

**Title of meeting:** Environment and Community Safety Portfolio Decision Meeting

**Date of meeting** 9<sup>th</sup> July 2014

**Subject:** Inspection plan for food business operators 2014 / 2015

**Report by:** Alan Cufley, Head of Corporate Assets, Business and Standards

**Wards affected:** ALL

**Key decision:** No

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**1. Purpose of report**

- 1.1. The propose of this report is to update the Cabinet Member on the current level food business hygiene compliance in Portsmouth and to set out the programme of inspection during 2014 / 2015.

**2. Recommendation**

**2.1. That the Cabinet Member for Environment and Community Safety:**

- a) approves the continuation of the risk-based approach to the statutory and regulatory inspection and enforcement of food business operators
- b) acknowledges the level of hygiene compliance in food businesses in Portsmouth and the public health importance of this service
- c) approves the Food Operating Plan 2014 / 2015 as described in Appendix 1 of this report

**3. Background**

- 3.1 In October 2011 the Cabinet Member endorsed the city council working in partnership with the Food Standards Agency (FSA) and for the Environment Health's Business Support Team (BST) to adopt the 'Food Hygiene Rating Scheme' (FHRS) which requires a rating to be assigned to all food business operators.
- 1.2. In March 2012 the Cabinet Member endorsed a revised risk based inspection and enforcement plan to target resources upon businesses where the lowest acceptable level of hygiene was being maintained.
- 3.1. In November 2013 the FSA audited the feed and food law enforcement services performed by the BST to ensure its arrangements to improve consumer protection and confidence in relation to food and feed are consistent with the requirements of the Food Law Code of Practice (FLCofP).

#### 4. Explanation of the Food Hygiene Rating Scheme and Food Law Code of Practice and results of the audit

- 4.1. The FHRS is intended to offer guidance to consumers in choosing where to eat out or shop for food by giving them an enhanced level of information about the hygiene standards in restaurants, cafés, takeaways, hotels and food shops. The FHRS is also intended to actively encourage businesses to improve their hygiene standards.
- 4.2. Under the FHRS, officers from the BST inspect food businesses to ensure that they meet the requirements of food hygiene law. Subsequently these officers rate the hygiene standards found at the time of inspection. At the bottom of the scale is '0' which requires urgent improvement. At the top of the scale is '5' which means the hygiene standards are very good.
- 4.3. The FLCofP sets out the framework under which the BST must carry out its statutory functions to protect the public in respect to food hygiene and food safety. It requires every local authority to have a Food Operating Plan and prescribes the manner in which it is formatted.
- 4.4. The BST is required under legislation to have regard to this Code when discharging its duties. Should the BST fail to have regard to relevant provisions of this Code, decisions and actions of the team are likely to be successfully challenged, and evidence gathered during a criminal investigation being ruled inadmissible by a court and formal action being instigated against the city council by the FSA.
- 4.5. The FSA audit of the Council's approach to Food and Feed Law enforcement in November 2013 was a generally positive experience for the Business Support team. It provided for the BST to reassess its procedures and operating processes to ensure compliance with the FLCofP. The auditors recommended 3 primary areas where the authority should refocus its attention. These were focused on, 1) the regulation of businesses which require approval to operate, 2) the authorisation and training of officers, and 3), the management of our database / record keeping. In total 12 recommendations were made of which all have been actioned.

#### 5. Analysis of service delivery

- 5.1. The number and type of Food Business Operators (FBO) on the 1st April 2014 is shown in table 1 below.

|                              |     |                              |     |
|------------------------------|-----|------------------------------|-----|
| Primary Producer             | 0   | <b>Restaurant / Caterers</b> |     |
| Manufacturer and Packer      | 9   | Hotel/Guest House            | 52  |
| Importer / Exporter          | 1   | Mobile Food Unit             | 48  |
| Distributor / Transporter    | 19  | Caring Premises              | 236 |
| <b>Retailers:</b>            |     | Restaurant and Caterer       | 306 |
| Supermarket / Hypermarket    | 29  | Pub/Club                     | 207 |
| Small Retailer               | 316 | Restaurant / Café / Caterer  | 370 |
| Retailer Other               | 20  | School / College             | 65  |
|                              |     | Takeaway                     | 216 |
| <b>Total Premises - 1894</b> |     |                              |     |

- 5.2. The total number of inspections carried in last three years is shown in **table 2** below.

**Table 2.**

| Year        | Inspections |
|-------------|-------------|
| 2011 / 2012 | 740         |
| 2012 / 2013 | 839         |
| 2013 / 2014 | 646         |

- 5.3 In 2013 / 2014 the inspection rate was lower than that achieved in previous years but in line with that projected. Estimates, based on the level of resource available, made in April 2013 however suggested that 600 could be delivered so this was an increase on that projection.
- 5.4. This level of inspection performance was based around the number of full time equivalent (FTE) officers available at that time (3.35) and the number of food business operators in the city (approximately 1900). These figures have slightly changed in 2014 / 2015 as the staff engaged in this specific activity in April 2014 reduced by 0.5 FTE.
- 5.5. The numbers of premises rated '0', '1', '2', '3', '4', or '5' as of February / August 2012, March 2013 and March 2014 are highlighted in **table 3** below.

