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31 May 2013

## **S U M M O N S**

**MEETING:** Community Board  
**DATE:** 10 June 2013  
**TIME:** 6.00pm  
**PLACE:** Committee Room 1, Town Hall, Gosport  
**Democratic Services contact:** Vicki Stone

LINDA EDWARDS  
BOROUGH SOLICITOR

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### **MEMBERS OF THE BOARD**

The Mayor (Councillor Beavis) (ex-officio)  
Chairman of the Policy and Organisation Board (Councillor Hook) (ex – officio)

Councillor Burgess (Chairman)  
Councillor Kimber (Vice – Chairman)

Councillor Carter CK  
Councillor Mrs Cully  
Councillor Edgar  
Councillor Foster-Reed  
Councillor Henshaw

Councillor Mrs Hook  
Councillor Hylands  
Councillor Mrs Morgan  
Councillor Murphy  
Councillor Mrs Wright

### **FIRE PRECAUTIONS**

(To be read from the Chair if members of the public are present)

**In the event of the fire alarm sounding, please leave the room immediately. Proceed downstairs by way of the main stairs or as directed by GBC staff, follow any of the emergency exit signs. People with disability or mobility issues please identify yourself to GBC staff who will assist in your evacuation of the building.**

**IMPORTANT NOTICE:**

- If you are in a wheelchair or have difficulty in walking and require access to the Committee Room on the First Floor of the Town Hall for this meeting, assistance can be provided by Town Hall staff on request

If you require any of the services detailed above please ring the Direct Line for the Democratic Services Officer listed on the Summons (first page).

**NOTE:**

- i. Councillors are requested to note that, if any Councillor who is not a Member of the Board wishes to speak at the Board meeting, then the Borough Solicitor is required to receive not less than 24 hours prior notice in writing or electronically and such notice shall indicate the agenda item or items on which the member wishes to speak.
- ii. Please note that mobile phones should be switched off for the duration of the meeting.

**AGENDA**

**PART A ITEMS**

RECOMMENDED  
MINUTE FORMAT

1. APOLOGIES FOR NON-ATTENDANCE

2. DECLARATIONS OF INTEREST

*All Members present are required to declare, at this point in the meeting or as soon as possible thereafter, any disclosable pecuniary interest in any item(s) being considered at this meeting.*

3. MINUTES OF THE MEETINGS OF THE COMMUNITY BOARD  
HELD ON 11 MARCH AND 16 MAY 2013.

4. DEPUTATIONS – STANDING ORDER 3.5

*(NOTE: The Board is required to receive a deputation(s) on a matter which is before the meeting of the Board provided that notice of the intended deputation and its object shall have been received by the Borough Solicitor by 12 noon on Thursday, 6 June 2013. The total time for deputations in favour and against a proposal shall not exceed 10 minutes).*

5. PUBLIC QUESTIONS – STANDING ORDER 3.6

*(NOTE: The Board is required to allow a total of 15 minutes for questions from Members of the public on matters within the terms of reference of the Board provided that notice of such Question(s) shall have been submitted to the Borough Solicitor by 12 noon on Thursday, 6 June 2013).*

6. ENVIRONMENTAL HEALTH (COMMERCIAL) SERVICE PLAN  
2013/ 2014

Part II

*It is a requirement of the Food Standards Agency and the Health and Safety Executive respectively that the work undertaken in the fields of Food Safety and Health and Safety at Work by and on behalf of the Council are adequately resourced and formally endorsed by the Council. This report identifies the work programme of the Environmental Health (Commercial) Team for the year 2013/2014 in relation to these services, to meet the above requirement and to satisfy those Agencies that adequate arrangements are in place at Gosport Borough Council.*

Contact:  
Ian Rickman  
Ext 5509

Community Board  
10 June 2013

7. ENVIRONMENTAL HEALTH ENFORCEMENT POLICY

Part II

*To present to the Board an Environmental Health Enforcement Policy for the Environmental Health Partnership.*

Contact:  
Ian Rickman  
Ext 5509

8. ANY OTHER ITEMS

*-which the Chairman determines should be considered, by reason of special circumstances, as a matter of urgency.*

## AGENDA ITEM NO. 06

<b>Board/Board:</b>	COMMUNITY BOARD
<b>Date of Meeting:</b>	10 <sup>TH</sup> JUNE 2013
<b>Title:</b>	ENVIRONMENTAL HEALTH (COMMERCIAL ) SERVICE PLAN 2013/ 2014
<b>Author:</b>	COMMUNITY AND CUSTOMER SERVICES MANAGER
<b>Status:</b>	FOR DECISION

### **Purpose**

It is a requirement of the Food Standards Agency and the Health and Safety Executive respectively that the work undertaken in the fields of Food Safety and Health and Safety at Work by and on behalf of the Council are adequately resourced and formally endorsed by the Council. This report identifies the work programme of the Environmental Health (Commercial) Team for the year 2013/2014 in relation to these services, to meet the above requirement and to satisfy those Agencies that adequate arrangements are in place at Gosport Borough Council.

### **Recommendation**

That the Community Board approve the Food Safety Service Plan 2013/14 set out at Appendix A and the Health & Safety Service Plan 2013/14 set out at Appendix B of this report.

## **1 Background**

- 1.1 Gosport Borough Council is a Food Authority under the Food Safety Act 1990. The Council is also an enforcing authority under the Health and Safety at Work etc. Act 1974. Guidance issued by the respective Secretaries of State requires local authorities to formally commit sufficient resources to address these responsibilities. From April 2011 the requirement with reference to the Health and Safety provision became a statutory responsibility.

## **2 Report**

- 2.1 Appendix A of this report outlines the demands on the Food Safety Service Plan in 2013/2014. Appendix B outlines the demands on the Health and Safety Service in 2013/2014. Both appendices contain historical data relating to past experience.
- 2.2 Responsibility for Food Safety and Health and Safety falls to the Commercial Team within the Environmental Health Section. The Commercial Team has two elements, namely Environmental Health Officers (EHO's) and the Technical Officers (TO's), who are responsible for Food Hygiene, Health and Safety matters and some licensing matters. Licensing Officers (LO's) in the Licensing Team are responsible for most licensing issues. Whilst elements of each discipline attempt to support each other where possible, national criteria regarding qualifications of officers in reality restrict food and health and

safety functions to the EHOs and TOs only.

### **3 Risk Assessment**

- 3.1 The Council must be able to identify that it has provided adequate resources to carry out its statutory functions as a Food Authority (Food Safety Act 1990) and as an Enforcement Authority (Health and Safety at Work etc. Act 1974).
- 3.2 Failure to resource these functions adequately may result in sanction from the Food Standards Agency or the Health and Safety Executive. Failure to adequately resource the Health and Safety function may result in action being taken against the Council. This may also result in bad publicity. Having detailed Food Safety and Health and Safety Intervention Plans in place provides a platform to help make Gosport a safe and healthy place to live, work and visit and demonstrates that adequate resources are provided to these important statutory areas of work.

### **4 Conclusion**

- 4.2 The Community Board is recommended to approve the Service Plans for 2013/14 set out in the Appendices to this report.

<b>Financial Services comments:</b>	These Statutory functions can be met within the agreed budgets for 2013/14
<b>Legal Services comments:</b>	Contained in the report
<b>Crime and Disorder:</b>	None
<b>Equality and Disorder:</b>	None
<b>Service Improvement Plan implications:</b>	None
<b>Corporate Plan:</b>	Failure to deliver the service plan may require consideration be given to the provision of additional resources to these areas of responsibility. In addition the Food Standards Agency may carry out any shortfall and recharge the Authority.
<b>Risk Assessment:</b>	As above.
<b>Background papers:</b>	None
<b>Appendices/Enclosures:</b>	
Appendix 'A'	Food Safety Service Plan 2013/2014
Appendix 'B'	Health and Safety Service Plan 2013/2014
<b>Report author/ Lead Officer:</b>	Ian Rickman

**Gosport Borough Council  
Food Safety Service Plan  
2013 / 2014**

## **INTRODUCTION**

1. This Food Safety Service Plan has been produced as required by and in accordance with the Food Standards Agency Framework Agreement on Local Authority Food Law Enforcement. It is written in the format prescribed by the Agency, its purpose being to demonstrate that Gosport Borough Council has in place adequate and effective arrangements to meet its statutory obligations in respect of Food Safety.
2. Gosport Borough Council is designated as a Food Authority under the European Communities Act 1972, the Food Hygiene (England) Regulations 2006 and the Food Safety Act 1990 and, as such, has a statutory duty to enforce the legislation. Authorised Environmental Health employees working within the Commercial Team have the delegated authority to enforce the legislation.
3. This Service Plan covers the following:
  - i) The Food Safety Service Aims and Objectives
  - ii) Background information
  - iii) Service Delivery
  - iv) Resources
  - v) Quality Assessment
  - vi) Service Review.

## **SERVICE AIMS AND OBJECTIVES**

4. The Council's Corporate Plan identifies the Council's Strategic Priorities which includes under the heading "People" to "Promote Health & Well Being". The Food Safety function is an important contributor to this Strategic Priority.
5. The Service objectives are as follows:-
  - i) To ensure that all businesses involved in the preparation, sale, distribution or handling of food comply with food safety legislation and the requirements of codes of practice issued by the Food Standards Agency.
  - ii) To minimise the spread of incidents of infectious diseases, including incidents of food poisoning, by investigating relevant cases and taking action to control the spread of disease.

### **Links to Corporate Objectives and Plans**

6. In respect of Food Safety, the Council's Community Board is responsible for this function.
7. The Spending Plan for delivering the Food Safety Service for 2013/2014 has already been agreed.
8. Reports are considered by the Community Board throughout the year as required in order to ensure the service is able to adapt to changing demands e.g. changes to legislation/guidance.



## **BACKGROUND**

### **Profile of Gosport**

9. The Borough of Gosport is on the south coast of England and covers almost 2750 hectares of land. It is surrounded by water on three sides with the Solent to the west and south, and Portsmouth Harbour to the east. Almost one quarter of the borough is in Ministry of Defence ownership and there is only one principal single carriageway access to the adjoining Borough of Fareham.
10. Over 79,000 people live in the Borough and, whilst the population broadly reflects the national age profile, the proportion of older people is expected to increase at a significantly faster rate than average. Residents are mostly white and the proportion of Black and Minority Ethnic people is small compared to the rest of the South East.
11. Gosport has a number of areas ranked in the top 20 per-cent most deprived in England. Income, health and educational inequalities contribute to the social exclusion experienced by many households. It has a lower life expectancy than the rest of the region, and relatively high levels of heart disease, strokes, cancer, alcohol misuse, smoking, obesity and teenage pregnancy rates.
12. Average wages are well below the regional average and approximately 12,000 residents commute out of the area, earning higher wages than can be secured locally. Gosport has the lowest job density and business start-up rate in Hampshire, contributing to out-commuting and traffic congestion. During difficult economic times it can become difficult for businesses to maintain standards, so it is more important for the food safety service to ensure that standards in food businesses do not drop.

### **Organisational Structure**

13. The Council is supported by a number of Boards and Committees including Overview and Scrutiny. The Community Board is currently responsible for Food Safety function.
14. The Environmental Health and licensing function are progressing within the new partnership arrangement, sharing a Head of Service with Fareham Borough Council, and developing the shared service for the two Authorities
15. The Food Safety function at Gosport Borough Council is undertaken by the Commercial Team, within the Environmental Health Section, within the Community and Customer Services Unit, which reports to the Community Board.

### **Fareham and Gosport Environmental Health Partnership Initiative**

16. Since January 2011, the Gosport Environmental Health Section has been working in partnership with Fareham Borough Council Environmental Health Section. The Head of Environmental Health is head of both Fareham Borough Council's and Gosport Borough Council's Environmental Health Services and is the officer responsible for the Food Safety Service delivery. The Community and Customer Services Unit Manager is the lead Manager for this Partnership in Gosport.

17. The Partnership is developing well and the Commercial Teams from both Councils continue to work closely together to develop joint working practices and deliver projects across both Boroughs. In 2013/14 it aims to develop joint working practices and deliver joint projects across both Councils. This ensures consistency across the Boroughs in the way that work is carried out, which is a particular benefit for those businesses that have premises in both Boroughs. It will enable better use of the joint resource to deliver the priorities of both Services.
18. The Gosport Food Safety enforcement team consists of one full time Principal Environmental Health Officer, one Environmental Health Officer (on a temporary contract until 30 June 2013) and two Technical Officers. These officers also undertake Health and Safety and Infectious Disease control and some Licensing and Statutory Nuisance work. In August 2012 the operation and management of Gosport Market passed to the Commercial Team. The Environmental Health Partnership provides greater flexibility and resilience as the Gosport team has access to the food safety team based in Fareham. In March 2013 the Commercial Team carried out 20 food hygiene rating inspections for Fareham Borough Council to enable the Environmental Health Partnership to achieve 100% of its planned inspection programme.
19. The provisions made for specialist services are as follows:-
- Food Analyst:**  
Hampshire Scientific Service  
Hyde Park Road,  
Southsea  
Hants  
PO5 4LL  
Tel No. 023 9282 9501
- Food Examiner:**  
Food Water and Environmental Microbiology Services (Porton)  
HPA Porton Down  
Salisbury  
Wiltshire  
SP4 0JG  
Tel. No. 01980 616766/6161776.
20. These are used as and when necessary where expert and specialist advice is required.
21. Following structural, organisational, administration and procedural changes from April 2011, consultant services were again unnecessary in 2012/2013. This has resulted in financial savings, improvement in quality and consistency of inspections and closer working relationships between Officers in the Commercial Team and local food businesses. It is unlikely that consultants will be required in light of the Environmental Health Partnership with Fareham Borough Council's Commercial Team, which can provide any additional resource to deal with peaks in workload and vice versa.

## Scope of the Food Service

22. The food service consists of the following elements:-

- i) Ensuring that all food premises within the Borough are identified and inspected on a risk-assessed basis;
- ii) Implementing and maintaining the National Food Hygiene Rating Scheme
- iii) Reviewing planning and building control applications to ensure that food hygiene requirements are considered at the design, build and renovation stages of development;
- iv) Providing advice to food businesses and members of the public on issues relating to food safety;
- v) Investigating all complaints relating to food and food safety and taking appropriate enforcement action to prevent potential outbreaks of food poisoning;
- vi) Undertaking sampling in order to determine the quality and fitness of food that is available for purchase throughout the Borough;
- vii) Minimising the spread of incidents of infectious diseases, including incidents of food poisoning by investigating relevant cases and taking action to control the spread of disease.

In order to provide an efficient and cost effective service, officers who undertake food safety duties also undertake other duties such as Health and Safety at Work, Infectious Disease Control, the Health Act and some Licensing enforcement. Whenever possible visits to premises for different purposes are combined to ensure that officer time is used efficiently and that the inspection burden on business is kept to a minimum.

## Demands on the Food Service

23. There are approximately 703 registered food premises within the Borough, mainly composed of restaurants, takeaways and retailers. There are no specific unusual or seasonable demands on the food safety service, such as tourism or large numbers of food premises run by proprietors whose first language is not English.

24. As at 15 May 2013 the 703 registered food premises within the Borough, were made up of the following food premises types:

Primary Producer	2
Manufacturer or Packers	6
Distributors or Transporters	3
Supermarkets or Hypermarkets	28
Small Retailers	88
Other Retailers	78
Restaurants or Cafés or Canteens	80
Hotels or Guest Houses	21
Pubs or Clubs	75
Takeaways	76
Caring Establishments (Hospitals or Rest Homes)	168
Schools or Colleges	33
Mobile Food Unit	33
Other Caterers	82
<b>Total Registered Premises</b>	<b>703</b>

This is an increase in 36 registered premises since April 2012. There are no “Approved Premises”, such as a cold store or dairy establishment, in Gosport.

