



Food Safety Enforcement Policy

1.0 Purpose

This document establishes the Food and Occupational Health sections approach to Food Safety enforcement taking into consideration the Enforcement Policy Procedure MP16E Procedure.

2.0 Introduction

- 1.1 It is the policy of Allerdale Borough Council to ensure that food and drink intended for sale for human consumption which is produced, stored, distributed, handled or consumed within the Borough is without risk to the health or safety of the consumer. This will be achieved through the provision of education, advice and the use of statutory powers of enforcement as necessary.
- 1.2 The aim of this Policy is:
- To inform the public and food businesses of the principles by which enforcement action is taken.
 - To provide guidance for officers to enable them to make effective decisions that are transparent, accountable, proportionate and consistent and that do not impose unnecessary burdens on businesses.
 - To ensure food safety enforcement action is focused on situations where the public are put at risk and on food businesses who negligently or intentionally contravene the law.
- 1.3 This Policy has been written having regard to the Food Standards Agency's Framework Agreement; the Food Law Code of Practice and Practice Guidance, the Code for Crown Prosecutors and the Regulators' Code published by the Department for Business, Innovation and Skills (BIS).
- 1.4 The Council will take a graduated approach to enforcement. As a first step, the Council's authorised officers will normally seek to secure compliance with the law informally, actively working with businesses to encourage and support legislative compliance. However, where appropriate, formal action will be taken, including the service of hygiene improvement and hygiene emergency prohibition notices, the issue of simple cautions or prosecution.
- 1.5 When judging compliance with the law, authorised officers will take into account the relevant codes of practice, industry guides and any specific instruction from the Food Standards Agency or Local Government Association. Officers will use sensible, professional judgement about the extent of the risks and the effort that has been applied to counter them.

- 1.6 In the unlikely event of reaching a decision to depart from this Enforcement Policy, the reasons for departure will be recorded.
- 1.7 The Council has a publicised complaint procedure. Complainants are encouraged to contact the relevant officer or their line manager in the first instance. In cases where disputes cannot be resolved, any right of further complaint or appeal will be explained and the complainant will be directed to the Allerdale Borough Council website and requested to complete the online complaint form. Further information is available at www.allerdale.gov.uk
- 1.8 The Food Standards Agency has an Independent Business Appeals Panel. The Panel will consider complaints or appeals against a decision given by a local authority that the complainant thinks is incorrect or goes beyond what is legally required. Before submitting details to the panel the complainant must have raised a formal complaint or appeal with the Council and this must have concluded. Further information is available at www.food.gov.uk

3.0 The Principles of Enforcement

- 2.1 When developing an Enforcement Policy the Council is required to take into account the Legislative and Regulatory Reform Act 2006 and the Department of Business, Innovation and Skills (BIS) Regulators' Code 2013.
- 2.2 The principles of good enforcement contained within the Legislative and Regulatory Reform Act 2006 are:
- Transparency
 - Accountability
 - Proportionality
 - Consistent
 - Targeted

2.2.1 Transparency

The Council will be open and transparent by helping duty holders and the public to understand what is expected of them and what they should expect from officers. Officers will distinguish between legal requirements which are compulsory and advice or guidance which is desirable but not compulsory.

2.2.2 Accountability

The Council is accountable to central government, the Food Standards Agency and the local taxpayer for their actions and omissions. The Council has policies, service plans, procedures and service standards against which it can be judged, and an effective accessible mechanism for dealing with comments and complaints.

2.2.3 Proportionality

Proportionality means relating enforcement action to the risks. The Council will minimise the costs of compliance for business by ensuring that any action required is proportionate to the risk and seriousness of the breach. Some risks may be so serious that they cannot be permitted irrespective of economic consequences.

As far as the law allows, the Council will take account of the circumstances of the case and the attitude of the operator when considering action.

2.2.4 Consistency

The Council's authorised officers will carry out their duties in a fair and equitable manner, by taking a similar approach in similar circumstances to achieve similar ends.

The Council has arrangements in place to promote consistency in the exercise of discretion, including effective arrangements for liaison with other enforcing authorities.