**Table 3.**

| Rating | Feb 2012 | August 2012 | March 2013 | March 2014 |
|--------|----------|-------------|------------|------------|
| 0      | 27       | 20          | 43         | 4          |
| 1      | 40       | 46          | 52         | 81         |
| 2      | 55       | 73          | 44         | 52         |
| 3      | 475      | 389         | 322        | 252        |
| 4      | 334      | 360         | 358        | 343        |
| 5      | 842      | 965         | 1023       | 1074       |

- 5.6. Each time a business is inspected a new rating is provided with the level of improvement or decline in hygiene standard dictating the new rating score. The frequency of inspection is determined by the risk to people's health. The greater the risk to health, the more frequent the inspection.
- 5.7. As the rating of each of the inspected premises may have changed (positively or negatively) following inspection it is difficult to provide direct comparisons with the level of improvement or decline in the quality of food being offered by the businesses in the city. All current food business ratings are reported on the FSA's website which is freely available to the public and business alike - no indication of the previous performance is necessary within the scheme.
- 5.8. Businesses rated '0', '1' or '2' are given priority for action to secure improvement in hygiene standards. Irrespective of the original rating, if during inspection hygiene standards are very poor, or there is an imminent risk to health, appropriate

enforcement action is taken to make sure that consumers are protected. This can include agreeing with the proprietor to voluntarily close the premises.

- 5.9. All FBOs are provided feedback following an inspection. Officers will provide improvement advice and how any problems identified can be avoided and rectified. Where improvements are required inspectors will issue a comprehensive written report clearly explaining precisely what is required to comply with the law. Where problems are acute or persistent, appropriate enforcement action is taken.
- 5.10. The number of enforcement actions taken in 2009 / 2010, 2010 / 2011, 2011 / 2012, 2012 / 2013 and 2013 / 2014 is recorded in **table 4** below.

**Table 4.**

| <b>Enforcement Type</b> | <b>09 / 10</b> | <b>10 / 11</b> | <b>11 / 12</b> | <b>12 / 13</b> | <b>13 / 14</b> |
|-------------------------|----------------|----------------|----------------|----------------|----------------|
| Improvement Notice      | 4              | 3              | 12             | 47             | 60             |
| Closure                 | 1              | 1              | 2              | 8              | 5              |
| Prosecutions            | 0              | 0              | 0              | 2              | 5              |

- 5.11. Since the introduction of the revised risk based inspection programme in 2012, the number of Improvement Notices served upon premises requiring a prompt, timetabled, improvement in standards has continued to increase. In addition, 13 premises have closed pending improvement, reopening only when officers have been satisfied when the necessary works have been completed and poor hygiene standards in 7 premises have necessitated prosecution in the Magistrates' Court.
- 5.12. As a result of the increased detection of poor hygiene performance, the numbers of businesses rated '0' has significantly decreased. Conversely the number of '5' rated premises has significantly increased. The numbers of '0' and '5' rated premises are the best they have been since the scheme was introduced and are a reflection of its success.
- 5.13. We encourage customers to take an active role in reporting food businesses within Portsmouth that have poor food safety practices and investigate issues raised by them in the appropriate manner. Complaints are typically received in relation to:
- Sighting of vermin or pests on food premises.
  - Poor levels of cleanliness in kitchens, store rooms or preparation rooms.
  - Poor food handling practices.
  - Contaminated food e.g. food containing foreign bodies, or that is out of date.
- 5.14. The number of complaints received is consistent with the significant reduction (50%) achieved in 2012 / 2013 and is a further reflection of how standards of food businesses have improved in the last two years. The number of complaints relating to food business operators is shown in **table 5** below.

**Table 5.**

| <b>Year</b> | <b>Number</b> |
|-------------|---------------|
| 2009 / 2010 | 537           |
| 2010 / 2011 | 541           |

|             |     |
|-------------|-----|
| 2011 / 2012 | 469 |
| 2012 / 2013 | 211 |
| 2013 / 2014 | 270 |

- 5.15. In 2013 / 2014 a higher number of 'interventions' were carried out. The number of interventions instigated and the number outstanding is set out in **table 6** below. As expected, maximising the resources available, the service was unable to deliver all inspections in accordance with the prescriptive timetable as required by the FLCofP. However **81%** of interventions were delivered on time. For clarity interventions include: inspections; monitoring; surveillance; verification; audit; and sampling where the analysis/examination is to be carried out by an Official Laboratory.

**Table 6.**

|   |             |
|---|-------------|
| <b>Number of interventions that should have been achieved</b> | <b>1294</b> |
| Number of interventions actually achieved                     | 1067        |
| Due interventions outstanding                                 | 227         |

- 5.16. This level of performance is described as 'broadly compliant' and is an outcome measure which the FSA has developed to monitor the effectiveness of our regulatory function. It is based on a numerical scoring system which is used by officers to assess premises which pose the greatest risk to consumers.
- 5.17. In 2013 / 2014 the interventions compliance rating was **87%** as calculated from the figure provided within **table 7** below.