25. The Food Authority has procedures in place that ensure that the Food Standards Agency’s Code of Practice, which guides food authorities in their enforcement, is followed. Officers of the Council must and do have regard to these Codes and other Guidance in undertaking the Food Safety function as they ensure consistent enforcement across the Country. These procedures are embedded into the Commercial Team’s electronic business processes. The Practice Guidance document issued by the Food Standards Agency to Local Authorities was re-issued in October 2012 and provides clarification on some issues, but does not introduce significant changes.
26. The Commercial Team, in addition to undertaking the food safety function, also has responsibility for Health and Safety, Infectious Disease Control, Health Act and some Licensing functions and Statutory Nuisance in commercial premises.
27. The Health and Safety functions are covered by a separate Service Plan. In order to maximise the use of limited resources and to ensure a more coherent service to business, the same officer deals with all Food Safety, Health and Safety issues relating to any single premises, where appropriate interventions in relation to these activities are combined.
28. The service is provided 9.00am to 5.00pm Monday to Friday by officers based at the Town Hall. There is an emergency telephone line for out of office hours, but no formal environmental health emergency arrangements are in place. Cases of genuine emergency, such as food poisoning outbreaks reported outside normal working hours are referred via the Council’s emergency contact arrangements to the Head of Environmental Health. Planned out of hours inspections and visits are made by Officers on the basis of the trading times of food businesses and the perceived need.

### **Licensing**

29. The Licensing Team is a designated Responsible Authority for the purposes of the Licensing Act 2003, which came into effect on 7 February 2005. The Commercial Team are required to make relevant representations regarding licence applications. This additional work, together with licensing inspections to check compliance with licence conditions, impacts upon the Commercial Team’s normal food duties, but is carried out in conjunction with food hygiene inspections where possible.
30. In addition to the above, from April 2012, the Commercial Team became responsible for licensing inspections to check compliance with licence conditions at riding establishments, pet shops, dangerous wild animals, animal boarding establishments and the registration of people and premises where skin piercing is carried out.

### **The Gambling Act 2005**

31. The above Act came into force on 31 August 2007. Whilst there are only a small number of licensed gambling premises in the Borough, e.g. betting shops, entertainment centres etc., the Act encompasses the provision of gaming

machines in licensed premises. There is some limited enforcement necessary by members of the Commercial Team, in relation to such machines

### **The Health Act 2006**

32. The above Act came into force on 1 July 2007 and there is ongoing enforcement in relation to this and the smoke free provisions of the Act, which is also carried out by officers of the Commercial Team.

### **Shellfish**

33. The Authority is also responsible for the shellfish beds located between the mean high water mark and the Fareham Borough Council boundary in the west and the Portsmouth Port Health boundary to the east and south. Whilst there are no sampling points within the Food Authority's responsibility, demands are placed on the service to provide information to local fishermen and occasionally sampling results means the temporary closure of the shellfish beds.

### **Approvals**

34. The Food Authority is responsible for approving relevant premises e.g. cold store meat in accordance with relevant EC legislation, Food Law Code of Practice and centrally issued guidance. There are currently no such approved premises within the Borough.

### **The National Food Hygiene Rating Scheme**

35. The Food Hygiene Rating Scheme (FHRS) is a Food Standards Agency/Local Authority partnership initiative. It is a national scheme which provides consumers with information about hygiene standards in food business establishments at the time they are inspected, using information gathered by officers to check compliance with legal requirements on food hygiene. The food hygiene rating given reflects the inspection findings.
36. The purpose of the FHRS is to allow consumers to make informed choices about the places where they eat or shop for food and, through these choices, encourage businesses to improve their hygiene standards. The overarching aim is to reduce the incidence of food-borne illness and the associated costs to the economy.
37. There are six different food hygiene ratings ('0' up to '5') - the top rating ("5") represents a 'very good' level of compliance with legal requirements and all businesses "included" in the scheme irrespective of the nature or size of their operation should be able to achieve this. A small number of businesses that do not supply food direct to consumers are "excluded" from the scheme. Others, such as child minders, are "exempt" from the scheme and/or classed as "sensitive" where there are inherent security sensitivities.
38. Food hygiene ratings are published online at <http://ratings.food.gov.uk/> and businesses are encouraged to display certificates and window/door stickers showing their food hygiene ratings at their premises where consumers can easily see them. There is currently no legal requirement to display either.

39. The FHRs incorporates safeguards to ensure fairness to businesses. These include an appeal procedure, a 'right to reply' for publication (together with the food hygiene rating) at <http://ratings.food.gov.uk/> and a mechanism for requesting a re-visit/re-inspection for the purposes of re-rating when improvements have been made.
40. The Community Board formally adopted the FHRs Scheme on 7 March 2011. The FHRs was officially launched by the Environmental Health Partnership during National Food Safety Week (6-13 June 2011), after a successful funding bid from the Food Standards Agency for the joint implementation of it and significant changes to work practices of the Commercial Team.
41. Virtually all 374 Local Authorities in England, Wales and Northern Ireland have adopted the FHRs (Scotland have their own initiative) and are publishing food hygiene ratings for their food businesses.
42. The food hygiene ratings for businesses in Gosport on 16 April 2012/16 May 2013 is as follows:

Scope	Rating	No of Food Businesses		
		2012	2013	Difference
Included	0 – Urgent Improvement Necessary	1	1	0
	1 – Major Improvement Necessary	36	35	-1
	2 – Improvement Necessary	25	17	- 8
	3 – Generally Satisfactory	95	70	- 25
	4 – Good	101	115	+14
	5 – Very Good	198	260	+62
Exempt		180	40	-140
Excluded		64	76	+12
Sensitive		4	69	+65
<b>Total Rated Premises</b>		<b>636</b>	<b>683</b>	<b>+47</b>

43. These figures shows that in the last year there has been a substantial increase in the number of premises with a "Very Good" or "Good" food hygiene rating. It is disappointing however that there has only been a small decrease in the number of businesses with lower ratings and that 53 businesses remain in the 0-2 category. It is worth noting that businesses that have acceptable hygiene practices but have no written food safety management procedures will fall into this category.
44. During 2012/2013 the Commercial Team received 27 requests for a re-inspection after the food business operator had addressed the issues raised at the previous food hygiene inspection. Requested re-inspections are carried out three to six months after the initial inspection to assess whether the improvements made have been maintained. They increase the workload of the team although not significantly. All but two of these re-inspections resulted in a much higher food hygiene rating. Officers feel that the scheme is making a very positive difference in improving hygiene standards in the Borough.

### **Gosport Open Market**

45. In August 2012 responsibility for the licensing, operation and promotion of the twice weekly open air market in Gosport High Street transferred from the Council's Streetscene Section to the Commercial Team. The Commercial Team has completely reviewed the arrangements for the day to day operation (including, record keeping), management and promotion of the Market. There are obvious benefits in the Commercial Team operating the market, particularly regarding the monitoring of food safety arrangements for mobile food vendors trading at Gosport Market. Officers assuming the shared Market Supervisor role have responded to over a hundred service requests regarding the Market.

### **Hampshire Better Regulation Partnership**

46. The Hampshire Better Regulation Partnership (formally the Retail Enforcement Pilot) has been operating for a number of years in Hampshire. When Fire Officers and Trading Standards Officers visit low risk premises in the County they gather information on the partnering Council's behalf regarding health and safety, food hygiene standards and licensing conditions. District Council officers do the same for them regarding fire safety and trading standards issues at low risk premises. This enables the authorities in the Partnership to reduce the amount of visits to business premises and also ensures that all Enforcement Agencies have up to date information. The data base for the system is hosted by Hampshire County Council, thus reducing the costs and those low costs were met by a grant. In 2013 Gosport Borough Council will join the original partners, including Fareham Borough Council, in this countywide initiative.

### **Enforcement Policy**

47. Gosport Borough Council has signed up to the Central and Local Government Enforcement Concordat. One of the requirements of this concordat is that the Council has an Enforcement Policy.

48. The Council has a General Enforcement Policy and a more specific one relating to the work of the Environmental Health Section

49. All food safety enforcement decisions are made following consideration of the Environmental Health Enforcement Policy. Any departure from the Policy is documented.

50. A copy of the Environmental Health Enforcement Policy and/or a summary leaflet explaining the key elements is available on request. In addition, where formal enforcement action is taken, a copy of the summary leaflet is provided to the business concerned. The Policy is also available on the Council's website.

51. All food law enforcement will be carried out in accordance with the relevant Food Safety Act Codes of Practice and other Official Guidance produced by Local Government Regulation or the Food Standards Agency.

52. Food premises owned by the Council need a separate method for achieving compliance. Usually, an informal approach is successful. However, if difficulties were to be encountered, these would be reported to the Community and Customer Services Manager, who would, in turn, raise the issues at a Chief Executive's Management Team meeting, if necessary after liaison with the relevant unit manager for the premises concerned..

## **SERVICE DELIVERY**

### **Food Safety Interventions**

53. A summary of the estimated number of food safety interventions and resource requirements for 2013/2014 are detailed in Appendix 1 to this Service Plan.
54. The enforcement of Food Safety legislation is governed by a Statutory Food Law Code of Practice and Practice Guidance. This specifies procedures and forms to be used by employees when enforcing the legislation. In particular, there is a risk rating scheme which is used to assess the risk associated with each food business and thereby its priority for inspection. Traditionally all categories of premises were included in the formal inspection regime. As well as inspection, there are a range of other interventions which may take place, such as auditing or verification visits, as well as visits to carry out sampling or to investigate food or food hygiene complaints,
55. The Food Standards Agency issued a revised Food Law Code of Practice in April 2012 and Practice Guidance in October 2012.
56. This Code gives very specific advice regarding Interventions and has considerably revised the requirement to include all of the premises in the traditional inspection regime. Broadly Compliant Category C premises can be inspected alternately. So every other intervention is a traditional inspection, all of Category D premises can receive alternate inspections and Category E need not be inspected at all, but can be the subject of an alternative intervention strategy.
57. The purpose of this revision is to ensure that interventions are risk based and realise that a range of other interventions can be employed to achieve the same result, e.g. surveys, formal training and interventions like :- sampling, auditing, verification visits, as well as visits to carry out sampling or to investigate food or food hygiene complaints. However to ensure all food businesses are given an accurate food hygiene rating all interventions are currently full food hygiene inspections, irrespective of the risk category.

### **Performance Management Monitoring**

58. The Food Standards Agency monitors the performance of the Council with respect to Food Hygiene management and gathers the performance data using the Local Authority Enforcement Monitoring System (LAEMS). LAEMS is a web-based system used to report local authority food law enforcement activities direct to the FSA. Local Authorities upload data that has been generated from the local system (Uniform) to LAEMS. The FSA then evaluate and publish the performance of each Local Authority. The FSA also use the Food Hygiene Rating Scheme data as a means of monitoring performance and the Council is required to return data annually regarding its Approved Premises.

## **FOOD SAFETY INTERVENTIONS PLAN**

### **Inspections**

59. Food Hygiene inspections are carried out in accordance with the Food Law Code of Practice (April 2012) and Food Law Practice Guidance (October 2012).



60. Following each inspection, the premises are attributed a Risk Rating Score in accordance with the Food Law Code of Practice, which determines the minimum inspection period before the next inspection. The risk score is entered on to the Uniform Computer database system and an annual list of premises due for inspection is produced. A monthly list is produced of new businesses due for inspection
61. This requires different category premises to receive an inspection at the appropriate frequency.
62. In September 2005 the largest ever outbreak of E. coli O157 in Wales occurred; it was the second largest ever in the United Kingdom. Thirty-one people were admitted to hospital and a five year old boy tragically died. The public inquiry which followed was the second chaired by Professor Hugh Pennington. The inquiry report was published in March 2009 and the Food Standards Agency has since issued a response detailing a number of recommendations. In Gosport the Commercial Team's response to these recommendations was for the highest risk food premises to have a sampling visit and a desk top study of their Hazard Analysis and Critical Control Point (HACCP) system, prior to receiving their full physical inspection, with "red flagging" of specific areas of concern for the next officer.
63. Category C premises are divided into two groups as defined by the guidance, those broadly compliant and broadly non-compliant. Broadly compliant premises receive a full inspection every other time it is due and an alternative intervention such as a sampling visit or visit for another food matter for the other due inspection. There is however clear guidance on what the alternative intervention must be in the Code of Practice. Broadly non-compliant premises will continue to receive an inspection every time it is due to satisfy the requirements of the national Food Hygiene Rating Scheme.
64. Category D premises are treated the same as Broadly Compliant C premises.
65. Category E premises may not receive a traditional inspection at all (other than those required for the National Food Hygiene Rating Scheme), but may receive one of the other intervention types as appropriate.
66. All new food premises will receive an initial full inspection and thereafter be treated as above, depending on the initial category.
67. To ensure that all businesses are given an accurate Food Hygiene Rating all businesses due for inspection during 2013/2014 will receive a full inspection.
68. The Official Control full inspection programme for 2013/2014 by risk category is as follows:-

Risk Category	Inspection Interval	No. of Premises Due a full Inspection in	
		2013/14	2012/13
A (High)	6 months	4	2
B (High)	12 months	22	29
C (Medium)	18 months	183	127
D (Low)	2 years	88	52
E (Low)	3 years	65	42
New businesses	Awaiting first inspection	12	49
<b>Total</b>		<b>372</b>	<b>301</b>

69. In addition there will be new food businesses (approximately 100) that open during the year and require a full inspection and existing businesses which request a revisit to have their food hygiene rating re-assessed, using the safeguard mechanism available in the national Food Hygiene Rating Scheme (approximately 30).
70. It is intended over time to develop an alternative intervention plan for those premises not requiring a full inspection, such as using complaint or sampling interventions to defer inspections or combining visits by multi-skilled officers who may be visiting for other reasons
71. In 2012/2013, all of the 301 high and low risk premises that were due for a programmed Food Hygiene inspection were inspected by the deadline of 31 March 2013, except one seasonal business that was closed for refurbishment. A further 85 unplanned inspections, for example at new businesses were carried out, making an annual total of 386 food hygiene inspections. This is the second consecutive year that the Commercial Team has achieved its inspection target and without the support of an external inspection contractor.
72. Revisits are made to check on compliance with formal enforcement Notices and where serious defects require follow up action. This is at the officers' discretion in accordance with our documented procedures and in line with the Environmental Health Enforcement Policy. In 2012/2013 80 food businesses provided written self-certification that they had completed all necessary work identified at their last Food Hygiene inspection; 37 revisits and 31 other Food Hygiene visits were made by Officers. Some of these visits were to check on progress with the 52 Hygiene Improvement Notices that officers served at 19 different premises for food safety offences, mainly relating to the lack of written food safety management procedures, training of food handlers, hot water and cleaning and also the disrepair of the premises.
73. The profile of current premises in Gosport is detailed in paragraph 25. The use of the risk assessment scheme ensures that the highest priority is given to food manufacturers and caterers where conditions are below standard (and those with a food hygiene rating of two or below) and premises that cater for vulnerable groups.
74. The Council maintains a Register of all food premises within the Borough in accordance with regulations. The register is held on the Uniform Computer database system, which is maintained by the system supervisor. In addition, the original registration forms are held in electronic form and copies are sent to Hampshire County Council Trading Standards on receipt.
75. The Commercial Team has received appropriate training to ensure knowledge of food specific legislation which relates to premises within the Borough.
76. All new food premises receive an initial contact and in most cases a full inspection within one month of opening. Full inspections are carried out, occasionally following food and food hygiene complaints. The decision to make such inspections depends upon the nature and circumstances of any complaint.
77. Although there is no formal time recording system in place about 75% of the Commercial Team's time is spent on food safety. This equates to three Full-Time Equivalent members of the team. Food safety, however, includes dealing with food hygiene complaints as well as food complaints, food sampling and food premises inspections.

