





PEMBROKESHIRE COUNTY COUNCIL

FOOD, SAFETY AND PORT HEALTH SECTION

POLICY	REF.
FOOD SAFETY AND STANDARDS: ENFORCEMENT POLICY	FHP 01

ISSUE NO.	PREPARED BY	APPROVED BY	SIGNATURE	DATE
02	J BEYNON	Steven Jones (Director of Development) Cllr Huw George (Cabinet Member for Environmental and Regulatory Services and the Welsh Language)	See attached  	13/06/2016

REVISION SUMMARY			
<p>Issue 02:</p> <p>Key changes:</p> <ul style="list-style-type: none"> - To reflect amendments to enforcement principles in line with national direction and PP overarching Enforcement Policy. - To incorporate new enforcement options – inc. improvement notices for food standards, and fixed penalty notices for breaches relating to Food Hygiene Ratings. - To incorporate changes to Primary Authority arrangements – introduction of co-ordinated partnerships. - To update references to latest guidance (e.g. on cautioning of adult offenders) and bodies (e.g. Regulatory Delivery). 			
DATE LAST REVIEWED	13/06/2016	DATE OF NEXT REVIEW	13/06/2019

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Introduction

The main aims of this policy are to ensure, as far as reasonably possible, that food produced, sold or supplied within Pembrokeshire is:

- safe and wholesome;
- produced under hygienic conditions;
- of an acceptable quality and composition; and,
- suitably labeled and advertised,

so as to protect the health of the public and the rights/expectations of consumers, and by administering the national Food Hygiene Rating Scheme to allow consumers to make informed choices about where to purchase food.

These aims will be pursued in a way that seeks to maintain a level playing field for all businesses.

While primary responsibility for ensuring compliance with food law lies with food business operators, Pembrokeshire County Council (hereafter referred to as 'the Council'), as a food authority, has a role in ensuring that food business operators manage and control risks effectively, thus preventing harm and ensuring that consumers are not misled

Whilst the enforcement of public health and consumer protection legislation is generally covered by the Council's Public Protection Division Enforcement Policy, this (Food Law Enforcement Policy) sets out in more detail the enforcement principles that apply and provides more specific information on the selection of relevant enforcement options by the Food Safety and Standards and Port Health Teams, as required under the Food Law Code of Practice (Wales).

Purpose of Enforcement

*The **purpose of enforcement** is to:*

- *Ensure that food business operators take action to deal immediately with serious risks.*
- *Promote and achieve sustained compliance with the law.*
- *Ensure that food business operators who breach food safety and standards requirements, and directors or managers, who fail in their responsibilities, are held to account, which may include bringing alleged offences before the courts.*

Enforcement is distinct from civil claims for compensation and will not be undertaken specifically to assist cases where civil claims may be pursued.

Enforcement Principles

We are committed to firm but fair enforcement of food safety and standards legislation and have signed up to the UK and Local Government Concordat on Good Enforcement.

*Enforcement is informed by the **principles** of:*

- *Standards*
- *Openness (and transparency)*
- *Helpfulness*
- *Proportionality (and the targeting of resources and enforcement actions)*
- *Consistency.*
- *Accountability.*

These principles apply both to enforcement in individual cases and to the management of enforcement activities overall.

- **Standards**

Clear standards will be drawn up setting out the levels of service and performance to be expected.

These will be set out in the Council's annual Service Plan for Food Law Enforcement which will be published on the Council's website at www.pembrokeshire.gov.uk.

Each Plan will also include an account of our previous year's performance against our standards.

Information on these standards and our performance against them will also be made available on request.

- **Openness (and transparency)**

In practice, openness and transparency are about helping food business operators to understand what is expected of them and at the same time what they, and others, should expect from our officers. This will include us being upfront and clear about our policies, procedures and working practices - which will be consulted on where appropriate.

We aim to provide information and advice in plain language and to disseminate this as widely as possible.

At the conclusion of each visit, officers will leave a visit report at the premises, providing the business with contact details for the visiting officer, and confirming the purpose of the visit, key findings and any follow-up action that we plan to take.

Wherever significant breaches of legislation are identified following an inspection, investigation or other regulatory contact, we will write to food business operators.

In order to be transparent, we will make clear to food business operators not only what they have to do, but, where this is relevant, what they don't. To this end a clear distinction will be made between action needed to meet statutory requirements and recommendations about good practice.

It should be noted, however, that compliance with advice on good practice might be important in demonstrating compliance with food law requirements, and that the business has taken all reasonable precautions and exercised all due diligence.

All correspondence will identify each contravention; the measures which in the opinion of the officer could be taken in order to secure compliance; make a clear distinction between action needed to meet statutory requirements and recommendations about good practice; and, provide a timescale for achieving compliance. We will also confirm, where appropriate, that other means of achieving the same effect may be chosen.

Where letters, notices, etc., have been issued, officers will be prepared to discuss the content, and any issues or difficulties arising, with the food business operator if requested.

Officers will have due consideration to the Council's Welsh Language Policy, where applicable. In addition, provision will be made for the use of interpreters/translation services in appropriate circumstances.

This Food Law Enforcement Policy will be readily available to food business operators and consumers.

- ***Helpfulness***

Recognising that 'prevention is better than cure' we will proactively provide information and guidance to businesses, as clearly and concisely as possible, to enable them to understand and meet their legal obligations. Relevant national guidance will be utilised where available.

We will encourage businesses to seek information/advice from us and work with business (especially small and medium sized enterprises) to advise on and assist compliance as resources permit. When responding to such requests enforcement action shall be avoided so far as possible.

Acknowledging the finite nature of our resources we will prioritise the use of electronic media (website and e-mail) to disseminate information and advice as widely as possible.

Where more detailed or bespoke advice is required, or an enhanced service is being sought, businesses will be offered support on a chargeable basis. In doing so, we will be open and upfront about any work that is chargeable, including the basis for any charges that are applied.

In addition, we will actively encourage 'eligible' food businesses to consider the benefits of entering into a 'Primary Authority' partnership with the Authority.

Further details on these services, including the charges, terms and conditions, is available at www.pembrokeshire.gov.uk/foodlawadvice.

We will stand by any advice we provide to businesses, and similarly respect advice provided by other regulators.

We will aim to ensure that our enforcement services are effectively co-ordinated to provide as cohesive service as possible. In particular, the Council aims to deliver food hygiene and standards as a combined, holistic, food law enforcement service.

At a personal level Council officers are expected to provide a courteous and efficient service, to identify themselves by name and to provide a contact point and telephone number for further queries.

- ***Proportionality (and the targeting of resources and enforcement actions)***

Proportionality means relating enforcement interventions and actions to risk.

We will ensure that enforcement interventions are targeted primarily on those 'businesses' whose activities give rise to the most serious risks or where hazards are least well controlled.

We will consider the regulatory impact that our actions may have on economic well-being, looking to minimise the costs of compliance by ensuring that any action required is proportionate to the risks. Particular care will be taken when working with small businesses, voluntary and community organisations, to ensure that legal obligations can be met without unnecessary expense.

While some food law requirements are specific and absolute, others require action 'so far as reasonably practicable'. The principle of proportionality will, however, be applied in relation to both kinds of duty.

Deciding what is 'reasonably practicable' to control risks involves the exercise of judgement. Regard will be had to the degree of risk on the one hand, and to the sacrifice (whether in money, time or trouble) involved in the measures necessary to avert the risk, on the other. Unless it can be shown that there is gross disproportion between these factors and that the risks are insignificant in relation to the cost, food businesses must take the measures necessary and incur costs to reduce the risk. Some irreducible risks may be so serious that they cannot be permitted irrespective of the consequences. Ultimately, the courts will determine what is reasonably practicable.

