food safety interventions at food establishments;
- Approving establishments under [Regulation 853/2004](#) as appropriate;
- Responding to complaints about food and food establishments from or through which it is supplied;
- Providing a response to requests for advice from the public and from food businesses;
- Making available to the public information relating to food establishment inspections through the [National Food Hygiene Rating Scheme](#);
- Undertaking a programme of food sampling;
- Undertaking, subject to available resources, food safety campaigns including those aimed at healthy eating;
- Providing, subject to available resources, food safety campaigns aimed at helping businesses comply with the law such as [Safer Food Better Business](#), - etc.;
- Providing a voluntary food surrender service;
- Responding to [Food Alerts](#) and notifications of food hazards;
- Acting within the [Primary Authority scheme](#), as appropriate;
- Undertaking appropriate enforcement activity.

This policy is relevant to those situations in which the Competent Authority has food related statutory duties or discretionary powers under domestic and European Legislation.

All officers will work within the requirements of this policy. Any significant departure will be exceptional, capable of justification and be fully considered by the Head of Service, unless it is considered that there is a risk to the public in delaying the decision. All officers will be fully acquainted with the requirements of the policy.

## 3. Authorisations

In accordance with the Council's constitution, the Head of Service has a duty to appoint officers with suitable qualifications, experience and level of competency to enforce or, to ensure that appropriate officers are trained to the required level to undertake an enforcement role.



Authority to exercise executive functions in relation to food safety has been delegated to the Head of Service as detailed in the Council's Constitution. These powers have then been further delegated where considered appropriate and necessary, as outlined in the Memorandum for Officer Delegation.

#### 4. General Principles

When carrying out enforcement action it is important that the Council works within the statutory framework and that it follows best practice and procedure.

In particular, the Council is committed to acting in a fair and consistent manner and has adopted this enforcement policy as part of this commitment. When exercising its enforcement functions, the Council will act in such a way which is:

- Transparent
- Accountable
- Proportionate
- Consistent
- Targeted only at cases in which action is needed.

Relevant advice/guidance and legislation underpinning this strategy includes:

- Dover District Council's overarching enforcement strategy
- Advice from [CPS](#)
- [Home Office](#) COPS and Guidance
- [Regulator's Code](#)
- [Human Rights Act 1998](#)
- [Police and Criminal Evidence Act 1984](#)
- [Data Protection Act 1998](#)
- [Freedom of Information Act 2000](#)
- [The Protection of Freedoms Act 2012](#)
- [Regulation of Investigatory Powers Act 2000](#)

#### 4.1 Regional and Local Liaison

The Competent Authority will be represented at meetings of the regional food liaison group i.e., Kent Food Group, to help maintain enforcement consistency with other authorities. This group includes representation from Kent County Council Competent Authority i.e. [Trading Standards](#), and the [UK Health Security Agency \(UKHSA\)](#) and other specialists as necessary.

#### 4.2 Primary Authority Scheme

The Competent Authority endorses the [Department for Business, Energy & Industrial Strategy \(BEIS\) Primary Authority Scheme](#) and where possible will adopt and implement its provisions. Consideration will be given as to whether contact with the relevant authority is appropriate. It is expected that contact will be made where the advice or enforcement action relates to centrally agreed policies or procedures of a food business.



Primary authority partnerships are available to any business that trades across two or more council boundaries, regardless of size. Primary Authority partnerships are legally nominated by the [Department for Business, Energy & Industrial Strategy \(BEIS\)](#) and partnerships are automatically recognised by all local regulators. Documents and information relating to the Primary Authority Scheme are available at the [Primary Authority Register](#).

### **4.3 Food Standards Agency Guidance**

The Competent Authority and individual officers will have regard to the Food Standards Agency (FSA) [Food Law Code of Practice](#) (subsequently referred to as the Agency Code of Practice) and other guidance from the FSA and to any other interpreting guidance issued from time to time by the Head of Service. In particular officers will have regard to published [UK](#) or [EU](#) Industry Guides to Good Hygiene Practice and to other relevant Food Industry Codes of Practice.

The Competent Authority has regard to the [Framework Agreement on Local Authority Food Law Enforcement](#).