78. The Commercial Team holds regular team meetings to help ensure that inspection targets are being met and also to enable the team to respond quickly to changes in legislation/guidance and develop and improve the methods of operation within the team. In addition a meeting is held every month between the Head of Environmental Health and the Commercial Team Leader to address any issues that may have arisen, that cannot be resolved amongst the team, for example changes to operating procedures as a result of changes to legislation/guidance. Regular Environmental Health Partnership Commercial Team meetings facilitate Partnership development and integration, consistency and joint project work between Gosport and Fareham Borough Councils.
79. At the time of every food premises inspection, an intervention report and pro-forma are completed and attached to the electronic premises file. A copy of the intervention report is left at the food business. Following each inspection, a written report is sent to the proprietor of the business. The report has a standard format, which includes all of the information contained in Annex 6 of Food Law Code of Practice. Food Hygiene Rating information is left at the time of the inspection and confirmed in writing. Since April 2011 the proprietors report has included two copies of a Schedule of Work, with one copy being returned to the Commercial Team on completion of all necessary Work. This allows the Team to monitor where improvements are made and prioritise which premises to re-visit.

### **Food Complaints**

80. It is the responsibility of the Council to enforce the provisions of the Food Safety Act 1990 as far as food complaints concerning the following are concerned:
- i) Food which does not comply with the food safety requirements i.e. food which is unfit; food which has been rendered injurious to health; or food which is so contaminated.
  - ii) Food which is not of the nature or substance demanded by the purchaser.
81. The Council also enforces the provision of the Food Labelling Regulations 1996, which relate to 'Use-by' date labelling and quality issues, in co-operation with the trading standards authority.
82. All food complaints are investigated in accordance with guidance issued from Local Government Regulation- 'Guidance on Food Complaints' and Codes of Practice.
83. Initial investigations into food complaints are given high priority, since these can give an indication of where the food supply chain has broken down. Such breakdowns may be one-offs or can indicate a problem that, if left unattended, could have serious consequences. Arrangements are in place to contact the Food Standards Agency where food complaints may have wider implications.
84. Where companies involved are unable to provide a satisfactory defence that they have taken all reasonable precautions and exercised all due diligence to prevent such a complaint, legal proceedings may be instituted. The decision to prosecute would be taken at the recommendation of the officer concerned, in consultation with the Head of Environmental Health, and the Borough Solicitor, in accordance with the Environmental Health Enforcement Policy. In each case the company/business and complainant will be kept informed as to the progress of the complaint.

85. Dealing with food complaints is a relatively small part of the workload; during 2012/2013 16 food complaints were received.

**Primary Authority Principle.**

86. In April 2009 the Regulatory Enforcement and Sanctions Act introduced the Primary Authority Scheme. This is an arrangement where a Local Authority agrees to provide specialist advice to a company regarding its Food Safety arrangements and acts as a point of contact for other local authorities where its food may be sold. The Primary Authority is usually where the head office for a company is situated. The Originating Authority is the Authority where the unit which manufactured a product is situated. In principle any Authority shall have regard to any information or advice it has received from any liaison with primary and originating authorities notify that Authority of the outcome of investigation following initial liaison.
87. If a business requests a Local Authority to be its Primary Authority for any regulatory function, the Local Authority must agree to the request, although it may charge for the cost of doing so. Currently this Council does not act as Primary Authority for any local business

**Advice to Business / Food Hygiene Complaints**

88. Whilst the Council will utilise its powers to enforce the food legislation, it is recognised that, where food businesses break the law, it is often due to ignorance rather than design. As a consequence, it is the Council's policy to provide advice to business in a number of different ways.
89. The Commercial Team stopped providing formal food hygiene training in June 2011, as there are many local providers and on-line training courses available and this has allowed focus to be directed to higher priority work. Advice is provided on training courses offered throughout Hampshire and the Isle of Wight by other authorities and training centres and particularly for courses offered in ethnic languages.
90. Other training is organised on an ad hoc basis depending on need, for example, in response to new legislation and guidance.
91. Advice is also given during routine inspections and visits and followed up in writing. Advice is provided to direct queries received either by telephone, email letter or to visitors to the Town Hall. Where necessary, it is followed up with a visit and/or a letter or email. Provisional advice is given prior to the setting up of a new food business. Free advisory leaflets are provided, where appropriate. During 2012/2013 advisory visits were made to 17 food premises.
92. Where a business requires consultancy-type advice a small charge is levied.
93. Building Control and Planning Applications are inspected by the Commercial Team and advice given to the developers/applicants regarding issues relating to Food Safety and Health and Safety. During 2012/2013 the Commercial Team was consulted on 146 planning applications and 32 building control applications.
94. A magazine called 'Coastline' is produced by the Council four times a year. It is sent to all residents within the Borough. A quarterly business magazine called "Business Connect" is sent to businesses in the Borough. Information on food safety issues is occasionally included in these publications.
95. Information is also available on the Council's website.

96. In addition, the team responds to enquiries and complaints from members of the public and employees regarding the hygiene of premises, food handling practices, odours drainage, accumulations etc. This may result in anything from a telephone call to prosecution for any offences. During 2012/2013 the Commercial Team responded to 196 of these service requests.

### **Food Sampling**

97. The Council believes that a proactive, point of sale, food sampling programme can provide useful information about the microbiological fitness of food for sale within the Borough. The Sampling Policy is in Appendix 2 to this Plan and the Sampling Programme for 2013/2014 is set out in Appendix 3 of this plan.
98. The Council participates in the Wessex Environmental Monitoring Service (East) Users Sampling Group which has a co-ordinated food-sampling programme based on Food Standards Agency, Health Protection Agency/Public Health England and agreed regional priorities.
99. The Sampling Programme consists of the following:-
- i) Participation in Food Standards Agency, and Health Protection Agency/Public Health England sampling initiatives.
  - (ii) Participation in the European Union initiatives, when they occur.
  - (iii) Participation in regional initiatives devised by the Wessex Environmental Monitoring Service (East) Users Sampling Group
  - (iv) Participation in local initiatives devised by the Environmental Health Partnership or by problems highlighted within the Borough
100. Following the *E.coli* outbreak in Wales in 2005 and the subsequent recommendations by Professor Pennington and the Food Standards Agency, the Commercial Team adopted an amended approach to inspecting high risk food premises (such as butcher's shops). During 2012/13 and in line with best practice, microbiological samples were obtained from these premises and a desk top review of their Hazard Analysis and Critical Control Point system undertaken. Once known the sample results are used to inform the subsequent full inspection. The Commercial Team expanded on the success of pre-inspection sampling in 2011/2012 by collecting samples in accordance with the Sampling Programme at any premises due for inspection that meets the criteria of each sampling study. During 2012/2013 the Commercial Team collected 160 food or environmental (surface swabs and cleaning cloths) samples on 76 food sampling visits to 52 food premises in the Borough; 128 of these samples were of satisfactory microbiological quality. Repeat sampling was carried out as necessary to check that improvements had been made.

### **Control and Investigation of Outbreaks and Food Related Infectious Disease**

101. The measures to be taken to control the spread of infectious diseases are contained in various Acts of Parliament and their associated Regulations. This legislation includes the control of food poisoning and food and water borne diseases. Although the number of cases reported locally is comparatively low, it is widely acknowledged that the vast majority of cases go unreported. Moreover, a

single case may lead to the discovery of an outbreak and could lead to a further outbreak if the person concerned is a food handler.

102. The investigation of food poisoning cases is therefore given a high priority and in an outbreak situation can necessitate utilising qualified employees from the Residential Team at Gosport and/or the Environmental Health Partnership, in addition to those in the Commercial Team.
103. All investigations follow the procedures laid out in the Hampshire and Isle of Wight Health Protection Unit Joint Outbreak Control Plan and associated procedures and guidance issued by the Health Protection Unit and the Communicable Disease Surveillance Centre. Such investigations are overseen by the Head of Environmental Health and involve regular liaison with the Health Protection /Public Health England Unit.
104. The Council supports the Hampshire, Dorset and Isle of Wight Infectious Disease Forum, the Health Protection Agency/ Public Health England/ Environmental Health Forum, and the Portsmouth Water Company Liaison Group, which exist to promote best practice and consistency of approach in this area of work, between the neighbouring local authorities.
105. There are excellent links with the local Health Protection/Public Health England Unit and the Food Water and Environmental Microbiology Service, which come to the fore during outbreaks. All notifications infectious diseases and food poisoning are actioned on the day of receipt, by a visit, telephone or a letter.
106. During 2012/2013 the Commercial Team investigated 27 individual cases of alleged food poisoning and infectious disease notifications either from the Health Protection Unit or as a complaint direct from the person who was ill. These notifications are only the tip of the iceberg as many cases remain unreported and the Council is not notified of cases of *Campylobacter* as there is no follow up action required. There were no reported outbreaks in the Borough.

### **Liaison with Other Organisations**

107. To ensure that enforcement action taken in the area of this Council is consistent with national guidance and neighbouring local authorities, liaison arrangements are in place with the following organisations:
  - i) The Food Standards Agency
  - ii) Local Government Regulation
  - iii) Chartered Institute of Environmental Health, Hampshire and Isle of Wight Branch Food Advisory Group (bimonthly meetings)
  - iv) Wessex Environmental Microbiology Services Users Sampling Group (East) (meetings every four months)
  - v) Southern Shellfish Liaison Group (annual meeting with interim newsletters as necessary)
  - vi) Hampshire, Dorset and Isle of Wight Infectious Disease Forum (biannual meetings).
  - vii) Health Protection Agency/Public Health England (biannual meetings)
  - viii) Portsmouth Water Company Local Authority Liaison Group (annual meeting)
108. The Council fully supports the work of the Hampshire and Isle of Wight Food Liaison Board. This body, which has representatives from all Hampshire and Isle of Wight Food Authorities, Hampshire Scientific Services, Hampshire County

Council Trading Standards and the Wessex Environmental Microbiology Services Users Sampling Service, has amongst its objectives, 'ensuring that any enforcement action taken is consistent with other neighbouring local authorities'.

### **Food Safety and Standards Promotion**

109. The Council's education and promotion activities can have a direct impact on food safety standards. The Council is therefore committed to providing advice and information both to business and the public through a number of initiatives:

- i) Food Safety information leaflets – these are available from the Town hall.
- ii) National Food Safety Week – this is held in June every year. The Council supports a number of activities designed to promote food safety during this week, as resources allow. In 2013 the theme is 'Kitchen Check'.
- iii) Use of the Council's regular "Coastline" Newsletter or "Business Connect" Magazine sent to all homes or businesses in the Borough.

### **Food Alerts**

110. Food alerts are notified by EHCNET (national computer link) from the Food Standards Agency and emailed direct to Environmental Health. There is a Commercial Team duty officer system and the duty officer decides upon the appropriate action in each case, which may include mailshots, visits, local press releases, etc. The resource implication is unknown, as it depends upon the nature and type of alerts, but existing resources usually perform this work as and when required. During 2012/2013 the Council received 50 notifications of product recalls/withdrawals requiring action or for information, as well as numerous allergy alerts.

### **Equality and Diversity**

111. The Equality Act 2010 replaced many separate anti-discrimination laws with a single Act. It also strengthened the law in important ways and extends protection against discrimination on the basis of: race, disability, sex gender re-assignment, marriage and civil partnership, sexual orientation, age religion or belief, and pregnancy and maternity.

112. There is a general duty under the Act and some specific duties which include the need for public bodies to: eliminate unlawful discrimination, harassment and victimisation, advance equality of opportunity and foster goods relations. In addition, there is a duty to publish certain information to demonstrate compliance with the Act.

113. There is an Equality Impact Assessment in place which details the various measures employed by the Commercial Team to meet the requirements of the Act and ensure the Service does not discriminate and is equally accessible to all.

## **RESOURCES**

### **Financial / Staffing Allocation**

114. The Commercial Team consists of one full time (Principal Environmental Health Officer/Team Leader), one full time Environmental Health Officer (on a temporary contract until 30 June 2013) and two full time Environmental Health Technical Officers. The Team also has access to the wider Fareham food safety resource through the Environmental Health Partnership.
115. All officers involved in food safety work are fully competent to inspect all risk categories of premises as required by the Food Law Code of Practice. Officers only carry out work which is permitted by the qualification requirements of the code of practice.
116. There is a list of delegations to officers, within the Council's Constitution. This is constantly reviewed and updated as new regulations are made.
117. A summary of the number of interventions and resource requirements is shown in Appendix 1 to this Plan. The current resource allocation is sufficient to provide the service as detailed in this Plan

### **Staff Development Plan**

118. The training strategy of the Section is based upon a number of basic principles which take into account current and anticipated demands, the funding provision available and the Head of Environmental Health's view on the priority of the need and the employees' time and the need for Professional Officers to meet Continuing Professional Development requirements.
119. The basic principles are:
- i) The Section has a duty to the Council to ensure that it is able to meet all the demands that are placed upon the Section.
  - ii) The Council as an employer wishes to develop the potential of all its employees so they can deliver the services required by the Council.
  - iii) Regular and continual training and updating of skills in order to undertake "the job role" are necessary.
  - iv) The Council is committed to continuous development of employees and services to ensure it is properly equipped to deal with future challenges.
  - v) The Section is committed to ensure workforce and succession planning.
  - vi) To ensure all staff receive appropriate Customer Service and Equality and Diversity training to deliver the service to meet the customers needs.
120. The Partnership is committed to ensuring that all employees involved in food safety work receive a minimum of ten hours core Continuing Professional Development training annually and ten hours non-core, as required by the Food Law Code of Practice. This is determined on the individual and team need.
121. This training may be provided through attendance at externally organised courses and seminars or through in-house training activities.
122. All training received is documented as part of the Sections Training Plan.



## **QUALITY ASSESSMENT**

- 123. The Food Safety Act Code of Practice on Food Hygiene Inspections requires Authorities to have internal monitoring systems.
- 124. The Section has a set of Food Safety Procedures that incorporate all the respective Food Safety Food Law Code of Practice and Official Guidance. This is regularly kept under review and is used to ensure consistency and improvements in service delivery. The document management system ensures consistency and performs management review.
- 125. The Council has in place procedures for achieving and monitoring the consistency and quality to ensure that its food safety service is provided in a way that is consistent with the Food Standards Agency Standard, Statutory Codes of Practice and nationally issued guidance.
- 126. The Hampshire and Isle of Wight Food Advisory Group have an advanced system of Inter Authority Auditing that is regularly carried out. The Council is committed to this initiative and accepts that there is much that can be learned from the process. In addition, the Food Standards Agency is proposing that it will be unlikely to audit Authorities with such a scheme in place. Inter Authority Audits within Hampshire and the Isle of Wight of the food safety service are scheduled to take place during 2013/2014
- 127. The Council's employee development procedures are documented.
- 128. In addition, the Commercial Team operates a system of peer review and quality checks where officers carry out joint inspections to ensure a consistent interpretation of legislation, codes of practice and national guidance.