Enforcement action, be it verbal advice, the issue of a letter or written warning, statutory notices, or prosecution, will primarily be based upon an assessment of any risk to public health, i.e. the probability of harm to health occurring due to non-compliance with food safety law. In addition, for food standards offences, the level of commercial disadvantage caused to compliant businesses will be significant. In doing so we will take account of how far the business has fallen short of what the law requires, the extent of the risks/disadvantage created by the breach and the attitude and approach of the food business operator.

- ***Consistency***

Consistency of approach does not mean uniformity. It means taking a similar approach, in similar circumstances, to achieve similar ends.

We appreciate that food business operators managing similar risks will expect a consistent approach in the advice tendered, the approach to enforcement and in response to incidents and complaints.

Accordingly, we will carry out our duties in a fair, equitable and consistent manner.

In practice, consistency is not a simple matter and decisions will be guided by many variables, including:

- the degree of risk;
- the attitude and competence of management;
- any history of incidents or breaches involving the business;
- previous enforcement action; and
- the seriousness of any breach, including any potential or actual harm.

In striving to adopt a consistent approach, authorised officers will have due regard to:

- requirements set out in the latest statutory Food Law Code of Practice (Wales);
- guidance set out in the latest Food Law Practice Guidance (Wales);
- UK Industry Guides to Good Hygiene Practice;
- guidance issued by the Food Standards Agency (Wales), the Regulatory Delivery (formerly the Better Regulation Delivery Office), and earlier guidance issued by LACORS where still relevant and appropriate;
- relevant industry codes of practice;
- appropriate technical literature; and
- where a Primary Authority partnership exists for the business concerned (see below), to any advice given to the company by the Primary Authority.

In addition, we have established various arrangements to promote consistency in the exercise of this discretion, which are set out later in this policy.

- ***Accountability***

The Council is accountable to the public for its actions.

Accordingly, it has established policies and standards against which it can be judged, and a mechanism for dealing with comments and handling complaints (see below).

Targeting of Resources

In targeting our resources, we will have regard to the principles set out below; the requirements of the Food Law Code of Practice (Wales); the advice contained in the Food Law Practice Guidance (Wales); any advice issued by the Regulatory Delivery (formerly the Better Regulation Delivery Office) and earlier guidance issued by LACORS (Local Authorities Co-ordinators of Regulatory Services), where still relevant and appropriate; and to any inspection plans established for a company by a Primary Authority (see below).

In doing so we will seek to strike a balance between carrying out investigations, and other proactive interventions such as the provision of targeted information and advice and risk-based inspections.

- ***Inspections and other forms of proactive intervention***

We recognise that many local businesses, small businesses in particular, rely on and value advice from enforcement officers, and that routine inspections (along with other forms of proactive intervention) provide an opportunity to assist businesses to understand legislation as well as an opportunity to check compliance.

We acknowledge that such advice can make a real difference to the way that local businesses operate, helping communities and economies thrive, at the same time as securing the right level of public/consumer protection.

All new food premises falling to the Council for enforcement, i.e. new premises and those subject to a change in ownership or management that is likely to have a significant bearing on the way that food safety and standards are managed, will be subject to an initial inspection. As far as possible this initial inspection will be made within 28 days of the premises being registered, or of operations commencing, whichever is the later.

Following this inspection the premises will be risk-assessed and prioritised for its subsequent inspection, or where permitted some other intervention, in accordance with the requirements of the Food Law Code of Practice (Wales).

The risk scores applied will also determine the Food Hygiene Rating for the business. This rating system is subject to its own statutory checks and balances including a right to appeal, a right to apply and a right to request a revisit for rescore purposes. More information on this can be found at www.pembrokeshire.gov.uk/hygieneratings.

Food premises classed as high risk (i.e. those in risk categories A or B for food hygiene, and/or risk category A or B for food standards) will be routinely subject to full inspection.

Food premises in Category C for food hygiene will either be subject to full inspection, or where the premises were 'broadly compliant' at the previous inspection may be subject to a more cursory assessment (or verification visit), as an indicator of whether standards are likely to have been maintained. Discretion in this respect will rest with the visiting officer, who shall have due regard to local policy decisions. For Category C premises, verification visits may alternate with, but not replace, full inspections.

Food premises in Category D for food hygiene will generally be subject to a verification visit, although once again discretion will rest with the visiting officer who may elect to undertake a full inspection.

Where a food establishment eligible for a verification visit was previously awarded a Food Hygiene Rating of less than 5, and is likely to have improved, a full inspection may be considered in lieu of a verification visit, so that any improvements made by the business will be reflected through an improved Food Hygiene Rating score, if appropriate.

Food premises in Risk Category E for food hygiene, and Risk Category C for food standards will not generally be subject to routine programmed inspection or verification visits, but may be targeted by one of a range of other 'alternative enforcement strategies'. In the majority of cases this will be achieved by providing the business with relevant guidance on food law requirements, affording the business the opportunity to self-assess and confirm compliance. A small number of random inspections may take place, if appropriate, e.g. to validate the effectiveness of alternative enforcement strategies employed.

Both inspections and verification visits will be made at the optimum time to view the processes being undertaken. This will *occasionally* require visits to be undertaken early morning, during the evening and at weekends.

As a general rule, these visits will be carried out without prior notice, however, see 'Approach to Enforcement' below.

To ensure a structured approach to the inspection process, consistent with quality assurance practice, inspections and verification visits will be guided by and recorded using the relevant inspection form for the type of premises concerned. Where applicable, these inspection forms will similarly be based on model forms agreed by the national Food Safety Expert Panel or equivalent Food Standards fora. .

In practice, and in accordance with the Food Law Code of Practice (Wales), authorised officers will use their professional judgement to determine which areas warrant greatest attention and any that may attract less. Similarly the scope of an inspection may be limited by any inspection plan issued by a Primary Authority. Where an authorised officer carries out an inspection that covers only part of a business, the officer shall record make a record of the scope of the inspection and any limitations that applied and confirm this in the follow-up report.

The approach detailed above will enable us to target available resources on the highest risk businesses, while taking a 'lighter touch' for those that are 'broadly compliant' and that are actively striving to comply with the law.

Further details are available in the Council's Food Law Enforcement Service Plan, which is prepared annually and is featured on the Council's web-site at www.pembrokeshire.gov.uk.

- ***Impact of the Primary Authority partnership scheme on the proactive inspection of food premises***

As of 6th April 2009, by virtue of the Regulatory Enforcement and Sanctions Act 2008, the Primary Authority scheme came into force across the UK, providing companies with the right to form a statutory partnership with a single local authority (the Primary Authority), which then provides robust and reliable advice that other local authorities must take into account when carrying out inspections or dealing with non-compliance. This scheme was subsequently extended to allow for the establishment of 'co-ordinated' Primary Authority partnerships between trade associations and individual local authorities.

We will have full regard to these requirements when acting in the capacity of an enforcing authority and, in addition, will positively consider any requests made by businesses to act as a Primary Authority.

In practice, before undertaking the inspection of any premises, officers will determine whether a Primary Authority partnership exists, and if so what areas are covered. Where a relevant partnership has been established for food hygiene and/or standards matters, and an inspection plan has been agreed for the company concerned, officers will adhere to this plan unless a deviation from the plan can be justified, and then only after first agreeing this with the Primary Authority (or in the event of a dispute with the Regulatory Delivery (formerly the Better Regulation Delivery Office)).

The Primary Authority scheme operates alongside other non-statutory partnership arrangements set up historically under LACORS Home Authority Principle, which officers shall continue to have regard to.

