

Summary Sheet

Name of Committee and Date of Committee Meeting

Cabinet – 17 December 2018

Report Title

Food Service Inspection Plan 2018 -19 and Introduction of a Pre-Inspection Service Offer

Is this a Key Decision and has it been included on the Forward Plan?

Yes

Strategic Director Approving Submission of the Report

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Ward(s) Affected

Borough-wide

Summary

The Food Standards Agency requires all Competent Authorities to have an up-to-date, documented Food Service Plan, which is readily available to food business operators and consumers. This plan must be subject to regular review and clearly state the period of time for which the plan has effect.

The Food Standards Agency undertook a focussed audit of this Authority in May 2010 and reported that the framework for the plan was in line with the Service Planning Guidance in the Framework Agreement. The Food Service Plan for 2018/19 follows this outline.

Food hygiene ratings are increasingly important to the food industry, with customers taking an active interest in the hygiene standards of the premises from which they eat, and accordingly making informed choices.

There is an opportunity to offer a pre-inspection advice service to food business owners. The service could provide valuable information and guidance prior to statutory inspections which, if heeded, will enable businesses to enhance their premises and deliver a higher food hygiene rating.

The Council therefore proposes to introduce an in-house offer to the food industry, to provide bespoke advice and guidance and support businesses to achieve compliance and improved food hygiene ratings. This would support food business, and deliver improved food hygiene outcomes for Rotherham's residents.

Whilst there are a number of food premises which would not take advantage of the offer, either because they have their own internal compliance systems, or where they do not see food hygiene as a priority, it is expected that a market exists for support to businesses who are eager to improve their rating and attract more customers.

Recommendations

1. That approval be given to the Food Service Plan for 2018/19;
2. That approval be given to the introduction of a new Council service to provide pre-inspection advice to food businesses, for which a charge of £195 plus VAT will be made.

List of Appendices Included

Appendix A Food Service Plan 2018/19

Background Papers

The following documents have been considered when preparing this report:

- Food Safety Act 1990
- Food Law Code of Practice (England) issued March 2017
- Food Law Practice Guidance (England) Nov 2017
- Food Standards Agency, *The Food Hygiene Rating Scheme: Guidance for local authorities on implementation and operation – the Brand Standard*, version 6, June 2017
- Localism Act 2011
- Regulators' Code

Consideration by any other Council Committee, Scrutiny or Advisory Panel

No

Council Approval Required

No

Exempt from the Press and Public

No

Food Service Inspection Plan 2018 -19 and Introduction of a Pre-Inspection Service Offer

1. Recommendations

- 1.1 That approval be given to the Food Service Plan for 2018/19;
- 1.2 That approval be given to the introduction of a new Council service to provide pre-inspection advice to food businesses for which a charge of £195 plus VAT will be made.

2. Background

Food Service Inspection Plan

- 2.1 The Food Law: Code of Practice (England) is a statutory code of practice requiring 'Competent Authorities' to have an up-to-date, documented Food Service Plan, which is readily available to food business operators and consumers and which reflects paragraph six of the Regulator's Code¹.
- 2.2 The Plan must cover all areas of food law that the Council has a duty to enforce, and set out how the Council intends to deliver 'Official Controls' within its area. The Plan must include imported food responsibilities and the control arrangements that are in place. The Plan must also include reference to the Council's approach to enforcement including its 'Alternative Enforcement Strategy' for dealing with those premises rated as low risk under the Food Establishment Intervention Rating Scheme.
- 2.3 The report presents the Food Service Plan 2018/19 at Appendix A for approval. The plan also includes a summary of the work undertaken in 2017/18.

Pre-Inspection Service Offer

- 2.4 All food businesses are legally required to register with the Council, and are subject to a formal risk-based inspection regime, in accordance with Food Standards Agency guidance.
- 2.5 There is no legal requirement for a food business to seek advice or be inspected before opening. However, businesses often start trading without any food handling training, inadequate preparation and processes, and inappropriate kitchens, storage areas and facilities. A number of more proactive businesses ask for pre-opening advice.
- 2.6 Currently, on the occasions where advice is requested and provided, the Council diverts resources away from the delivery of its statutory duties. It is also often the case that this advice is provided to businesses that never actually open, resulting in wasted resources.

¹ Food Standards Agency, *Food Law: Code of Practice (England)*, March 2017, p69. The *Regulators' Code* is enshrined within the Council's General Enforcement Policy and paragraph six relates to transparency of regulatory activity

3. Key Issues

Food Service Inspection Plan

3.1 The Food Standards Agency last undertook a focussed audit of the Council's Food Service Plan in March 2010 and reported that the framework for the plan was in line with the service planning guidance contained in the Framework Agreement.² The Food Service Plan for 2018/19, appended to this report as Appendix A, follows this outline.