## **Benchmarking**

- 129. The Commercial Team is committed to supporting the Hampshire and Isle of Wight Environmental Health Benchmarking Club. The aim of this group is to provide a simple and effective means of comparing services provided by different Authorities. The results are used to facilitate continuous improvement of this service.

## **REVIEW**

### **Performance against Plan**

- 130. The annual Food Safety Service Plan is reviewed annually by the Community Board.
- 131. The performance of the food service is reported annually to the Food Standards Agency via the Local Authority Monitoring System (LAEMS). The performance is compared with other Local Authorities nationally and within Hampshire.
- 132. The Food Standards Agency then reports this performance data to Government and Europe.

### **Areas for Improvement**

- 133. The service is performing very well at present. However, in 2013/2014 the following areas will receive further consideration:-

- i) Further development of the Environmental Health Partnership with the Fareham Borough Council Environmental Health Section.
- ii) Reviewing and updating the Food Safety Procedures
- iii) Joining the Hampshire Better Regulation Partnership.
- iv) Further developing a lower risk premises strategy
- v) Identifying areas for efficiency savings
- vi) Providing support to businesses and removal of unnecessary bureaucracy in enforcement.
- vii) Making the transition from the traditional Uniform database to the Ocella/BPMS systems which are used by the Environmental Health Partnership in Fareham Borough Council
- viii) Reviewing and updating food safety information on Gosport Borough Councils website and contributing to the development of an Environmental Health Partnership website.
- ix) Devising an action plan to implement any recommendations that arise out of the inter authority audit of the food safety service planned for during the coming year

## Gosport Borough Council Food Safety Interventions Plan 2013/2014

Priority	What	How	Where and When
FSA Requirement	Complete planned inspection program at High and Medium risk premises	209 Inspections	Existing Category A, B and C premises throughout the year
FSA Requirement	Complete planned inspection program at Low risk premises	153 Inspections	Existing Category D and E premises throughout the year
FSA Requirement	Carry out unplanned inspections at new High, Medium and Low risk premises	120 Inspections (approximately)	New Category A, B, C, D and E premises throughout the year
FSA Requirement	Re-visits to premises to check compliance	120 revisits (approximately)	Throughout the year
FSA Requirement	Investigate complaints and respond to enquiries about food and food premises and food alerts (1 <sup>st</sup> response within 1 day, same day for food alerts.)	150 Service Requests (approximately)	Throughout the year
FSA Requirement	Consult on Planning and Building Regulation applications (within 10 days)	150 consultations (approximately)	Throughout the year
FSA Requirement	Undertake Sampling Program	2 days per month + 6 days for re-samples	Throughout the year
County Groups	Attend Hants and IOW Food Advisory Safety Advisory Group, Wessex Environmental Microbiology Services Users Sampling Group (East), Public Health England /Local Authority	Attend quarterly /biannual meetings	Throughout the year

	Infectious Disease Forum and Hampshire Shellfish Liaison Group		
FSA Requirement	Development, training and team meetings	As required	Throughout the year
FSA Requirement	Investigate food poisoning notifications (On day of receipt)	As required	Throughout the year
Legal Requirement	Formal enforcement action	As required	Throughout the year
FSA Requirement	General advice and enquiries (Response within 2 days)	As required -150 Service Requests (approximately)	Throughout the year
FSA Requirement	Respond to Food Hygiene Rating Scheme “safeguard” applications	As required - 35 requests (approximately)	Throughout the year
Local/County Initiative	To participate in the Hampshire Better Regulation Partnership	30 re- inspections	Throughout the year
Local Requirement	To manage and co-ordinate work of the team	Day to management duties	Daily
Health & Safety Enforcement	The detail regarding this area of work is reported to the Community Board as Appendix 2 of the report above through the Health and Food Safety Service Plan.		
Licensing / smoking	A separate plan for this work area is not currently required by an external organisation. These functions are combined with Food and Health and Safety functions where possible.		
Projects	To implement changes to guidance in respect of high risk premises and to allow flexibility so as resources can be redirected to areas within the Environmental Health Section as demand requires.		

**Food Sampling Policy for Gosport Borough Council**

1. The Sampling Policy document is written for Gosport Borough Council's Commercial Team, within the Environmental Health Section of the Community and Customer Services Unit.
2. Food, drinking water and environmental samples will be taken throughout the year both on a coordinated programmed and random basis. The Team will participate in National, European, regional and Environmental Health Partnership studies, where appropriate and as resources allow.
3. Samples can be taken before and during both routine food hygiene inspections by authorised officers or as part of a compliant based inspection. In addition samples can be taken from random premises that fulfil the sampling programmes protocols. Samples can be taken on a formal and informal basis. Formal samples can be taken following a complaint, during an inspection and as part of any Home Authority or Primary Authority agreement within Gosport Borough Council. Informal samples are normally taken as part of on-going national, European, regional and Environmental Health Partnership sampling initiatives and for monitoring purposes.
4. This policy refers to the Sampling Programme that is held within the Community and Customer Services Unit. This Sampling Programme is produced for each financial year and is produced in conjunction with the Health Protection Agency/Public Health England and Wessex Environmental Microbiology Services Users Sampling Group (East), and Environmental Health Partnership. The Sampling Group agrees on and coordinates the years Sampling Plan with other local authorities in accordance with the National (Food Standards Agency, Health Protection Agency/Public Health England and Local Government Regulation) plans, European plans and any regional studies that the group wishes to undertake.
5. The purpose of sampling and associated actions by the Commercial Team, within the Environmental Health Section Community and Customer Services Unit is:-
  - i. To identify any foods or drinking water from public standpipes that poses a hazard or risk to health of the consumer. This may be due to contamination of significant pathogenic bacteria and/or associated toxins. This may include specific food businesses or events.
  - ii. To identify any contraventions of Food Safety legislations.
  - iii. To use results to educate and inform local businesses and, in addition, to inform the public regarding food safety issues.
  - iv. To help evaluate food handling, temperature control and associated processes at food premises in relation to their food safety management system requirements.

- v. To investigate food complaints and food poisoning or food contamination incidents.
  - vi. To assess the microbiological quality of food manufactured, distributed or retailed in the Borough, including imported food from outside of Europe
  - vii. To fulfil its monitoring role at premises where Gosport Borough Council is the Home or Primary Authority
  - viii. To assist in any potential formal enforcement action, where it is suspected that poor practices and procedures exist.
6. Routine sampling is an important part of the work of Gosport Borough Council's Commercial Team, within Community and Customer Services.
7. All samples are taken in accordance with the following legislation and guidance documents:-
- i. Food Safety Act 1990 (Section 29)
  - ii. Food Hygiene (England) Regulations 2006 (Regulation 12)
  - iii. Food Law Codes of Practice (2012) and Practice Guidance (2012) (Section 6).
  - iv. Local Government Regulation (formally LACORS) Guidance on Food Sampling for Microbiological Examination (January 06)
  - v. Health Protection Agency Guidelines for Assessing the Microbiological Safety of Ready-to-Eat Foods Placed on the Market (2009)
  - vi. Food Safety ( Sampling and Qualification ) Regulations 1990



# Food Sampling Program for Gosport Borough Council for 2013/2014

## APPENDIX 3

<b>MONTHS OF SAMPLING</b>		<b>2013 A</b>	<b>M</b>	<b>J</b>	<b>J</b>	<b>A</b>	<b>S</b>	<b>O</b>	<b>N</b>	<b>D</b>	<b>2014 J</b>	<b>F</b>	<b>M</b>
<b>NATIONALSAMPLING</b>													
Study 50: Plain soda from soda gun or fixed dispensing point			Start										Finish
Study 51:Reactive study (details to follow)													
Study 51:Reactive study (details to follow)													
<b>REGIONALSAMPLING</b>													
Imported food		All year											
Hygiene monitoring at high risk premises (with food hygiene rating of 0-3) before food hygiene inspection		All year											
<b>ENVIRONMENTAL HEALTH PARTNERSHIP SAMPLING</b>													
Drinking water from public stand pipes		Start					Finish						
Water from swimming pools, splash pools and spas		Start					Finish						



Study Name	Aim of Study	Type of Sample required	Total number of premises
Study 50: Plain soda from soda gun or fixed dispensing point	To provide microbiological quality data on soda water dispenses used to mix carbonated water with syrups before dispensing to the customer	Plain soda water from soda guns or fixed dispensing point	10
Study 51:Reactive study	(details to follow)	(details to follow)	(details to follow)
Study 52:Reactive study	(details to follow)	(details to follow)	(details to follow)
Imported Foods	The FSA set a guide that 10% of samples should be imported foods.	Any imported food of animal origin from non EU Country which is ready to eat and at catering premises	12
Hygiene Monitoring at high risk premises before food hygiene inspection	To identify the suitability of cleaning regimes within high risk premises (butchers and businesses with a Food Hygiene Rating of 0, 1, 2 3)	Environmental Swabs (hand contact surfaces such as door handles, equipment handles, work surfaces, cleaning cloth used in ready to eat area; Ready to eat food product	50
Drinking water from public stand pipes	To assess the microbiological quality of drinking water at caravan, marina and outdoor event sites		10
Water from swimming pools, splash pools and spas	To assess the microbiological quality of water in swimming pools, splash pools and spa pools	Water	15

**Gosport Borough Council  
Health & Safety Service Plan  
2013 / 2014**

## **Introduction**

1. The Council is designated as an Enforcing Authority under the Health and Safety (Enforcing Authority) Regulations 1998 and is responsible for the enforcement of the Health & Safety at Work etc Act 1974 (and relevant statutory provisions) for activities which fall to the local authority for enforcement within the Borough.
2. The Council has a duty to carry out its functions in accordance with guidance issued by the Health & Safety Executive (HSE). The Health & Safety Commission issued this guidance under Section 18 of the Health & Safety at Work etc. Act 1974; therefore it is known as the Section 18 Standard..

## **Section 18 – Intervention Plan**

3. The Council's Corporate Plan identifies the Council's Strategic Priorities which includes under the heading "People" to "Promote Health and Well Being". The Health and Safety function is an important contributor to this Strategic Priority and one where the Council works with its partners to promote good health and reduce ill-health.
4. The delivery strategy for Health and Safety Enforcement includes the following:-
  - i) Enforcing Health and Safety at Work legislation in business premises for which the Council is the enforcing authority to ensure safety, health and welfare of employees and the public by:
    - (a) Ensuring that all relevant businesses are identified and inspected on a risk-assessed basis;
    - (b) Investigating all relevant workplace related accidents;
    - (c) Investigating all complaints relating to workplace health and safety;
  - ii) Providing health and safety at work related advice to business and the public.

## **Performance and activities during 2012-2013**

5. During 2012/2013 the numbers of inspections in the Inspection Programme declined due to a change in the National Inspection Policy, which was introduced by the current government following the Löfstedt Review. Once the proposed National Local Authority Enforcement Code is published it is anticipated that the proactive inspection work in 2013/2014 will increase due to focusing on specific high risk hazards. The reactive work undertaken by the Commercial Team primarily in response to complaints and accident notifications has however increased. The major work areas for the Commercial Team during 2012/2013 were as follows:
  - i) Achieving 100% of its health and safety inspection programme for category A premises.
  - ii) Receiving 32 accident notifications which were investigated in accordance with the Incident Selection Criteria Guidance issued by the Health and Safety Executive.
  - iii) Investigating 51 complaints received, which resulted in 6 Health and safety Improvement Notices being served for lack of risk assessments and

staff training, poor maintenance of a roof, inadequate facilities in sanitary accommodation and absence of testing swimming pool water for microbiological quality.

- iv) Visiting 11 non-food premises to give advice and providing advice at food businesses whilst carrying out food hygiene inspections or visits
- v) Responding to 13 health and safety related enquiries.
- vi) Advising new businesses regarding potential high risk processes, such as sun beds and coffee machines that operate under pressure
- vii) Contacting the proprietors of 129 catering premises with a known gas installation prior to their next food hygiene inspection to advise of their duties to ensure gas installations and equipment are installed, serviced and inspected by competent engineers and safe to use. Many of these businesses confirmed their inspection and service programmes prior to officers making the appropriate checks during programmed food hygiene inspections. This was part of an on-going county wide project.
- viii) Participation in the Hampshire FIT (Fit for work, fit for life, fit for tomorrow) Programme
- ix) The Safety Advisor delivered in-house health and safety training courses and assisted in several safety incidents for Fareham Borough Council under the Environmental Health Partnership arrangement

### **Gosport Open Market**

In August 2012 responsibility for the licensing, operation and promotion of the twice weekly open air market in Gosport High Street transferred from the Streetscene Section to the Commercial Team. The Commercial Team has completely reviewed the arrangements for the day to day operation (including, record keeping), management and promotion of the Market. There are obvious benefits in the Commercial Team operating the market, particularly regarding the health and safety arrangements of mobile market traders. Officers assuming the shared Market Supervisor role have responded to over a hundred service requests regarding the Market.

### **Key Delivery Priorities**

7. Over the coming year the key delivery priorities are:-
- i) To inspect all high risk premises that are due for a programmed inspection and risk rate any premises inspected according to the revised risk rating guidance;
  - ii) To investigate all accidents and incidents in accordance with HSE Local Authority Circular 22/13 "Incident Selection Criteria Guidance".
  - iii) To investigate complaints made about health and safety practices within workplaces or those open to the public.

- iv) To respond to requests for health and safety advice or guidance, in particular for new businesses.
- v) To investigate health and safety matters of evident concern noted during visits to businesses for other issues.
- vi) To continue to review and update the Health and Safety Procedures to ensure that they fully reflect the way that the work is undertaken and that officers are carrying out their duties in accordance with the current guidance.
- vii) To take part in county wide projects to tackle specific health and safety issues, working in partnership with Gosport's Hampshire Local Authorities colleagues and the HSE.
- viii) To further align the systems and ways of working with Fareham to further develop the Environmental Health Partnership and realise the benefits in terms of resilience and efficiency this Partnership can deliver.
- ix) To join the Hampshire Better Regulation Partnership (formerly the Retail Enforcement Pilot) and share intelligence with other regulators (Hampshire Fire and Rescue Service and Trading Standards)
- x) The further development of a lower risk premises strategy
- xi) To review and update the health and safety information on Gosport Borough Councils website and contribute to the development of an Environmental Health Partnership website
- xii) To complete the transition from using Gosport's traditional Uniform database to the Ocella/BPMS systems used by the Environmental Health Partnership in Fareham Borough Council
- xiii) To revise the above as necessary when the HSE National Local Authority Enforcement Code is published.

### **Local Priorities**

8. Over the coming year the key local priorities are:-

- i) To further develop the Gosport and Fareham Environmental Health Partnership.
- ii) To support the Hampshire Better Regulation Partnership (formerly the Retail Enforcement Pilot) and continue to share intelligence with other regulators;
- iii) To actively support the Hampshire Joint Warranting Project;
- iv) To participate in the Hampshire FIT Programmes as appropriate. Areas of work that began in 2012 will be continued in 2013, including:
  - (a) Health and Safety in the Beauty Sector in particular – Tattooing and skin piercing, Lasers and Intense Pulse Light hair removal systems, nail bars and sunbeds
  - (b) Pressure systems

- (c) Gas safety in food premises
  - (d) Legionella in spa pools, hotels and care homes
- v) To improve awareness of the health and safety at businesses on Industrial Estates in the Borough and to identify any new high risk premises.

