

BABERGH DISTRICT COUNCIL

FOOD SAFETY ENFORCEMENT POLICY

1. Objectives

- 1.1 It is the policy of Babergh District Council to strive to ensure that food and drink intended for sale for human consumption, which is produced, manufactured, stored, distributed, handled or consumed within the district is without risk to the health or safety of the customer.
- 1.2 These objectives will be pursued whilst:
 - (a) promoting economic prosperity amongst the food businesses in the district;
 - (b) carrying out visits based on risk assessment of the business activities;
 - (c) ensuring that businesses are provided with advice and guidance to help them comply with the law; and
 - (d) ensuring that enforcement activities are open to scrutiny.

2. Implementation of Policy

- 2.1 The policy will be implemented in accordance with enforcement techniques and practices which are:-
 - (a) consistent with current statutory and professional guidance;
 - (b) fair;
 - (c) in accordance with sound principles of common sense;
 - (d) consistent within the area of the Council;
 - (e) related to the risk presented by the activities of the food business;
 - (f) consistent with the principles of the Regulators Compliance Code and the Council's General Enforcement Policy. (Controlled document ES-GN-014)
- 2.2 Officers will have regard to the Regulators Compliance Code when making decisions covered by this policy and in particular when carrying out enforcement action as described in sections 6 and 7 below.
- 2.3 Enforcement will be carried out by appropriately qualified and competent officers given suitable authorisation and delegation appropriate to their designation and duties. A separate procedure for the appointment and authorisation of officers is given in controlled document es fs – 032.

- 2.4 The enforcement techniques described in this policy are supported by statutory Codes of Practice and other trade Codes of Practice and guidance issued by professional bodies.
- 2.5 All authorised officers are to make themselves fully acquainted with the requirements of this policy, and will abide by its terms when making enforcement decisions. Any departure from the policy is permitted only in exceptional circumstances capable of justification, and authorised by the relevant departmental manager.
- 2.6 Appropriate training for familiarisation with this policy and with supporting documents will be given as necessary to enforcement officers.
- 2.7 The designated officers for the implementation of this policy are:-
- (a) Head of the Natural and Built Environment
 - (b) Food and Safety Regulation Manager
 - (c) Principal Food and Safety Officer
 - (d) Food and Safety Officers
- 2.8 This policy and the Council's General Enforcement Policy should be read together. In the event of any conflict between the two the principles of the General Enforcement Policy will take precedence.

3. **Monitoring etc.**

- 3.1 This policy will be monitored by the Head of Natural and Built Environment and the Food and Safety Regulation Manager in the course of their line management supervision. Officer monitoring will be undertaken by the Principal Food and Safety Officer (PFSO), together with a review of records and correspondence. Any non-compliance with the policy will be discussed first with the inspecting officer to determine the reasons. Persistent non-compliance with the policy may be a disciplinary matter.
- 3.2.1 Any food business operator who feels aggrieved about the implementation of this policy may seek in writing to have the matter investigated in accordance with 3.1 above.
- 3.3 Where there appear to be differences in enforcement policy between Babergh and other Suffolk local authorities that could materially affect action that might be taken against a food business operator then the matter may be referred to the Suffolk Food Liaison Group to ensure a consistent approach.

4. **Responsibilities and Duties under the Policy**

- 4.1. The Head of Natural and Built Environment will:-

- Seek any necessary delegated authority from the Council to secure the implementation of this policy.
- Appoint officers to carry out the Council's statutory functions in relation to food who are qualified, experienced and competent.
- Authorise such officers to perform their enforcement duties.
- Authorise the taking of prosecutions and administration of simple cautions when appropriate.

4.2 The Food and Safety Regulation Manager will:-

- Carry out the duties of the Head of Natural and Built Environment in his absence.
- Receive and submit recommendations for prosecution or simple caution to the Head of Natural and Built Environment for formal approval.
- Administer and record simple cautions.
- Obtain authorisation from the Head of Natural and Built Environment for officers employed as Senior Environmental Health Officers and Food and Safety Officers to carry out their enforcement duties.
- Receive recommendations for prosecution or simple caution from the SEHOs or FSOs and consider and endorse them where the criteria contained in this policy are satisfied, and submit them for further action to the Head of Natural and Built Environment.
- Ensure that officers carrying out food enforcement duties receive adequate training and are suitably qualified commensurate with those duties.
- Review this policy as necessary in the light of changes in legislation, statutory or professional guidance, or experience and after consultation with the Principal Food and Safety Officer and Head of Natural and Built Environment, amend it accordingly.
- Also undertake the inspection duties listed for SEHOs.