The Competent Authority and individual officers will have regard to the [Food Standards Agency's Brand Standard](#) (subsequently referred to as the Agency Brand Standard) when approaching issues related to the National Food Hygiene Rating Scheme.

Particular reference is made to guidance on enforcement action which is contained in the [Food Law Code of Practice](#) and [Practice Guidance](#) as issued under [Section 40](#) of the Food Safety Act 1990.

## **5. Interventions and Enforcement**

### **5.1 Interventions**

Interventions are activities designed to monitor, support, and increase food safety compliance within food establishments.

Interventions that are official controls include: -

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

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

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

The Competent Authority will document, maintain, and implement a food hygiene interventions programme that includes all food establishments. The programme will



ensure that establishments within the District are normally inspected in accordance with their inspection rating(s) at frequencies laid down in the relevant Agency Code of Practice.

## 5.2 Food Safety Promotion/Advice

It is believed that assisting businesses to comply with the law is every bit as important as detecting non-compliance. It is for this reason that the service emphasises its advisory and promotional work. This Policy is in accordance with the Agency's guidance.

The primary method of advising businesses is through our intervention programme and by responding to direct enquiries. In addition, the Competent Authority provides advice on food safety on the Council's Website.

The major food safety promotional programmes are:

- The [National Food Hygiene Rating Scheme](#).
- Food Safety Week – this is a national scheme primarily aimed at the general public to promote safer food.

Sometimes prospective purchasers will approach the department for advice or information. The following policy will be adopted in respect to advising prospective purchasers of food businesses:

- Officers will not normally undertake site visits prior to the purchase of a business;
- If there are outstanding works, the officer will inform the prospective purchaser of their existence and provide relevant documentation as necessary. The release of information will be in line with the requirements of the [Freedom of Information Act 2000](#) and [Environmental Information Regulations 2004](#). The prospective purchaser will also be advised to contact the business proprietor as appropriate. Where a site visit to discuss outstanding works is requested by a prospective purchaser and supported by the current owner an officer will visit.

The intention of this approach is to ensure that officers do not unfairly interfere in the negotiation between a purchaser and vendor.

## 5.3 Food Complaints

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



will be defined in the Food Alert and through liaison with Trading Standards as appropriate (see 5.7 Food Hazards and Alerts).

#### **5.4 Revisits**

Food businesses that fail to comply with significant statutory requirements will be subject to appropriate enforcement action and a revisit inspection. Failure to comply with significant statutory requirements includes:

- Failure to comply with a single requirement that compromises food safety or public health;
- Failure to comply with a number of requirements that, taken together, indicate ineffective management;
- Failure to comply with the requirements of a [Hygiene Emergency Prohibition Notice](#) or Order.

Revisits will focus on the significant statutory requirements that were found to be contravened at the previous intervention.

The timing of the revisit will be determined by the action taken as a result of the earlier intervention. Whenever practicable the revisit will be undertaken by the officer who conducted the original intervention.

#### **5.5 Food Sampling and Analysis**

The Competent Authority believes that effective routine food sampling is an essential part of a well-balanced enforcement service and undertakes to provide the resources necessary to carry out appropriate food sampling.

Sampling may be taken:

- As part of an FSA programme
- As an advisory tool
- In the investigation of complaints
- For evidence gathering.

Sampling will be carried out in accordance with this policy and programme and will follow a set, documented procedure. This procedure is based on the Kent Food Sampling Protocol for microbiological sampling and includes guidance from the [Food Standards Agency Code of Practice and Practice Guidance](#).

Central government funding for microbiological food and water samples is allocated directly to the Council. This allocation does not cover the cost of sample collection, purchase, or any chemical analysis.

All results and explanations regarding sampling will be given to food businesses or manufacturers as soon as possible. Unsatisfactory results will be followed up as necessary with advice or formal action as appropriate. If food is manufactured

outside the District, the producer and relevant local authority will be contacted where necessary (follow [Primary Authority guidance](#) where appropriate). Where national food safety is at risk the Food Standards Agency will be consulted who may issue a Food Alert.