### **Gosport and Fareham Environmental Health Partnership Initiative**

9. The partnership arrangement with Fareham and Gosport's Environmental Health Sections is continuing to develop. Officers in the Commercial Teams follow the same procedures and are now joint authorised to work in both districts. Hopefully towards the start of the 2013–2014 Work Programme both Sections will be using the same database and document management system. This should provide resilience, efficiency and cost saving benefits.

### **Hampshire Better Regulation Partnership**

10. Gosport takes part in The Hampshire Better Regulation Partnership project which is aimed at reducing the burden of inspection for retail businesses, whilst enhancing consumer and worker protection. Fire Officers and Trading Standards Officers carry out visits to low risk premises on the Council's behalf and Council's officers undertook the same for them. The project provides a platform for information sharing amongst the enforcement agencies. The data base for the project is hosted by Hampshire County Council

### **Working in Partnership**

11. This Council is committed to effective working with partners to deliver positive outcomes for the Health and Safety of the public, employees and others affected by work activities in Gosport. In particular, it will seek to work positively with HSE, other Local Authorities, Regulators and Interested persons and organisations. Examples of such working are detailed below:-
- i) Gosport and Fareham Environmental Health Partnership.
  - ii) Hampshire Better Regulation Partnership - this initiative won an award from the Department for Business Innovation and Skills.
  - iii) Hampshire Joint Warranting Project – one officer is authorised officer for neighbouring authorities as well as undertaking work on behalf of HSE.
  - iv) Hampshire FIT Programmes - These are co-ordinated by the Hampshire and Isle of Wight Health & Safety Advisory Group and HSE.

### **The National Local Authority Enforcement Code**

12. Professor Löfstedt's Review, published in November 2011 recommended that the HSE be given a stronger role in directing Local Authority health & safety inspection and enforcement activity. A National Code is being developed in response to this recommendation and also as an outcome of the Red Tape Challenge on Health and Safety. It is designed to ensure that Local Authority health and safety regulators take a more consistent and proportionate approach to enforcement.

13. The Consultation Period for this National Code has finished and will be soon published.
14. It recognises that the primary responsibility for managing health and safety risks lies with the business that creates the risk, however Local Authority health & safety regulators have an important role in ensuring the effective and proportionate management of risks, supporting business, protecting their communities and contributing to a wider public health agenda.
15. It is vital that Local Authority regulatory resource is used consistently and to best effect by targeting specific risks or focussing on specific outcomes. LAs should use the full range of regulatory interventions available to influence behaviours and the management of risk with proactive inspection utilised only for premises with higher risks or where intelligence suggests that risks are not being effectively managed. The Code provides direction to LAs on meeting these requirements, and reporting on compliance.
16. The Code will be given legal effect as HSE guidance to LAs under section 18(4)(b) of Health and Safety at Work etc Act 1974 (HSWA) and will apply to England, Wales and Scotland.
17. Once the National Code has been published, it will replace the Section 18 Standard which currently governs how LAs undertake their enforcement work. The new Code also acknowledges the wider Public Health role of Local Authorities along with business development responsibilities.
18. The consultation document set out what is meant by 'adequate arrangements for enforcement and concentrated on the following four objectives:
  - i). Clarifying the roles and responsibilities of business, regulators and professional bodies to ensure a shared understanding on the management of risk;
  - ii) Outlining the risk-based regulatory approach that LAs should adopt with reference to the Regulator's Compliance Code, HSE's Enforcement Policy Statement and the need to target relevant and effective interventions that focus on influencing behaviours and improving the management of risk;
  - iii). Setting out the need for the training and competence of LA H&S regulators linked to the authorisation and use of HSWA powers; and
  - v) Explaining the arrangements for collection and publication of LA data and peer review to give an assurance on meeting the requirements of this Code.
19. The HSE are considering the responses from the consultation and will decide how best to take the proposals forward. A report will be brought to the Board if necessary, once the Code has been published.

### **The Independent Regulatory Challenge Panel**

20. The Independent Regulatory Challenge Panel has been set up by the Government to look into complaints regarding advice given by HSE or LA inspectors. If a business believes that health and safety requirements are incorrect or goes beyond

what is required to control the risk adequately they have the option to go to this Panel. The Panel will consist of independent members who will have the competence and experience to assess advice that has been given on regulatory matters. Before the business raises an issue with the Panel, they should have first tried to resolve the matter with the relevant HSE or LA inspector and their manager.

### **The Health & Safety Resource**

21. The Gosport Health and Safety enforcement team consists of consists of one full time Principal Environmental Health Officer (Team Leader), one full-time Environmental Health Officer (on a temporary contract until 30 June 2013), two Technical Officers and the Council's Corporate Safety Advisor. These officers (excluding the Safety Advisor) also undertake Food Hygiene and some Licensing and Statutory Nuisance enforcement and Infectious Disease control work. In August 2012 the operation and management of Gosport Market was transferred to the Commercial Team.
22. The resource is now enhanced by the Gosport and Fareham Environmental Health Partnership, as each Authority can be supported by the other during peaks in workload, with staff able to carry out Health & Safety functions in each Authority. A lot of work has already taken place to align work practices, procedures, forms and letters to facilitate this.

### **Enforcement Decisions**

23. All enforcement decisions are consistent with Gosport's Environmental Health Enforcement Policy, and the Enforcement Management Model (which is a tool for determining the most appropriate course of action in more serious cases).

### **Training**

24. The HSE and Local Authorities have recently developed the Regulators' Development Needs Analysis Tool. This is an on-line system which is able to identify knowledge gaps and devise action plans to address them. This is a useful tool to help ensure that the inspectorate is trained and competent. This will be fully implemented for the Gosport Health & Safety Enforcement Team.
- 25 . Appendix 1 to this Plan details the resource allocation for the above.



## APPENDIX 1

### Gosport Borough Council Interventions Plan 2013/2014

Priority	What	How	Where (When)
National / Local S18 Enforcement Standard	Complete High risk inspection programme	5 Health and Safety Inspections	Existing Category A premises throughout the year
National S18 Enforcement Standard	Investigate accidents	30 accident investigations (estimate)  Need to meet revised accident investigation selection criteria	Throughout the year
National S18 Enforcement Standard	Inspecting high risk premises not previously inspected	Health and Safety Inspections	Throughout the year
National S18 Enforcement Standard	Act as Responsible Authority to Licensing Act 2003 application/variations (within 28 days)	20 requests (estimate)	Throughout the year
National S18 Enforcement Standard	Development, training and team meetings	As required	Throughout the year
Local	Investigate complaints about workplaces and give advice (first response within 2 days)	50 service requests (estimate)	Throughout the year
Local	Consult on Building Control and Planning applications (within 10 days)	100 requests (estimate)	Throughout the year
Local	To identify new high risk premises	As required	Throughout the year

Local	Programme to ensure that accurate information is held for low risk health and safety premises	Alternative interventions including questionnaires	Throughout the year
Local	Attend Safety Advisory Group	Attend meetings and administration	Throughout the year
County Initiative	To take part in FIT 3 and other LA/HSE joint initiatives	60 Premises (estimate)	Throughout the year
Local / Regional	To participate in Hampshire Better Regulation Partnership Project	260 Inspections	Throughout the year
County Groups	Attend Hants and Isle of Wight Health & Safety Group	Attend bimonthly meetings	Throughout the year
Legal Requirement	Formal enforcement action	As required	Throughout the year
Food Safety Enforcement	The detail regarding this area of work is reported to the Community Board as Appendix 1 of the report above through the Food Safety Service Plan		
Licensing/smoking enforcement	A separate plan for this work area is not currently required by an external organisation. These functions where possible are combined with Food and Health & Safety functions		
Projects	To implement changes to guidance in respect of high risk premises and to allow flexibility so as resources can be redirected to areas within the Environmental Health Section as demand requires.		

## AGENDA ITEM NO. 07

<b>Board/Committee:</b>	Community Board
<b>Date of Meeting:</b>	10 <sup>th</sup> June 2013
<b>Title:</b>	Environmental Health Enforcement Policy
<b>Author:</b>	Kim Carron
<b>Status:</b>	FOR DECISION

### **Purpose**

To present to the board an Environmental Health Enforcement Policy for the Environmental Health Partnership.

### **Recommendation**

That the Board approves the Environmental Health Enforcement Policy

#### **1 Background**

- 1.1 The Environmental Health Section within the Community and Customer Services Unit is responsible for enforcing a wide range of legislation that may affect individuals, organisations or businesses residing or operating within its district. Examples of such legislation include food safety, occupational safety, environmental protection, noise control, private sector housing, animal welfare, licensing and certain environmental antisocial activities.
- 1.2 The Council has adopted the Cabinet Office's "Enforcement Concordat" which offers best practice guidance and promotes good standards of enforcement. The Concordat advocates that enforcement agencies have a published Enforcement Policy in place, to demonstrate to business what it can expect from enforcement officers.
- 1.3 The Environmental Health Section has had an enforcement policy in place for a number of years now, which sits under the Council's generic enforcement policy. The policy was last published following review in 2008.

#### **Environmental Health Partnership**

- 1.4 In January 2011 Gosport Borough Council's Environmental Health Section commenced working in partnership with Fareham Borough Council's Environmental Health Section. Both Sections have Enforcement Policies which were both last reviewed in 2008. The opportunity has been taken to produce a single Policy covering both Sections. As the Partnership continues to mature, staff from either Section can assist either Council, it is important therefore they are operating to the same enforcement principles. This Policy was

adopted by Fareham in December 2012.

## **2 Report**

### **2.1 CONSULTATION**

2.2 The draft revised enforcement policy was placed on the new Hampshire Portal to invite comments, prior to being approved by both Councils

2.3 The revised policy is attached as Appendix A, together with the Summary leaflet attached as Appendix B. The Summary leaflet is sent out to all businesses and individuals with any correspondence that relates to enforcement action the Council can take.

## **3 Risk Assessment**

3.1 In order to comply with the Enforcement Concordat and other guidance on enforcement activities the Council must have an Enforcement Policy in place.

## **4 Conclusion**

4.1 The Environmental Health Enforcement Policy has been amended to reflect latest guidance and to reflect the partnership arrangement with Fareham Borough Council.

<b>Financial Services comments:</b>	
<b>Legal Services comments:</b>	Contained in the report.
<b>Crime and Disorder:</b>	None
<b>Equality and Diversity:</b>	Contained in policy
<b>Service Improvement Plan implications:</b>	None
<b>Corporate Plan:</b>	The Enforcement Policy sits under the Generic Enforcement Policy the Council has in place and helps to meet the requirements of the Enforcement Concordat.
<b>Risk Assessment:</b>	The Policy assists in the justification of enforcement action and provides clarity on such matters to regulated entities.
<b>Background papers:</b>	None
<b>Appendices/Enclosures:</b>	None
Appendix 'A'	Fareham and Gosport Environmental Health Partnership Enforcement Policy
Appendix B	Fareham and Gosport Environmental Health Partnership Enforcement Policy Summary leaflet
<b>Report author/ Lead Officer:</b>	Ian Rickman



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Working in Partnership

Fareham and Gosport

Environmental Health Partnership

Enforcement Policy

June 2013

## **Preamble**

1. In January 2010 Fareham and Gosport Council agreed to develop a partnership arrangement in respect of the Environmental Health Sections. Since then work has been carried out to align the services of both Council's where possible and make the best use of the shared resource. In 2012 both Council's Enforcement Policies were due for renewal so a Policy has been approved by both to promote consistency of approach to enforcement between each Council .
2. At Fareham Borough Council the Environmental Health Section is within the Department of Regulatory and Democratic Services and at Gosport Borough Council is within the Community and Customer Services Unit. The Service is lead by a Shared Head of Environmental Health, the staff at each Council have been authorised to undertake environmental health duties within both Fareham and Gosport's areas.
3. The aim of this enforcement policy is to provide clarity as to how the Environmental Health Partnership intends to use its Enforcement powers to achieve compliance with legislation and the criteria that will be considered in deciding the most appropriate responses to breaches of legislation
4. Fareham and Gosport Councils have a Corporate Strategy / Plan in place which details each Council's ambition for its area. In order to achieve this there are a number of Corporate Priorities for each Council. In Fareham, Environmental Health contributes to the Corporate Priority of ensuring Fareham remains " A Safe and Healthy place to live and work" and also contributes toward "Protecting and enhancing the Environment". In Gosport it contributes toward the Strategic Priority of "Promoting Health and Well Being"
5. The Environmental Health contribution is made by delivering a range of regulatory services which include the following areas:- food safety, health & safety at work, environmental protection, pollution and noise control, infectious disease control, housing standards, air quality, contaminated land, water supplies, pest control, nuisances, animal welfare and licensing and registration.

## **Statement of Objectives**

6. This policy applies to all of the legislation enforced by the Environmental Health Partnership at Fareham and Gosport Council's.
7. In respect of Fareham Borough Council the policy also covers the other Regulatory activities undertaken within the Department of Regulatory and Democratic Services. At Gosport there is a separate Generic Enforcement Policy which applies to the other regulatory activities
8. Where there are shared Enforcement roles with other Council sections or other agencies, policies practices and procedures will be developed to avoid duplication of the collection of information and unnecessary burden on businesses and individuals.

9. The Environmental Health Partnership is committed to ensuring that legislation is enforced in a fair, consistent and transparent manner. In carrying out its enforcement functions it will have regard to equality and diversity, ensuring that everyone has equal opportunity to understand the legal obligations placed upon them.
10. Enforcement action may be any of a number of different measures:- verbal warnings; written warnings; statutory notices; fixed penalty notices simple cautions or prosecution. The choice of the most appropriate course of action in a case will depend on a number of factors including risk to public health, safety or the environment.
11. On determining a course of action the advice contained in a number of key guidance documents will also be taken into account:-
  - the Regulator's Compliance Code (Department for Business, Enterprise and Regulatory Reform, December 2007, now the Local Better Regulation Office<sup>1</sup>)
  - the Central and Local Government Concordat on Good Enforcement (usually known as the Enforcement Concordat) where not superseded by the Regulator's Compliance Code
  - advice from the Food Standards Agency
  - advice and guidance on licensing matters from the Department for Culture, Media and Sport (DCMS) and the Home Office.
  - advice from the Health & Safety Executive (HSE) and Health and Safety Executive/Local Authority Enforcement Liaison Committee (HELA).
  - advice from the Department of Health.

### **Underlying Principles of Enforcement**

12. The Environmental Health Partnership will seek to secure compliance with the law in line with the following principles:-

#### *Proportionate*

13. Action taken or required to achieve compliance with the law will be proportionate to the seriousness of the breach and the risk to public health, safety or the environment. The cost of compliance will be carefully considered against what is reasonably practicable, in order to ensure that unnecessary expense is not incurred. In considering proportionality, the impact of any regulatory intervention upon economic progress including the effectiveness and perception of fairness of any regulation will be taken into account.

#### *Consistent*

14. Enforcement duties will be carried out through firm but fair use of the Partnership's influence and Regulatory powers. In order to achieve consistency, arrangements are in place so there is peer review of enforcement decisions, they are also discussed at team meetings and also within the Hampshire and Isle of Wight professional groups. In

addition national guidance on enforcement is followed.

### *Transparent*

15. The procedures that are followed to enforce legislation and the way in which complaints are dealt with will be open. Publications such as this Policy and other literature will be expressed in plain language and made easily available to all. The same principle of openness, simplicity and clarity will also apply to all written correspondence, and verbally, when giving advice, dealing with enquiries and requests for service. Any informal or formal appeal options will also be made clear to people who are the subject of enforcement action from the Partnership.