2.2.5 Targeting

The Council will ensure resources are targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled and will ensure that action is focused on the duty holders who are responsible for the risk and who are best placed to control it.

The Council follows a national risk rating system for interventions. Separate procedures are available for inspections, the national Food Hygiene Rating Scheme (FHRS), use of the various food enforcement sanctions, sampling, food and food premises complaint investigations, the investigation of food poisoning and food borne infection notifications.

2.3 The Regulators' Code is a statutory Code of Practice introduced under Section 23 of the Legislative and Regulatory Reform Act 2006 and came into force in April 2014. Regulators should take an evidence-based approach to the use of enforcement tools and base their decisions on the key principles laid down in the Regulators' Code. These principles are:

- a) Regulators should consider the impact of their interventions on economic progress and seek to support those who are regulated to comply and grow.
- b) Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views.
- c) Regulatory efforts and resources should be targeted via risk assessment to where they will be most effective.
- d) Regulators should share information about compliance and risk.
- e) Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.
- f) Regulators should ensure that their approach to their regulatory activities is transparent.

4.0 Qualification and Authorisation of Officers

3.1 All officers who undertake the enforcement options in this policy will have the necessary qualifications, training, experience and competence to do so and meet the requirements set out in the Food Law Code of Practice. Officers will be authorised in writing by the Head of Governance and Regulatory Services. There is a separate procedure covering the Authorisation of Officers.

3.2 Officers will be fully acquainted with the requirements of this Enforcement Policy and with any revisions as they arise.

5.0 Decision Making

4.1 In deciding the type of enforcement action to take, an authorised officer must have regard to:

- The nature of the breach and the history of compliance of the food business operator.
- In the case of a new business, an assessment of the food business operator's willingness to undertake the work identified by the officer.

4.2 Any decision to prosecute will be ratified by the Legal Services Department.

6.0 Working with Others to Secure Compliance

5.1 Discussion and liaison may be necessary with the following in implementing the Enforcement Policy:

- Consumers and Businesses

The need to protect the health of the consumer whilst acknowledging the concerns of businesses are recognised and are implicit within this policy and the requirements of the Regulators' Code.

- Primary Authority Scheme/Home Authority

Officers will utilise the Home Authority Principle and Primary Authority scheme including using inspection plans created under Primary Authority when inspecting relevant businesses.

Where enforcement action is being considered in relation to a business which has a Primary Authority partnership, a statutory notification to the Primary Authority will be made via the Primary Authority Register, with the exception of circumstances where the need to act swiftly is critical.

Officers will liaise with the Primary Authority during the early stages of an investigation to determine whether Primary Authority advice has been given, and whether the business has followed it.

- Food Standards Agency

The FSA will be notified of all approvals or any variations issued under product specific legislation.

Under the Food Incidents and Alert System the FSA will be notified of any issues which have a wider concern or where there is a serious localised incident.

- Public Health England (PHE) and the County Analyst

In relation to infection control, sampling and epidemiological advice. The expert advice of colleagues within PHE and the County Analyst may be required in determining relevant enforcement action.

- County Food Liaison Group

As regards the co-ordination and promotion of consistency within Cumbria, which involves direct links with Cumbria County Council Trading Standards Department.

5.2 Liaison with Expert Bodies

- 5.2.1 Other specialist organisations and governing bodies will be consulted where appropriate.