Microbiological samples will be analysed at the [UKHSA Microbiology Services Food, Water and Environmental Microbiology Laboratory](#) London. Chemical and physical contamination samples will be analysed at the UKHSA Microbiology Services Food, Water and Environmental Microbiology Laboratory London or [Kent Scientific Services](#) (County Analyst). These laboratories are accredited by the [United Kingdom Accreditation Service \(UKAS\)](#).

In addition to food sampling, certain types of water samples will be taken for analysis by the [UKHSA Microbiology Services Food, Water and Environmental Microbiology Laboratory](#) London, or [Kent Scientific Services](#). T

## 5.6 Investigation of Complaint Samples

Authorised officers will need to consider whether any scientific investigation is to be undertaken. If there is any doubt, consultations will be held with the [Kent Scientific Services](#) (County Analyst) and/or [UKHSA Microbiology Services Food, Water and Environmental Microbiology Laboratory](#) London, who will give advice on the form of scientific investigation, which may be appropriate for that complaint sample.

All complaint samples will be properly stored and handled. The following points will be noted:

- The storage of samples will ensure that their condition does not deteriorate significantly before inspection by the retailer, manufacturer, or importer or before it is sent for further analysis;
- The sample will be put in a suitable container and sealed;
- The container or sample will be sealed and marked for identification;
- The sample will be submitted for analysis as soon as possible;
- The retailer, manufacturer or importer will be informed that the sample has been sent for analysis.

Upon receipt of laboratory results, full details will be sent to the retailer, manufacturer, or importer.

A Company under investigation may ask that samples be made available to help with an internal inquiry into the complaint. The Council will attempt to comply with any reasonable request provided that it does not impede the proper storage, examination, or evidential value of the samples, or otherwise prejudice the Council's position as regards the possible instigation of legal proceedings.

## 5.7 Food Hazards and Alerts

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

Once a food hazard has been identified, the Competent Authority will immediately carry out an assessment to determine the likely scale, extent and severity of the risk to public health or safety of the hazard, involving other agencies as appropriate. This may include the [Food Standards Agency](#), [UKHSA](#), [Trading Standards](#), [Primary](#), Originating





or Neighbouring Authorities, medical specialists, Food Examiners, [Public Analysts](#) and/or microbiologists.

Localised food hazards will be dealt with as necessary but will not be reported to the [Food Standards Agency](#).

Serious localised food hazards and non-localised food hazards will be reported to the [Food Standards Agency](#) and other relevant agencies at the earliest opportunity and by the quickest available means. Notifications will be confirmed in writing using the appropriate Agency Incident Report Form e.g., the [FSA](#).

Food incidents that are contraventions of food law, but not hazards will be normally resolved by the Competent Authority and the food business operator, through the Primary or Originating Authority, if appropriate.

A Food Alert is a communication from the [Food Standards Agency](#) to Competent Authorities concerning a food hazard or other food incident. A food alert may or may not require the Competent Authority to take action. This will be made clear by the Agency on a case-by-case basis.

The Competent Authority will have appropriate facilities to receive Food Alerts and updates from the [Food Standards Agency](#) by electronic mail ([FSA Smarter Communication System](#)). Out of hours, the Head of Service may be contacted via the duty officer system. Appropriate contact numbers are provided to the [Food Standards Agency](#).

Arrangements are in place to ensure that the Food Examiner and [Public Analyst](#) are able to notify the Competent Authority promptly if they identify a food hazard during the course of the analysis or examination of a food sample. These arrangements include notification outside normal working hours.

The Competent Authority will deal with food incidents, hazards and Food Alerts in accordance with the internal procedure and will have regard to the [Food Standards Agency guidance on the management of outbreaks of foodborne illness](#).

## **5.8 Enforcement**

Enforcement should secure efficient and effective compliance through a fair and consistent approach. This includes taking into account the Enforcement Concordat, advice from the Crown Prosecution Service, the Home Office, Codes of Practice and Guidance.