### *Targeted*

15. Enforcement action will be targeted at those situations that give rise to the more serious risks or least well-controlled risks. In addition to levels of risk other factors such as accident history, new legislation, national and local campaigns, public interest will also determine priorities for enforcement activity. Risk Assessment shall precede and inform all aspects of the approach to regulatory activity. Feedback from regulated entities (Businesses and individuals who are the subject of enforcement activity by an Authorised Officer) will be sought and used to inform regulatory policies.
17. The Partnership will, where possible, endeavour to use enforcement powers as a means to an end, rather than pursuing enforcement for its own sake taking into account the particular interests of consumers, businesses, employees and the public. Clear guidance, information and advice will be given to persons, organisations or businesses so as to positively encourage compliance with the legislation.
18. The emphasis will be on persuasion, influence and education to secure the aims of legislation. Where this proves ineffective, or there are serious breaches of legislation, swift and firm action will be taken against those who fail to comply with the law.
19. Any changes to legal requirements will be promptly communicated to regulated entities; in general a graduated approach to the enforcement of any changes will be adopted.
20. The Partnership will utilise national regulatory guidance as far as possible but where it does develop its own guidance, regulated entities will be included in the development process. If the Partnership decides to charge for regulatory advice in the future, account will be taken of the needs and circumstances of smaller regulated entities and others in need of help and support.

### **Enforcement Officers Conduct**

21. The following rules will govern the way in which enforcement officers carry out their work. Officers will:
  - be trained and competent for the duties for which they are undertaking.
  - identify themselves by name, organisation and produce their means of identification;
  - act with courtesy, competence, honesty and integrity and be open about how they go about their work;
  - impartially exercise their independent professional judgement to the best of their



skill and understanding;

- treat the views of all persons/organisations in breach of legislative requirements and of complainants with due care and sensitivity;
- liaise with colleagues, other departments and agencies where necessary to ensure that others are aware of their actions;
- respect commercial confidentiality.
- at the end of a visit, the Enforcement Officer will discuss with the Business or Individual what further action, if any, they are going to take. A copy of the Inspection Report will be provided if requested.
- give suitable prior warning of our intention to take enforcement action whenever practicable.
- Any action taken will be consistent with this Enforcement Policy, unless there are documented justifiable reasons for deviating from it.
- Where enforcement action is taken, the business/person against whom it is taken will always receive a summary of this policy, in leaflet form and a copy of the full policy if requested.

### **Selection of Enforcement Action**

22. The selection of enforcement action will be guided by the general aim of using the lowest level of action consistent with achieving efficient and effective compliance with legislation and securing adequate health, safety standards.
23. There is a clear need to demonstrate that decisions regarding enforcement action are taken in an objective and responsible way in order that both Business and Public have confidence in the fairness of those decisions. It is, therefore, important that all relevant matters are taken into account when determining what action should be taken.
24. Factors that will be taken into account in deciding the appropriate enforcement action taken in any specific circumstance include the severity and scale of the actual or potential harm arising from an incident
  - the seriousness of the legal contravention
  - the particular circumstances of the case and the likelihood of continuance or recurrence
  - The general attitude of the offender to his or her responsibilities
  - the track record of the duty holder or the business
  - Continued risk to health, safety
  - Public expectation
  - Consequences of non-compliance
  - Likely effectiveness of enforcement options
  - Any enforcement or professional practice guidance issued nationally or locally
  - The need to consult or liaise with other enforcers (whether internal or external) e.g. Planning, Building Control, Business Rates, Tourism and Leisure, Fire, Trading Standard, Health and Safety Executive, Social Services, Meat Hygiene Service, Environment Agency, Police.
  - Ability of individual to understand legal requirements and steps taken to address any equality and diversity issues.
  - the enforcement priorities
  - the wider relevance of the incident including serious public concern

25. When a local business is part of a larger organisation which is involved in Lead or Home Authority Partnership Scheme or large, multi-site national organisation participating in the Large Organisations Partnership Pilot (LOPP), the Lead/Home Authority will be consulted as well as the originating authority in the case of manufactured products before enforcement action is taken – unless there is a requirement for immediate action because of imminent danger to health, safety or the environment. In addition, the Office of Fair Trading may be informed of details of any relevant conviction. In addition The Partnership works closely with other agencies in particular Hampshire Fire and Rescue and Hampshire Trading Standards. It should be noted that Environmental Health can only take Enforcement action regarding matters which it has delegated powers to deal with. Any action taken by other regulators will be in line with their own enforcement policies and procedures

## **Enforcement Options**

26. The enforcement options available include (although not all in each case):-
- Informal action - written or oral
  - Penalty Points
  - Information Notices - requiring formal details e.g. correct ownership information as a precursor to serving notices
  - A range of statutory Notices generally requiring some remedy within a specified timescale (a charge can be levied where Housing Act Notices are served)
  - Fixed Penalty Notices
  - Simple Caution
  - Prosecution
  - Injunctive restraint
  - Anti Social Behaviour controls including orders
  - Seizure of Equipment - noise making equipment, food, articles or records.
  - Issuing and revocation of various licenses and authorisations.
  - Carrying out Works in default, including recovery of costs where a Statutory Notice has not been complied with.
  - Compulsory purchase of properties (Housing Act power).

## **Informal Action**

27. Where a breach of the law has occurred and the consequences or potential consequences are minor we will try to deal informally with the matter and will advise the person responsible what needs to be done to comply with the law.
28. Informal enforcement action will be taken by the Case Officer. The officer will choose between taking no action – where there are no contraventions or only technical, minor or inconsequential breaches – or informal action in the form of verbal advice or written advice and requirements in the form of a letter, schedule or inspection report.
29. The Officer, when giving advice, will explain clearly what needs to be done, why, and by when. He/she will make sure that legal requirements are *always* distinguished from 'best practice' advice and/or recommendations.
30. To ensure the consistent application of advice and action by different Case Officers, ongoing training and monitoring of approach will be undertaken by line managers, and where such arrangements exist, between authorities.

31. The person/business will always be advised in writing of who to contact should they not understand or disagree with the requirements, together with any rights of appeal.
32. Even where some of the above criteria are not met there may be circumstances in which informal action will be more effective than the formal approach. This may apply to businesses and enterprises associated with voluntary organisations using volunteers where no one is employed to work. In taking health and safety enforcement action contrary to that identified by the Enforcement Management Model (EMM) Authorised Officers must identify the reason for the proposed action in the "Outcome of Management Review" of the Enforcement Assessment Record of the EMM.

### **Formal Action**

33. The Partnership prefers to secure compliance with legislation by a process of education and encouragement and will reinforce this in writing. It will sometimes be necessary for more formal action to be taken particularly where there is a risk to health, safety. This may involve the service of a Statutory Notice that states what must be done and gives a date for completion. Such Notices will normally only be served when: there has been a serious breach of the law, or there is a serious risk to health, safety, or the Partnership itself has a statutory duty to serve notice, or an informal approach has not been successful.
34. Where a Statutory Notice is served, the person/business on whom it is served will always be advised of the appeals procedure.
35. Under most circumstances, prior written warning of our intention to serve notice will be given. At this time, people will be given an opportunity to make representations if they believed that the notice should not be served or that its requirements are unreasonable. Exceptions to this are when we believe that there is an immediate risk to health, safety, or to prevent evidence being destroyed.

### **Issue of Penalty Points - Hackney & private Hire Licensing**

36. Each Council's Penalty Points Scheme forms part of the prevailing Hackney Carriage and Private Hire Conditions. This provides stepped enforcement for those licence holders who have contravened licence conditions or associated legal provisions. It does not, however, prejudice each Council's ability to take other actions which it is entitled to take under legislation, bye-laws or regulation.
37. The Head of Environmental Health is authorised to issue penalty points with the person concerned having the right of appeal to the Director of Regulatory and Democratic Services (Fareham) and Community and Customer Services Manager (Gosport). The Head of Environmental Health has delegated authority to suspend a licence where the infringement is so serious as to place the public at risk or where the person concerned has accumulated 12 points in any 12-month period. Any suspension must be ratified at the next available Licensing Board/Panel.

### **Information Notices**

38. Certain legislation enables the Partnership to serve a Notice requiring information regarding a Company or an individual's interest in a company or premises. Failure to comply with such a notice is regarded as a serious offence, which would usually be pursued by prosecuting for the offence.

## **Statutory Notices**

39. Only Authorised Officers who are duly authorised by the Director of Regulatory and Democratic Services (Fareham) and the Community and Customer Services Manager (Gosport) may issue (i.e. sign) Statutory Notices.
40. Authorised Officers must, be satisfied that it is appropriate to issue or request any Statutory Notice in a given case. The Head of Environmental Health may issue certain Statutory Notices on the recommendation of Authorised Officers where the latter are not personally authorised to do so.
41. Authorised Officers shall endeavour to obtain the agreement of the duty holder regarding the placing of time limits on Statutory Notices, having taken due account of the risk. Authorised Officers will always discuss the works required with the duty holder, if possible, to resolve points of difference and fully consider alternative solutions.
42. When issuing a Statutory Notice the Authorised Officer will provide information about the right of appeal.
43. Failure to comply with a Statutory Notice will generally result in legal proceedings and/or work in default where appropriate and permitted.

## **Hygiene Improvement Notices**

44. Officers will only consider the use of a Notice where one or more of the following criteria apply :
  - there are significant contraventions of the legislation
  - there is a lack of confidence in the proprietor or enterprise to respond to the informal approach
  - there is a history of non-compliance with the Council's informal requests for action
  - standards are generally poor with little management awareness of statutory requirements
  - the consequences of non-compliance could be potentially serious to public health
  - in addition to any other formal action, e.g. prosecution, effective action also needs to be taken as quickly as possible to remedy conditions that are serious and deteriorating.

## **Hygiene Emergency Prohibition Notices**

45. Officers will only consider the use of Hygiene Emergency Prohibition Notices where one or more of the following criteria 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 criteria concerning the conditions when prohibition may be appropriate, specified in the relevant Code of Practice, are fulfilled

- there is no confidence in the integrity of an unprompted offer made by the proprietor to voluntarily close the premises or cease the use of any equipment, process or treatment associated with the imminent risk
  - a proprietor is unwilling to confirm in writing his/her unprompted offer of a voluntary prohibition.
46. Where emergency action involving chemical contamination of food is being considered, Authorised Officers will normally take medical or other expert advice before reaching a final enforcement decision. The relevant guidance concerning which bodies are to be contacted will be consulted.
47. Where a Hygiene Emergency Prohibition Notice has been issued, an application for a Hygiene Emergency Prohibition Order must be made to the Magistrates' Court within three working days. Failure to do so will entitle the proprietor of the business to compensation
48. The operator of a food business subject to a Hygiene Emergency Prohibition Order will be given not less than 24 hours notice of the intention to apply at the Magistrates' Court for such an Order.

### **Remedial Action Notices**

49. Premises subject to approval(s) under E.C. Regulation 853/2004<sup>2</sup> that are in breach of requirements of the Regulation(s) may be subject to a Remedial Action Notice to address the breach. These will be used as deemed appropriate by the Officer in accordance with the approach set out in respect of Hygiene improvement Notices.

### **Health and Safety Improvement Notices**

50. Officers will only consider the use of Improvement Notices where indicated by the HSE's Enforcement Management Model assessment.

### **Health and Safety Prohibition Notices**

51. Authorised Officers will only consider the use of Prohibition Notices where one or more of the following criteria apply :
- the consequences of not taking immediate and decisive action to protect health and safety would result in an unacceptable risk of personal injury
  - a serious risk of personal injury can be demonstrated; this might include evidence from relevant experts, such as a civil engineer or the Employment Medical Advisory Service
  - the Authorised Officer has had regard to any relevant Approved Code of Practice or HSE, HELA or Other relevant Guidance, concerning the conditions when Prohibition may be appropriate
  - the Authorised Officer has no confidence in the integrity of an unprompted offer made by the duty holder to voluntarily close the premises or particular part of the premises or to cease the use of any equipment, process or treatment associated with the unacceptable risk to personal injury
  - a duty holder is unwilling to confirm in writing his or her unprompted offer of a voluntary prohibition

- an assessment under the Health and Safety Executive Enforcement Management Model identifies service of a Prohibition Notice as an appropriate course of action.

### **Abatement Type Notices**

- In defined situations where there are relevant matters which are determined to be Prejudicial to Health or a Statutory Nuisance and all efforts to affect an agreed solution to a statutory nuisance or environmental defect by informal means have failed.
- 

### **Hazard Awareness Notices**

- These can be served on the owner of a property under the Housing Act 2004 where the Council wishes to draw attention to the desirability of remedial action in the case of less serious hazards. These will be used as necessary in respect of either Category 1 or Category 2 hazards.

### **Overcrowding Notices**

- These may be used where a house/house in multiple occupation is overcrowded depending on the circumstances.
- Informal action has failed to achieve a reduction in occupancy has failed.

### **Surrender, Seizure and Detention of Food**

52. Officers will encourage the voluntary surrender of food that is suspected of not having been produced in compliance with the Food Hygiene (England) Regulations 2006<sup>3</sup>. Where voluntary measures are refused or inappropriate then Detention of Food notices will be served on the producer. Only Officers duly authorised by the Director of Regulatory and Democratic Services (Fareham) and the Community and Customer Services Manager (Gosport)
53. Where necessary, analysis of detained food will be undertaken as soon as possible by the Partnership's food examiner. Where detained food is considered to be in contravention of relevant legislation Where agreement on the destruction or processing with the producer is not reached, the matter will be brought before a Justice of the Peace for a Condemnation Order
54. All food for destruction, either voluntarily or by way of a Condemnation Order, will be destroyed strictly in compliance with national guidance.

### **Voluntary Closure of Food Premises**

55. The Partnership will consider voluntary closure of food premises where a health risk condition exists as defined by the Food safety Act 1990 i.e. there is a risk/imminent risk of injury to health) provided that this undertaking to close is confirmed in writing and that the food business will not re-open without the officer's prior approval. voluntary closure will not be accepted where there is no confidence that the food business operator will close the premises or cease the use of any equipment, process or treatment associated

with the imminent risk.

56. If the business operator offers to close voluntarily the officer will
- consider whether there is a risk of the establishment being re-opened without his/her knowledge and/or agreement (if this were to cause food poisoning or injury the Council could be criticised for not having used statutory powers)
  - recognise that there is no separate legal sanction against a business operator who re-opens for business after offering to close, although enforcement action for the actual breaches (e.g. unsafe food, similar processing as before, etc.) remains available
  - explain to the food business operator that, by making the offer to close, any right to compensation if a Court subsequently declines to make a Hygiene Emergency Prohibition Order is lost
  - consider the implications for taking further formal action regarding unsound food, and
  - ensure that frequent checks can be made on the establishment to ensure that it is not operational.

### **Fixed Penalty Notices**

57. The Partnership will take a firm approach against people that fail to clean up after their dogs, drop litter or carry out a range of other environmental anti-social activities. A similar approach will also be taken against individuals and businesses that fail to comply with regulations such as preventing smoking in enclosed public places etc. In such cases and where legislation allows Fixed Penalty Notices (FPN's) can be issued. Therefore if an authorised officer believes that someone has committed an offence he / she may offer that person the opportunity of paying a fixed penalty in respect of it. If the penalty is paid, the defender discharges any liability for that offence. If the person either refuses to accept the FPN or, having accepted such a notice, does not pay before the end of the period specified in each case the matter will be followed up with a view to prosecution.
58. It will be the normal practice, where a fixed penalty applies to an offence, for a FPN to be issued in all instances where such an offence is detected.
59. Persons to whom a Fixed Penalty Notice is issued may direct questions about the service of that Fixed Penalty Notice to the Head of Service The Head of Service may decide upon the cancellation of a Fixed Penalty Notice, in respect of Notices issued under the Health Act (Fareham). Where the fixed penalty is not discharged the Council will consider action by way of legal proceedings

### **Simple Cautions**

60. The following conditions will be met before a Simple Caution is administered :
- there must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction, and
  - the suspected offender must admit the offence either verbally or in writing (there must be a record). A Simple Caution will not be appropriate where a person has not made a clear and reliable admission of the offence (for example where intent is denied or there are doubts about the person's mental health or intellectual

capacity or where it is likely that the person could avail themselves of the provisions of a statutory defence), and

- it is in the public interest to use a Simple Caution as the appropriate means of disposal, and the suspected offender must understand the significance of a Simple Caution and give consent to being cautioned.