- ***Investigation of incidents and complaints***

Incidents and complaints are investigated in order to determine:

- causes;
- whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law;
- any lessons to be learnt and to influence the law and guidance; and
- what response is appropriate to any breach of the law.

We recognise that it is not possible or necessary to 'formally' address all issues of non-compliance with the law that are uncovered during the course of an inspection or other visit, or in the investigation of reported incidents or complaints.

To maintain a proportionate response, the criteria for selecting incidents and complaints for investigation, shall necessarily target more serious matters, so as not to distort the overall balance of resource between preventative and reactive work.

*In selecting which **incidents and complaints to investigate** and in deciding the level of resources to be used, the Council will have regard to the following factors:*

- *Seriousness of incident or complaint and potential to cause illness or injury.*
- *Seriousness of legislative breach/es.*
- *Extent of management failure.*
- *National and local enforcement priorities.*
- *Number of people at risk.*
- *Vulnerability of people at risk (young persons, children and other vulnerable groups).*
- *Knowledge of the food business operator's compliance history.*
- *New premises not previously inspected.*
- *Premises falling outside the risk-based inspection programme.*
- *Wider relevance within a particular trade or premises.*
- *Incident involves a new process, technique or plant.*
- *Wider relevance of event including serious public concern.*
- *Legal factors.*
- *Reliability of information received.*
- *Practicality of achieving results.*

Decisions on the investigation of incidents and complaints shall generally be taken by authorised officers, with further guidance and direction being provided by senior officers, where appropriate.

In cases where there is a shared enforcement role, liaison with other agencies which might be involved will take place at an early opportunity to confirm the responsibilities of the respective parties in each case.

- ***Fatalities***

Where a possible breach of food law leads to a fatality, we will have regard to the possibility that the circumstances of the case might justify a charge of manslaughter.

To ensure that decisions on investigation and prosecution are closely co-ordinated following a fatality, investigations will be conducted in liaison with the police.

The police are responsible for deciding whether to pursue a manslaughter investigation, while the Council's food law enforcement officers will investigate possible food law offences and take action in accordance with this policy.

Approach to Enforcement

- ***General powers of entry, search and seizure***

The right to privacy and respect for personal property are key principles of the Human Rights Act 1998, and it is recognised that powers of entry, search and seizure need to be fully and clearly justified before use because they may significantly interfere with the occupier's privacy.

Accordingly, authorised officers will consider if the necessary objectives can be met by less intrusive means.

However, it should be recognised that authorised officers of a food authority on producing, if so required, some duly authenticated document showing his or her authority, have a statutory right:

- to enter any premises within the authority's area for the purpose of ascertaining whether there is or has been on the premises any contravention of the provisions of food hygiene, safety, traceability or labelling legislation which we have a duty to enforce;
- to enter any premises, whether within or outside the authority's area for the purpose of ascertaining whether there is on the premises any evidence of any such contravention within that area;
- to enter any premises for the purpose of the performance by the authority of their functions under food hygiene, safety, traceability or labelling legislation which we have a duty to enforce; and
- to enter at all reasonable hours a food business establishment for the purpose of producing a food hygiene rating; carrying out a re-rating; determining an appeal; or enforcing any of the requirements relating to the display of ratings.

These general rights are contained within Regulation 14 of the Food Hygiene (Wales) Regulations 2006 and Section 32 of the Food Safety Act 1990, and in addition permit an authorised officer to take with them such other persons as they consider necessary. While these rights in themselves do not give an authorised officer any right to force entry to search or seize property, they do give them the right to be on the premises during the search without the occupier's permission.

The rights in relation to the food hygiene rating provisions are contained under Section 17 of the Food Hygiene Rating (Wales) Act 2013. Other powers and rights may be available where other, more specific, hygiene, safety, traceability or labelling legislation is enforced.

Food businesses may refer to the Food Standards Agency webpage “*Food Law Inspections and Your Business*” which explains what food business operators can expect when a food law enforcement officer calls (Web address - <http://tinyurl.com/nl24fox>)

As a general rule, and in accordance with Article 3(2) of EC Regulation 882/2004 on ‘official controls performed to ensure the verification of compliance with feed and food law, animal health and welfare rules’, and the Food Law Practice Guidance (Wales), inspections and other interventions will generally be unannounced.

However, there will be occasions when it is advantageous to give prior notice of an inspection and this discretion will be exercised in the context of the overriding aim of ensuring compliance with food legislation.

Policy on announced/unannounced inspections

If it will not compromise ensuring legal compliance and public protection advance notice shall be considered in the following circumstances:

- *Where it is necessary for management and/or technical representatives to be present, e.g. to discuss changes in legislation, to discuss and assess an enterprise’s food safety management, to discuss and assess an enterprise’s provision of food hygiene training, in large and/or complex enterprises.*
- *To comply with the requirement to give 24 hours notice of inspection at premises used solely as domestic premises.*
- *Where the authority has confidence in the management of the enterprise.*
- *Where an enterprise, particularly if it is small or run by a single person, would need to make specific arrangements to enable the proprietor to give full attention to the officer during the inspection.*
- *Where special arrangements need to be made to allow access to premises.*

Advance notice shall not be appropriate:

- *Where previous history leads the authority to suspect that the inspection will be made more difficult and less effective as a result of giving prior notice.*
- *Where previous inspections have identified poor standards of legal compliance.*
- *Where prior notice is likely to result in an enterprise’s premises or practices being intentionally altered.*
- *Notice is likely to result in the proprietor or relevant personnel being intentionally absent.*
- *Where it is considered appropriate to make an assessment of general hygiene standards and practices at a premises and the presence of particular persons from the enterprise is not necessary.*

In all cases authorised officers will:

- exercise their powers courteously and with respect for persons and property,
- only use reasonable force when this is considered necessary and proportionate to the circumstances.

It is recognised that if the provisions of Sections 15 and 16 of PACE, PACE Code of Practice B, the Food Safety Act 1990, the Food Hygiene (Wales) Regulations 2006 and the Food Law Code of Practice are not observed, evidence obtained from a search may be open to question.

It should be noted that the requirements of the EC Regulation 852 on the hygiene of foodstuffs do not generally apply to:

- primary production for private domestic use,
- the domestic preparation, handling or storage of food for private domestic consumption,
- the direct supply by the producer, of small quantities of primary products to the final consumer or to local retail establishments directly supplying the final consumer, or to
- collection centres and tanneries which fall within the definition of food business only because they handle raw material for the production of gelatine or collagen

However, it should be noted that the requirements of (EC) Regulation 178/2002, which lay down the general principles and requirements of food law, prohibits food being placed on the market if it is unsafe (i.e. being injurious to health or unfit for human consumption) or misleadingly presented, and requires food to be 'traceable'. These requirements are not limited to mainstream 'food business operators', but include all others who supply food, including food produced by individuals for charitable and similar events, for example someone running a one-off food event such as a buffet at a dance. The aim is to protect public health and consumers' interests by covering all eventualities, with the exception of private domestic consumption.

• ***Enforcement options***

The Council has a wide range of tools at its disposal in seeking to secure compliance with food law and to ensure a proportionate response to criminal offences.

This includes: educating and advising food business operators face-to-face and in writing, informal letters and reports, sampling, detaining and seizing food, serving improvement notices, hygiene prohibition procedures/ prohibition procedures, the use of remedial action notices, issuing fixed penalty notices (for the failure to display Food Hygiene Ratings, issuing simple cautions and prosecution procedures.