3.2 There are two types of food inspections:

1. Food **Hygiene** Inspections aim to ensure that food is being handled and produced hygienically and is safe to eat. They identify factors which have the potential to cause food poisoning. Officers will therefore look at the structure and cleanliness of the premises, pest proofing and the food handling, cooking and storage procedures being employed by the business.
2. Food **Standards** Inspections establish whether legal requirements covering quality, composition, labelling, presentation and advertising of food are being met. Food standards inspections therefore cover issues such as falsely describing foods, substituting foods for cheaper alternatives, for example, substituting lamb with cheaper meats, and the provision of information to consumers regarding allergens in food.

3.3 The Food Service Plan 2018/19 sets out the current profile of food businesses in Rotherham, together with their respective risk ratings in accordance with the Food Law, Code of Practice. Priorities are subsequently identified in relation to both food hygiene and food standards inspections, with a focus on category A and B premises.

3.4 Food hygiene and food standards inspections are required to be undertaken at defined frequencies, dependent on the level of assessed risk. Premises are scored against criteria which include: the potential hazards associated with the particular food being processed; the method of food processing; the number and distribution of potential consumers who could be at risk; the level of current compliance with food standards; and the confidence in current management controls. This score then classifies food businesses on an A to E scale, for food hygiene inspections and an A to C scale for food standards inspections. Categories A and B are deemed the highest risks. Tables 1 and 2 below set out the required frequencies of inspections.

Table 1 – Food Hygiene Inspection Frequencies

Category	Minimum intervention frequency
A	At least every 6 months
B	At least every 12 months
C	At least every 18 months
D	At least every 24 months
E	A programme of alternative enforcement strategies or interventions every three years

² Food Standards Agency, *Framework Agreement on Official Feed and Food Law Controls*, April 2010

Table 2 – Food Standards Inspection Frequencies

Category	Minimum intervention frequency
A	At least every 12 months
B	At least every 24 months
C	Alternative enforcement strategy or intervention every five years

- 3.5 With respect to food hygiene inspections during 2017/18, the Council undertook 100% of high risk category A and B inspections and 99% of Category C inspections to the required frequencies. During the same period food standards inspections were completed to timescales in 100% of category A, 96% of category B, and 75% of category C premises.
- 3.6 The Food Service Plan for 2018/19 sets out performance measures as follows:
- 100 % of A to C food hygiene premises to be inspected to the required frequencies;
 - Category D and E food hygiene premises to be undertaken when resources allow;
 - Lower risk Category E food hygiene inspections may be subject to alternative enforcement strategies. For example, the Council uses questionnaires for businesses such as childminders, green grocers and other low risk activities;
 - 100% of the Category A and B food standards premises to be inspected to the required frequencies;
 - Category C food standards inspections may be subject to alternative enforcement strategies.
- 3.7 The Food Service Plan also sets out the arrangements for sampling, and how the service contributes to related initiatives set out by Public Health England. The Council participated in a number of surveys last year, such as checking ovens for cooking meat joints in catering premises for pathogens, and undertaking swabbing in catering premises. This resulted in 172 samples being submitted in 2017/18.
- 3.8 In addition, the Plan deals with complaints received by the Council in relation to food and infectious disease issues. As an example, last year referrals concerning imported foods and supplements resulted in outcomes that included products being taken off the market and others being re-exported.
- 3.9 As part of the Food Standards Agency's change programme, the Agency may require the Council to review its Plan, including making changes in response to any public health issues that are arising.

Pre-Inspection Service Offer

- 3.10 The Council has a statutory duty to inspect food premises using a risk-based approach, to ensure legal compliance and protect the public's health. Each year over 900 food businesses are inspected in Rotherham, to ensure compliance of food businesses with minimum legal standards. Each premise is issued with a food hygiene rating ranging from zero in the worst cases, up to 5 for those premises with the best hygiene standards.
- 3.11 Food hygiene ratings are becoming increasingly important to customers and businesses. All ratings are published on the Food Standards Agency's website, which is regularly used by web-based food ordering companies and social media to attract attention to local ratings. This can generate significant feedback and comment from customers, particularly in relation to those premises that they frequent with low ratings.
- 3.12 A number of Councils now offer pre-inspection advice to food businesses. This enables businesses to seek guidance from the Council about how to comply with legal requirements and how to ensure as high a rating as possible. Although this provision is not a statutory obligation, it is a service that can be delivered for a fee that is reflective of the resource required.
- 3.13 The Council has highly qualified and experienced front-line Environmental Health Officers that are capable of providing a high-quality advice service to enhance support for food businesses and improve food hygiene across the sector. The Localism Act 2011 allows Councils to charge fees for non-statutory services. The offer of pre-inspection advice and guidance is not a statutory obligation and consequently can be charged for.
- 3.14 A pre-inspection food hygiene advice and guidance offer can be delivered within existing resources to those food businesses that request such a service. The scheme will be aimed at both new and existing businesses, providing a head start to those new to the industry, whilst providing an enhanced service to established businesses wishing to improve their hygiene rating score.
- 3.15 Service provision would be bespoke to the individual business and aim to assisting compliance and improved food hygiene ratings. In addition the service will:
- improve relationships between businesses and regulators;
 - help business get things right first time and so reduce inspection costs;
 - reduce the costs to the Council from revisits and regulatory interventions;
 - increase food business operators' confidence in running their business;
 - promote business success and economic growth;
 - increase food hygiene compliance and food hygiene ratings in Rotherham attracting customers;
 - enhance the opportunity for businesses to achieve high Food Hygiene Ratings, that can then be used in marketing, and give businesses a competitive edge.