After considering all relevant information received or gained during an intervention one or more of the following courses of action should be considered:-

- [No Action](#)
- [Information action \(verbal or written\)](#)
- [The use of Hygiene Improvement Notices](#)
- [The use of Hygiene Emergency Prohibition Notices](#)
- [The use of Voluntary Closure Arrangements](#)
- [The voluntary surrender of foods](#)
- [The use of Remedial Action/Detention Notices \(for approved establishments\)](#)
- [The seizure, detention, or rejection of food](#)



- [The use of Prosecutions](#)
- [The use of Simple Cautions:](#) and
- A combination of the above

In all instances enforcement action will be taken which is proportionate to the risks to public health arising from any contravention identified. In deciding the type of enforcement action to be taken regard will be had to the risks arising from contraventions, the nature of the food business and the nature and type of food handled as well as the nature of the contravention and the history of compliance of the proprietor with food safety legislation.

The Competent Authority will ensure that the number of notices etc. served or the number of other legal processes such as prosecution or simple caution will not be used as an indicator of performance.

Unless a significant risk to health is identified, officers will operate a graduated and educative approach (the *hierarchy of enforcement*) starting with advice and education and only moving to more formal action when the informal approach does not achieve the desired effect.

Officers will also consider the following criteria in deciding the most appropriate course of action: -

- The seriousness of the offence
- The offender's past history
- Consequences of non-compliance
- The known or likely public benefit of the chosen enforcement action
- The willingness of the offender to prevent a recurrence and in the case of a business, the confidence in management.
- The strength of the evidence
- The Crown Prosecution Service's [Code of Practice for Crown Prosecutors](#).

## 5.9 Types of Enforcement

### a) No Action

Where no contraventions are found and there is insufficient information or evidence to proceed.

### b) Informal Action

Informal action includes: -

- Verbal advice. To be given when the offender shows an understanding and willingness to remedy contraventions of a minor nature. Officers will ensure that there is a clear distinction between matters that are necessary to meet statutory requirements and those recommended as good hygiene practices.
- Written advice. To be used when there are contraventions that require rectification, and the officer is confident that the necessary works will be carried out. Reasonable timescales will be given to achieve compliance. Informal approaches to enforcement will make clear all the information



that will enable a proprietor to understand what work is required and why it is necessary, with details of the actual statutory provisions being breached.

c) [Hygiene Improvement Notices](#)

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

- There has been a significant contravention of the relevant food hygiene or food processing regulations;
- The proprietor may not carry out the necessary works without the use of formal notices;
- The contravention, in the opinion of the authorised officer, does not pose an imminent risk to health;
- Significant contravention(s) highlighted in an informal letter have been found to be still outstanding during a subsequent intervention and it appears that the proprietor does not intend to undertake the works.

All Hygiene Improvement Notices will clearly specify both the measures to be taken and the period of time allowed for compliance. The period given for completion of work will be discussed with the proprietor whenever possible. Account will be taken of the nature of the problem, the risk to health and the availability of solutions before a time limit is set. Requests for time extensions received prior to the expiry date of a notice will be considered although there is no specific provision in the [Food Safety and Hygiene \(England\) Regulations 2013](#) to extend the time limits on a Hygiene Improvement Notice. The proprietor will be advised, in writing, of the decision and any new time limits granted.

Hygiene Improvement Notices will not be used in the following circumstances:

- Where the contravention might be a continuing one, for example, personal cleanliness of staff and a notice may only secure an improvement at one point in time;
- In transient situations, and it is considered that swift enforcement action is needed, for example, a one-day festival or sporting event. A [Hygiene Emergency Prohibition Notice](#) would be the only formal remedy, which would have immediate effect;
- Where there is a breach of good hygiene practice but no failure to comply with an appropriate regulation.

It will be made clear within all Hygiene Improvement Notices that there is a provision to allow the proprietor to carry out alternative measure(s) of an equivalent effect to those specified. When the officer and proprietor agree on alternative works the officer will confirm in writing that they have approved the alternative works. In situations where the manager is not the proprietor, and cannot make decisions with regard to

structural repairs and replacements, the officer will, if possible, discuss the detail of the works with the person in a position to authorise repair before issuing a notice. Due consideration will be given to any relevant [UK](#) or [EU](#) Industry Guides to Good Hygiene Practice when assessing compliance with the Food Safety and Hygiene (England) Regulations 2013.



Hygiene Improvement Notices will make it clear that the proprietor has a right of appeal against the service of a notice. The relevant information is contained within notes attached to the notice.

