



REGULATORY SERVICES

FOOD LAW ENFORCEMENT POLICY

Issue 2

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Introduction

This document sets out what business and others being regulated can expect from Harborough District Council's food safety enforcement officers. It commits the Council to good enforcement policies and procedures.

This food law enforcement policy must be read in conjunction with the councils' general enforcement policy which details the generalised policy of the Council based on the principles of good enforcement contained in the Enforcement Concordat, produced by Central Government and the Statutory Code of Practice for Regulators (Regulators' Code) produced by the Department for Business Innovation and Skills.

The Council takes into account advice contained in the Code for Crown Prosecutors, and endeavours to ensure that it supplements the advice outlined in specific enforcement guidance from other sources, including the Code of Practice made under Section 40 of the Food Safety Act 1990 (FSA) and the Regulators' Code.

The primary function of central and local government enforcement work is to protect the public, the environment and groups such as consumers and workers. At the same time, carrying out enforcement functions in an equitable, practical and consistent manner helps to promote a thriving national and local economy. Harborough District Council is committed to these aims and to maintaining a fair and safe trading environment.

The effectiveness of legislation in protecting consumers or sectors in society depends crucially on compliance by those regulated. We recognise that most businesses want to comply with the law. We will, therefore, take care to help businesses and others meet their legal obligations without unnecessary expense, while only intervening where there is a clear case for protection. All citizens will reap the benefits of this policy through better information, choice and safety.

Food Law Enforcement Policy

1.0 Framework Agreement on Local Authority Food Law Enforcement

The Authority shall set up, maintain and implement a documented enforcement policy in accordance with the relevant Food Safety Code of Practice, the Enforcement Concordat and other official guidance, approved by the relevant Local Authority Member forum.

The enforcement policy or an accurate summary should be readily available to the public and food businesses in the Authority's area.

The Authority shall set up, maintain and implement documented procedures for follow up & enforcement actions in accordance with the relevant Food Safety Act Code of Practice and official guidance

The Authority shall carry out food law enforcement in line with the relevant Food Safety Act Code of Practice.

All decisions on enforcement action shall be made following consideration of the Authority's enforcement policy. The reasons for any departure from the criteria set out in the enforcement policy shall be documented.

2.0 Scope of the document

This document applies to Regulatory Services food safety functions.

3.0 General Food Safety Enforcement Policy Statement

This policy builds upon the principles of good enforcement set out in the Council's General Enforcement Policy.

3.1 General Principles

This Council is committed by action through education, training and enforcement to ensuring that food and drink intended for human consumption, which is produced, stored, distributed, handled or consumed within the district is without risk to the health or safety of the consumer and satisfies the requirements of the Food Safety Act 1990 & other relevant legislation.

Enforcement action will be based upon risk to public health, or the seriousness of the non compliance with food safety law.

It is the Council's aim to achieve and maintain consistency in its approach to enforcement. It is therefore committed to complying with the Government Statutory Code of Practice issued under Section 40 of the Food Safety Act 1990 and to such other guidance and industry codes as may be issued by recognised and authoritative bodies on food and food related matters.

If an enforcement matter is professionally contentious, or appears to be of national significance, or it is felt that existing guidance has not adequately taken account of the legal provision, Case Law, relevant research or other evidence, the matter may be put to the Food Safety Technical Sub-Committee of the Leicestershire Branch of the Chartered Institute of Environmental Health for consideration and possible referral to national bodies in order to ensure consistent enforcement.

Only suitably trained officers will be employed by the Council on food law enforcement activities, with initial and refresher training consistent with that required by relevant Code of Practice and departmental policies.

Officers will be fully acquainted with, and consider, this policy when making enforcement decisions. Any departure from the policy will be exceptional, capable of justification and be fully considered by the Regulatory Services Manager and Lead Officer for Food Safety before the decision is taken, unless it is considered there is significant risk to the public in delaying the decision.

The policy shall be reviewed regularly or in the light of new legislation or guidance and any developments will be incorporated into the policy.