Enforcement decisions will be guided by requirements and advice set out in:

- this Enforcement Policy
- the Food Law Code of Practice (Wales)
- the Food Law Practice Guidance (Wales)
- advice issued by the Regulatory Delivery (formerly the Better Regulation Delivery Office) and earlier guidance issued by LACORS (Local Authorities Co-ordinators of Regulatory Services) where still relevant and appropriate
- the Enforcement Concordat
- any relevant Codes of Practice issued under the Regulatory Reform Act 2001
- the Regulators Code
- the Code for Crown Prosecutors
- current version of the Ministry of Justice 'Simple Cautions for Adult Offenders'
- the Human Rights Act 1998.

In addition, where a Primary Authority partnership exists for the business concerned (see below), to any advice given to the company by the Primary Authority.

In practice, in deciding the type of enforcement action to take authorised officers shall have regard to the nature of the breach and the history of compliance of the food business operator, or in the case of new businesses an assessment of the food businesses operator's willingness to undertake the work identified by the officer.

Except where circumstances indicate a significant risk, we will take a graduated and educative approach, starting at the bottom of the pyramid, i.e. offering advice and taking informal action, with formal action being reserved for situations where an informal approach does not achieve the desired outcome.

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

Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most cases within 5 working days and in all cases within 10 working days.

Communications with multi-site businesses will normally be with the head office unless the business concerned has given a different address for communications to be sent.

The outcome of an official control will always be reported in writing to the food business operator, either at the conclusion of the official control or as soon as practicable thereafter, even if the outcome was satisfactory.

All authorised officers shall abide by this policy when making enforcement decisions. Any departure from this policy shall be exceptional, capable of justification and fully considered by a relevant senior officer before the decision is

taken, unless it is considered that there is significant risk to the public in delaying the decision. Accordingly, the reason for the departure shall be recorded.

- ***Significance of the Primary Authority partnership scheme (and Home Authority Principle) to enforcement decisions***

As of 6th April 2009, by virtue of the Regulatory Enforcement and Sanctions Act 2008, the Primary Authority scheme came into force across the UK, providing companies with the right to form a statutory partnership with a single local authority (the Primary Authority), which then provides robust and reliable advice for other local authorities to take into account when carrying out inspections or dealing with non-compliance. This scheme was subsequently extended to allow for the establishment of 'co-ordinated' partnerships between trade associations and individual local authorities.

We will have full regard to these requirements.

In practice, before taking 'formal' enforcement action against a company subject to a Primary Authority partnership for the area/s covered, we will consult the Primary Authority *before* any action is taken.

This duty to consult generally applies to statutory enforcement only, although will also include situations where non-statutory enforcement action indicates that legal action will be considered for failing to follow any direction given.

An exception applies in cases where urgent action is needed to protect public health, e.g. the service of a Hygiene Emergency Prohibition Notice.

The Primary Authority shall consider whether the action proposed is inconsistent with advice that it has previously provided to the company. If the proposed action is not inconsistent with any advice previously provided, then we will be free to proceed with the proposed course of enforcement.

If the proposed enforcement is inconsistent, we will seek to negotiate a way forward with the Primary Authority.

In the event of a dispute, which cannot be resolved to our satisfaction, we will raise the matter with the Regulatory Delivery (formerly the Better Regulation Delivery Office), which has statutory responsibility for making a determination.

In the interest of consistency, where we propose to take action informally against a company, and this action may impact on any advice given centrally to the company by its Primary Authority, liaison with the Primary Authority will again take place prior to action being taken.

The Primary Authority scheme will operate alongside other non-statutory partnership arrangements set up under LACORS Home Authority Principle, which officers shall continue to have regard to. In particular, liaison with the Home Authority will take place where enforcement action may have a bearing on any central agreed policies and/or procedures.

- **Informal action**

In the vast majority of cases, compliance with the law is promoted and secured informally by authorised officers who offer information, advice and support, both face to face and in writing.

Informal action will generally be appropriate where:

- *the act or omission is not serious enough to warrant formal action; and*
- *from the business's past history it can be reasonably be expected that informal action will achieve compliance; and*
- *confidence in the business's management is high; and*
- *the consequence of non-compliance will not pose a significant risk to public health; and*
- *there is no evidence of deliberate fraud*

It is our policy to write to food business operators wherever significant breaches of legislation are identified following an inspection, investigation or other regulatory contact.

This correspondence should:

- identify each contravention.
- Identify the measures, which in the opinion of the officer, could be taken in order to secure compliance.
- make a clear distinction between action needed to meet statutory requirements and recommendations about good practice.
- give an indication of the time-scale suggested for achieving compliance.
- be clear and simple to understand.

The correspondence shall also confirm, where appropriate, that other means of achieving the same effect may be chosen.

We aim to issue such correspondence within 15 working days of an inspection/visit being concluded. However, where correspondence is to be accompanied by a Food Hygiene Rating, then this shall be issued within the required 10 working days.

- **Revisits**

Policy on revisits

Revisits shall be carried out to food businesses that fail to comply with 'significant' statutory requirements and to confirm compliance with relevant statutory notices. These shall include:

- Failure to comply with a single requirement that compromises food safety, compromises public health, or prejudices consumers.*
- Failure to comply with a number of requirements that, taken together, indicate ineffective management.*
- To check compliance with the requirements of a Hygiene Improvement Notice/ Improvement Notice.*
- To check compliance with the requirements of a Hygiene Emergency Prohibition Notice or Order (food hygiene).*
- To check compliance with the requirements of an Emergency Prohibition Notice or Order (food standards).*

As a general rule revisits shall be reserved for, and carried out in respect of, premises that are classed as not 'broadly compliant' for food hygiene or where compliance and/or confidence are low for food standards (scoring the lowest available score for Current Compliance (40) and /or Confidence in Management (30) for food standards, under the Food Law Code of Practice rating scheme). This will help to ensure that our resources and efforts to secure improvements in food premises are targeted at the main offenders.

Where minor regulatory breaches are identified, the subsequent planned inspection should offer sufficient opportunity to determine effective compliance. Alternatively, businesses may be asked to confirm compliance in writing, in which case if written confirmation is not received the premises will be revisited.

Where continued non-compliance is evident further enforcement action will be taken.

Hygiene Improvement Notices

The use of statutory, Hygiene Improvement Notices, under Regulation 6 of the Food Hygiene (Wales) Regulations 2006, will in general be related to risk to health. It is not, for example, appropriate to issue improvement notices for minor technical contraventions.

Hygiene Improvement Notices may be appropriate where any one or more of the following circumstances apply:

- *Where formal action is proportionate to the risk to public health.*
- *Where there is a record of non-compliance with breaches of the food hygiene regulations.*
- *Where an authorised officer has reason to believe that an informal approach will not be successful.*
- *The service of Hygiene Improvement Notices would not be appropriate:*
- *Where the contravention might be a continuing one, for example the personal cleanliness of staff and a notice would only secure an improvement at one point in time.*
- *In transient situations, and it is considered that swift enforcement action is needed, for example, a one day festival or sporting event. In this case a Remedial Action Notice or Hygiene Emergency Prohibition Notice would be the only formal remedies having immediate effect.*
- *Where there is a breach of good hygiene practice, but no failure to comply with an appropriate regulation.*

In accordance with the Food Law Code of Practice (Wales), Hygiene Improvement Notices will only be signed by authorised officers, who are duly qualified and experienced in food law enforcement, and who are properly trained and competent. In practice this will be restricted to Environmental Health Officers enforcing food hygiene or processing regulations; holders of the Higher Certificate in Food Premises Inspection who are authorised to carry out food hygiene inspections; and, holders of the Ordinary Certificate in Food Premises Inspection in relation to premises that they are authorised to inspect. The officer signing the notice will have witnessed the contravention and be satisfied that it constitutes a breach of the Regulations.