7.0 Interventions

- 6.1 The Council visits and inspects all premises where it has enforcement responsibility on a regular basis in line with the Food Law Code of Practice and Practice Guidance. The frequency of intervention is based on the level of risk found to exist at each premises and ranges from six months to three years. The emphasis is placed on premises where the level of risk is perceived to be highest.
- 6.2 The Council has adopted the national Food Hygiene Rating Scheme whereby the public can make an informed choice about where to eat based on the standards of hygiene found in food businesses at the time of inspection. The food hygiene rating is based on the risk rating already applied in line with the Food Law Code of Practice. The scheme recognises good standards; however, officers will aim to work with lower scoring premises to help them to improve their rating.
- 6.3 An alternative enforcement strategy is used for 'low risk Category E' establishments which means an intervention other than inspection may be undertaken, for example contact via questionnaire. For Category E premises included within the Food Hygiene Rating Scheme, every alternate planned intervention will be an inspection. An intervention is carried out at least once every three years at Category E Premises.
- 6.4 The frequency of inspection of food premises may be altered in the event that the Council is asked to bring forward the intervention of an establishment following direction from the Food Standards Agency in response to an emerging incident or a national programme of work.
- 6.5 Officers will consider the impact their interventions may have on small businesses and try to ensure that the burdens of their interventions fall fairly and proportionately on these premises.
- 6.6 Officers will use the full range of interventions to improve compliance with food law by using their professional judgement to apply a proportionate level of regulatory and enforcement activity at each food business.
- 6.7 In relation to new businesses the local authority becomes aware of, officers will, where appropriate, aim to carry out an initial advisory visit prior to opening or within 28 days of the establishment operating. Where resources are stretched, this advice may be given over the telephone. A further visit will then be undertaken to carry out an inspection and to risk rate the premises. This will take place between 2/3 months to help provide evidence to the officer to be able to rate the business for confidence in management. Where businesses have opened without notifying the local authority, an inspection to risk rate the premises will be carried out.

8.0 Revisits following Interventions

- 7.1 Food businesses that fail to comply with significant statutory requirements will be subject to appropriate enforcement action and revisits. A revisit will be made to businesses at the discretion of the inspecting officer taking into account the

compliance scores given for hygiene and/or structure and/or a confidence in management.

7.2 Revisits will focus on the contraventions identified at the programmed intervention and ensuring that these have been remedied. However, requests for revisits under the Food Hygiene Rating Scheme will check that the required improvements have been made and also assess the level of compliance overall.

7.3 The timing of the revisit will be determined by the action taken as a result of the earlier intervention. The revisit will whenever practicable, be undertaken by the officer who carried out the original intervention. Revisits requested under the Food Hygiene Rating Scheme will always be unannounced.

9.0 Food Safety Enforcement Actions

8.1 Authorised Officers will consider the most appropriate course of action including enforcement action during inspections or following incidents or complaints. All relevant information and evidence will be taken into account.

8.2 It is important that the full range of enforcement options remains open to an authorised officer.

8.3 The choices of action are:

- No action
- Informal action and advice, including informal written warnings
- Statutory Notices - Hygiene Improvement Notice, Hygiene Emergency Prohibition Notice or Remedial Action Notice
- Voluntary closure
- Service of Regulation 29 Certificate
- Detention and seizure of food
- Suspend or revoke an approval
- Issue a Simple Caution
- To prosecute
- Any combination of the above

8.4 Before formal action is taken, officers will provide the food business operator with an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required.

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

8.6 Separate Allerdale Borough Council procedures, containing detailed guidance for officers are in place on the use of the various enforcement options, including statutory notices, detention and seizure, voluntary closure and approvals.

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

10.0 No Action

- 9.1 Where there is full compliance with relevant legislation no further action will be required other than to issue a report of inspection proforma as identified by the Food Law Code of Practice.
- 9.2 There will be circumstances where a contravention may not warrant action i.e. the premises is low risk in nature i.e. no food preparation, or it may be inappropriate.

11.0 Informal Action

- 10.1 Informal action to secure compliance with legislation includes offering verbal advice, the issue of a handwritten food hygiene inspection report at premises following an inspection, and the issue of a post inspection letter, also known as an informal written warning.
- 10.2 At the conclusion of an inspection, the officer will discuss any contravention of food law discovered, any corrective action necessary, the timescale for remedy and any recommendations of good practice the officer considers appropriate.
- 10.3 A hand written inspection report will be issued at the conclusion of all programmed inspections and revisits. If there are only a small number of minor contraventions or recommendations, the inspection report alone may be sufficient. If there are more substantial issues to be addressed, a letter will also be issued, detailing the contravention and action to be taken. Informal advice or information pertinent to matters noted at the time may also be included within the letter.
- 10.4 The existing procedure of giving advice and informing of minor contraventions by inspection report or informal letter is accepted and understood by Allerdale Borough Councils food businesses. Officers will use this approach as long as they believe this will achieve compliance with food safety legislation within a timescale that will protect the public health and ensure safe food production.
- 10.5 The circumstances when it is appropriate to use verbal and informal written warnings are:
- The act or omission is not serious enough to warrant formal action.
 - From the individual's/businesses past history it can be reasonably expected that the warning will achieve compliance.
 - The officer has confidence in the management of the business.
 - The consequences of non-compliance will not pose a significant risk to public health.