3.2 Complaints Policy

The Council is committed to providing ready access to those wishing to appeal or complain about enforcement action, in accordance with the Council's corporate complaints procedure. However in areas where there is a formal right of appeal or a legal remedy, that appeal process or legal remedy must be resolved first.

If a complaint is made using the Council's Complaints Procedure and the complainant remains dissatisfied at the conclusion of that process, the complainant can approach the Local Government Ombudsman to ask for a review of the Council's decision.

The FSA's Independent Business Appeal Panel (IBAP) will consider any complaint or appeal from a business against food safety and food standards advice given by a local authority in England. Before contacting the panel, the business must have raised a formal complaint or appeal with its local authority and these must have concluded.

4.0 Authorisation Process

The purpose of this section is to state the Council's constitutional framework with respect to:-

- (a) Designating the officers who may authorise prosecution under the Food Safety legislation.
- (b) Identifying the limits of powers delegated to Food Enforcement Officers.
- (c) Identifying the competencies necessary for Food Enforcement Officers to be authorised to undertake enforcement action.

4.1 Officer Authorisations

Enforcement action under the Food Safety Act 1990 or related legislation will be initiated by qualified, experienced and competent Enforcement Officers without further reference to Elected Members.

- (a) Only officers who have been assessed as competent by the Council to issue Hygiene Improvement Notices will do so. Officers will be authorised to sign hygiene improvement notices only for premises within the categories for which they are competent. Only an authorised officer who has personally witnessed the contravention(s) will sign the notice.
- (b) Only officers who have been assessed as competent by the Council to issue Remedial Action Notices will do so. Only an authorised officer who has personally witnessed the contravention(s) will sign the notice.
- (c) Only officers who have been assessed as competent by the Council to issue Hygiene Emergency Prohibition Notices will do so. Only an authorised officer who has personally witnessed the contravention(s) will sign the notice.
- (d) Competent Authorities need to satisfy themselves through appraisal and assessment procedures that an officer can provide demonstrable evidence that they meet the competency (knowledge and skills) requirements set out in the Food Law Code of Practice (the Code). The competencies in the Code recognise that an officer's authorisation can be broadened as the person gains experience and develops new competencies. Newly qualified officers will only be authorised after a competency assessment has been carried out.
- (e) High risk premises (categories A and B), all food manufacturers and processors classified as substantial and premises approved under product specific legislation will only be officers assessed as competent to do so.

- (f) Only officers holding meet the required competencies will be authorised to inspect, detain or seize foodstuffs.

4.2 The Delegation Framework

- (a) Where, through upholding the principles outlined in the policy document, a prosecution is necessary, the following officer may authorise such action:-

Head of Legal Services

- (b) The following designated officer can recommend a prosecution:

Relevant Corporate Director/Head of Service

- (c) The following designated Officers will also be consulted as part of the prosecution decision making process:-

Regulatory Services Manager
Team Leader (commercial)

Other officers may be consulted, including external advisors / experts where appropriate.

- (d) The designated Officer who is responsible for authorising a prosecution will be aware of the limits of their delegated powers by reference to the Councils Constitution, Statutory Codes of Practice and any other forms of guidance, including the principles set out in this policy.

4.3 Training

The criteria used to assess the competence of Food Enforcement Officers are those detailed in Council policy documents as well as specific requirements contained within The Statutory Code of Practice (The Code of Practice) issued pursuant to Section 40 of the Food Safety Act 1990 (the Act)

In addition the Council will provide appropriate initial and ongoing training to Food Enforcement Officers as deemed necessary to enable them to carry out their duties efficiently and effectively, and to maintain and develop the required competencies. This will include the following:

- (a) Minimum ongoing training of 20 hours per year, a minimum of 10 hours which must be spent on core food matters directly related to the delivery of official controls.
- (b) Minimum ongoing training of 30 hours per year for Chartered Environmental Health Practitioners.

In most instances, food safety enforcement action other than prosecution and caution will be instigated by the Team Leader (Commercial), and Environmental Health Officers.

5.0 Enforcement Options

The purpose of this section is to state the authority's policy with respect to:

- (a) Achieving and maintaining consistency of approach in deciding on enforcement action concerning food safety and food standards.
- (b) Ensuring commitment to an approach in all enforcement decisions that is fair and balanced and based on common standards to protect the public.