The notice will:

- state the officer's grounds for believing that the food business operator is failing to comply with the Hygiene Regulations
- specify the matters which constitute the food business operator's failure to comply
- specify the measures which, in the officer's opinion, the food business operator must take in order to secure compliance, and
- require the food business operator to take those measures, or measures which are at least equivalent to them, within such period (not being less than 14 days) as may be specified in the notice.

The correspondence shall confirm, where appropriate, that other means of achieving the same effect may be chosen.

Where reasonably possible, officers will provide food business operators with an opportunity to discuss the notice and, if possible, resolve any points of difference before serving it.

Failure to comply with a Hygiene Improvement Notice is an offence and will generally result in prosecution.

- ***Food Standards Improvement Notices***

The use of statutory food standards improvement notices will in general be related either to risk to health or where labelling is misleading to a material degree. However, they may also be used as part of an escalating enforcement process where compliance is in the public interest and a food business has been slow or unwilling to comply with food standards legislation, despite being sent one or more warning letters.

Food standards improvement notices are not appropriate for use in isolation if there is an imminent risk of injury to health.

The service of Food Standards Improvement Notices will similarly be restricted to trained and competent officer, being those described for Hygiene Improvement Notices plus Trading Standards Officers, authorised to enforce food standards legislation.

- ***Hygiene Emergency Prohibition Procedures***

The use of statutory, hygiene emergency prohibition procedures, under Regulation 8 of the Food Hygiene (Wales) Regulations 2006, shall be considered where circumstances are identified that are deemed to present an imminent risk of injury to health.

*In general, the use of a **Hygiene Emergency Prohibition Notice** will only need to be considered where one or more of the following circumstances apply:*

- *The consequences of not taking immediate and decisive action to protect public health would be unacceptable.*
- *An imminent risk of injury to health can be demonstrated. This might include evidence from relevant experts, including a food analyst or food examiner.*
- *The guidance criteria specified in the latest Food Law Code of Practice (Wales) concerning the conditions when prohibition may be appropriate, are fulfilled.*

- *There is no confidence in the integrity of an unprompted offer made by a food business operator voluntarily to close premises or cease the use of any equipment, process or treatment associated with the imminent risk.*
- *The food business operator is unwilling to confirm in writing his/her unprompted offer of a voluntary prohibition.*

Hygiene Emergency Prohibition notices may be used to prohibit the use of all or part of the food premises, to prohibit the use of specified equipment, and to prohibit a particular process.

In accordance with the Food Law Code of Practice (Wales), Hygiene Emergency Prohibition Notices shall only be issued by officers holding the qualifications specified in the Food Law Code of Practice (Wales), who are currently involved in food law enforcement and who are properly trained, competent and duly authorised.

In accordance with legal requirements, a copy of the Hygiene Emergency Prohibition Notice will be affixed in a conspicuous position on the premises, with a copy served on the food business operator.

Following service an application will be made to the local Magistrates' Court for an Order confirming the Notice.

At least one day before the date of this application, a notice of intention to apply for the Order will be served on the food business operator.

The Hygiene Emergency Prohibition Notice will cease to have effect if the application for the Order is not made within this time period, on the determination or abandonment of the application, or on the issue by the Authority of a certificate to the effect that the Authority is satisfied that the food business operator has taken sufficient measures to secure that the health risk condition is no longer fulfilled.

Application for such a certificate by the food business operator must be in writing. In accordance with legal requirements, the Authority will determine any such application, as soon as possible, and in any event within 14 working days. Having determined such an application and being satisfied that the health risk condition is no longer fulfilled, the Authority will issue a certificate within three working days. If the Authority is not satisfied, notice will be given to the business along with reasons for that determination.

The Authority is legally required to compensate the food business operator in respect of any loss suffered by reason of the operator complying with the notice, unless an application for an Order is made within the required time period and the court declares itself satisfied, on the hearing of the application, that the health risk condition was fulfilled at the time when the notice was served.

Any disputed question as to the right to or the amount of any compensation payable is determinable by arbitration.

Voluntary procedures to remove the health risk condition may be used in certain circumstances. Generally, this will be at the instigation of the food business operator where the operator agrees that an imminent risk of injury to health exists, though may also be suggested by an officer (who is authorised to serve a Hygiene Emergency Prohibition Notice), where there is clear scope to serve a Hygiene Emergency Prohibition Notice.

Voluntary procedures will only be used in extenuating circumstances recognising that:

- there is a risk that premises might be re-opened without the officer's knowledge or agreement;
- there is no separate legal sanction against a food business operator who re-opens for business after offering to close; and
- any right to compensation that might be available to a business if a Court subsequently declined to make a Hygiene Emergency Prohibition Order would be lost.

Any voluntary closure agreement shall be confirmed in writing by the food business operator/manager having the authority to agree such action, and the officer, with an undertaking not to re-open without the officer's prior approval.

Parallel powers and procedures exist under Section 12 of the Food Safety Act 1990, and would be considered in respect of certain food standards breaches.

• ***Prohibition Orders***

A court may determine that a Hygiene Prohibition Order should be made, following a successful prosecution, to prohibit the use of all or part of the food premises, to prohibit the use of specified equipment, and/or to prohibit a particular process, where it considers that the health risk condition is fulfilled. Where such an Order is issued, the same procedures are followed as apply after a Hygiene Emergency Prohibition Order has been granted.

In addition, a Court has the discretion to impose a Hygiene Prohibition Order on a person, effectively permitting them from running a food business.

Where this occurs, we will notify the Chartered Institute of Environmental Health of the imposition of the Order. Notification will take place following any appeal, or assuming that there is no appeal, after the appeal period has expired.

A Hygiene Prohibition Order against a person can only be lifted by application to a Court.

Where such an Order is lifted, we will notify the CIEH of this fact at the earliest opportunity.

Parallel powers and procedures exist under Section 11 of the Food Safety Act 1990, and would be considered in respect of certain food standards breaches.

- ***Food Recall and Withdrawal***

Article 19 of EC Regulation 178/2002 imposes a requirement on food business operators to recall and/or withdraw food from the market if it is not in compliance with food safety requirements and to notify competent authorities.

Where products may have reached the consumer, there is an obligation on food businesses to inform consumers of the reason for the withdrawal of the product and where necessary recall products already supplied.

It is an offence under Regulation 4 of the General Food Regulations 2004 to fail to comply with these requirements.

We will take advice where appropriate from relevant experts, including the Food Standards Agency, to assist in any determination.

- ***Seizure and Detention of Food***

When food has not been produced, processed or distributed in compliance with the Hygiene Regulations (as defined in Regulation 2 of the Food Hygiene (Wales) Regulations 2006), an authorised officer may use Regulation 27 (see also Regulation 23 in this regard) of those Regulations to seize and detain the food (by the use of Section 9 of the Food Safety Act 1990).

Following the certification required by Regulation 27, authorised officer shall follow the advice set out in the Food Law Code of Practice in connection with the use Section 9 of the Food Safety Act 1990.

In addition, where food is deemed not to comply with the “food safety requirements” as specified in Sections 8 and 9 of the Food Safety Act 1990, an appropriately authorised officer may detain and seize the food directly by the use of Section 9 of the Food Safety Act 1990.

Detention

Unless immediate action is required, a decision to detain food will normally only be taken if it has been discussed with the owner or person in charge of the food and, if appropriate, with the manufacturer.

The Detention of Food Notice shall be signed by the authorised officer who takes the decision to detain the food.

Where an authorised officer has served a detention of food notice, professional judgement will be used to determine whether food should be detained where it is, or moved elsewhere. If there are any doubts about the security or physical care of the food, the detention notice will specify a place to which the food is to be moved.

In all cases, but especially with highly perishable food, officers will act expeditiously at every stage and provide full information to those required to carry out analysis or examination of samples of the food.

