

Neighbourhood Services & Community  
Involvement Scrutiny Commission

4 July 2018

# Briefing Report

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**REGULATION OF LEICESTER'S  
FOOD BUSINESS SECTOR –  
THE SERVICE PLAN 2018/19**

Lead director: **JOHN LEACH**

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## Useful information

- Ward(s) affected: **All**
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### 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 introduces the draft Food Service Plan 2018/19 (attached at Appendix E1) and provides information on:
  - The food sector from a food law regulatory perspective
  - Proposed food law regulatory interventions for 2018/19
  - Case studies illustrating the diversity of LCC interventions
  - Key issues in the development of the national framework in response to the growth and diversity of the food industry and reduced local authority budgets.
- 1.4 The finalised Food Service Plan 2018/19 will be presented to Council for member endorsement.

### 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 and the proposed work programme.

### 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	2013	2014	2015	2016	2017	2018
manufacturers & distributors	72	73	73	81	90	98
importers/exporters	11	11	6	6	9	8
distributors/transporters	83	80	77	82	87	94
retailers	868	848	730	773	782	800
restaurants & caterers	2052	2100	1942	2000	2028	2028
totals	3086	3112	2828	2942	2996	3028

**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.

	2013	2014	2015	2016	2017	2018
New Business Registrations	506	456	527	507	540	519

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:

	2012	2013	2014	2015	2016	2017	2018
percentage "broadly compliant"	71.1	70.4	71.5	79%	82%	84%	84%*

Table 'Broad compliance' with standards in Leicester (all establishments) \*national average at end of 2016/17 was 88%

Food Hygiene Rating	2013	2014	2015	2016	2017	2018
5 very good	674	784	1008	1157	1337	1397
4 good	347	370	472	493	483	462
3 generally satisfactory	414	418	536	575	452	407
2 improvement necessary	119	114	143	141	160	151
1 major improvement necessary	225	225	193	156	127	103
0 urgent improvement necessary	39	24	19	21	8	11
Totals	1818	1935	2371	2543	2567	2531

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

### **3. The Proposed 2018/19 Intervention Program**

5.1 Based on statutory guidelines the inspection programme for 2018/19 consists of:

- 1278 food businesses to be inspected
- 15 Approved Establishments to be inspected
- 520 new food businesses/establishments are forecast to be registered and which will require support and inspection

5.2 22 food businesses/establishments have been carried over from the 2017/18 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 2018/19

#### **5.3 Proposed Compliance Projects 2018/19**

The following compliance projects are proposed:

##### **5.3.1 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.

##### **5.3.2 Acrylamide**

Acrylamide is a chemical substance formed when starchy foods, such as potatoes and bread, are cooked at high temperatures. Acrylamide levels found in food have the potential to increase the risk of cancer for people of all ages.

New legislation which came into force in May 2018 requires all food businesses operators to put in place simple practical steps to manage acrylamide within their food safety management systems. This will ensure that acrylamide levels in their food are as low as reasonably achievable.

EC Regulation 2017/2158 establishes best practice, mitigation measures and benchmark levels for the reduction of the presence of acrylamide in food.

This project aims to identify Leicester based manufacturers and caterers likely to be producing foods that will be higher in acrylamide and contact and inform those businesses of the new requirements.

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

Introduce an additional level of recognition for Food Establishments that routinely achieve a Food Hygiene Rating score of 5.

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

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

#### **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 related illness.
- Ensure that Leicester's food businesses 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 2017/2018:

#### Food Safety Team Activity and Actions

Advice Visits	Inspections (Hygiene)	Inspections (Standards)	Compliance Verification	Sampling Visits	Intelligence /Info Gathering	FHRS Re-ratings
238(292)	1656(1815)	811(698)	1360(1433)	151(95)	79(79)	139(128)

Voluntary Closures	Seizure, Detention & Surrender	Suspension/ Revocation of Approval	Emergency Prohibition Notice	Improvement Notice	Remedial Action & Detention Notice	Written Warning	Simple Caution	Prosecution initiated
4(10)	2(5)	0(2)	4(2)	46(60)	0(0)	1701 (1707)	10(5)	1(0)

Numbers in brackets are values for 2016/17

## 5. Supporting Information – Case Studies

### Investigating a Food Poisoning Outbreak

To celebrate the end of Diwali 2017, employees at three Leicester offices of a central government department were invited to order culturally relevant food from a city establishment and have this delivered to their offices for consumption while at work. A set menu of food items was supplied in containers within 'Tiffin Bags' and were left on employees desks. Food was consumed either immediately or some hours later.