The Enforcement options available, after consideration of all of the relevant information and evidence are:-

- (a) Take no action
- (b) Take informal action
- (c) Issue Hygiene Improvement Notice
- (d) Issue Remedial Action Notice / Detention Notice
- (e) Issue Hygiene Emergency Prohibition Notice
- (f) Voluntary Prohibition
- (g) Suspension or withdrawal of approvals
- (h) Issue Simple Cautions
- (i) Prosecution

5.1 The Policy

The policy of this Council is as follows:-

5.1.1 No Action

Where an intervention or investigation reveals full compliance with the relevant Food Safety and Food Standards Legislation / Codes of Practice, no further action is required, apart from issuing a post intervention report as required by the Code of Practice. The results of the inspection will be recorded in the premises file.

5.1.2 Informal Action

Informal action to secure compliance with legislation may be given in the form of:-

- (i) Verbal Advice
- (ii) Written requests for action or advice
- (iii) Written warnings (Food Hygiene Inspection Reports)
- (iv) Written Agreements e.g. Voluntary Closure

In deciding whether to take informal enforcement action many criteria will be considered, including:-

- (i) Whether the act or omission is serious enough to warrant formal action.
- (ii) Whether past history indicates that informal action can be expected to achieve full compliance.
- (iii) Whether officers' confidence in the management of the premises is high.
- (i) Whether the consequences of non-compliance will pose a significant risk to public health.
- (v) Whether, even when some of the above criteria are not met, there may be circumstances in which informal action will be more effective than a formal approach.
- (vi) The availability of a due diligence defence (acting with reasonable care).

Following a food hygiene inspection an Enforcement Officer will issue an intervention report as prescribed in the Food Law Code of Practice. The report will confirm all matters discussed at the closing meeting with a Food Business Operator and confirm any verbal advice given at that time. The report will be sent to the Food Business Operator of the business and will contain equivalent details to those prescribed in Annex 6 – Food Business establishment/food premises intervention report:-

- (i) Outline the regulations being contravened.
- (ii) Contain all the information necessary to understand what work (if any) is required and why it is necessary.
- (iii) Clearly indicate measures which are recommendations of good hygiene practice and which are legal requirements.

- (iv) Indicate the time allowed for meeting any legal requirements.
- (v) Officer and Manager contact details.

Revisits (Secondary Inspections) to premises following an intervention will be made where significant contraventions of food hygiene or processing regulations and/or poor hygiene practices are found.

5.1.3 Hygiene Improvement Notices

The use of Hygiene Improvement Notices will, in general, be related to a risk to health. They will not be issued for minor technical infringements of the law, hence they may be appropriate in any of the following circumstances or a combination thereof:

- (i) Formal action is proportionate to the risk to public health;
- (ii) There is a record of non-compliance with breaches of the food hygiene regulations; and
- (iii) The authorised Officer has reason to believe that an informal approach will not be successful.
- (iv) Standards are generally poor and management has little awareness of requirements
- (v) Non-compliance could have potentially serious consequences to public health e.g. where there is a breakdown of controls critical for food safety, or where no such controls exist.
- (vi) Effective action needs to be taken as quickly as possible to put right conditions that are serious and deteriorating.

A hygiene improvement notice will not be issued where:

- (i) The contravention is minor and presents no risk to public health;
- (ii) The contravention is a continuing one, e.g. cleanliness or temperature control, and a notice would only secure an improvement at one point in time.
- (iii) Swift action is required, such as at a one day event where a risk to public health exists.

Authorised Officers will follow the food law Code of Practice and guidance on the issue of Hygiene Improvement Notices, including realistic time limits for compliance, preferably agreed with the Food Business Operator, although the final decision will rest with the Officer. The authorised Officer will also discuss with the Food Business

Operator what has to be done and will consider all the options available.