If food is detained where it is found, the authorised officer must be satisfied that adequate arrangements can be made to ensure its security and prevent tampering, and will organise periodic monitoring of the food throughout the period of detention. Before making such arrangements regard will be had to the nature of the food, the quantity, any health hazard that it represents and the ownership of the establishment where it is located.

The officer will generally avoid leaving it in the charge of, or in an establishment owned by, any person who may be prosecuted for an offence under food law.

Seizure of food

In considering whether to seize food that has been detained, authorised officers will consider whether the food in question can be treated or processed before consumption and if so, whether the food, after treatment or processing, would be sound and wholesome and satisfy food safety requirements.

Arrangements for the treatment or processing of food in these circumstances will need to be agreed by the authorised officer and the owner or the person in control of the food and be subject to a signed, written undertaking.

Any arrangement that involves food being moved to the area of another Food Authority for treatment or processing should be accepted by the receiving Food Authority before the agreement is concluded. Arrangements should be made for that Food Authority to take steps to ensure the processing or treatment is carried out, including the service of a Detention of Food notice if appropriate. If the receiving Food Authority is unable to accept responsibility for ensuring that the food is properly processed or treated, the arrangement should not proceed.

Unless the preceding paragraphs of this section apply, or the use of voluntary procedures is more appropriate, food will be seized if an authorised officer has evidence that it does not satisfy food safety requirements.

When food is seized, written notification of the seizure will be issued as soon as is reasonably practicable. This notification will include details of the type and quantity of the food seized, including any distinguishing marks, codes, dates etc.

If evidence or information indicates that food that has already been detained should be seized, the officer will serve a food condemnation notification, warning of the

intention to take the food before a Justice of the Peace and apply for its condemnation.

A food condemnation notification will be given to the person in charge of the food when the officer intends to have the food dealt with by a Justice of the Peace. The notification may also be given to the owner of the food.

Food that has been seized should be dealt with by a Justice of the Peace as soon as is reasonably practicable, normally within 2 days, but if necessary longer to ensure that parties attend and be represented should they so choose. Highly perishable food should be dealt with by a Justice of the Peace at the earliest opportunity.

The person in charge of the food, or the owner, will be given the opportunity of being present and represented should they so choose, when the food is dealt with by the Justice of the Peace, although action would not be delayed if the owner cannot be traced or contacted.

It is important that the owner or the person in charge of the food has the opportunity of attending, and good service of notice of the hearing will be documented and retained to show the Court that was the case.

The authorised officer will ensure continuity of evidence whether or not there may be a subsequent prosecution and will make every attempt not to leave the food which has been seized unattended.

Dealing with Batches, Lots or Consignments of Food

Where any food which is unsafe forms part of a batch, lot, or consignment of food of the same class or description, it shall be presumed that all the food in that batch, lot or consignment is also unsafe, unless following a detailed assessment there is no evidence that the rest of the batch, lot or consignment is unsafe.

If a quantity of food of different types or batches is being detained, the authorised officer will issue a separate Detention of Food Notice in respect of each type or batch.

When considering whether to seize or detain a batch, lot or consignment the authorised officer should take into account:

- the evidence available;
- the nature of the contamination;
- the nature and condition of any container holding the food;
- the risk to health;
- the quantity of food involved in relation to any sampling which has been undertaken.

Withdrawal of Detention of Food Notice

The authorised officer will act as quickly as possible when evidence or information indicates that detained food can be released, and in any case within 21 days. A Withdrawal of Detention of Food Notice should be served.

The decision to issue a Withdrawal of Detention of Food Notice will be taken either by the officer who originally issued the notice or initiated the action or by another officer with the relevant experience.

A Withdrawal of Detention of Food Notice will be served as soon as possible to prevent possible deterioration of the food. The notice need not be served by the officer who made the decision, but may be served by any authorised officer.

Voluntary Procedures

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

A receipt will be issued for food that is voluntarily surrendered for destruction. The receipt will indicate that the food has been voluntarily surrendered for destruction and be signed and counter-signed by the authorised officer and the person surrendering the food respectively.

The time, place and method of destruction of the food shall be recorded on the office copy by the authorised officer in due course and retained.

We may look to secure, as part of the voluntary surrender, an agreement by the owner to pay the reasonable expenses of destruction or disposal.

Destruction or Disposal of Food

We are responsible for ensuring the destruction of food that has been seized or voluntarily surrendered, and arrangements will be made for the food to be supervised until it can be dealt with in the appropriate manner.

If possible and if there is likely to be some delay before destruction, the food will be disfigured so as to prevent any possibility of it being returned to the food chain.

We shall ensure the total destruction of the food by incineration or some other appropriate method, or if total destruction is not possible, such a degree of disfigurement that the food could never re-enter the food chain, having regard to the requirements of relevant waste disposal legislation.

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

- ***Remedial Action Notices***

The service of a Remedial Action Notice, under Regulation 9 of the Food Hygiene (Wales) Regulations 2006, is available to be considered if any of the requirements of the Hygiene Regulations (as defined by Regulation 2 of the Food Hygiene (Wales) Regulations 2006), are being breached or an inspection under the Hygiene Regulations is being hampered.

However, where possible officers will seek to remedy non-compliance by a graduated approach to enforcement, including where necessary by employing Hygiene Improvement Notice provisions before commencing any other enforcement action.

A Remedial Action Notice specifically provides for the prohibition of the use of any equipment or any part of the establishment; the imposition of conditions upon, or prohibition of, any process; and, also allows for the rate of an operation to be reduced or stopped completely.

In practice, it would be considered 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 action specified in the notice has been taken, the notice would be withdrawn, by means of another written notice.

If an authorised officer considers it necessary to serve a Remedial Action Notice owing to the conditions or practices found on the inspection of an establishment subject to approval under Regulation 853/2004, consideration will also be given to whether food at the establishment should be detained for the purposes of examination, by means of a Detention Notice.

- ***Detention Notices (in 'approved' premises)***

Regulation 9 of the Food Hygiene (Wales) Regulations 2006, makes further provision for the detention of any food, including the taking of samples for the purposes of examination, by the service of a Detention Notice.

This provision is only available in respect of food in establishments subject to approval under Regulation 853/2004.

In practice, the detention of food would be considered where there are indications or suspicions that food at an establishment is unsafe, and that examination is therefore necessary, including the taking of samples.

Once we have received the results of the examination, confirming the safety or otherwise of the food, we will either seize the food and apply to a Magistrate for it to be condemned, or, if the food is deemed to be safe, will withdraw the Detention Notice by means of a further notice in writing.

- ***Suspension or withdrawal of approval/conditional approval (in the case of 'approved' premises)***

A graduated approach to enforcement applies when considering the suspension and withdrawal of approval as it does generally to other areas of food law enforcement, with consideration being given to all other enforcement options to remedy contraventions in advance.

In accordance with Article 31(2)(e) of Regulation (EC) No. 882/2004 suspension or withdrawal of approval/conditional approval would, however, be considered if serious deficiencies are identified or we have had to stop production at an establishment repeatedly and the food business operator is not able to provide adequate guarantees regarding future production.

To ensure a consistent approach across our Service, where an inspecting officer is of the opinion that an approval should be suspended or withdrawn or that conditional approval should not be made into full approval, the findings shall wherever possible be discussed, with the lead officer for the product specific sector, who will have an advanced knowledge and overview of the sector.

If the lead officer agrees with the inspecting officer's conclusion, the matter would be brought to the attention of the relevant senior officer, typically the Authority's Lead Officer for Food Safety and Hygiene, or otherwise the Food, Safety and Port Health Manager, with any evidence supporting their conclusion.