Whilst the proprietor has a right of appeal, an officer will be prepared to discuss the need for the notice and its requirements informally with the proprietor. The works required will be checked within five working days of the expiry of a notice or following notification that the works are complete. Whenever possible the authorised officer who served the notice will check that the works have been carried out to the specified standard. In respect to Hygiene Improvement Notices served relating to the hazard analysis requirements of the [Food Safety and Hygiene \(England\) Regulations 2013](#), inspections to check compliance will be made on the day the notice expires.

If a notice is not complied with by the date specified, a letter will be sent to the person on whom the notice was served stating that formal action will be progressed. This letter will be passed to the Head of Port Health & Public Protection along with the other paperwork for the case.

Environmental Health Officers, and Food Safety Officers who have achieved the competency levels as laid out in the [Food Standards Agency Code of Practice and the Practice Guidance Document](#), will serve Hygiene Improvement Notices. Notices will only be served by officers in relation to the premises they are authorised to inspect.

#### d) [Hygiene Emergency Prohibition Notices](#)

Hygiene Emergency Prohibition Notices will be used if an authorised officer has evidence that the health risk condition is fulfilled i.e. there is an imminent risk of injury to health. In such situations, a [Hygiene Emergency Prohibition Notice](#) will be served

on the food business operator, followed by an application to a Magistrates' Court for a Hygiene Emergency Prohibition Order. The use of a [Hygiene Emergency Prohibition Notice](#) will only be considered in one or more of the following circumstances: -

- The consequences of not taking immediate and decisive action to protect public health would be unacceptable;
- An imminent risk of injury to health can be demonstrated. This might include evidence from relevant experts, including a food analyst or food examiner;
- The guidance criteria, specified in the relevant statutory [Agency Code of Practice](#), concerning the conditions when prohibition may be appropriate, are fulfilled;
- There is no confidence in the integrity of an unprompted offer made by a proprietor voluntarily to close the establishment or cease the use of any equipment, process or treatment associated with the imminent risk, and
- A proprietor is unwilling to confirm in writing a voluntary prohibition.

The following are examples of situations where use of a [Hygiene Emergency Prohibition Notice](#) may be appropriate for a premises:

- Infestation by rats, mice, cockroaches, birds, or other vermin, serious enough to result in the actual contamination of food or a significant risk of contamination;
- Very poor structural condition and poor equipment and/or poor maintenance or routine cleaning and/or serious accumulations of refuse, filth or other extraneous

- matter resulting in the actual contamination of food or a significant risk of food contamination;
- Drainage defects or flooding of the establishment, serious enough to result in the actual contamination of food or a significant risk of food contamination;
- Premises or practices which seriously contravene food law and have been or are implicated in an outbreak of food poisoning;
- Any combination of the above, or the cumulative effect of contraventions which, taken together, represent the fulfilment of the health risk condition.

A [Hygiene Emergency Prohibition Notice](#) may also be appropriate for dealing with defective equipment or for unsafe processes that for example pose a serious risk of cross contamination. The following are examples of situation where use of a [Hygiene Emergency Prohibition Notice](#) may be appropriate for a piece of equipment:

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

The following are examples of situations where use of a [Hygiene Emergency Prohibition Notice](#) may be appropriate for a process:

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

Hygiene Emergency Prohibition Notices will be signed only by Officers who have achieved the appropriate competency levels which are detailed in the [Food Standards Agency Code of Practice](#).

#### **e) Voluntary Closure Arrangements**

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

An officer may suggest this option but only when the conditions for the service of a [Hygiene Emergency Prohibition Notice](#) could apply. The officer must advise the food business operator to take independent legal advice concerning any offer to voluntarily close their food establishment. The officer will explain that by making the offer to close any right to compensation is lost.



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

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

#### **f) The Voluntary Surrender of Foods**

Voluntary procedures to remove food that is not suitable for human consumption from the food chain may be used; either at the instigation of the owner of the food or at the suggestion of the authorised officer when the owner of the food agrees the food is not suitable for human consumption. A receipt must be issued for food that is voluntarily surrendered to the Competent Authority for destruction. The receipt must indicate that the food has been voluntarily surrendered to the Competent Authority for destruction and be signed and counter-signed by the authorised officer and the person surrendering the food respectively. The receipt must include space for recording the time, place, and method of destruction of the food, and these details must be recorded on the office copy by the authorised officer in due course and retained by the Competent Authority.