61. Simple Cautions cannot be given for smoke-free offences as none of these are indictable
62. If all the above requirements are met, the Officer will always consider whether the offence makes it appropriate for disposal by a Simple Caution but where a suspect is under 18, a Simple Caution will not be given
63. Where a person declines the offer of a Simple Caution the suspect will be advised that the Partnership has the discretion to proceed with the matter by way of legal proceedings
64. Simple Cautions may be appropriate for individuals and corporate bodies. They will be used only in accordance with the relevant Home Office Circular, the Code of Practice made under section 22 of the Legislative and Regulatory Reform Act 2006<sup>4</sup>, the Code for Crown Prosecutors and relevant guidance.
65. When considering the disposal of a matter by way of a Simple Caution the Council will have regard to any aggravating or mitigating factors involved in the commission of the offence and determine which factors may be most appropriate in the local circumstances
66. The Head of Environmental Health is the Officer duly authorised to issue Simple Cautions and will not be personally involved in the investigation of the offence. Should this be unavoidable, the Director of Regulatory and Democratic Services (Fareham) and the Borough Solicitor (Gosport) will make the necessary decisions. All decisions will be fully recorded.
67. The views of the victim, if any, will be taken into account and the proposal to offer a Simple Caution explained, though the fact that a victim declines to support a prosecution will not preclude the consideration of a Simple Caution. The final decision is at the discretion of the Council. The victim will be kept informed of the final outcome.
68. The suspect's criminal record will be checked to avoid inappropriate use of a Simple Caution. In particular, the Home, Lead or Originating Authority will be contacted for this purpose. If the suspect has previously received a Caution, then a further Simple Caution will not normally be considered unless the matter is trivial or unrelated.
69. The Simple Caution may be administered by post or in person. The suspect will be given adequate time to decide whether to accept, including the opportunity to seek independent legal advice.
70. Simple Cautions will be recorded and may be published.
71. The issue of a Simple Caution may be considered as an alternative to a prosecution in accordance with the appropriate Home Office circular. Only officers designated in the



Council's scheme of delegation will be authorised to administer simple cautions for the Council.

72. The purpose of the Simple Caution is:
- (a) to deal quickly and simply with less serious offenders;
  - (b) to divert them from the Criminal Court System;
  - (c) to reduce the chances of them re-offending.
73. In deciding whether Simple Caution is appropriate the following factors will be taken into account:
- (a) the nature of the offence;
  - (b) the likely penalty if an offender was convicted by a court'
  - (c) the offender's age and state of health;
  - (d) the previous history;
  - (e) the offender's attitude towards the offence and willingness to co-operate.
74. The most serious offences will not be suitable for formal caution, regardless of the age and previous record of the offender.
75. Simple Cautions may be cited when considering any similar offences, within three subsequent years.
76. In most cases, the refusal of a Simple caution will result in a referral for prosecution by the Head of Environmental Health to the Solicitor of the Council/Borough Solicitor.

## **Prosecution**

77. Where circumstances have been identified which may warrant a prosecution, all evidence and information will be considered to enable a consistent, proportionate and objective decision to be made. For health and safety enforcement any decision to initiate proceedings must be supported by an Enforcement Management Model assessment indicating prosecution as an appropriate response. The burden of proof for a successful criminal prosecution is that of "beyond all reasonable doubt". Investigating officers must obtain sufficient evidence of the appropriate standard to provide a realistic prospect of conviction against each defendant on each charge. Consideration must also be given to what the defence case may be and how that is likely to affect the prosecution case. If the evidence is insufficient the prosecution should not proceed.
78. When collecting and preparing evidence officers will adhere to the principles prescribed by the Police and Criminal Evidence Act 1984, Codes of Practice and the Criminal Procedures and Investigations Act 1996, Codes of Practice on the disclosure of information.
79. Where an Officer considers an investigation may end with a recommendation for prosecution, a file of evidence will be compiled,. This file will then be passed to the Head of Environmental Health for Approval to proceed, if this approval is granted the file

will then be passed to the Council's legal advisors for approval to proceed based on evidential factors.

80. Where a decision is taken to refer a case to the Solicitor to the Council/Borough Solicitor the prosecuting Solicitor will carry out a further review of the case prior to commencing proceedings in accordance with the Code for Crown Prosecutors.
81. A decision to prosecute will be made in any of the following circumstances and at the earliest opportunity
- where the alleged offence involves a reckless disregard of the law such that public health, safety or well-being has or is being put at risk
  - where death was a result of a breach of the legislation
  - where the gravity of the alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender, warrants it
  - the alleged offence involves a failure by the suspected offender to correct an identified serious potential risk having been given a reasonable opportunity to comply with the lawful requirements of an Authorised Officer
  - where there has been a failure to pay the appropriate fine during the time specified on a Fixed Penalty Notice
  - for persistently failing to comply with a Fixed Penalty Notice for failure to display the correct no smoking signs in smoke-free premises or a smoke-free vehicle or for smoking in smoke-free premises or in a smoke-free vehicle
  - failing to prevent smoking in a smoke-free premises or a smoke-free vehicle
  - a Simple Caution has been offered but rejected
  - the alleged offence involves the failure to comply in full or in part with the requirements of a Statutory Notice
  - there is a history of similar offences or persistent poor compliance
  - there has been a failure to comply with a written informal warning(s) or an Improvement Notice or Prohibition Notice.
  - Authorised Officers have been intentionally obstructed or assaulted in the lawful course and pursuit of their duties. This includes refusing to provide name and address when requested by an Authorised Officer.
82. The Council's legal representatives and the Head of Environmental Health will also consider prosecution where, following an investigation or other regulatory contact, the following circumstances apply
- false information has been wilfully supplied or there has been intent to deceive
  - there have been serious failures by the management of the business or organisation
83. 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 law and conviction may deter others from similar failures to comply with the law.
84. When considering the decision to prosecute, Officers will also have regard to relevant Codes of Practice and guidance from the appropriate national regulator and consider the following factors
- a) the seriousness of the alleged offence, e.g.

- the risk or harm to public health
- identifiable victims or potential victims
- failure to comply with a Statutory Notice served for a significant breach of legislation
- deliberate disregard for financial reward.

- b) the previous history of the party concerned, including
  - offences following a history of similar offences
  - failure to respond positively to past warnings
  - failure to comply with statutory notices.
- c) the competence of any important witnesses and their willingness to co-operate.
- d) the willingness of the party to prevent a recurrence of the problem.
- e) the probable public benefit of a prosecution and the importance of the case, e.g. whether it might establish legal precedent or address a high incidence of similar offences in the area. Advice on the public interest is contained in the Code for Crown Prosecutors. The general advice is that the more grave the offence, the less likelihood there will be that the public interest will allow anything other than prosecution.
- f) whether any other action, such as issuing a Simple Caution or a Notice or imposing a Prohibition, would be more appropriate or effective. It is possible in exceptional circumstances to prosecute as well as issue a notice and failure to comply with a notice would be an additional offence.
- g) Any explanation offered by the company or the suspected offender. Suspected offenders will always be given the opportunity to offer an explanation before prosecution decisions are taken.
- h) Where applicable, the likelihood of the defendant being able to establish a 'due diligence' or 'best practicable means' defence. Where appropriate, reference will be made to case law and guidance issued by the Food & Drink Federation, Food Standards Agency, , the Chartered Institute of Environmental Health, National Consumers Association, National Farmers Union and the Retail Consortium, etc.

85. In circumstances where the Court must impose a Prohibition Order on a food business operator participating in the management of the food business due to a continuing risk to health, the Authorised Officer must obtain evidence in respect of the proprietor failing to take the necessary steps to ensure the provision of hygienic conditions and practices. This could include details relating to the absence or inadequacy of any documented food safety management systems, including HACCP (Hazard Analysis And Critical Control Point techniques<sup>5</sup>) and SFBB (Safer Food, Better Business<sup>6</sup>).

86. Additionally, the Council will actively consider the management chain and the role played by individual directors and managers. Where appropriate we will seek disqualification of directors under the Company Directors Disqualification Act 1986.

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<sup>5</sup>

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87. Where circumstances warrant it and the evidence to support a case is available the Council may prosecute without prior warning or recourse to alternative sanctions.
88. In cases of sufficient seriousness, and when given the opportunity, the Partnership will consider indicating to the magistrates that the offence is so serious that they may send it to be heard or sentenced in the higher court where higher penalties can be imposed.
89. In considering what representations to make the Partnership will have regard to the Court of Appeal guidance, the Court of Appeal has said "In our judgement magistrates should always think carefully before accepting jurisdiction in health and safety at work cases, where it is arguable that the fine may exceed the limit of their jurisdiction or where death or serious injury has resulted from the offence".

### **Work in default and cost recovery**

90. Work in default required in the interest of public health and safety or where a statutory notice has not been complied with may be undertaken by the Council, and the cost recovered from the duty holder. This may be in addition to, or instead of, prosecution. Where the law allows the Partnership will consider taking default action to remedy a defect to achieve compliance with a Statutory Notice, if necessary under a Warrant to enter the premises and including the seizure of equipment, Costs will be recovered from the person(s) responsible where possible.
91. Work in default may be appropriate when:
  - it is necessary to carry out the work in the public interest and/or the costs are not prohibitive;
  - there is a failure to carry out work covered by a Formal Notice;
  - immediate action is required;
  - it is unlikely that the work will be carried out unless the Council do it in default.

### **Licensed Premises**

92. Licensing Act 2003 : The Licensing authority is required to promote the following objectives in relation to premises and people licensed under the Act :
  - preventing crime and disorder
  - protecting public safety
  - preventing nuisance
  - protecting children from harm.
93. Fareham and Gosport Borough Councils recognise the interests of both citizens and businesses and will work closely, with partners, to assist licence holders to comply with the law and the four licensing objectives it seeks to promote. However, proportionate but firm action will be taken against those who commit serious offences or consistently break the law.
94. The Hampshire Licensing Protocol formalises the working agreement between licensing authorities, Hampshire Constabulary and Hampshire Fire & Rescue Service in respect of licensing compliance. This includes the nomination of liaison officers, disclosure

arrangements, provision of advice, complaint investigation, review of licences, prosecutions, cautions.

95. The Protocol sets out the roles and responsibilities of the various enforcement agencies. It promotes the targeting of agreed problem and high risk premises which require greater attention, while providing a lighter touch in respect of low risk premises which are well run.
96. The Partnership issues a number of licences and registrations. These include licences issued under the Licensing Act 2003, the Gambling Act 2005, licences for animal welfare, pet shops, caravan sites, entertainment, private hire and hackney carriage, lotteries and charitable collections are normally issued with specific conditions. Minor breaches of licence conditions will usually be dealt with informally, at least on the first occasion. As conditions are imposed in order to control activities which would otherwise cause harm, serious breaches will tend to result in prosecution/formal caution and/or revocation of the licence.
97. Where there are serious failures to comply with conditions or where the informal approach has failed to effect the necessary improvements, prosecutions may be taken, or the licence amended, suspended, revoked or refused. In some cases a formal report will be submitted to the Licensing and Regulatory Affairs or other relevant Committee/Board and consideration will be given as to whether or not a licence will be granted, amended, suspended, refused, revoked or renewed. The persons concerned will be entitled to attend the relevant Committee and make representations in support of their case. In considering applications and objections or representations about such licences and when decisions are made in respect of refusing, amending or revoking licences, then appropriate procedures and standards will be followed and all relevant evidence considered.

### **Breaches of Licence Conditions**

98. The Partnership issues a number of licences and registrations. These include licences issued under the Licensing Act 2003, the Gambling Act 2005, licences for animal welfare, pet shops, caravan sites, entertainment, private hire and hackney carriage, lotteries and charitable collections, and they are normally issued with specific conditions. Minor breaches of licence conditions will usually be dealt with informally, at least on the first occasion.
99. Where there are serious failures to comply with licence conditions or where the informal approach has failed to effect the necessary improvements, prosecutions may be taken, or the licence amended, suspended, revoked or refused. In some cases a formal report will be submitted to the Licensing and Regulatory Affairs / Licensing Board or other relevant Committee/Board and consideration will be given as to whether or not a licence will be granted, amended, suspended, refused, revoked or renewed. The persons concerned will be entitled to attend the relevant Committee and make representations in support of their case. In considering applications and objections or representations about such licences and when decisions are made in respect of refusing, amending or revoking licences, then appropriate procedures and standards will be followed and all relevant evidence considered.
100. Council's Penalty Points Scheme forms part of the prevailing Hackney Carriage and Private Hire Conditions. This provides stepped enforcement for those licence holders who have contravened licence conditions or associated legal provisions. Penalty points

will be issued for minor vehicle defects or breaches of licence conditions, where further action is not considered appropriate.

### **Suspension/Revocation of Licences**

101. In certain instances in order to protect public safety, Hackney Carriage and Private Hire Driver licences can be suspended and/or revoked, such action will only be taken in extreme cases where it is appropriate and the human rights of any individual concerned carefully considered. The thought process leading to such action will be carefully documented and justified.

### **Revocation of Premises Approval**

102. Where premises have been approved for the manufacture of foods under any specific food products Regulations and there is in force an Emergency Hygiene Prohibition Notice or a Hygiene Prohibition Order the Authorised Officer, in consultation with the Head of Environmental Health, will consider the revocation of the approval, depending on the circumstances which lead to the Prohibition.

### **Referral to another Agency**

103. Where any matter is found to fall more appropriately under the enforcement regime of another regulatory body or agency, e.g. the Police authority or HSE, the case will be referred to that agency by the Councils. In all cases of referred enforcement the person(s) under investigation will be notified in writing by the Partnership of the reasons for referral.

### **Revisits to Premises**

104. Following service of a Statutory Notice or a written informal warning and/or advice, officers will revisit the premises to check that compliance has been achieved. For very minor contraventions officers may advise that a check will be carried out at the next routine inspection. The decision on whether a follow-up visit is necessary will be based upon the seriousness of the non-compliance and the likelihood that further formal action will be taken as a direct result of the visit. Where practicable, the officer who undertook the original visit or inspection will carry out the revisit if there are significant breaches of legislation in accordance with Statutory Guidance in respect of Statutory Notices.