A request for an extension of time to comply with a Hygiene Improvement Notice will be considered favourably if the Food Business Operator has a genuine reason for requesting one. When deciding on a request for an extension the following will be taken into account:-

- (i) the risk to public health associated with the fault if an extension was granted;
- (ii) the reason for the request;
- (iii) the remedy involved;
- (iv) the past record of co-operation of the Food Business Operator;
- (v) Any temporary action which the Food Business Operator proposes to take to remedy the defect.

The Food Business Operator will be advised at the time of service of the notice that any request for an extension of the time limit should be made in writing before the expiry date of the notice.

Once the request for an extension of time has been considered the Food Business Operator will be advised, in writing, as to whether the request was adjudged reasonable or otherwise. The reasons for that decision will be explained and any new time limits confirmed.

Failure to comply with a Hygiene Improvement Notice will, in general, result in legal proceedings being instigated.

We will notify other appropriate bodies of any Hygiene Improvement Notice served and its outcome where necessary. This will include other appropriate enforcement authorities.

5.1.4 Remedial Action Notices/Detention Notices

Authorised officers will, wherever possible seek to remedy non-compliance in establishments subject to approval under Regulation 853/2004 by a graduated approach to enforcement. When necessary, the option to issue Hygiene Improvement Notices will be considered where appropriate. Authorised officers should consider these options before commencing any other enforcement action.

Remedial Action Notices/Detention Notices

Powers to issue Remedial Action Notices and Detention Notices in respect of establishments subject to approval under Regulation

853/2004 are provided by regulation 9 and 10 respectively of the Food Safety and Hygiene (England) Regulations 2013.

Authorised officers may serve a Remedial Action Notice if any of the requirements of the "Hygiene Regulations", as defined by regulation 2 of the Food Safety and Hygiene (England) Regulations 2013, are being breached or an inspection under the "Hygiene Regulations" is being hampered. More specifically, this provision, through the service of a Remedial Action Notice, prohibits the use of any equipment or any part of an establishment, the imposition of conditions upon, or prohibition on, any process and allows for the rate of an operation to be reduced or, stopped completely.

Also included is a provision for the detention of any food, including the taking of samples for the purposes of examination, by the service of a Detention Notice.

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

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

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

- where there are indications or suspicions that food at an establishment is unsafe and therefore examination is necessary, including the taking of samples.

Such action should be proportionate to the risk to public health and where immediate action is required to ensure food safety. A Remedial Action Notice may be used if a continuing offence requires urgent action owing to a risk to food safety or when corrective measures have been ignored by the food business operator and there is a risk to public health. As soon as the authorised officer is satisfied that the action specified in a Remedial Action Notice has been taken, the notice must be withdrawn by means of a further notice in writing. Similarly, in respect of a Food Detention Notice, if the authorised officer is satisfied that the food need no longer be detained, the relevant notice must also be withdrawn by means of a further notice in

writing.

5.1.5 Hygiene Emergency Prohibition Notices

The serving of a Hygiene Emergency Prohibition Notice to close premises or a part of the premises, to require a discontinuation of use of equipment or a process, is an action which will not be entered into lightly. A Hygiene Emergency Prohibition Notice will only be considered if an authorised Officer has evidence that a health risk condition is fulfilled i.e. there is an imminent risk of injury to health. Examples, which are not prescriptive or exhaustive include:

Health risk conditions where prohibition of premises may be appropriate

- Infestation by rats, mice, cockroaches, birds or other vermin, serious enough to result in the actual contamination of food or a significant risk of contamination.
- Very poor structural condition and poor equipment and/or poor maintenance, or routine cleaning and/or serious accumulations of refuse, filth or other extraneous matter, resulting in the actual contamination of food or a significant risk of food contamination.
- Drainage defects or flooding of the establishment, serious enough to result in the actual contamination of food, or a significant risk of food contamination.
- 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. For example, the dual use of complex equipment, such as vacuum packers, for both raw and ready to eat foods without verification and HACCP procedures to ensure effective cleaning and disinfection is in place. (With regard to the FSA Guidance: Controlling the Risk of Cross-Contamination from E.coli O157)
- 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.

Health risk conditions where the prohibition of equipment may be appropriate

- Use of defective equipment, e.g. a pasteuriser incapable of achieving the required pasteurisation temperature.