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

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

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

#### **g) The use of Remedial Action/Detention Notices (for approved establishments)**

Remedial Action Notices are used in respect of establishments subject to approval under Regulation 853/2004. They are used if any of the hygiene requirements are breached or an inspection under the "Hygiene Regulations" is being hampered. More specifically this provision provides for the prohibition of the use of any equipment or any part of the establishment, the imposition of conditions, upon, or prohibiting, any process and also allows for the rate of an operation to be reduced or stopped completely. Remedial Action Notices will only be signed by Officers who have achieved the





appropriate competency levels which are detailed in the Food Standards [Agency Code of Practice](#)..

Also note the powers to suspend or withdraw the approval or conditional approval of an establishment.

Detention Notices provide for the detention of any food, including the taking of samples for examination. Detention Notices will be signed only by Officers who have achieved the appropriate competency levels which are detailed in the Food Standards [Agency Code of Practice](#).

#### **h) The Seizure, Detention or Rejection of food**

Detention and seizure can be used to deal with foods that fail to meet food safety requirements. Food does not comply when:

- It is unfit for human consumption; or
- It has been rendered injurious to health; or
- It is so contaminated (by extraneous matter or otherwise) that it would not be reasonable to expect it to be used for human consumption in that state.

Detention notices served under [Regulation 10](#) of the Food Safety and Hygiene (England) Regulations 2013 have no provision for compensation, whereas compensation is payable for any depreciation in value of the food if the notice is withdrawn (if the food is found to be compliant).

An authorised officer will seize food products (with or without prior detention) if adequate arrangements can be made to immediately transport and store the goods until a Justice of the Peace can deal with them.

If food is condemned by the Justice of the Peace, it must be destroyed. This must be witnessed by an authorised officer.

#### **i) The Seizure, Detention or Rejection of food for Third Country Foodstuffs:**

Foods must be detained pending port health controls, including sampling. Non-compliant foods must be rejected in accordance with [Article 66 of Retained Regulation \(EU\) 2017/625](#) (The Official Controls Regulations). This allows for goods to be destroyed, re-dispatched outside of Great Britain or subjected to special treatment and, where appropriate, allocate the consignment for purposes other than those for

which it was originally intended. Whilst the importer may have some input to the outcome of the rejection, if the food is unsafe, it must be effectively removed from the food chain. Where there is a failure to meet set limits, the limits for the proposed third country of destination should be checked before re-dispatch is permitted. An authorised officer must witness the destruction of any foods rejected for destruction to ensure there is no opportunity of it being re-introduced into the food chain.

Border Notifications:

As soon as problems are identified with third country imports that indicate that they will be rejected, a Border Notification must be sent to the [Incident Branch of the Food Standards Agency](#).



## j) Prosecutions

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

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

- Whether there is sufficient evidence (the test for which is set out in the [Code for Crown Prosecutors](#)). Of particular note are:
  - The likely cogency of any important witness, and their willingness to cooperate;
  - The alleged person or persons responsible have been identified;
  - Any explanation offered by the defendant;
  - The likelihood of the defendant being able to establish a defence – in particular a due diligence defence.
- Whether the Public Interest Test has been satisfied as set out in the [Code for Crown Prosecutors](#). Prosecutors must note that unless the Evidential Test is satisfied, the Public Interest Test is irrelevant. If there is insufficient evidence, the case is very likely to fail in court so there is no justification in launching a prosecution.
- The hierarchy of enforcement will illustrate whether a prosecution is more appropriate as opposed to the other enforcement options. It must be remembered that a [Hygiene Improvement Notice](#) could ultimately result in a Court case, so evidence must be robust before a Notice is served.
- That this Enforcement Policy has been adhered to.
- Whether any other action, such as issuing a caution in accordance with the [Ministry of Justice – Simple Cautions for Adult Offenders](#) guidance would be more appropriate.