### **Enforcement At Premises In Which The Council Has An Interest**

105. Where Council-owned premises are operated by a contractor or other occupier the Partnership retain responsibility for enforcement. Under these circumstances the Partnership will apply its enforcement policy and procedures in exactly the same way as it does in all other premises for which it has enforcement responsibility
106. The Council's cannot take action against itself and where such action would otherwise be warranted, the matter will be passed to the Borough Solicitor for action. **Workplace Accident Investigation**
107. Accidents will be investigated in accordance with the principles of proportionality, consistency, targeting, transparency and accountability and also the Health & Safety Executive guidance on accident investigation selection criteria

108. The purpose of investigation is to:

- identify immediate and underlying causes
- ensure the duty holder takes appropriate remedial action to prevent reoccurrence
- evaluate compliance with the relevant statutory provisions apply the principles of the Enforcement Management Model and take enforcement action if appropriate

## **Death at Work**

109. Where there has been a breach of health and safety law leading to a work-related death the Partnership will consider whether the circumstances of the case might justify a charge of manslaughter. Officers will liaise with the Police, Coroners and the Crown Prosecution Service (CPS) and if they find evidence suggesting manslaughter they will pass it on to the Police or, where appropriate, the CPS. If the Police or the CPS decide not to pursue a manslaughter case, the Council will bring a health and safety prosecution if that is appropriate

110. The Partnership will always carry out a site investigation of a reportable work-related death following liaison with the Police and where evidence indicates that a serious criminal offence or possible health and safety offences may have been committed. Such investigation will be undertaken in accordance with "Work Related Deaths: A protocol for liaison"<sup>7</sup> and the associated "Work Related Deaths: Investigators Guide"<sup>8</sup> both published by the HSE. This specifically excludes deaths from natural causes or by suicide.

## **Publicity**

111. The Partnership may publicise the names of all the companies and individuals who have been convicted in the previous 12 months of breaking the law and will also consider drawing media attention to factual information about charges that have been laid before the courts, having due regard to publicity that could prejudice a fair trial.

112. The Partnership will also consider publicising any conviction that could serve to draw attention to the need to comply with legal requirements, or deter anyone tempted to disregard their duties under the law.

## **Equality**

113. The Council's are aware of their legal obligations in respect of Equality. In carrying out enforcement activities the Environmental Health Partnership will make every effort to ensure that everyone has equal opportunity of understanding the legal requirements which they are expected to comply with. There is a separate Equality Impact Assessment for each element of the Environmental Health Service which details the range of measures that can be employed to ensure that the regulated entity understands what is being asked of them. Obviously in the most serious incidences immediate enforcement action may be necessary to protect public health or safety of the environment. In these extreme cases if initial immediate enforcement action is

deemed necessary every effort will be made to ensure that the measures detailed within the Equality Impact assessments are employed.

114. Regard shall also be had to the Human Rights Act 1998 when applying this Policy, this is particularly relevant in respect of the suspension or revocation of licences.

## **Appeals**

115. Most legislation gives rights of appeal against enforcement action to either the Courts or Tribunals and these rights will be clearly explained when any such action is taken. This appeals procedure may be time consuming, costly and complicated. The Council has an informal appeals procedure which people can use prior to service of Notices or other enforcement action. Rights of appeal can therefore be divided into informal and formal rights.

## **Informal Measures**

116. If a business or individual wishes to contest any proposed action they should discuss the matter with the officer concerned in the first instance. If they wish to contest further, the officer will provide the name of a senior officer within the relevant Council who will be available to review the decision. At this time there will be an opportunity for the individual or business to make representations as to why the proposed course of action is unnecessary or unreasonable. Those wishing to make use of the Council's informal appeal procedure must do so within 7 days and in all cases before the proposed Notice is served or formal action taken.
117. The informal appeal will not be available where it is necessary for action to be taken in respect of matters that present an immediate risk to health, safety, amenities or the environment. In such cases the statutory right of appeal under the appropriate legislation will apply.
118. It should be noted that any statutory rights of appeal to the Court/Tribunal is unaffected by the informal process. Most formal appeals have to be lodged within a time specified by statute.

## **Regulatory Challenge Panel - Health & Safety matters only**

119. The Regulatory Challenge Panel will consider complaints in respect of advice given by both HSE inspectors and local authority inspectors in relation to cases after 30<sup>th</sup> June 2011. Such complaints are from businesses which believe that the advice is incorrect or disproportionate. The panels remit does not extend to considering complaints regarding the conduct of inspectors.
120. The Regulatory Challenge Panel currently has 5 members from HSE. The Panel will not address issues where other appeals processes already exist such as prosecutions or enforcement notices.
121. Referrals to the Panel are the second stage of a three stage complaints process. Businesses who are unhappy with advice they have received are encouraged to first try and resolve the matter with the relevant local authority or HSE inspector and the inspector's manager. If they remain unsatisfied the next stop is to complete an online form on HSE's website ([www.hse.gov.uk](http://www.hse.gov.uk)) which will raise their issue with the new



Panel. There is no cost involved in raising such a complaint. The option also remains for businesses to seek resolution through the existing HSE internal complaint process.

### **Statutory Rights of Appeal**

122. Once legal action, such as the service of a Statutory Notice or a decision to prosecute has been taken, it is no longer possible to use the informal appeals procedure. Any appeal against the action taken will therefore need to be made to the relevant Court or Tribunal. Where enforcement notices are served, detailed information will be provided to the person concerned regarding their statutory rights of appeal. The information will include, where appropriate, the necessary forms to enable an appeal to be made.

### **Complaints Procedure**

123. If a person or business is not satisfied with the way that the Partnership's enforcement duties are carried out, then there is a corporate complaints procedure which can be followed. All complaints will be investigated and a written response provided in accordance with each Council's complaints policy.

### **Liaison with Business and Consumer groups**

124. Central to this Enforcement Policy is the provision of a courteous and efficient service and a reliance on co-operation rather than coercion.

125. The Environmental Health Partnership will:

- Actively work with Business and Consumer groups to advise and assist with compliance.
- Organise Seminars on new environmental health and licensing legislation and other relevant issues for local Business, e.g. food hygiene courses.
- Support and take an active part in any appropriate Business partnership or meetings with Business.
- Discuss health and safety issues or problems of compliance with anyone experiencing difficulties.
- Encourage Business and Consumer groups to seek advice or information from the Partnership
- Where the Councils require information from regulated entities the information will be assessed to see if there is any duplication of requests and amended where necessary. The Councils will also seek feedback on the forms it uses to collect information from regulated entities. The Councils will ensure that data is shared where it is possible, practicable and appropriate.
- Ensure that this Enforcement Policy or a summary is readily available to Business and Consumer Groups, and that their comments and advice will taken into account when this Policy is reviewed.

- Establish clear standards defining the level of service and performance the Public and Business people can expect to receive.
- Provide the Enforcement Policy and associated information and guidance on the Council's website

### **Consultation and Review**

128. Arrangements will also be made for the Policy to be published and brought to the attention of relevant persons, businesses and organisations. The Policy will be regularly reviewed and local businesses, the public and other persons will be consulted regarding its content.

## Environmental Health Partnership Enforcement Policy Summary Leaflet (to be printed booklet style A5)

### INTRODUCTION

Environmental Health delivers a range of regulatory services which include the following areas:- food safety, health & safety at work, environmental protection, pollution and noise control, infectious disease control, housing standards, air quality, contaminated land, water supplies, pest control, nuisances, animal welfare and licensing and registration. In January 2010 Fareham and Gosport Council's agreed to develop a partnership arrangement in respect of their Environmental Health Sections. Staff at each Council have been authorised to undertake environmental health duties within both Fareham and Gosport's areas.

The aim of this enforcement policy is to provide clarity as to how the Environmental Health Partnership intends to use its Enforcement powers to achieve compliance with legislation and the criteria that will be considered in deciding the most appropriate responses to breaches of legislation.

### Statement of Objectives

This policy applies to all of the legislation enforced by the Environmental Health Partnership at Fareham and Gosport Council's. Where there are shared Enforcement roles with other Council sections or other agencies, policies practices and procedures will be developed to avoid duplication of the collection of information and unnecessary burden on businesses and individuals. The Environmental Health Partnership is committed to ensuring that legislation is enforced in a fair, consistent and transparent manner. In carrying out its enforcement functions it will have regard to equality and diversity, ensuring that everyone has equal opportunity to understand the legal obligations placed upon them.

### UNDERLYING PRINCIPLES

The Council has adopted, signed up to and fully supports the principles of the Central and Local Government Concordat on Good Enforcement. By adopting the Concordat we commit ourselves to ensuring that our regulatory duties are undertaken in a fair, consistent and transparent manner so as to reduce any unnecessary burden on business or individuals. In determining the nature of any enforcement action the Council will have due regard to the advice issued by the Government, in statutory Codes of Practice including the Attorney General's 'Guidelines on Criteria for Prosecution' and the Crown Prosecution Service's Code for Prosecutors and the Local Better Regulation Office guidance including the Regulators' Compliance Code.

The department will seek to ensure compliance with the law but will carry out this duty in an appropriate manner according to the following principles.

#### • **Proportionate**

Action taken or required to achieve compliance will be in proportion to the seriousness of the breach and the risk to health, safety or the environment. The cost of compliance will be carefully considered against what is reasonably practicable, in order to ensure that unwarranted expense is not incurred, **together with the wider effect on economic progress.**

#### • **Consistent**

Enforcement duties will be carried out through firm but fair use of the Authorities licensing and regulatory powers. In order to achieve consistency, arrangements are in place to encourage discussion and compare enforcement decisions and good practice both within the Authority and externally through liaison with other local authorities and enforcement bodies.

#### • **Transparent**

The Council will help people to understand what the law requires of them and make clear what needs to be done, and not done, to comply. It will also be made clear what people should do if they are not happy about any action the Council has taken or is proposing to take.

#### • **Targeted**

Enforcement action will be targeted at those situations that give rise to the more serious risks, least well-controlled risks or those who have a history of non-compliance.

Clear guidance, information and advice will be given to persons, organisations or businesses so as to positively encourage compliance with legislation.

The emphasis will be on persuasion, influence and education to secure the aims of legislation. Where this proves ineffective, or there are serious breaches of legislation or risks to health, safety, amenities or the environment, swift and firm action will be taken against those who fail to comply with the law. **Risk Assessment shall precede and inform the approach to regulatory activity, together with national priorities.**

### SELECTION OF ENFORCEMENT ACTION

The choice of appropriate enforcement action will be guided by the general aim of using the lowest level of action consistent with achieving efficient and effective compliance with legislation and securing adequate protection of the public interest in health, safety and the environment. Factors that will be taken into account in deciding the appropriate enforcement action taken in any specific circumstance include:

- the severity and scale of the actual or potential harm arising from an incident
- the seriousness of the legal contravention
- the particular circumstances of the case and the

likelihood of continuance or recurrence

- The general attitude of the offender to his or her responsibilities
- the track record of the duty holder or the business
- Continued risk to health, safety or the environment
- Public expectation
- Consequences of non-compliance
- Likely effectiveness of enforcement options
- Any enforcement or professional practice guidance issued nationally or locally
- The need to consult or liaise with other enforcers (whether internal or external) e.g. Planning, Building Control, Business Rates, Tourism and Leisure, Fire, Trading Standard, Health and Safety Executive, Social Services, Meat Hygiene Service, Environment Agency, Police.
- Ability of individual to understand legal requirements and steps taken to addressing any equality and diversity issues.
- the effect of the legislative breach upon the potential persons affected
- the enforcement priorities
- the wider relevance of the incident including serious public concern

When a local business is part of a larger organisation which is involved in Lead or Home Authority Partnership Scheme or large, multi-site national organisation participating in the Large Organisations Partnership Pilot (LOPP), the Lead/Home Authority will be consulted as well as the originating authority in the case of manufactured products before enforcement action is taken – unless there is a requirement for immediate action because of imminent danger to health, safety or the environment. In addition, the Office of Fair Trading may be informed of details of any relevant conviction.

### Enforcement Options

- Informal action - written or oral
- Penalty Points
- Information Notices - requiring formal details e.g. correct ownership information as a precursor to serving notices
- A range of statutory Notices generally requiring some remedy within a specified timescale (a charge can be levied where Housing Act
- Fixed penalty Notices
- Simple Caution
- Prosecution
- Injunctive restraint
- Seizure of Equipment - noise making equipment, food, articles or records.
- Issuing and revocation of various licenses and authorisations.
- Carrying out Works in default, including recovery of costs where a Statutory Notice has not been complied

- with.
- Statutory Orders -
- Compulsory purchase of properties.

#### Informal Action

Where a minor breach of the law has occurred we will try to deal informally with the matter and will advise the person responsible what needs to be done to comply.

Informal enforcement action will be taken by the Case Officer. The officer will choose between taking no action – where there are no contraventions or only technical, minor or inconsequential breaches – or informal action in the form of verbal advice and requirements or written advice and requirements in the form of a letter, schedule or inspection report. The officer, when giving advice, will explain clearly what needs to be done, why, and by when. He/she will make sure that legal requirements are *always* distinguished from 'best practice' advice and or recommendations.

#### Formal Action

The Council prefers to secure compliance with legislation by a process of education and encouragement and will enforce such requirements in writing. It will sometimes be necessary for more formal action to be taken particularly where there is a risk to health, safety, amenity or the environment.

#### Equality

The Council's are aware of their legal obligations in respect of Equality. In carrying out enforcement activities the Environmental Health Partnership will make every effort to ensure that everyone has equal opportunity of understanding the legal requirements which they are expected to comply with. There is a separate Equality Impact Assessment for each element of the Environmental health Service which details the range of measures that can be employed to ensure that the regulated entity understands what is being asked of them. Obviously in the most serious incidences immediate enforcement action may be necessary to protect public health or safety of the environment. In these extreme cases if initial immediate enforcement action is deemed necessary every effort will be made to ensure that the measures detailed within the Equality Impact assessments are employed. Regard shall also be had to the Human Rights Act 1998 when applying this Policy; this is particularly relevant in respect of the suspension or revocation of licences or permissions.

#### Appeals

Most legislation gives rights of appeal against enforcement action to either the Courts or Tribunals and these rights will be clearly explained when any such action is taken. This appeals procedure may be time consuming, costly and complicated. The Council has

an informal appeals procedure which people can use prior to service of Notices or other enforcement action. Rights of appeal can therefore be divided into informal and formal rights.

#### Informal Appeal

If a business or individual wishes to contest any proposed action they should discuss the matter with the officer concerned in the first instance. If they wish to contest further, the officer will provide the name of a senior officer within the Council who will be available to review the decision. At this time there will be an opportunity for the individual or business to make representations as to why the proposed course of action is unnecessary or unreasonable. Those wishing to make use of the Council's informal appeal procedure must do so within 10 days and in all cases before the proposed Notice is served or formal action taken.

The informal appeal will not be available where it is necessary for action to be taken in respect of matters that present an immediate risk to health, safety, amenities or the environment. In such cases the statutory right of appeal under the appropriate legislation will apply.

It should be noted that any statutory rights of appeal to the Court/Tribunal is unaffected by the informal process. Most formal appeals have to be lodged within a time specified by statute.

#### Complaints Procedure

If a person or business is not satisfied with the way that the Council's enforcement duties are carried out, then there is an official complaints procedure which can be followed. All complaints will be investigated in accordance with each Council's complaints policy.

#### Review

A detailed copy of the Environmental Health Partnership Enforcement Policy is available on [www.fareham.gov.uk](http://www.fareham.gov.uk) or [www.gosport.gov.uk](http://www.gosport.gov.uk)

It is intended to keep this policy under review.

If you have any comments, or suggestions please contact Ian Rickman Head of Environmental Health

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Last updated May 13

Working in Partnership

Fareham and Gosport

Environmental Health Partnership

Enforcement Policy Summary Leaflet

May 2013

The aim of this enforcement policy is to provide clarity as to how the Environmental Health Partnership intends to use its Enforcement powers to achieve compliance with legislation and the criteria that will be considered in deciding the most appropriate responses to breaches of legislation