Even where some of the above criteria are not met, there may be circumstances in which a warning will be more effective than a formal approach.

- 10.6 When an informal approach is used to secure compliance with food safety legislation, any written documentation issued or sent to proprietors will:
- Contain all the information necessary to understand what work is required and why it is necessary.
 - Indicate the regulations contravened and the measures which will enable compliance with the legal requirement.

- Clearly distinguish between matters which are necessary to meet statutory requirements and those which are recommended practice.
- Copies of letters and reports of inspection will be sent to the registered or head office where this is not the premise visited.
- Contain the contact details for the inspecting officer and the Manager of the inspecting officer.

The inspection category and minimum inspection frequency will be verbally provided if requested by the food business operator.

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

12.0 Hygiene Improvement Notices

- 11.1 Authorised officers will consider the issue of Hygiene Improvement Notices under Regulation 6 of the Food Safety & Hygiene (England) Regulations 2013, in accordance with the FSA Food Law Code of Practice and the Practice Guidance. There is a separate procedure covering the issue of Hygiene Improvement Notices.
- 11.2 Hygiene Improvement Notices will be served by authorised officers based on their opinion that there is a contravention of the law at the time of the visit or that there had been a contravention and that it is likely that the contravention will continue or be repeated.
- 11.3 The circumstances when it is appropriate to issue a Hygiene Improvement Notice include those situations where one or more of the criteria below apply:
- Formal action is proportionate to the risk to public health;
 - There is a record of non-compliance with breaches of the food hygiene regulations; and/or
 - The authorised officer has reason to believe that an informal approach will not be successful.
- 11.4 The officer will discuss the notice and, if possible, resolve points of difference before serving it. The notice will say what needs to be done, why and by when. Timescales will be realistic and details of appeal mechanisms and requests for extensions of time will accompany the notice.
- 11.5 Hygiene Improvement Notices will be signed by an appropriately authorised officer who has witnessed the contravention.
- 11.6 Non-compliance with a Hygiene Improvement Notice will be considered on a case to case basis but will generally result in prosecution.

13.0 Improvement Notices

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

- 12.2 The County Council has a duty to enforce the Food Information Regulations 2014. Allerdale Borough Council has a power, but not a duty, to enforce certain provisions for the allergen labelling requirements for non-pre-packed foods and officers are expected to carry out these checks, of mainly catering premises, as part of their routine inspections.
- 12.3 If an officer has reason to believe that an informal approach will not achieve a successful outcome, an authorised officer can issue an Improvement Notice, but under normal circumstances will liaise with the County Council Trading Standards Department, as the enforcing authority, and as agreed by the Cumbria Food Liaison Group.

14.0 Hygiene Emergency Prohibition Notices

- 13.1 Authorised officers will consider the issue of Hygiene Emergency Prohibition Notices where the use of a premises, a process, a treatment of a piece of equipment represents or involves an imminent risk of injury to health.
- 13.2 Regulation 8 of the Food Safety and Hygiene (England) Regulations 2013 and the FSA Food Law Code of Practice and the Practice Guidance specify the steps that have to be taken when using Hygiene Emergency Prohibition Notices. There is a separate procedure covering the service of Hygiene Emergency Prohibition Notices.
- 13.3 Unless the use of voluntary procedures is more appropriate in the circumstances, Hygiene Emergency Prohibition Notices must be used if an authorised officer has evidence that the health risk condition is fulfilled.
- 13.4 In considering the use of such notices, the prime consideration should be to protect public health. The following instances are examples of circumstances that could show the health risk condition exists, such that there is an imminent risk of injury to health:
- Premises or practices which seriously contravene food law and have been or are implicated in an outbreak of food poisoning;
 - Serious infestation by rats, mice, cockroaches, birds or other vermin serious enough to result in the actual contamination of food or a significant risk of contamination;
 - Very poor structural condition and poor equipment and/or poor maintenance of routine cleaning and/or serious accumulations of refuse, filth or other extraneous matter resulting in actual food contamination or a significant risk of food contamination;
 - Drainage defects or flooding of the premises serious enough to lead to actual contamination of food or a significant risk of contamination;
 - Use of equipment for the processing of high risk foods that has been inadequately cleaned or disinfected or which is grossly contaminated and can no longer be properly cleaned;
 - Dual use of complex equipment, such as vacuum packers, slicers and mincers for raw and ready-to-eat foods;
 - Serious risk of cross contamination;
 - Failure to achieve sufficiently high processing temperatures;