4.3 The PFSO will be a qualified Environmental Health Officer with experience of food hygiene enforcement and will:-

- Be authorised to carry out all food safety enforcement duties contained in all relevant legislation by the Head of Natural and Built Environment.
- Carry out the duties of the Food and Safety Regulation Manager in his absence.

- Undertake the inspection of all classes of food premises irrespective of risk classification.
- Undertake the investigation of food safety complaints in accordance with the division's approved operating procedures.
- Decide what enforcement action is appropriate.
- Undertake all enforcement actions described in this policy.
- Seek guidance if necessary on the choice of appropriate enforcement action from the Food and Safety Regulation Manager and/or legal officers of the Council.
- Undertake the monitoring function of the policy detailed in 3.1 and 3.2.

The PFSO may also authorise minor deviations from this policy where circumstances demand it, and shall submit details of the deviation to the Food and Safety Regulation Manager for confirmation.

4.4 Food and Safety Officers will:-

- Be authorised by the Head of Natural and Built Environment to carry out food enforcement duties appropriate to their level of qualification and experience.
- At all times work under the general supervision and guidance of the Food and Safety Regulation Manager and PFSO.
- Undertake the investigation of food safety enquiries and complaints.
- Undertake all enforcement action (described later in this policy) appropriate to their level of qualification and when circumstances demand, refer matters requiring formal action to the Food and Safety Regulation Manager.
- Seek endorsement of the enforcement action decided upon before commencement.
- Be trained or experienced to at least the level and standard required by statutory Codes of Practice.

5. **Visits etc.**

- 5.1 Where poor hygienic practices have been found in the course of a programmed inspection, a further visit will be made after an appropriate interval. The timing of this visit will be determined by actions taken by the inspecting officer and following the original inspection.

- 5.2 As far as is possible, revisits will be undertaken by the original inspecting officer.
- 5.3 Where Babergh District Council is itself the proprietor of a food business, it will be subject to the same inspection regime as any other business. Should any contraventions be found in these premises, they will be brought immediately to the attention of the appropriate Head of Service. Any dispute will be referred to the Chief Executive without delay.
- 5.4 Where the Food Business Operator's first language is not English, officers must ensure that they are able to communicate effectively to give advice and secure compliance with legal requirements. Commercial interpreting and translation services are readily available. Where the FBO requests that letters and notices be translated this will normally be carried out. Where the FBO does not request translations, but the officer suspects that they may have some difficulty reading English, the warning notice ES/GN – 075 076 or 077 must accompany any correspondence.

6. **Enforcement Options**

- 6.1 All actions in which officers are involved, whether undertaken routinely or otherwise may result in prosecution. Officers will at all times maintain accurate and proper records of all actions.
- 6.2 Action following an inspection will be one of the following options:-
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|-----|--------------------------------------|---|-----------------|
| (a) | Verbal advice |) | |
| (b) | Inspection report |) | Informal action |
| (c) | Letter |) | |
| (d) | Hygiene Improvement Notice |) | |
| (e) | Hygiene Emergency Prohibition Notice |) | |
| (f) | Simple caution |) | Formal action. |
| (g) | Prosecution |) | |
- 6.3.1 Detailed guidance on each of the options is given in the Food Safety Act Code of Practice and Practice Guidance, guidance from LACORS, industry guides and professional bodies. In general, the following circumstances are appropriate for each of the listed courses of action.

6.4 **Advice and Informal Action**

6.4.1 Verbal advice:

This course of action is to be followed only where a food business is well managed, almost no contraventions of legal requirements or good practices are found, and the business poses little or no risk to

customers. A record of verbal advice given will be recorded on the report form and kept in the property file.

6.4.2 Inspection Report:

To be issued on completion of the inspection on the standard form. It will draw attention to areas where improvement is needed, and where some follow-up action is required to secure compliance. It will distinguish between recommendations and legal requirements. The business itself will be well managed.

6.4.3 Letters:

Letters will be sent in the following circumstances:-

- (a) In response to individual enquiries or complaints.
- (b) Where detailed instructions are required to secure compliance with legal requirements or good practice and will include the following information:-
 - (a) What work is required and why it is necessary.
 - (b) Which regulations are contravened, measures which will enable compliance with legal requirements and advice that other means of achieving the same effect may be chosen.

6.5 In all instances, the need to differentiate between legal requirements and matters which are recommended as good hygiene practice must be recognised, including the giving of verbal advice.

6.6 **Formal Action by Notice**

6.6.1 Hygiene Improvement notices will be served by an appropriately authorised officer where one or more of the following circumstances exist.

- (a) There are significant contraventions of legislation.
- (b) There is a lack of confidence in the food business operator to respond to an informal approach.
- (c) There is a history of non-compliance with informal action.
- (d) Standards are generally poor with little management awareness of statutory requirements.
- (e) The consequences of non-compliance present a potentially serious risk to public health.