- Use of equipment for the processing of high-risk foods that has been inadequately cleaned or disinfected or which is grossly contaminated and can no longer be properly cleaned.
- Use of storage facilities or transport vehicles for primary produce where the storage facilities or transport vehicles have been inadequately cleaned or disinfected.

Health risk conditions where prohibition of a process may be appropriate

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

Where a Food Business Operator volunteers to close a premises or cease to use any equipment, process or treatment, but where there is either:

- (i) No confidence in the integrity of the Food Business Operator;
- or
- (ii) The Food Business Operator is unwilling to confirm in writing his/her offer of a Voluntary prohibition.

An application for a Hygiene Emergency Prohibition Order will be made to the Magistrates Court within 72 hours of the issue of a Hygiene Emergency Prohibition Notice.

Officers will notify other appropriate bodies of any Hygiene Emergency Prohibition Orders served and the outcome where necessary. This will include any other appropriate enforcement authorities.

5.1.6 Voluntary Prohibition

Should a voluntary offer to close premises or cease the use of any equipment, process or treatment be accepted the Officer will explain to the Food Business Operator that, by making the offer to close, he is relinquishing the rights to compensation if a court subsequently declines to make a hygiene emergency prohibition order.

If an authorised officer is minded to accept any voluntary offer from a Food Business Operator the officer will:-

- (i) Determine whether the nature and extent of the offer would have at least the equivalent effect of the service of a Hygiene

Emergency Prohibition Notice.

- (ii) Require an offer document signed and dated by the Food Business Operator setting out the nature and extent of the offer and countersigned by the authorised Officer.

5.1.7 Suspension/Withdrawal of Approval/Conditional Approval –

These enforcement options are available in establishments subject to approval under European Community Regulation No.853/2004.

Powers to withdraw and suspend an approval/conditional approval are provided by the Official Feed and Food Controls (England) Regulations 2009.

Any suspension or withdrawal of an approval takes immediate effect. As a result the establishment must not be used for any activities which would render it subject to approval under regulation 853/2004.

On discovery of non-compliance in establishments subject to approval, the Council will explore the use of all other enforcement options to control the food hazards presented before considering suspension or withdrawal. Non-compliance will not necessarily be considered sufficient to justify the immediate suspension or withdrawal of an establishment's approval/conditional approval.

Suspension

The Council will only initiate procedures to suspend an establishment's approval or conditional approval after other enforcement options have been considered.

Withdrawal

The Council will only initiate procedures to withdraw an establishment's approval or conditional approval if other enforcement options have been considered, including suspension of the approval.

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

Notifications

Any decision to suspend or withdraw an establishment's approval/conditional approval will be notified in writing to the food business operator.

The notice will:

- Give the reasons for the suspension or withdrawal;
- The steps that are required to be taken to satisfy the requirements of the Regulation;
- Detail the right of appeal against the decision;
- Make it clear that activities requiring approval cannot be undertaken.

The Council will notify the Food Standards Agency of the decision and retain a copy of the written notification on the premises file.

Appeal against decision to refuse / suspend / withdraw

Following an appeal against a decision of the Council to refuse or withdraw an approval, the food business operator may continue to undertake activities requiring approval, pending the results of the appeal. This provision does not extend to appeals against the suspension of an approval.

If the Council considers that any activities undertaken in an establishment pending the result of an appeal may present a risk to public health, the Council will consider the use of other relevant enforcement powers.

Prosecution

See Section 6.

Simple Cautions

See Section 7.

6.0 Food Safety Prosecution Policy / Criteria

This section details the Council's criteria on which a decision is made whether to prosecute.

6.1 Criteria for Prosecution

The Council always has the discretion of whether or not to prosecute for an offence. The decision to prosecute is a very significant one and is not taken lightly and is based on the circumstances of each case laid out in the policy below.

Any decision to prosecute under this policy will be based on the circumstances of the case and with reference to our Corporate Enforcement Policy.

Criteria for prosecution will be related to risk(s) to public health and/or the seriousness of an offence.