The Lead Officer for Food Safety and Hygiene, or otherwise the Food, Safety and Port Health Manager, are responsible for authorising action.

In practice, we may suspend an establishment's approval if the food business operator can guarantee that it will resolve deficiencies within a reasonable time, in which case a reasonable timescale must be agreed in which the deficiencies will be resolved and a guarantee given by the food business operator to resolve the deficiencies. If the agreed deadlines are not met a decision will be taken whether to agree a further extension if works have generally progressed satisfactorily or otherwise to proceed to withdrawal.

Any person aggrieved by a decision of the approving authority may appeal to the Magistrates' Court within one month of the date on which the notice of the decision was served on the food business operator.

Where a person appeals against a decision to withdraw or refuse approval, and they were immediately before the refusal or withdrawal, operating the food business establishment, they may continue to use the establishment pending the outcome of the appeal, subject to any conditions imposed on it by the approving authority for the protection of public health.

This provision does not extend to appeals against the suspension of approval, which has immediate effect.

Where the inspecting officer considers that the continued use of the establishment in the period pending the determination of an appeal poses a risk to health the officer will consider the use of Hygiene Emergency Prohibition procedures, which can be used despite the appeal being made.

- ***Fixed Penalty Notices (for offences under the Food Hygiene Rating (Wales) Act 2013***

The Food Hygiene Ratings (Wales) Act 2013 establishes a number of requirements relating to the display and communication of food hygiene ratings.

Where an officer has reason to believe that a person has committed an offence under the Act the officer may issue that person a Fixed Penalty Notice (FPN).

In practice, we will endeavour to resolve most breaches of the Act through constructive dialogue with the food business operator, ensuring that the business understands the reasons for any offence, and will offer any advice that may be appropriate to assist subsequent compliance.

If a food business operator explains readily and openly why they are having difficulty complying, and such an explanation is reasonable, then advice would be offered to assist compliance as opposed to moving to impose a FPN or prosecution.

However, where resolution cannot be achieved easily or quickly, a FPN will be considered as the next step in a graduated approach towards establishing compliance.

Similarly, where there is continuing non-compliance despite any advice previously offered to the food business operator, we may look to impose a FPN

Once the initial discussion has taken place, and any help or advice given, we will pro-actively monitor whether or not the food business operator is complying with the Act. If further monitoring or complaints are received that suggest that the food business operator is continuing to breach the Act, then further action will be considered. In most cases, this is likely to be the imposition of a FPN, unless the FBO is able to provide a reasonable excuse, supported by evidence, as to why compliance is not possible.

Where we reasonably believe that there has been a deliberate or persistent failure to comply with a requirement of the Act, it may be deemed inappropriate to serve a FPN and legal proceedings may be instituted immediately instead.

To ensure the consistent use of these FPNs within the Authority, the proposed issue of a FPN will be discussed with, and agreed by, the Food, Safety and Port Health Manager.

A FPN shall set out the circumstances giving rise to the alleged breach, explaining why the offence has occurred. It will also state that the person has the right to be tried for the alleged offence and explain how that right might be exercised

The full amount in the fixed penalty notice (£200) must be paid within 28 days beginning on the day on which the notice was served. However a discounted amount (£150) is payable if payment is received within a period of 14 days beginning on the day on which the notice was served. If the last day does not fall on a working day this period is extended to the next working day.

Alternatively a person issued with the FPN may elect to be tried for the offence. This request must be made to the Authority before the expiry of the period allowed for payment. The person concerned is able to change their mind and pay the penalty at any time within the period allowed for payment.

- ***Simple Cautions***

A simple caution may be offered as an alternative to prosecution in certain circumstances. They will be administered in accordance with current version of the Ministry of Justice 'Simple Cautions for Adult Offenders'.

The purpose of a simple caution is to:

- offer a proportionate response to low level offending where the offender has admitted the offence;
- deliver swift, simple and effective justice that carries a deterrent effect;
- record an individual's criminal conduct for possible reference in future criminal proceedings or in criminal record or other similar checks;
- reduce the likelihood of re-offending;
- increase the amount of time officers spend dealing with more serious crime and reduce the amount of time officers spend completing paperwork and attending court, whilst simultaneously reducing the burden on the courts.

*To safeguard the interests of suspected offenders, the following conditions shall be fulfilled before a **simple caution** is administered:*

- *there must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction in respect of each offence; and*
- *the offender has made a clear and reliable admission of guilt, verbally or in writing; and*
- *no defence has been raised in respect of any offence covered by the caution; and*

- *that it is in the public interest to offer a simple caution as an alternative to prosecution; and*
- *the offender must consent to the simple caution as an alternative to prosecution; and*
- *the offender must understand the significance of accepting a simple caution.*

Where an individual/enterprise declines the offer of a simple caution, the matter will normally be dealt with by way of a prosecution.

Where it is appropriate to do so in accordance with this policy, a Simple Caution may be administered in addition to issuing other statutory notices for the purpose of securing necessary compliance.

- ***Prosecution***

Whilst our primary purpose is to ensure that food business operators manage and control risks effectively, thus preventing harm, prosecution is an essential part of enforcement.

The decision whether to prosecute shall be taken at the earliest opportunity, taking account of the evidential test and the relevant public interest factors set down by the Director of Public Prosecutions in the Code for Crown Prosecutors.

No prosecution will go ahead unless there is sufficient evidence to provide a realistic prospect of conviction and that a prosecution would be in the public interest.

Where the circumstances warrant it and the evidence to support a case is available, we may prosecute without prior warning or recourse to alternative sanctions.

Where it is appropriate to do so in accordance with this policy, a prosecution may be brought in addition to issuing other statutory notices for the purpose of securing necessary compliance.

Subject to the above tests being met, a prosecution will normally be brought where, following an investigation or other regulatory contact, one or more of the following circumstances apply:

- *The gravity of an alleged offence, together with the seriousness of any actual or potential harm, warrants it. Includes all cases where a death has resulted from a breach of legislation. Offences of a less serious nature that would be expected to give rise to a nominal penalty would*

be a factor against prosecution.

- There are/have been serious failures in management (i.e. where a food business operator's management of food safety and/or standards is found to be far below what is required in law and to be giving rise to significant risk).*
- It is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by the law, and conviction may deter others from similar failures to comply with the law. Where offences, including those of a less serious nature, are prevalent within the area, prosecution might be appropriate to highlight the need for compliance.*
- The general record and approach of the offender warrants it. This shall include situations where false information has been supplied wilfully, or there has been intent to deceive, in relation to a matter which gives rise to significant risk and those where authorised officers have been intentionally obstructed in the lawful course of their duties. Where authorised officers are assaulted, we will seek police assistance, with a view to seeking the prosecution of offenders.*
- There has been reckless disregard of food safety and/or standards requirements. This will include situations where a breach which gives rise to significant risk has continued despite relevant warnings. Conversely, where an offence is considered to have been committed as a result of a genuine mistake or misunderstanding, prosecution might not be appropriate. However, this must be balanced against the seriousness of the offence.*
- There have been repeated breaches or persistent poor compliance. In practice, this applies to repeated breaches that give rise to significant risk, and to persistent and significant poor compliance. Previous convictions and cautions will be of particular significance.*
- There has been a failure to comply with a written warning or notice served. Includes any failure to comply with a hygiene improvement or hygiene emergency prohibition notice, or a repetition of a breach that was subject to a simple caution, or a failure to accept a simple caution.*

Consideration will, however, be given to:

- The willingness of the offender to prevent a recurrence.*
- The likelihood of a successful due diligence or other defence.*
- The explanation offered by the offender.*
- The ability of witnesses to co-operate.*

- *Any comments from a Primary, Home and/or Originating, or Lead Authority, as applicable*

While legislation places primary responsibility for legal compliance on the 'food business operator', in determining who to prosecute, consideration will be given to the role played all persons involved in the commission of the offence. Where the commission of the offence is due to the act or default of a person other than the 'food business operator', then in accordance with Regulation 10 of the Food Hygiene (Wales) Regulations 2006, and Section 20 of the Food Safety Act 1990, legal proceedings may be pursued against that person, whether or not proceedings are brought against the food business operator.

