

Neighbourhood Services & Community  
Involvement Scrutiny Commission

# Briefing Report

---

**REGULATION OF LEICESTER'S FOOD BUSINESS  
SECTOR**

Lead director: **JOHN LEACH**

---

## Useful information

- Ward(s) affected: **All**
- Report author: **David Howard, David Barclay Rhodes**
- Author contact details: **Tel: 37 3191 Email: dave.howard@leicester.gov.uk**
- Report version number: v0.3
- Date of report: **30 June 2017**

### 1. Summary

- 1.1 Leicester City is home to large, diverse and vibrant food sector making and supplying food not only to the people of Leicester but also all over the country and the world.
- 1.2 Leicester City Council's regulation and support of the sector is similarly diverse and includes food hygiene, food standards [such things as labelling and composition] and the health and safety of workers and other persons.
- 1.3 This report provides information on:
  - The food sector from a food law regulatory perspective
  - Proposed food law regulatory interventions for 2017/18
  - Case studies illustrating the diversity of our interventions
  - Key issues in the development of the national framework in response to the growth and diversity of the food industry and reducing local authority budgets.

### 2. Recommendations

- 2.1 The Commission is asked to:
  - a) Note the work undertaken by Leicester City Council's Food Safety Team
  - b) Comment on issues raised.

### 3. Leicester's Food Sector

- 3.1 Leicester is the largest city in the East Midlands region and the tenth largest in England. The city is a major regional commercial, manufacturing and retail centre located close to the M1 and M69. Although it is known for diversity of its trades rather than for the dominance of any single industry, it has a sizeable food manufacturing sector which includes a number of specialist ethnic food producers and importers.
- 3.2 A number of Leicester's food businesses are of national significance such as Walkers Snack Foods (Pepsico), Walkers Midshires, Samworth Brothers, Fox's Confectionery and Cofresh Snack Foods. The city is also home to a number of smaller specialist food producers.
- 3.3 A small number of food businesses import and distribute foods from third countries outside the EU.

Establishment Type	2012	2013	2014	2015	2016	2017
manufacturers & distributors	73	72	73	73	81	90
importers/exporters	11	11	11	6	6	9
distributors/transporters	81	83	80	77	82	87
retailers	835	868	848	730	773	782
restaurants & caterers	1964	2052	2100	1942	2000	2028
totals	2964	3086	3112	2828	2942	2996

**Table: Food sector profile by type of establishment** (Source: Local Authority Enforcement Management System – hygiene)

- 1.1 In 2008 there were 2,411 registered food businesses/establishments in Leicester. This rose to a peak of 3,112 registered establishments in 2014. As at 31 May 2017 this figures stands at 3,006. There has been an underlying increase of about 25% in the food sector since 2008.
- 1.2 The leisure sector has increased substantially over the last ten years with more restaurants, fast food outlets, pubs and clubs opening up. This is likely to continue given Leicester's increased attraction as a visitor destination for King Richard III heritage.
- 1.3 Any operator of an establishment making and/or supplying food is required to register with Leicester City Council. This includes establishments such as shops and restaurants, establishments supplying food as part of other services such as hospitals, nursing homes, works canteens, and establishments not usually considered as businesses, such as voluntary organisations and places of worship.

- 1.4 Leicester's food industry has a high number of Asian and other restaurants. Leicester's food businesses are generally small (less than 50 workers) and micro (less than 10 worker) enterprises. Some are run by people for whom English is not their first language. Several languages are spoken by operators and staff including Bengali, Gujarati, Urdu, Chinese and Turkish.
- 1.5 A feature of Leicester's food sector is the high turnover of operators and their establishments, particularly in the restaurants & caterers sub-sector.

	2012	2013	2014	2015	2016	2017
New Business Registrations	529	506	456	527	507	540

**Table: New Food Business Registrations in the City**

- 1.6 The Leicester Leicestershire Economic Partnership (LLEP) 2014-2020 Strategic Economic Plan views 'food & drink manufacturing' as a sector in which the area has "higher than average concentrations of employment and competitive advantage where the aim is to accelerate existing enterprise growth". 'Food & drink manufacturing' is identified as a Priority Sector for Intervention in the form of business development and support.