- Operation outside critical control criteria, for example, incorrect pH of a product which may allow Clostridium Botulinum to grow;
- Any combination of above or the cumulative effect of contravention which together represent an imminent risk of injury to health.

The list is not exhaustive.

- 13.5 The effect of the Hygiene Emergency Prohibition Notice is to immediately close the premises, or prevent use of equipment, or the use of a process or treatment. The authorised officer must apply to a magistrate's court for a Hygiene Emergency Prohibition Order within three days of the Hygiene Emergency Prohibition Notice being served, the day of service being day one. The officer must give the food business operator at least one day (24 hours) notice of the intention to apply to the court for a Hygiene Emergency Prohibition Order.
- 13.6 In certain circumstances the use of a Hygiene Emergency Prohibition Notice 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 indicated he would be getting in a team of cleaners to improve the position before it re-opened. Under such circumstances the officer would normally revisit before the premises reopened.
- 13.7 Voluntary procedures to remove a health risk condition may be used at the instigation of a food business operator, when the food business operator agrees that a health risk condition exists, ie there is an imminent risk of injury to health. An officer can suggest this option but only when they are in a position to be able to serve a Hygiene Emergency Prohibition Notice. Any voluntary closure agreement must be confirmed in writing by the food business operator or manager who has the authority to agree such action, with an undertaking not to re-open without the officer's prior approval.
- 13.8 The offer to voluntarily close will only be accepted where the authorised officer is satisfied that there is no likelihood of the premises being used as a food business, or the use of equipment, or of a process without the express agreement of the officer. A number of monitoring visits would be carried out to check the premises remains closed following voluntary closure. There is a separate procedure for the voluntary closure of a premises.
- 13.9 When considering such an offer, care will be taken to ensure that the person making the offer is aware that, in voluntarily closing, they are relinquishing the right to compensation for unjustified action contained in the formal Hygiene Emergency Prohibition Notice.

15.0 Remedial Action Notices

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

14.2 Circumstances which may lead to the issue of a Remedial Action Notice include:

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

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

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

16.0 Regulation 29 Certificate

15.1 When food has not been produced, processed or distributed in compliance with the 'Hygiene Regulations', a certificate under regulation 29 of the Food Safety and Hygiene (England) Regulations 2013 may be served by an authorised officer. Service of the certificate confirms the food fails to meet the Hygiene Regulations. The food must then be dealt with using powers of seizure under Section 9 of the Food Safety Act 1990 as food failing to comply with the food safety requirements.

17.0 Use of Seizure and Detention Notices

16.1 The use of detention and seizure powers under Section 9 of the Food Safety Act 1990 will be initiated in accordance with the Food Law Code of Practice and the Practice Guidance. There is a separate procedure for the use of detention and service of food.

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

16.3 Detention

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

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

16.4 Seizure

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

16.4.2 Food will, where possible, be brought before a Justice of the Peace within two days and perishable foods as soon as possible.

16.4.3 If the Justice of the Peace does not condemn the food, the owner may be entitled to compensation for any loss suffered.

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

17.0 Suspend or Withdraw an Approval

17.1 Authorised officers have enforcement powers available to them under the Official Feed and Food Controls (England) Regulations 2009 in respect of product-specific establishments subject to approval under Regulation 853/2004. Suspension or withdrawal of an Approval is considered in the Approval Premises Intervention procedure and supporting documentation.

17.2 Powers to withdraw or suspend approval or conditional approval of an establishment are provided by Article 31(2) of Regulation 882/2004.

