CABINET
TUESDAY, 24 NOVEMBER 2026

PART 1 – PUBLIC DOCUMENT

TITLE OF REPORT: North Herts Council Food Sampling Policy

REPORT OF: Director - Regulatory

EXECUTIVE MEMBER: Cllr Mick Debenham, Executive Member - Regulatory

COUNCIL PRIORITY: All Priorities

1. EXECUTIVE SUMMARY

To enable the Council to meet its legal obligations in line with the Food Law Code of Practice (England) (FLCoP) as published by the Food Standards Agency (FSA) under the provisions of the Food Safety Act, 1990 (the 'Act'), which requires every Competent Food Authority (CFA) to produce and make available a food sampling policy.

2. RECOMMENDATIONS

2.1. It is recommended that this Policy be adopted as presented.

2.2. In considering this policy, it should be noted that section 9 seeks to delegate future amendments of this Policy to the Director – Regulatory in consultation with the Executive Member for Regulatory in accordance with the provisions of the Council's Constitution.

3. REASONS FOR RECOMMENDATIONS

3.1. The reason for recommending the approval of this Policy is to enable the Council to fulfil its legal obligations under the FLCoP as required by the Act.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1. The Council has the statutory duty to make available to consumers and businesses a food sampling policy. The Council can decide to reject the policy as presented in which case the Council would be failing to fulfil its statutory obligation as set out in the FLCoP.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

5.1. This Policy states how the Council will meet its obligations as required by the FLCoP, and as such, consultation was limited to key Elected Members, key services of the Council and appropriate external agencies only.

5.2. Given that the work applicable to this policy is already undertaken by the Commercial Team of Environmental Health and accommodated within the existing resources available to this service, the Council's financial, human resources or risk teams were not included in this consultation.

5.3. The consultation took place during July 2026.

5.4. The Consultees were:

Councillor Mick Debenham, Executive Member for Regulatory
Councillor Bryony May, Shadow Member for Regulatory
Council Policy Services
Council Legal Services
Kent Scientific Services – authorised food sampling organisation
UKHSA food, water and microbiology service

5.5. Responses to the consultation were received from:

Councillor Mick Debenham, Executive Member for Regulatory
Council Policy Services
Council Legal Services
UKHSA food, water and microbiology service

5.6. All responses were considered and where appropriate, the Policy was amended to its current, presented form. A summary of the responses and their impact on the Policy is given in Appendix D.

6. FORWARD PLAN

6.1 This report contains a recommendation on a key Executive decision that was first notified to the public in the Forward Plan on the 25th September 2026.

7. BACKGROUND

7.1. This report has been written to enable the Council to consider adequacy of the Policy, as presented, to enable the Council to meet its obligations as set out in the FLCoP as presented in Appendices B and C.

7.2. It is recognised by the FSA that food sampling, including all matter considered to be food under the provisions of the Act, and environmental sampling of a food business, including surface swabbing, cleaning cloths, etc., is a useful means of gathering information about the safety and quality of our food and the presence of harmful microorganisms in food produced, sold, used and consumed locally. As such, food sampling is therefore considered to be an Official Control available to a CFA. This Policy facilitates this provision, and once adopted, will be available to consumers and food businesses as required.

7.3. The Policy also seeks to delegate the decision for future amendments to the Director – Regulatory in consultation with the Executive Member for Regulatory, as this will offer a more effective and efficient process to accommodate future changes

8. RELEVANT CONSIDERATIONS

8.1. In accordance with the FLCoP, as published by the FSA, all CFA, including the Council, are required to produce and make available a Food Sampling Policy.

8.2. This Policy therefore fulfils this requirement and sets out the legal provisions under which this obligation exists, and the general approach the Council, as the local CFA adopts in taking food samples. The Policy also states the nature of the samples we may take; it sets out the annual sampling plan the Council proposes to follow, which agencies will formally analyse what type of samples and what actions may be considered subject to the results obtained. The Policy also sets out the steps to follow should a complaint or appeal be considered by anyone affected by the sample or its result.

8.3. The Policy, once adopted, enables the Council to implement a permitted food sampling programme in accordance with the FLCoP, as per Appendices B and C.