3.16 It is proposed to charge at the rate of £195 plus VAT for a basic package, inclusive of up to 2 hours work (not including travel time). The package would include:

- bespoke guidance and advice to food premises owners at any level whether new to the industry or existing businesses;
- support the development of specific in-house procedures and processes, ensuring that all conflicts of interest, legal and financial implications are taken into account, together with adherence to national legislation and guidance;
- full follow up provision of written specific guidance and advice generated from on-site pre-inspection findings geared to enable the business to achieve higher ratings;
- advice from professional and experienced staff, who are fully trained in relation to the process and procedures;
- visits arranged at the convenience of the food business;
- options for businesses to purchase additional time for training, food safety management coaching and follow up support visits.

3.17 A marketing and communications approach will be developed to promote the service and to ensure businesses are kept up to date with the latest guidance and legislative changes. This will include the development of a website (using the existing Council website) and business support packs and leaflets, to promote the service and aid business.

3.18 Generalised free advice will continue to be available for food businesses through the Council's website and associated links with the Food Standards Agency.

4. Options considered and recommended proposal

4.1 The Council has a statutory obligation to have a Food Service Plan in place. The Food Standards Agency state that it is preferable to seek approval to ensure that there is high level support for the approach, and the Plan is therefore presented for sign-off by Cabinet.

4.2 **Option 1:** The Council is not required to provide pre-inspection advice and consequently might decide that such provision is unnecessary, and to rely entirely upon regulatory intervention to improve compliance.

4.3 **Option 2:** A pre-inspection advice service would be introduced within existing resources as additional duties. It is estimated that ten businesses may realistically take up the service in the first year, yielding an income of £1,950. The assumption within the business model is that the service can be delivered within existing resources, and at negligible cost. This is for a number of reasons:

1. The provision of pre-inspection advice is anticipated to reduce the burden on the Council of regulatory interventions, which can be costly both in terms of finance and time;
2. The package of options, letters, terms and conditions and marketing will be developed at minimal cost by the service;
3. Marketing will be undertaken using the existing Council website and Social Media;

4. Active marketing to business will be through existing interactions with food businesses, at the point of inspection or contact from the business.
- 4.4 Whilst Officers are confident that the service can be provided at negligible additional cost, this will be tested through the implementation of the service. The Council has no obligation to provide a pre-inspection service, and, should the costs outweigh the financial benefits, the service would then consider whether to continue to provide the service in the future.
- 4.4 **Option 3:** The Council might prefer to purchase an off the shelf package. Systems to deliver pre-inspection advice have been developed by other Councils and are available to the Council at a cost. In particular, the Safer Food Direct package available from Cornwall Council, and utilised by Leeds City Council, includes all pre-written letters, terms and conditions, marketing and advertising, and staff training. The cost of this licence is approximately £2,200 each year, with a minimum three year contract. This option would allow the scheme to start far quicker than in house development, but would require 22 businesses to take-up the Service in Year 1, to ensure that the same net income to the Council of £1,950 assumed in Option 2. However, there is no indication that take up of the offer will be sufficient to deliver a cost neutral or revenue generating position, with the subsequent risk of further budgetary pressure. This option could be considered at a future point should take up of the offer be such that additional income would more than cover the additional system costs.
- 4.5 Option 2 is therefore the preferred option.

5. Consultation

- 5.1 No public consultation has taken place in respect of the Food Plan as this is not required.
- 5.2 Consultation around models of delivery of a pre-inspection service have been held with Leeds City Council, which already operates a successful and busy Safer Food Direct package purchased from Cornwall Council. Leeds City Council have already covered all licence costs and are now delivering a surplus. However, it is important to note Leeds has a significantly larger food industry and a different economy to that in Rotherham.