Factors favouring prosecution include:

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

There are various factors against prosecution including:

- The likelihood of a nominal penalty;
- The offence was committed as a result of a genuine mistake or misunderstanding (this must be balanced against the seriousness of the offence).
- Officers will explain the reason for bringing a prosecution and record that reason, which may later be referred to in open Court. The reasons will be documented.



The sufficiency of the evidence to support proceedings will be a matter of judgment for the Head of Port Health & Public Protection. Authorised officers will ensure they brief their legal advisers fully on the public health aspect of the case to enable the seriousness of the offence(s) from a public health perspective can be fully expressed to the Court.

In instances where a risk to public health exists and a prosecution is to be undertaken it may still be appropriate to serve Hygiene Improvement or Hygiene Emergency Prohibition Notices. Where it is intended to prosecute in addition to the service of a [Hygiene Improvement Notice](#) this will be made clear to the proprietor at the time the Notice is served.

All prosecutions will be conducted in accordance with the relevant procedures.

#### **k) [Simple Cautions](#)**

The purpose of a Simple Caution is to deal with less serious offenders quickly and simply and to divert them from the criminal courts and to reduce the chances of their re-offending [Ministry of Justice – Simple Cautions for Adult Offenders](#) guidance

The following conditions must be met before a caution can be administered:

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

When deciding whether to issue a caution the following will be considered:

- The nature of the offence;
- The likely penalty if the offender was convicted by a court;
- The offender's age and state of health;
- Any previous criminal history;
- The offender's attitude towards the offence and steps taken to prevent a recurrence.

There is no legal obligation for any person to accept the offer of a simple caution and no pressure will be applied to the person to accept a caution. However, where a person declined the offer of a simple caution it will normally follow that a prosecution will be taken.

All [simple cautions](#) will be dealt with in accordance with the appropriate procedures.

### **5.10 Enforcement Options in Product-Specific Establishments**

Additional enforcement provisions are provided by Commission Regulation (EC) No [853/2004](#) relating to product-specific establishments. Powers to suspend or withdraw the approval or conditional approval of an establishment are provided within the Regulations. In considering use of these powers the immediate effect of the suspension or withdrawal on the business will be considered. Other enforcement options will be explored as appropriate and necessary to control the food hazards presented by the



establishment. Non-compliance will not necessarily be considered sufficient to justify the immediate suspension or withdrawal of an establishment's approval or conditional approval, and a reasonable opportunity to achieve compliance will be allowed where this is appropriate.

In the case of a suspension of approval or conditional approval where the food business operator makes guarantees about future production in accordance with the Regulations these will only be considered if made in writing. It is however noted that the Competent Authority cannot insist on this, as no requirement exists in law to provide such guarantees in writing.

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

Decisions to suspend or withdraw an establishment's approval or conditional approval will be notified in writing to the food business operator. Reasons for the decision will be given. The notification will also make the food business operator aware of their right of appeal against the decision to the Magistrates' Court and provide the address of the Magistrates' Court.

Following an appeal against a decision to refuse or withdraw an approval the food business operator may continue to use the establishment, pending the results of the appeal, subject to any conditions imposed for the protection of public health. This provision does not extend to appeals against the suspension of an approval. If it is considered that any activities undertaken in an establishment pending the result of an appeal may present a risk to public health, the use of other relevant enforcement powers shall be considered.

### **5.11 Avoiding Potential Conflicts of Interest**

[Article 30 \(b\)\(iii\)](#) of [Retained Regulation 2017/625](#) requires that staff carrying out official controls are free from any conflict of interest. All officers will be aware of potential conflicts of interest that might affect their enforcement judgments. For example:

- Inspections of the Council's own premises;
- Relevant personal relationships;
- Relevant history, for example where an officer is appointed whose previous job was with a food business with premises in the District;
- Financial or other interest in a business covered by the food inspection programme;
- In the case of contractors, the provision of services to businesses covered by the food inspection programme.

Such potential conflicts of interest that might affect an officer's judgment shall be declared in writing to the Head of Service in order that appropriate action can be taken to avoid a conflict of interest. This requirement is in addition to any Council policies or legal or contractual requirements of relevance to this issue and applies to temporary staff and contractors.



Directly employed or temporary officers will not provide their own services e.g., training, consultancy services, within the District, even in their own time.