6.1.1 Non-compliance with an informal notice

Non-compliance with an informal notice (warning letter) will not normally be considered grounds for prosecution, but the authorised officer will reconsider at this stage the enforcement options available to remedy the contravention using the criteria described above. The failure to respond in the first instance to an informal approach will influence that decision. Additional areas of non compliance found during any further visits (not related to issues noted within the informal notice) may be considered grounds for prosecution.

6.1.2 Non-compliance with Statutory notices

Non-compliance with a hygiene improvement notice is a serious offence and will be considered to be grounds for prosecution with the following exceptions:

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

6.1.3 Food Complaints

The decision to prosecute for food safety offences relating to the sale of food unfit for human consumption, or not of the quality demanded by the purchaser will be taken at the earliest opportunity to avoid unnecessary and time consuming investigations by both authorised officers and food businesses.

A breach of law will not automatically result in legal proceedings. The circumstances which are likely to warrant prosecution may be characterised by one or more of the following criteria:-

- (a) There is a flagrant breach of law such that public health, safety or well being is put at risk, or there is a serious offence under food standards legislation.
- (b) A failure by the offender to correct an identified serious potential risk to food safety after having been given a reasonable opportunity to do so.
- (c) Sale of the unfit food has led to a food borne illness.
- (d) A failure to comply in full or part with a Statutory Notice, approval or registration.
- (e) There is a history of similar offences related to risk to the public or food standards offences.
- (f) A Simple Caution has previously been issued for a similar offence.

Before a prosecution proceeds, the enforcement officer will need to be

satisfied that the case is in the public interest and is supported by sufficient relevant evidence which is:-

- (a) Admissible
- (b) Reliable

The guidance contained in the food law Code of Practice and the Code for Crown Prosecutors will be followed and all the following factors taken into account:-

- (a) The seriousness of the alleged offence.
- (b) The previous history of the party concerned.
- (c) The likelihood of whether a defence of due diligence (acting with reasonable care) can be established.
- (d) Whether important witnesses are willing and able to co-operate.
- (e) Willingness of the party to prevent the problem recurring.
- (f) Whether prosecution would be of public benefit.
- (g) Whether a Simple Caution, Hygiene Improvement or Hygiene Prohibition Notice might be more appropriate.
- (h) Any explanation offered by the party concerned.

6.2 Prosecution Process

This section should be read in conjunction with the Councils' Corporate Enforcement Policy

In addition to the above criteria authorised Officers will have regard to the Statutory Code of Practice for Regulators

Investigation and decision making will not be unduly prolonged or delayed. It will be in accordance with principles laid out in the:

- (i) Human Rights Act 1998
- (ii) Police and Criminal Evidence Act 1984
- (iii) Regulation of Investigatory Powers Act 2000
- (iv) Criminal Procedure and Investigations Act 1996

We will keep witnesses, complainants and other parties informed as to the progress of the case.

Following a successful prosecution, a Hygiene Prohibition Order may be imposed by the Court where it considers that the premises, equipment or processes put the public health at risk. The Court may also ban the Food Business Operator, and/or manager, from managing a food business. Where the Council intend to seek a Hygiene Prohibition Order under Section 11 of the Food Safety Act 1990 it will:-

- (a) Ensure that it can satisfy the Court that there was a public risk;
- (b) Make enquires for evidence of previous convictions or warnings.

The Officer principally involved in the case will attend court in person even when a guilty plea has been lodged, so they can give further evidence, should the court require it before granting a Hygiene Prohibition Order, and note any mitigating evidence submitted.

6.3 Post Prosecution

Following a successful prosecution, the Council will:-

- (a) Notify any relevant authority of the conviction and any Hygiene Prohibition Orders in sufficient detail for other authorities to make use of the intelligence.
- (b) Notify other appropriate enforcement authorities.
- (c) With respect to complaints, notify the complainant of the outcome of the case.

7.0 Simple Cautioning

This section details the Council's procedures with respect to Simple Cautions, viz:-

- (a) When it is appropriate to use a Simple Caution.
- (b) That the use of Simple Cautions will be in accordance with the Home Office Circular 016/2008 and guidance issued 14 November 2013.
- (c) The designation of the Cautioning Officer.
- (d) What to do when a person declines the offer of a Simple Caution.
- (e) Notifying other bodies or authorities, if appropriate.