The organiser of this celebration food contacted the council after staff became ill. Forty two out of up to 180 people who ate the food reported illness. Some of the food left over was submitted for microbiological examination, as was a faecal sample from someone who was ill. Some of the food items yielded high levels of *Clostridium perfringens* toxin; the faecal specimen was positive for enterotoxin producing *Clostridium perfringens*.

It was not possible to obtain sufficient evidence for a realistic prospect of conviction. In these circumstances no prosecution will be brought.

### Food Incidents

During the fourth quarter of 2017/2018, an officer in the FST discovered and spent a significant amount of time investigating and dealing with two types of food which failed to meet food safety requirements: a pan masala mouth freshener with an illegal dye, and mini jelly cups - sweets which were a choking hazard to children.

The officer collected sufficient evidence for the Food Standards Agency to issue national product recall notices.

### **Prosecution**

In March 2018 a city centre restaurant and takeaway was prosecuted for 6 food hygiene offences. This followed a history of fluctuating compliance with food law. Improvements were not made by the food business operator and the matter was put forward for prosecution.

The business was fined £3009 including costs. Standards have since improved and the business has now achieved a Food Hygiene Rating of 4 'Good'.

### **Approved Establishment**

In November 2017 an existing approved establishment was found to be manufacturing egg products from raw eggs. They did not have the necessary approval to permit this production. A Remedial Action notice was served stopping the production of egg products.

Approval is required when using raw eggs to manufacture egg based products.

The Food Business Operator has, following officer advice, since revised their recipe and are now using ready cooked eggs from a suitably approved supplier.

### **Prosecution**

In November an establishment that had been subject to previous action to formerly 'Withdraw' their approval status was prosecuted. The matter was put before the court due to the poor compliance history which led to the FST decision to withdraw the approval.

The business was fined £320 and ordered to pay the council costs of £4802.50.

## **6. Regulating Our Future (ROF)- changes in the national regulatory framework**

- 6.1 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 ensuring that the national regulatory framework is "fit for purpose".
- 6.2 ROF was launched in Feb 2016. It is the FSA's strategic plan to modernise how food businesses in England, Wales and Northern Ireland are regulated to check that our food is safe and what it says it is.
- 6.3 The search is for a new delivery model that is suitable for the changing world in which we operate. The model needs to be dynamic to keep pace with innovation in the food sector and flexible to allow adaptation to future circumstances including when the UK leaves the EU.



6.4 Wider Government policy in England (most recently reaffirmed in the report of the Regulatory Futures Review) is that businesses should bear the cost of regulation, and that these costs should be no more than they need to be.

6.5 The FSA aim to have the new model in place by 2020.

6.6 The key FSA work streams are:

**Enhanced Registration** – Proposals are to introduce an online and centrally held register of all food businesses to make it easier for businesses to register and easier for them to access information and guidance that will enable them to get things right from the start. This is planned to go live in March 2019. There will be incentives for businesses who proactively register and sanctions for those who do not.

**Business start-up** - Emphasis on support/advice to steer at an early stage towards compliance including a redesigned FSA web site. 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 idea is to introduce a risk assessment on registration to ‘segment’ businesses and determine the level of intervention required including whether an initial inspection is 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.

**Primary Authority National Inspection Strategies** – The introduction of a bespoke national inspection programme for food operators with multi-sites that have demonstrated high levels of compliance. The inspection will focus on the controls at the business level rather than at each individual outlet.

**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.

**Oversight of local authorities** – A Balanced Scorecard will be introduced to facilitate FSA's performance management of local authorities and benchmarking. This being trialled at the moment and expected to be live by the end of 2018.

- 6.7 At present the final model is still not completely clear and neither is the impact on Leicester City Council. Significantly, much depends on the UK's future relationship with the Single Market and the nature of the Customs arrangements.
- 6.8 The FSA have stated that Local Authority Food Enforcement will remain at the heart of the regulatory arrangements.

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

### Financial implications

None

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### 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.

Food businesses in the city which are SMEs can receive support with reducing their operating costs and associated carbon emissions through the Green BELLE scheme. The scheme is run by the council's Leicester Energy Agency.

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

None

## **11. Summary of appendices:**

Appendix E1 – Food Service Plan 2018/19

## **12. 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.