17.3 On discovery of non-compliance in establishments subject to approval under Regulation 853/2004, officers must, before considering suspension or withdrawal, explore other enforcement options to control the food hazards. Food business operators will be given a reasonable opportunity to address deficiencies and achieve compliance where this is appropriate.

17.4 The food business operator will be notified in writing of any decision to suspend or withdraw approval or conditional approval. The reasons for the suspension or withdrawal will be specified, together with the matters necessary to satisfy the requirements of the Regulations. The operator will be informed that activities requiring approval cannot be undertaken and will be made aware of their right of appeal.

18.0 Simple Cautions

18.1 A simple caution is a formal warning that may be given to persons aged 18 or over who admit committing an offence. The simple caution scheme is designed to provide a means of dealing with offending without a prosecution where there is evidence of an offence, but the public interest does not require a prosecution.

18.2 Authorised Officers should consider the use of simple cautions as an alternative to prosecutions to:

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

- reduce the chances of repeat offences.
- 18.3 When a simple caution is under consideration, the following conditions must be fulfilled before it is offered:
- there is sufficient evidence to provide a realistic prospect of conviction if the offender were to be prosecuted;
 - the offender is over 18 years of age;
 - the offender admits that they have committed the crime and has not raised a defence;
 - the offender agrees to be given the caution.
- 18.4 Where an offender declines to accept a simple caution, it will be necessary to consider taking alternative enforcement action. This could include prosecution.
- 18.5 In offering a simple caution, account will be taken of the Ministry of Justice guidelines on Simple Cautions for Adult Offenders and the Code for Crown Prosecutors.
- 18.6 A caution will remain on record for a period of six years in line with the Councils retention policy. However, for a period of two years, it may be cited in Court should a further offence be committed and prosecuted during that time.
- 18.7 A simple caution can only be administered by a Cautioning Officer. The Cautioning Officer must not have taken an active part in investigating the offence. The Cautioning Officer is the Head of Governance and Regulatory Services. Any decision to offer a simple caution will be made in consultation with the Head of Legal Services.

20.0 Prosecution

- 19.1 Prosecution may be considered as an alternative, in addition to, or as a consequence of failure to comply with the above enforcement procedures. There is a Prosecution procedure which will be followed.
- 19.2 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 considered for prosecution.
- 19.3 The decision to prosecute is a significant one and will only be taken where that course of action is proportionate to the risk presented to public health by the contravention.
- 19.4 Before initiating any prosecution proceedings the Council must be satisfied that there is relevant, admissible, substantial and reliable evidence that an offence has been committed by an identifiable defendant.
- 19.5 The authorised officer will apply the evidential test and public interest test as described in the Crown Prosecution Service Code for Crown Prosecutors. Only when the evidential test has been satisfied will the public interest to proceed with a prosecution be considered.

- 19.6 In all cases, legal advice will be sought before recommending any prosecution and any decision to prosecute will be ratified by the Head of Legal Services.
- 19.7 Home and Primary Authorities will be consulted where prosecutions are planned and due regard will be paid to the opinion of that authority.
- 19.8 Factors that will be considered before initiating prosecution procedures include:
- The seriousness and nature of the alleged offence.
 - Whether there is sufficient, reliable and credible evidence to support proceedings and a realistic prospect of conviction.
 - Whether a prosecution is in the public interest.
 - The role of the suspect in the commission of the offence.
 - Was the suspect in a position of trust, responsibility or authority in relation to the commission of the offence?
 - The previous compliance history of the suspect.
 - Any previous advice given to the suspect by this or another authority.
 - Regard given to authoritative advice, guidelines and recommendations.
 - Any explanation by the suspect or any agent or third party acting on their behalf.
 - Whether there has been reckless disregard for food safety requirements.
 - The likelihood of that a due diligence* defence could be established.
 - The risk of harm to the public.
 - Any mitigating or aggravating circumstances.
 - The ability of any important witness and their willingness to co-operate.
 - The likely penalty to be imposed.
 - The suspect's age and state of health.
 - Whether other action, such as issuing a simple caution, serving a hygiene improvement notice, or imposing an emergency hygiene prohibition, would be more appropriate or effective.