**Table 7.**

|   |             |
|---|-------------|
| <b>Number of broadly compliant premises</b> | <b>1691</b> |
|---|-------------|

- 5.18. Following the 2013 FSA audit some minor changes have been made to the BST intervention programme and its delivery. As the BST is required to inspect all registered food premises within Portsmouth as part of a planned programme, how frequently officers routinely inspect will depend on the type of business and its previous record. The better the record the greater the period between inspections.
- 5.19. The rating given to premises after each inspection determines the length of time until the premises is inspected again.
- 5.20. Premises are then rated and inspected according to the following **table 8** below.

**Table 8.**

| Rating Category | Inspection Rating | Minimum Inspection frequency     |
|-----------------|-------------------|----------------------------------|
| A               | 92 - 196          | At least every 6 months          |
| B               | 72 - 91           | At least every 12 months         |
| C               | 52 - 71           | At least every 18 months         |
| D               | 31 - 51           | At least every 2 years           |
| E               | 0 - 30            | Alternative enforcement strategy |

- 5.21. The risk rating system considers the type and size of business, the level of food safety management and conditions noted during the inspection. In addition, premises providing food to vulnerable groups, for example children or the elderly, are subject to an additional weighting which will result in more frequent visits.
- 5.22. Whilst it is not normal practice to give prior notification of inspection, some visits will be carried out by appointment, particularly if the visit is primarily to look at documentation, or if discussions are required with a specific employee or the business proprietor. Officers have the right to enter and inspect food premises at all reasonable hours.
- 5.23. The appropriate control for each premise will be considered on an individual basis by an appropriately qualified officer. The officer may decide to reclassify any premises that were the subject of an alternative enforcement strategy for a full inspection. For example, premises where the operation has changed significantly or catering is undertaken.
- 5.24. As highlighted in table 8, low risk category E business will be subject to an alternative enforcement strategy. When these premises are due for inspection the FBO will be sent an appropriate initial letter together with a low risk self-assessment questionnaire to complete. On receipt of completed questionnaires the information will be reviewed to determine whether there have been any changes to the business since the last inspection which may present an increased risk to food safety.
- 5.25. If the questionnaire has not been returned within the 28-day period, the outstanding premises will be contacted with a reminder to establish if a further copy of the questionnaire needs to be dispatched. If the questionnaire has not been received after a further 14 days, the food business may be subject to a food hygiene inspection.
- 5.26. The number of 'A' 'B' 'C' 'D' and 'E' rated premises as of the 1<sup>st</sup> April 2014 in Portsmouth is shown in **table 9** below.

**Table 9.**

| <b>Risk Category</b> | <b>Number of Premises</b> |
|----------------------|---------------------------|
| A                    | 3                         |
| B                    | 101                       |
| C                    | 732                       |
| D                    | 299                       |
| E                    | 683                       |
| Awaiting rating      | 76                        |

## **6. Equality impact assessment**

- 6.1. The inspection criteria from 2014 / 2015 have been subject to a provisional equality impact assessment. Implementation will not affect the concept of fairness established under the adoption of the FHRS in 2011, which ensures that all food

establishments are being inspected and enforced equally in all premises regardless of race or cuisine type.

## **7. City Solicitor's comments**

- 7.1. Legal Services has previously confirmed that the requirement to carry out periodic food inspections of food premises using a risk-based approach is derived from and in accordance with 'EC Regulation 882/2004' and the 'Framework Agreement on Food Law Enforcement' in respect of legislation relating to England and Wales.
- 7.2. Legal Services has also previously confirmed that the 'Food Law Code of Practice (England)' enables the replacement of the inspection focussed approach to food law enforcement with a more flexible one whereby local authorities can use a wider range of interventions to monitor support and increase business compliance. The Food Standards Agency has acknowledged that the aim of this revision was to partly ensure that resources are directed at those food businesses that present the greatest risk to public health and consumer protection.

## **8. Head of Finance comments**

- 8.1. Financial Services has been consulted on the financial implications of continuing to carry out the statutory function of inspecting food businesses for food hygiene standards and has confirmed that the service cash limit in 2014 / 2015 is sufficient to resource the staff and activities identified within the 2014 / 2015 inspection plan.

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Signed by: Alan Cufley, Head of Corporate Assets, Business and Standards

## **Appendix 1: Food Operating Plan 2014 / 2015**

**Background list of documents:** The following list of documents discloses facts or matters, which have relied upon to a material extent by the author in preparing this report:

| <b>Title of Document</b> | <b>Location</b> |
|--------------------------|-----------------|
| NIL                      | NIL             |

The recommendation set out above in 2.1. above were approved/ approved as amended/ deferred/ rejected by the Cabinet Member for the Environment and Community Safety on

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Signed by: Councillor Robert New, Cabinet Member for Environment and Community Safety