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

The Competent Authority will avoid promoting the Competent Authority's services exclusively.

### **5.12 Enforcement within Local Authority Run Establishments**

Local Authority run establishments will be treated in the same way as all other food establishments within the District and inspected in accordance with the [Agency Code of Practice](#). Any enforcement concerns will be brought to the attention of the Head of Port Health & Public Protection and serious breaches of food law will be brought to the attention of the Head of Service without delay.

### **5.13 Approach to Enforcement of Requirements Related to Hazard Analysis Systems, Food Hygiene Training, and other Requirements.**

Guidance contained within the [Agency Code of Practice](#) will be followed with regard to enforcement of the [Food Safety and Hygiene \(England\) Regulations 2013](#).

A graduated approach will be adopted with respect to hazard analysis and food hygiene training, except where any failings lead to a serious risk. The first step towards securing compliance will normally be an educative approach and the officer will discuss the requirements of the legislation relating to hazard analysis and training and supervision with the proprietor. The aim will be to encourage the adoption of a

preventive approach to food safety, even where there is no immediate risk to public health apparent at the time of the inspection.

In considering formal approaches to enforcement, account will be taken of whether there is also evidence of a significant breach of other food hygiene requirements.

Where a business fails to have a documented food safety management system, enforcement action will be proportionate to the risks presented by the business operations.

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

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

In respect to hazard analysis enforcement, officers will give due consideration to advice issued by Central Government Departments.



## 5.14 Involvement of other Competent Authorities

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

If a complaint investigation identifies food that has the potential to cause an adverse effect on the health of consumers and may affect a wide geographical area, the [Food Standards Agency](#) will be informed. Officers will have due regard to the Food Standards Agency Code of Practice.

## 6. Policy Monitoring

To ensure compliance with this policy, the enforcement activities of the Public Protection Team will be monitored regularly by the Head of Port Health & Public Protection and the Port Health & Public Protection Managers and are subject to a regular audit process. Establishments will be selected in order to obtain feedback on the inspections undertaken by all officers of the Competent Authority. Responses will be reviewed, and all negative responses investigated. The details of the establishments surveyed, and the outcome of any reviews will be recorded.

Further feedback will be obtained as necessary to report on the level of satisfaction of businesses with local authority regulation services. This links to the corporate objective of providing advice and support to businesses in order to promote local economic vitality and fair competition. Ensuring that our food safety work protects the public, but at the same time supports a thriving local economy is an important objective.

The Head of Service will arrange for qualitative and quantitative monitoring of fieldwork.

The Head of Service will report to the Chief Executive on the food safety activities of the Competent Authority by means of the Food Safety Service Plan.

The Head of Service will, in accordance with the relevant Agency Code of Practice, make the [Local Authority Enforcement Monitoring Systems](#) (LAEMS) return to the Agency in respect to food performance.

This policy will be reviewed annually.

## 7. Training and Development

Appropriate resources will be made available to provide training for officers to enable them to successfully fulfil their food safety duties as detailed within this policy. The minimum ongoing training will be 10 hours per year and will be based on the principles of Continuing Professional Development.

Officers whose knowledge or practical experience of food law enforcement is out of date will receive appropriate revision training and be monitored by the Head of Service or another experienced food law enforcement officer during the period of training. The revision training will vary according to the experience of the officer and the period that the officer has not been involved in food law enforcement duties. The minimum revision



training should be 15 hours based on the principles of Continuing Professional Development.

Officers will be required to satisfy other relevant Continuing Professional Development training requirements appropriate to their qualification in order to maintain their competency and authorisation. Each officer will be responsible for maintaining records demonstrating this achievement.

The department retains copies of certificates of registration, qualifications and other documents required by this section of the Policy and record on going and revision training undertaken by authorised officers, including contract and temporary staff.

Officers that are newly qualified or are returning to food law enforcement duties after an absence of more than three years will be monitored for at least three months or for the duration of their revision-training period whichever is longer.

The Head of Service will ensure that contracted or temporary staff meet the same qualification and experience requirements as those directly employed by the Competent Authority.

## **8. Equality Impact Assessment**

This policy falls within the Overarching Enforcement Strategy Equality Impact Assessment.