## 2. Standards in the Food Sector

- 4.1 Food hygiene standards are monitored by Leicester City Council using national criteria including the quality of buildings; procedures and operational practices.
- 4.2 Two performance reports are available:

	2011	2012	2013	2014	2015	2016	2017
percentage "broadly compliant"	70.6	71.1	70.4	71.5	79%	82%	84% (88% national)

**Table 1: 'Broad compliance' with standards in Leicester (all establishments)**

Food Hygiene Rating	2012	2013	2014	2015	2016	2017
5 very good	626	674	784	1008	1157	1337
4 good	280	347	370	472	493	483
3 generally satisfactory	394	414	418	536	575	452
2 improvement necessary	86	119	114	143	141	160
1 major improvement necessary	215	225	225	193	156	127
0 urgent improvement necessary	45	39	24	19	21	8
Totals	1646	1818	1935	2371	2543	2567

**Table 2: 'Food Hygiene Rating' in Leicester (those businesses that directly supply the public)**

### **3. The Proposed 2017/18 Intervention Program**

5.1 Based on statutory guidelines the inspection programme for 2017/18 consists of:

- 1383 food businesses to be inspected
- 9 Approved Establishments to be inspected
- 520 new food businesses/establishments are forecast to be registered and which will require support and inspection

5.2 75 food businesses/establishments have been carried over from the 2016/17 inspection program. Carry over is for a variety of reasons for example access issues e.g. refurbishment and Seasonal operation e.g. sports clubs. These businesses carried over are a priority for inspection in 2017/18

#### **5.3 Proposed Compliance Projects 2017/18**

The following compliance projects are proposed:

##### **5.3.1 Engage food businesses and service users through social/digital media**

The FST wish to utilise social and digital media to

- Promote food safety/standards in Leicester
- Provide news on current local and national issues
- Promote FSA media events/launches
- Promote good practice
- Provide advice.

##### **5.3.2 Explore the introduction of cost recovery for FHRS re-rating visits**

To investigate the potential for cost recovery in relation to re-rating inspections.

##### **5.3.3 Promotion of 5 Rated Establishments**

Introduce an additional level of recognition for Food Establishments that routinely achieve a FHR of 5

##### **5.3.4 Allergens**

Investigate take away food with regard to substitution with peanuts for other ingredients such as almonds, and peanut contamination. This would involve a desktop review of establishment menus, placing an order for a peanut free meal and then sending that meal to the Public Analyst.

Investigate the allergen controls in small Leicester manufacturers in relation to substitution with peanuts for other ingredients such as almonds and peanut contamination.

##### **5.3.5 Sweet Marts**

Planned sampling exercise to examine the microbiological safety of sweet mart

products. Sampling would be an alternative to inspection or compliment where officers have specific concerns

### **5.3.6 Illicit Alcohol – Bars/nightclubs**

Joint project with the Licensing Team with a focus on authenticity of alcohol in late night bars and clubs

### **5.3.7 Upgrade LCC 's Food related web content**

Review and redesign web content to support and appropriately signpost service users.

### **5.3.8 Review of Halal Certification assurance**

An initial information retrieval exercise on Halal Certification in Leicester City was carried out in March 2017. The Food Safety Team will review the national and local intelligence and information to identify any significant issues arising.

### **5.3.9 GM Foods**

Desk top review of permitted GM foods – thought to be only one – GM oil which is already covered on inspection.

## **4. Supporting Information – Leicester City Council as Food Regulator**

4.1 Leicester City Council's regulatory aims, based on its statutory powers and duties, are:

- Prevent ill-health and death arising from food poisoning
- Ensure that retailers and caterers supply good quality food
- Prevent and detect fraud in the production and description of food
- Assist Leicester's food businesses to comply with food law.

4.2 In undertaking its regulatory activities Leicester City Council is obliged to do so in a way which supports business growth [see Regulators' Code 2014].