- 6.6.2 The use of Hygiene Improvement Notices will be related to risk to health. They will not be issued for minor technical requirements.
- 6.6.3 Hygiene Emergency Prohibition Notices which require a business to close temporarily are restricted to circumstances where the health risk condition is fulfilled in respect of the Food Hygiene (England) Regulations 2006. The guidance on Hygiene Emergency Prohibition Notices as outlined in the Food Safety Act Code of Practice and Practice Guidance and LACORS guidance notes, will form part of this policy.
- 6.7 All actions will be recorded on the departmental computer system within two days of the activity.
- 6.8 Correspondence relating to informal action will be issued within 10 working days of the inspection.

7. Simple Caution and Prosecution

- 7.1 The recommendation to pursue formal legal action following an inspection will be made by the PFSO or an appropriately qualified and authorised FSO in consultation with the Food and Safety Regulation Manager. Prosecutions will be conducted in accordance with normal legal procedures and practices and will take account of the Police and Criminal Evidence Act, the Criminal Procedures and Investigations Act and the Human Rights Act.
- 7.2 Basic details of the evidence to support a legal action will be prepared as quickly as possible by the PSFO or FSO. Evidence will consist of signed witness statements produced by the inspecting officers, samples of any bacteriological reports, photographs and any other materials to substantiate the alleged offences.
- 7.3 The Food and Safety Regulation Manager will consult the Council's Solicitor on the quality and adequacy of evidence (using the Charging Decision form ES GN 68), and any other legal issues raised. A report will then be prepared and discussed with the inspecting officer for consideration. If the Food and Safety Regulation Manager is satisfied that the recommendation is in line with statutory and professional guidance, and with the Council's policy, he will pass the report to the Head of Natural and Built Environment for authorisation of action.
- 7.4 If the offence is a first offence, or is of a technical nature, or is not sufficiently serious to proceed to Court, but could nevertheless be proved, a simple caution may be recommended by the inspecting officer, or the Food and Safety Regulation Manager in accordance with the resolution of the Council's Environmental and General Services Committee of the 17th January 1994.
- 7.5 The Food and Safety Regulation Manager will consider the report, any representations and other information concerning the proposed legal action, and will recommend the Head of Natural and Built Environment to authorise the prosecution or administer and record the simple caution.

- 7.6 Simple cautions will be administered according to the guidance contained in Home Office Circular (18/94) or any subsequent issue.
- 7.7 In the event of a simple caution being offered and declined by the defendant, the Food and Safety Regulation Manager will recommend prosecution in accordance with this policy, and within powers delegated to the Head of Natural and Built Environment.
- 7.8 In the event of a prosecution being authorised the papers will be forwarded by the Food and Safety Regulation Manager to the Council's Solicitor with a request to initiate court action.
- 7.9 The outcome of all Court proceedings and simple cautions will be notified by the Head of Natural and Built Environment to all interested parties.

Food Safety Complaints

- 8.1 It is the policy of Babergh District Council to investigate food complaints from members of the public whenever there is a significant risk to their health or the nature of the complaint indicates serious failings in food safety control.
- 8.2 Such complaints will be investigated in accordance with the Food Complaints Procedure ES/FS – 004.
- 8.3 Other food complaints may be received which do not present a risk to public health and do not merit full investigation. Depending on the nature of the complaint these may be either:
 - dealt with immediately over the telephone or face to face with the complainant, or
 - referred directly to the manufacturer (and originating authority where appropriate) with no further action by the Council.
- 8.4 Complaints which will be dealt with by verbal advice only will include items of natural occurrence in foodstuffs which do not constitute a risk to health. Examples of these are cod worms, struvite crystals, lead shot in game and vegetable fibres. The nature of the 'foreign body' will be explained and no further action taken.
- 8.5 Complaints which will be dealt with by referral to the manufacturer and originating authority will include non-hazardous foreign bodies such as plastic and cardboard (particularly in products manufactured at sites subject to third party audit), insects and molluscs in pre-packed fruit and vegetables, and mould growth in aseptically packed products. Sufficient information regarding the nature of the product, production

codes etc must be taken to enable referral of the complaint but the foodstuff and/or foreign body should remain in the ownership of the complainant. The officer must also establish if the complainant will consent to their details to be passed on to the manufacturer so that they may be contacted directly. The standard letter in Proactive should be used to refer the complaint to the manufacturer and originating authority where appropriate.

- 8.6 Any complainant who feels aggrieved by this procedure will be referred to the Food and Safety Regulation Manager or Lead Food Safety Officer.
- 8.7 Opinion from other Local Authorities will be sought and taken into account when formulating decisions on action when the circumstances giving rise to any alleged offence arise outside the area of Babergh District Council.