In particular, where an offence has been committed by a body corporate, in accordance with Regulation 18 of the Food Hygiene (Wales) Regulations 2006, and Section 36 of the Food Safety Act 1990, consideration will be given to the management chain and the role played by key individuals. Where an offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he or she as well as the body corporate will be deemed to be guilty of that offence and may be prosecuted accordingly.

In cases of sufficient seriousness, and when given the opportunity, we will indicate to magistrates that an offence may be so serious that they might send it to be heard or sentenced in the higher court where higher penalties can be imposed. In considering what representations to make, we will have regard to Court of Appeal guidance.

In addition, we will when appropriate draw to the court's attention all the factors that are relevant to the court's decision as to what sentence is appropriate on conviction, with reference to the Sentencing Council Definitive Guideline on 'Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences', where applicable.

In addition, it is our policy to seek to recover full costs for investigations that lead to prosecution.

Publicity

We will respond to press enquiries about charges that have been laid before the courts and will provide factual information wherever possible. In doing so, care will be taken to avoid any publicity which could prejudice a fair trial.

We will publicise any conviction which could serve to draw attention to the need to comply with food safety and/or standards requirements, or deter anyone tempted to disregard their responsibilities under food law.

Information on these convictions (and on other enforcement action taken) will be made available to the public on request.

Ensuring Consistency of Enforcement

We will only authorise officers who are suitably qualified, trained and experienced in relation to food safety and standards enforcement. Newly appointed officers will be put through an appropriate programme of training and supervision, in accordance with the requirements of the Food Law Code of Practice and internal procedures.

In addition, officers are required to work in accordance with a suite of written protocols and procedures.

In considering whether the law has been complied with, authorised officers will have regard to relevant requirements set out in the latest statutory Food Law Code of Practice (Wales); guidance set out in the latest Food Law Practice Guidance (Wales); UK Industry Guides to Good Hygiene Practice; guidance issued by the Food Standards Agency (Wales), Regulatory Delivery (formerly the Better Regulation Delivery Office) and LACORS (where still relevant and appropriate); relevant industry codes of practice; and appropriate technical literature, using sensible judgement about the extent of the risks and the effort that has been applied to counter them.

Enforcement decisions will be guided by the requirements of this Enforcement Policy.

To ensure that the interpretation of requirements and approach to enforcement remain appropriate and consistent within the Authority, officers are subject to regular monitoring in accordance with an internal monitoring procedure. As part of this process, inspection and service request records are reviewed and accompanied visits undertaken. In addition, statutory notices are subject to peer review prior to issue wherever possible.

Furthermore, decisions to offer a simple caution and to prosecute for food law offences are considered, by the Food, Safety and Port Health Manager, Head of Public Protection and authorised by the Director of Development, in accordance with the Public Protection Division's Prosecution Protocol.

Nationally, arrangements exist for the co-ordination of enforcement standards via the Food Standards Agency and Regulatory Delivery (formerly the Better Regulation Delivery Office).

Consistency is achieved across local authorities via regional Task Groups and national Expert Panels. Liaison also takes place with other relevant enforcement bodies, as necessary.

Advice and support on the investigation of food fraud cases is provided by the Welsh Food Fraud Unit.

As indicated above, before taking 'formal' enforcement action against a company subject to a Primary Authority partnership (direct or co-ordinated) for the area/s covered, we will consult the Primary Authority before any action is taken.

This duty to consult generally applies to statutory enforcement only (other than where immediate action is required to protect public health), although will also include situations where non-statutory enforcement action indicates that legal action will be considered for failing to follow any direction given.

In the interest of consistency, where we propose to pursue action informally against a company, and this action may impact on any advice given centrally to the company by its Primary Authority, liaison with the Primary Authority will again take place prior to action being taken.

The Primary Authority scheme will operate alongside other non-statutory partnership arrangements set up under LACORS Home Authority Principle, which officers shall continue to have regard to. In particular, liaison with the Home Authority will take place where enforcement action may have a bearing on any central agreed policies and/or procedures.

Complaints

Complaints about the service will be investigated in accordance with the Council's 'Complaints, Compliments & Suggestions' policy. This policy is featured on the Council's web-site at www.pembrokeshire.gov.uk.

Complaints should initially be made to, and shall be investigated by, the Council's Food, Safety and Port Health Manager:

Contact details:

Food, Safety and Port Health Manager
Public Protection Division
Pembrokeshire County Council
County Hall
Haverfordwest
SA61 1TP

Tel: (01437) 775636
Fax: (01437) 775494
e-mail: foodsafety@pembrokeshire.gov.uk*

*General e-mail account accessed by all food officers

Most complaints are settled in this way, often immediately.

In cases of maladministration, complaints can also be made to the Local Government Ombudsman for Wales.

Enforcement with respect to those premises where the Council has an interest

It is recognised that conflict of interest may arise in premises where the Council is responsible for food law enforcement and in which it also has an ownership or management interest. Examples of such premises include office canteens, local authority run schools, care homes, leisure centres, etc.

To ensure openness and transparency in respect of premises in which it has an interest, the Council will:

- Seek to secure compliance with food safety and standards requirements in a manner consistent with this enforcement policy, in the same way that it does in all other food business premises.
- Maintain a clear separation between the Council's various roles to ensure that individual officers are not asked to act in a capacity which draws them into a conflict of interest.
- Ensure that any investigation retains its independence and objectivity and, in exceptional circumstances, shall consider the appointment of an officer from another local authority to carry out an investigation or alternatively contracting the investigation to an independent or consultant EHO.
- In exceptional circumstances, maintain a distance between the legal representation of its enforcement officers and its food business operators.
- In practice, any contraventions and/or advice on good practice, identified during an inspection or investigation in any of the Council-run catering units, will be brought to the attention of the Council's County Catering Operations Manager in writing. The Catering Services Manager will ensure that matters of a structural nature are communicated to the Council's Operations Manager, and matters of an operational nature to the Catering Area Supervisor, for attention.

Similarly, matters of a structural nature in Council-owned leisure facilities (including Haverfordwest Leisure Centre, Tenby Leisure Centre, and Pembrokeshire Activity Centre) will be brought to the attention of the Council's Leisure Services Manager and the Director of Social Services & Leisure, as well as the food business operator.

Matters of a serious/persistent nature, and any premises which on inspection are found not to be 'broadly compliant' compliant with food hygiene requirements i.e. attracting a Food Hygiene Rating of 2 or less, will in addition be copied to the Corporate Management Team which

consists of the Chief Finance Officer, the Director for Children & Schools, the Director of Social Services & Leisure and the Director of Development. This includes in the case of any serious/persistent structural deficiencies, any serious/persistent operational deficiencies within schools, teachers training centres and County Hall, residential care/nursing homes and day centres; and, in other Council-owned leisure facilities.

If conditions are so serious that an imminent risk to health is deemed to exist, that warrants the prohibition of the use of the premises, or part thereof; or the prohibition of a particular piece of equipment or process; or where the detention/seizure of food is required; or, where prosecution of a business would normally be indicated, the Chief Executive shall be notified of the situation. Communication with the Chief Executive, shall be through the senior management chain, that is via the Food Safety and Port Health Manager, Head of Public Protection and Director of Development, as available.