6. Timetable and Accountability for Implementing this Decision

- 6.1 The work to deliver the Food Plan is already underway as the Council has a statutory obligation to undertake the functions within the Plan.
- 6.2 If agreed, work will be started to develop the pre-inspection scheme from the following month from the decision, with a view to providing the service from 1st April 2019.
- 6.3 The Assistant Director for Community Safety and Street Scene will be responsible for the delivery and implementation of the Plan.

7. Financial and Procurement Implications

- 7.1 The 2018/19 Food Service Plan will be delivered within existing budgets.

- 7.2 The introduction of a chargeable service for the provision of pre-inspection advice to food businesses is one of the budget savings proposals that are being considered, as part of the Council's 2019/20 budget strategy.
- 7.3 It is proposed that a charge of £195, excluding VAT, will be levied for the provision of the service. This is comparable with the charges levied by other authorities who provide this service. It has been assumed that 10 businesses will take up this service in its first year, generating additional income of £1,950. No market testing has been undertaken to determine demand for the service, but it is anticipated that small numbers of pre inspections can be managed within existing resources. In addition, minimal resources are required to set the service up, which can be accommodated within the existing budget for this service.
- 7.4 It is anticipated that demand for this new service will increase in future years as the benefits to businesses become more widely known. However, at this point it is difficult to estimate take up of the offer. In the event that demand for the service is higher than anticipated, resource implications will be reviewed and further consideration given to the purchase of an off the shelf package to assist in the delivery of the service.
- 7.5 There are no procurement implications associated with the recommendations of this report.

8. Legal Implications

- 8.1 Section 40 of the Food Safety Act 1990 provides the Secretary of State the power to issue Codes of Practice in relation to the execution and enforcement of the 1990 Act. Any Competent Authority that does not have regard to the Code of Practice may find their decisions or actions successfully challenged. In addition, the Food Standards Agency, can give a Competent Authority a direction requiring them to carry out steps in order to comply with the Code of Practice.
- 8.2 Under the Code of Practice, each Competent Authority must have an up- to-date, documented Food Service Plan for food business operators and consumers. The Plan must be subject to regular review and clearly state the period of time for which it has effect. The Plan should reflect the requirements set out in the relevant Regulators Code and must cover all areas that the Competent Authority has a duty to enforce and set out how the Authority intends to deliver official controls within its area.
- 8.3 Any failure by the Council to implement the Plan may result in the Food Standards Agency making a direction for compliance, which would be done in consultation with the Secretary of State.
- 8.4 Section 23 of the Food Safety Act 1990, gives a local authority the power to provide training courses in food hygiene for anyone who is, or who intends to become involved in food businesses, whether as proprietors, employees, or otherwise. That power would encompass the pre-inspection advice service recommended in this report.

8.5 In addition, Section 1 of the Localism Act 2011 gives a local authority a general power of competence to do anything that an individual may do, including providing it for a commercial purpose, or otherwise for a charge. This gives the Authority the power in these circumstances to make a charge for the pre-inspection advice service recommended in this report, as it does not amount to a statutory service.

9. Human Resources Implications

9.1 The assumption within the business model is that the service can be delivered within existing resources, and at negligible cost. There are therefore no human resources implications related to this initiative. However, the provision of the service will be closely monitored, in order to ensure it is not negatively impacting on statutory service delivery.

10. Implications for Children and Young People and Vulnerable Adults

10.1 There are no implications for Children and Young People or Vulnerable Adults.

11 Equalities and Human Rights Implications

11.1 There are no equalities or human rights implications

12. Implications for Partners and Other Directorates

12.1 There are no implications for partners or other directorates. Staff in the food, health and safety section, do however work closely with those in other local authorities to ensure effective delivery of the Food Service Plan.

13. Risks and Mitigation

13.1 Competent Authorities are required to have regard to relevant provisions of this Food Law (England) Code of Practice and if they do not follow them they could find their decisions or actions successfully challenged, and evidence gathered during a criminal investigation being ruled inadmissible by a court.

13.2 In addition, the FSA can, after consulting the Secretary of State, give a Competent Authority a direction requiring them to take any specified steps in order to comply with this Code.

13.3 Each of the discretionary services outlined in this report will enhance regulatory compliance amongst local businesses and improve public protection.

14. Accountable Officer(s)

Tom Smith, Assistant Director, Community Safety and Street Scene

Approvals obtained on behalf of:-

	Named Officer	Date
Strategic Director of Finance & Customer Services	Julie Copley	29th October 2018
Assistant Director of Legal Services	Elizabeth Anderton	14th November 2018
Head of Procurement (if appropriate)	Not Consulted	
Head of Human Resources (if appropriate)	Not Consulted	

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