4.3 Leicester City Council is a unitary authority and has responsibility for:

- food hygiene (traceability of supplies, management and production procedures, hygienic practices, building structures)
- food standards (labelling and ingredients, composition, product 'dates')
- feed (labelling of pet food, registration of businesses diverting surplus food into animal feed, handling procedures)
- weights & measures (accuracy of weighing/dispensing machines; weight/volume statements)

4.4 The organisational arrangements are as follows:

- Food Safety Team – deals with regulation of food hygiene, food standards and feed. Leicestershire County Council are commissioned to deliver Feed

interventions. To provide business advice (e.g. allergens, documented procedures)

- Trading Standards – food related fraud investigations and deliver any Weights & Measures services required.
- Public Safety Team – Leads on outbreak management and on health and safety enforcement in food premises

4.5 A variety of interventions are used in order to monitor and improve compliance with food law by food businesses in the City. This range includes inspections, sampling for analysis and examination, education and advice and the investigation of complaints.

4.6 Intervention programmes take due regard of the Food Law Code of Practice, March 2017. Risk assessment schemes are used to reflect levels of compliance and determine intervention frequency. There is a separate risk scheme for food hygiene and for food standards.

4.7 The following regulatory activity was reported for 2016/2017:

#### Food Safety Team Activity and Actions

Advice Visits	Inspections (Hygiene)	Inspections (Standards)	Compliance Verification	Sampling	Intelligence /Info Gathering	FHRS Re-ratings
292(211)	1815(1474)	698(702)	1433(1456)	95(153)	79(73)	128(150)

Voluntary Closures	Seizure, Detention & Surrender	Suspension/ Revocation of Approval	Emergency Prohibition Notice	Improvement Notice	Remedial Action & Detention Notice	Written Warning	Simple Caution	Prosecution initiated
10(5)	5	2(0)	2(10)	60(58)	0(4)	1707 (1221)	5(12)	0(3)

Numbers in brackets are values for 2015/2016

## 5. Supporting Information – Food Regulation Improvement plan

5.1 In May 2014 The Food Standards Agency undertook an audit of Leicester’s food function and an Improvement Action Plan was agreed with Leicester City Council.

5.2 The Improvement Plan was ‘signed off’ as completed by the Food Standards Agency in December 2015 following revisits by the auditors and the provision of documented procedures and performance reports.

5.3 The implementation of the Improvement Plan ensured the Food Safety Team complied with Statutory Food Law requirements and could maintain a Food Safety Intervention program that meets the needs of Leicester City.

5.4 The continued commitment of resources and other measures taken enabled the Food Safety Team to complete the 2016/17 Intervention Programme whilst also maintaining flexibility to tackle high priority incidents (e.g. food poisoning outbreaks, emergency closure, seizure of unsafe food and investigations) that occur and require a un planned regulatory response

5.5 Since the Food Standards Agency Audit and following the implementation of the

recommendations including resourcing commitments we have seen the level of broad compliance rise across food businesses in the city from 71.5% to 84%

## 6. Supporting Information – Case Studies

### **Supporting an Approved Establishment.**

A food business requires 'Approval' from its home local authority if it handles food of animal origin such as meat, fish or dairy and then supplies other food businesses. These Approved Establishments pose a higher risk in the supply chain and demand a closer level of attention than other food businesses. There are currently 22 Approved establishments in the city.

Life With Taste is a business that started from very humble beginnings in the city and has since grown substantially. This business Started from a small kitchen on Northampton Street 6 years ago. Unaware of the legal requirements for Approval and was producing food illegally and was required to stop until compliant. The company has since, with the Food Team Support, continued to grow. In 2016/17 the business moved from a small unit on Lee Circle to a much larger converted unit on Barkby Road. The Approval process was complicated due to the logistics of the move. However the company has successful been re approved in their new location and continue to provide Traditional Polish Foods regionally and nationally.

### **Tacking FHRS low scores - 0s and 1s**

Over the past two years resources have been dedicated to providing advice and support to operators of new food business establishments before those establishments start operating. This has generally taken the form of a site visit and where operators have heeded the advice and support provided, has led to higher food hygiene ratings, greater confidence in the operators' continued compliance with food law, and a contribution to there being fewer 0 and 1 rated establishments in the city. When they revisit poor establishments to check for improved compliance with food law, officers have also been re-rating under the FHRS [normally an operator is required to request a re-rating in writing].

Taken together these measures have contributed to reducing the number of 0 rated establishments in the city from about\* 30 two years ago and about\* 20 a year ago to 11 now.