8.4. As food sampling can be used to instigate or support enforcement under the Act, the Policy sets out how results from the sampling can be considered and what action may be taken as a result. The clarification of these considerations support the ability to use of food sampling as an Official Control, and this is provided for by the Policy.

8.5. By including the provision to delegate future decisions to amend this Policy to the Director- Regulatory, in consultation with the Executive Member for Regulatory, is in accordance with the Council's Constitution whilst still maintaining a safe level of control thus allowing only necessary and required amendments to be incorporated.

9. LEGAL IMPLICATIONS

9.1. The FLCoP published by the FSA requires CFA to produce and publish a Food Sampling Policy which, once approved, is to be made available to consumers and businesses. This Policy meets that requirement, and once approved, will be made available via the Council's website.

9.2. The Council, as the local CFA is also required to set out an annual Food Sampling Programme which supplements the local food control delivered by the Council. The Policy enables this, and allows any necessary enforcement arising from the food sampling to be considered as part of any food enforcement deemed to be necessary.

9.3. The Cabinet's Terms of Reference is provided under the Council's Constitution at paragraph 5.7.15; "To oversee the provision of all the Council's services other than those functions reserved to the Council", and paragraph 5.7.28; "To make a decision where a policy or strategy does not exist."

9.4. In considering delegating future decisions affecting this Policy, the Cabinet's Terms of Reference are provided in paragraph 14.6.2: "This scheme [of delegating powers to offices] operates under Section 101 of the Local Government Act, 1972 (council functions) and sections 9E Local Government Act, 200 (executive functions), as facilitated by paragraph 14.6.11(b)(iv).

9.5. In approving this Policy, the Cabinet would therefore be acting in accordance with its statutory requirements and in accordance with the Council's constitution.

10. FINANCIAL IMPLICATIONS

10.1. This Policy sets out how the Council will fulfil its legal obligations under the Act but does not seek to challenge the funding already provided to deliver this service. As such, this Policy has no additional financial implications beyond those already in place for this service.

11. RISK IMPLICATIONS

11.1. Good Risk Management supports and enhances the decision-making process, increasing the likelihood of the Council meeting its objectives and enabling it to respond quickly and effectively to change. When taking decisions, risks and opportunities must be considered.

11.2. The Council has a duty to produce and make available a Food Sampling Policy. By adopting this Policy, as presented, the Council will meet this obligation thus mitigating the risks posed by not having such a policy.

11.3. As previously highlighted, the Policy fulfils all of the requirements expected of it, as imposed by the FLCoP and allows for enforcement to take place using or supported by food samples taken in accordance with the terms of this Policy. This, in turn, supports the Council obligation to ensure, as far as reasonably practicable, that food manufactured, sold or consumed in its district, is safe and legally compliant.

12. EQUALITIES IMPLICATIONS

12.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

12.2. As this Policy only sets out how the Council will fulfil its legal obligations under the Act, there are no equalities implications associated with this.

13. SOCIAL VALUE IMPLICATIONS

Use <u>one</u> of the following paragraphs only

13.1. As the recommendations in this report apply only to how the Council will fulfil its obligations under the Act, the Social Value Act and “go local” requirements do not apply to this report.

14. ENVIRONMENTAL IMPLICATIONS

14.1 There are no known Environmental impacts or requirements that apply to this Policy.

15. HUMAN RESOURCE IMPLICATIONS

15.1 Whilst the Policy and this report outline how the Council will fulfil its obligations under the Act, it does so on the basis that officers already in post, or accommodated under the existing establishment will deliver the Policy as part of their existing roles. As such, there are no human resource implications arising from this Policy.

16. APPENDICES

16.1 Appendix A: Food Sampling Policy

16.2 Appendix B: Extract from Section 2.3.13 Food Law, Code of Practice, 2025 showing the requirements for an annual Food Sampling Programme

16.3 Appendix C: Extract from Section 2.3.20 of the Food Law, Code of Practice, 2025 showing the requirements for an annual Food Sampling Programme

16.4 Appendix D: Summary of responses to the Consultation.

17. CONTACT OFFICERS

17.1. Report Author: **Frank Harrison, Environmental Health Manager, frank.harrison@north-herts.gov.uk; ext. 4861**

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18. BACKGROUND PAPERS

18.1 None.