**due diligence: The Food Safety Act 1990 provides a defence for a person charged with an offence that he took all reasonable precautions and exercised all due diligence to avoid the offence. This requires that, not only are suitable precautions set up, but that they are adequately implemented and monitored to ensure their effectiveness.*

21.0 Prosecution for Non-Compliance with Hygiene Improvement Notices

- 20.1 Non-compliance with an improvement notice is a serious offence and will generally 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.

- Where the outstanding works are in hand (confirmation from contractor or supplier required), and an extension of time to complete the works would have been granted, if requested.

22.0 Prosecution - Food Complaints

21.1 The decision to prosecute for Regulation 178/2002 Article 14 or Food Safety Act section 7 or 14 offences relating to the sale of food injurious to health or 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. Before any prosecution is considered, officers should have regard for the food complaints procedure.

21.2 Prosecution will be indicated where:

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

Particular regard will be paid to the possibility of establishing a due diligence defence.

21.3 Independent advice will be sought from the appointed food examiner or public analyst or other expert, where appropriate.

21.4 In all cases where a prosecution is being considered, a report will be requested from the home or primary authority, as appropriate and particular regard will be paid to this report.

21.5 The integrity and co-operation of the complainant in providing witness support is especially important. The wishes of the complainant regarding prosecution will be respected, unless it is in the public interest and there is sufficient evidence to proceed independently.

23.0 Prosecution - Food Hygiene Regulations

22.1 A decision to prosecute for offences under food hygiene regulations will be taken based on the risk to public health presented by the contravention. It is not sufficient for there to be a technical breach of the regulations on a minor matter.

22.2 The initial response to contraventions that do not present a risk to public health will be by informal written notification or improvement notices.

22.3 Immediate prosecution action may be indicated where:

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

22.4 Where a prosecution is prepared for food hygiene regulation contraventions, summonses will generally be issued for a small number of specimen charges,

representing the more serious contraventions and demonstrating the element of the risk.

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

24.0 Notification of Food Law Prosecution to the Food Standards Agency

23.1 The FSA has a central repository of information for successful prosecutions, this database includes information about food standards, food safety and food hygiene related prosecution cases by local authorities in the UK. Local Authorities are requested to enter on the database any successful prosecutions taken by the local authority. This is done annually by Allerdale Borough Council as part of the annual return.

23.2 The Council will report any successful prosecutions to the FSA within 28 days after a conviction has been obtained, in accordance with the Food Law Code of Practice Guidance.

25.0 Other Factors to consider when using Enforcement Powers

25.1 Police and Criminal Evidence Act (PACE) 2004

Our officers will have close regard to the requirements set out in the Police and Criminal Evidence Act and any amendments and current and codes relevant to our regulatory enforcement responsibilities. This includes investigation of relevant offences, powers of entry in the course of discharging statutory duties, taking samples to help in gaining necessary evidence and interviewing those suspected of committing offences

25.2 Regulation and Investigatory Powers Act (RIPA) 2000

This Act regulates the powers of public bodies to carry out surveillance and investigation, including the interception of communications, and officers will use their powers in accordance with RIPA.

25.4 Protection of Human Rights

The provisions of the European Convention on Human Rights such as Article 1 of the First Protocol, Article 8 and Article 14 are relevant when considering any enforcement action. There is a clear public interest in enforcing relevant public protection regulations, in a proportionate way. In deciding whether enforcement action is taken, the Food and Occupational Health team will, where relevant, have regard to the potential impact on the health and safety or welfare of those affected by the proposed action, and those who are affected by the breach of regulations. In particular, due regard will be given to the right to a fair trial and right to respect for private and family life, home and correspondence.

25.5 Equalities, Vulnerable Persons and Minority Groups

The section aim to effectively support and promote access to our enforcement services recognising the diversity of the communities we serve and ensure that residents and businesses are treated equally and fairly through the delivery of our services. When

required, the section will make reasonable adjustments to support diverse communities and business operators. This may include translation of written text, joint visits with a translator or buddy support system.

26.0 Review of Policy and Procedure

24.1 This Enforcement Policy will be reviewed annually or sooner if significant changes in legislation or centrally issued guidance make this necessary.