\*numbers fluctuate



### **Prohibition of a Food Business Operator**

Boston Chicken and Pizza is a typical hot food takeaway. The establishment had a long history of fluctuating compliance. Standards were typically poor on inspection however some improvements would be made. However in 2015 the FBO was served with improvement notices for structural matters including repairs to the floors and lack of hot water to a wash hand basin. At a subsequent visit these issues had not been fully addresses and the inspecting officer identified other serious and repeated food hygiene offences. The FBO was prosecuted and although the fine due to his circumstances was nominal LCC made a request that the court consider prohibition as a food business operator. This was successful and a first for the Food Safety Team.

### **Illegal Imports**

Mega Oriental is a small retailer specialising in Chinese food and produce. Following an anonymous complaint regarding concern that there was illegal food the shop was inspected. The inspecting officer identified a large quantity of meat and fish products from China with no traceability information and no evidence that they had been legally imported. The food was seized and taken away for destruction.

### **Food Information and Nutrition**

On 13<sup>th</sup> December 2016 NEW rules on nutrition declarations came into force – required for most prepacked foods.

The project focussed on smaller Leicester based food manufacturers with an aim to:

- Ensure they were aware of the nutritional labelling requirements
- Offer advice and guidance where needed
- Identify compliance issues for potential follow up
- In addition potential weights and measures issues were also checked.
- 

52 small manufactures were contacted by letter advising of the new

nutritional requirements and offered a support visit to look at the requirements in relation to their products and to gauge compliance. An officer from the Business Advice and Support Team provided the lead supported by Food Safety Team Officers.

Overall most businesses were on the way to correct nutritional labelling. Some required further advice and this was offered at the time.

Some significant weights and measures issues were identified. Again businesses were advised and dealt with at the time to seek compliance. There remains some follow up work to this project.

### **Investigating a Food Fraud**

During 2013/2014 officers took over 100 samples of meat from butchers' shops and of meat based meals from various types of catering establishments.

Some of the results of this sampling led to a substantial and complex investigation which involved colleagues in Trading Standards and other local authorities and culminated in a trial in the Crown Court of four defendants on charges including fraud. Widespread substitution of lamb [an expensive meat which should have been Halal] for Turkey [a cheaper meat which might not have been Halal] was uncovered.

Two of the four defendants were found guilty of fraud and Food Safety Act offences and were both imprisoned for five years. The other two defendants were found not guilty.

### **Withdrawal of Approval**

Following an inspection at Eastern Catering Burleys Way on February 23 2017 and further checks on March 07 2017, non compliance with food law was identified which being of such a nature and taking into account the past record of the operator, led to a to the immediate withdrawal of the operator's approval to place certain animal based food on the market in the UK and across the rest of the EU.

This was the first time in Leicester that this sanction had been used. Eastern Catering is a food business involved in food manufacture and event catering. A case is being prepared for Legal Services, recommending prosecution for non compliance leading up to withdrawal of approval.

### **An Emergency closure**

A routine inspection of a grocers shop on Abbey Street in December 2016 by the Food Safety Team revealed evidence of mice and constituted imminent risk of injury to health.

The officer served a Hygiene Emergency Prohibition Notice to prohibit the use of the establishment for any food business immediately, and set out in writing what the operator had to do in order to remove the imminent risk condition. The officer and a support officer took photographs, drew a plan, checked records and wrote witness statements

Three days later an application was made by the council in the Magistrates Court for A Hygiene Emergency Prohibition Order. At this hearing the court considered and confirmed that the imminent risk condition existed at the time the notice was served, and also continued the prohibition by issuing a Hygiene Emergency Prohibition Order.

## **7. Regulating Our Future (ROF)- change in the national regulatory framework**

- 7.1 As part of its duties under the Food Standards Act 1999, and in accordance with the requirements of Regulation (EC) No 882/2004 on official feed and food controls, the Food Standards Agency is responsible for monitoring and reporting the performance of local authorities in enforcing relevant food safety legislation.
- 7.2 The ROF program is the FSA's strategic plan that will build an effective proportionate and robust system for ensuring businesses meet their responsibility to produce food that is safe and what it says it is.
- 7.3 ROF was launched in Feb 2016 and aims to implement a new sustainable approach to regulation that leverages business behaviour changes to deliver consumer benefits.
- 7.4 The drive for a new delivery model is the rapidly changing world in which we operate and its consequences for food safety and standards. The model aims to be dynamic to keep pace with innovation in the food sector and flexible to allow adaptation to future circumstances including Brexit.
- 7.5 The FSA aim to have the new model in place by 2020.
- 7.6 At present model delivery details are very broad. Key FSA work streams are:

**Enhanced Registration** – Ensuring food businesses are the best they can be from the day they start. Proposals are to introduce a centrally held register of all food businesses utilising shared data from other regulatory bodies to ensure all

food businesses are captured and therefore subject to regulation. Incentives for businesses who proactively register and sanctions for those who do not. Emphasis on support/advice to steer at an early stage towards compliance. LCC FST already provide advice and support service to new businesses and support this approach.

**Segmentation** – moving away from a ‘one size fits all approach’. The Frequency and nature of interventions will remain risk based. The proposal is to introduce an early risk approach to ‘segment’ businesses and determine the level of intervention required.

At first point of contact with a new business the regulatory regime segments food establishments based on the businesses activities. Resources to be focussed on critical risk areas.

The current risk assessment following intervention is to be evolved to consider all available compliance information (third party audits, recognition of continued compliance) when setting next intervention dates.

**Assurance and Standards** – ‘Developing and implementing robust, credible and deliverable arrangements’. ROF has particular regard to the Cabinet Office Report January 2017 Regulatory Futures Review that focuses on these key themes:

- The future of regulation
- Regulated self assurance and earned recognition
- Charging for regulation
- Collaboration between regulators and
- Burdens on regulators

The broad ROF proposals are:

- to provide for businesses that already use third party assurance to share that information with Local Authorities and the FSA to demonstrate compliance as an alternative to routine inspection
- To ensure that businesses pay for the cost of regulation and poor compliance will cost more.
- To enhance the Primary Authority (PA) partnership regime to look at opportunities to provide wider assurance on compliance throughout national, regional, local business chains that are have a PA arrangement.
- To ensure that any scheme of third part assurance is centrally overseen by the FSA and can demonstrate competence and impartiality to ensure credibility particularly with consumers.

**Data and Digital Technology** – It’s recognised that data is a critical resource that will help deliver a more efficient and effective service. Better information and information sharing between regulators is being explored

**Sustainable Funding** – Research is underway to consider who should bear the cost of regulation and work is underway to understand the approaches to charging for other regulatory activities in the UK.

The FSA have already opened the door to this principle and been operating trials with LA's regarding cost recovery based charging for FHRS Re-rating inspections. The Trials have been successful in that authorities have implemented the charging and the principle is encouraged by the FSA. LCC FST are exploring this principle as part of the 2017/18 Service Plan

- 7.7 The UK food regulation system is highly complex. At present it is unclear what the final model will be and thus what will be the impact on Leicester City Council. The FSA have stated that Local Authority Food Enforcement will remain at the heart of the regulatory arrangements.

## **8. Details of Scrutiny**

- 8.1 Neighbourhood Services & Community Involvement Scrutiny Commission, 12 July 2017.
- 8.2 Scrutiny Comments to be inserted...

## **9. Financial, Legal and Other implications**

### Financial implications

None

Colin Sharpe  
Head of Finance  
Ext 37 4081

### Legal implications

The local authority is required to comply with all of its obligations concerning food regulation as set out in the Food Law Code of Practice, the contents of this report do not present any new legal obligations, however the increased number of officers within the Food Safety Team undertaking a higher volume of inspections will inevitably result in an increase in matters being referred to Legal Services for advice, training and prosecution.

### Climate Change and Carbon Reduction implications

Delivery of the services described in the report will generate some carbon emissions from the travel involved. Carbon emissions from travel undertaken by staff across the council are managed through a policy of asking staff to consider options for using sustainable travel options, where this is feasible and will not negatively affect the effectiveness and efficiency of service delivery.

Duncan Bell  
Senior Environmental Consultant  
Ext. 37 2249

## **9. Background information and other papers:**

None.

## **10. Summary of appendices:**

Appendix A – Food Service Plan 2017/18

## **11. Is this a private report (If so, please indicated the reasons and state why it is not in the public interest to be dealt with publicly)?**

No.