The procedure aims to ensure consistency in using cautions.

7.1 The Aims of Cautioning

The aim of a Simple Caution is to:

- deal quickly and simply with offences
- divert offenders where appropriate from appearing in the criminal courts; and
- reduce the likelihood of re-offending

7.2 The Criteria for Cautions

A person will only receive a Simple Caution when the circumstances of the offence meet the criteria identified in the Home Office Circular or any replacement thereof and therefore there must be:-

- (i) Sufficient evidence of the offenders guilt to make a conviction a

realistic prospect;

- (ii) A clear & reliable admission of guilt by the offender; and
- (iii) It is in the public interest to use a Simple Caution taking into account the public interest principles set out in the Code for Crown Prosecutors

Factors which will be taken into account on whether to issue a Simple Caution include:

- (a) the nature and seriousness of the offence
- (b) the likely penalty
- (c) previous offence history and attitude to the offence for which a simple caution is contemplated.

The Simple Caution will be administered by the Cautioning Officer. The investigating officer may also be present.

We will inform the offender in writing that we propose to issue a Simple Caution.

The Simple Caution will be issued in writing. Two copies of the Simple Caution will be signed by the offender and the Cautioning Officer. The offender will be given a copy of the signed Simple Caution.

If the Simple Caution is issued by post the offender must return both signed copies within 14 days to the Cautioning Officer whereupon having signed both copies the Cautioning officer will return a signed copy to the offender.

If the offender refuses to accept a Caution or fails to return the signed copies within 14 days, legal proceedings will be considered.

7.3 Recording Offences

We will record details of the offence in the appropriate premises file.

7.4 Notifying Other Bodies

We will notify appropriate enforcing authorities of the Simple Caution as soon as possible after its issue.

Subject to the offence meeting the statutory criteria details of the Simple Caution may be recorded on the Police National Computer

If the offence relates to a complaint, we will inform the complainant that a formal caution has been issued.

7.5 Council owned premises

Whilst it is not usually the case for enforcement agencies to inspect their own outlets, this could be the case in respect of food enforcement within council owned premises. Inspection is undertaken by the Council's food safety officers and council owned premises are required to be registered and meet the same standards as other premises. Where contraventions of the regulations are found the Corporate Director and relevant department head will be advised in writing without undue delay.

8.0 The Primary Authority Partnership

Harborough District Council recognises the status of the Primary Authority Partnership scheme, made under the Regulatory Enforcement and Sanctions Act 2008, administered by the Better Regulation Delivery Office (BRDO).

8.1 Primary Authority Notification

Section 28 of the RES Act requires an enforcing authority that wishes to take enforcement action against a business which has a primary authority, to first notify the primary authority of the proposed action. Enforcement action is widely defined for the purposes of the Act by the Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009, as amended.

Statutory guidance on the scheme requires that the notification of proposed enforcement action by the enforcing authority:

- should be made via the Primary Authority Register;
- should be itemised, where multiple enforcement actions are being proposed; and
- should include specified details. These are set out in the statutory guidance and in the notification template on the Primary Authority Register.

The statutory guidance also requires that, when making a notification, an enforcing authority should ensure that, during the five working days following the notification, it is able to respond to requests from the primary authority for further information or clarification.

The Primary Authority has 5 working days to decide if objects or not to the proposed enforcement action. If the Primary Authority or Regulated Business objects, they are entitled to refer the matter to BRDO for consideration within 28 days. BRDO determinations must be adhered to.

8.2 Retrospective Notification

The legislation recognises that there will be times when the need to act swiftly is critical and it allows for notification to the primary authority to be retrospective in certain defined circumstances. In brief, this applies for:

- emergency prohibition notices under specified food hygiene legislation;
- enforcement action that is required urgently to avoid a significant risk of harm to human health, the environment or the financial interests of consumers.

Document History

Issue	Approval Date	Approved By
1		
2	May 2016	Portfolio Holder for Environment and Regulation