

Manual for Official Controls Amendment 105

Chapter 7 Enforcement

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1. Introduction

1.1 Purpose

1.1.1 FSA enforcement role

These enforcement arrangements apply to all meat establishments approved in England and Wales and under veterinary control.

Enforcement action should also be taken in accordance with the FSA Enforcement Policy.

1.2 Relevant references

1.2.1 Authorised Officers (AOs), Inspectors and Authorised Persons

Operational staff must have a delegated authority to act as an “Authorised Officer” under food hygiene and safety legislation, “Authorised Person” under animal by-product legislation or an “Inspector” under TSE and animal welfare legislation. This will provide officers with the appropriate powers of entry and authority to undertake enforcement under the respective legislation.

For ease of reference, the MOC will refer to all officers as AOs, however, it is important to be aware of the designation that applies under respective pieces of legislation.

1.2.2 Food Business Operator (FBO)

FBO means the natural or legal persons responsible for ensuring that the requirements of food law are met within the food business under their control (Retained Regulation (EC) 178/2002, Article 3, Point 6).

The Food Safety Act 1990, Section 53 (1) uses the expression “Proprietor” to refer to the person who carries out the business.

The Animal By-Products (ABP) legislation identifies the “Operator” who must comply with the requirements of Retained EU and domestic ABP legislation. Operator is defined as the natural or legal person having an animal by-product or derived product under their control, including carriers, traders and users [Retained Regulation (EC) 1069/2009, Article 3].

The EU and domestic welfare at slaughter legislation refers to the “Business Operator” as the natural or legal person having under its control an undertaking

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carrying out the killing of animals or any related operations falling within the scope of the Regulations [Retained Council Regulation (EC) 1099/2009, Article 2 (l)].

1.2.3 Court

References to 'court' should be taken to mean, in England and Wales, a Magistrate' court or Crown Court.

1.2.4 Justice of the Peace

References to a 'Justice of the Peace' should be taken to mean, in England and Wales, a Magistrate.

1.2.5 Duly authorised representative

Duly authorised representative is a responsible person who has the authority to act on behalf of the FBO. This person should be identified either on the approval application document or through some other form of written correspondence.

1.2.6 Legal definitions

Most legislation includes a definition section that provides guidance on many of the phrases contained within it. The table below identifies where this guidance can be found in the main pieces of legislation that we enforce.

Legislation	Location of definition
Retained Regulation (EC) 178/2002	Articles 2 and 3
Retained Regulation (EC) 852/2004	Article 2
Retained Regulation (EC) 853/2004	Article 2 and Annexes I, II, III
Retained Regulation (EU) 2017/625	Article 3
Retained Regulation (EU) 2019/625	Article 2
Retained Regulation (EU) 2019/624	Article 2
Retained Regulation (EU) 2019/627	Article 2
Retained Regulation (EU)2019/628	Article 2
Retained Regulation (EC) 999/2001	Article 3, Annex I
Retained Regulation (EC) 1069/2009	Article 3
Retained Regulation (EU) 142/2011	Annex I
Retained Regulation (EC) 2073/2005	Article 2
Retained Regulation (EC) 1099/2009	Article 2

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Legislation	Location of definition
The Food Safety Act 1990 (as amended)	Sections 1,2 and 53
All domestic regulations, for example, the Food Safety and Hygiene (England) Regulations, the TSE Regulations, Animal By-Product (ABP) (Enforcement) Regulations, the Welfare of Animals at the Time of Killing Regulations	Regulation 2 'Interpretation'

1.2.7 Guidance documents

- EU Commission Guidance on Implementation of HACCP.
- EU Commission Guidance on Implementation of Retained Regulation EC 852/2004.
- EU Commission Guidance on Implementation of Retained Regulation EC 853/2004.
- EU Guidance on Key questions relating to import requirements.
- EU Commission Staff Working Document on the understanding of certain provisions on flexibility provided in the Hygiene Package.
- Retained Regulation (EC) 2073/2005 Microbiological Criteria for Foodstuffs.
- Retained Regulation (EC) 178/2002 Guidance Notes for Food Business Operators on Food Safety, Traceability, Product Withdrawal and Recall.
- Food Law Code of Practice and Practice Guidance.
- Industry Guide on Edible Co-products and Animal By-products.
- Food Safety Management Diary for Meat Producers.
- The Wild Game Guide and Photo Annex.
- European Commission Notice on the implementation of food safety management systems covering prerequisite programs (PRPs) and procedures based on the HACCP principles, including the facilitation/flexibility of the implementation in certain food businesses (2016/C 278/01).
- Chronos User Guide.

1.2.8 Judicial Review

Where a statutory right of appeal does not exist, you may challenge a decision by a public body, such as the FSA, through Judicial Review. A claim for Judicial Review must be made to the High Court promptly and in any event within 3 months after the grounds for claim arise. You may wish to take legal advice on your rights to challenge the decision. You can find more information online in the 'Administrative Court Judicial Review Guide'.

2. Legislation, Enforcement Roles and Provisions

- 2.1 Legislation and enforcement provisions
- 2.2 Division of enforcement responsibilities
- 2.3 Communication with FBOs
- 2.4 Recording and monitoring enforcement action
- 2.5 Gathering and preserving evidence
- 2.6 Information obtained from unauthorised sources (The Regulation of Investigatory Powers Act 2000 (RIPA))

2.1 Legislation and enforcement provisions

2.1.1 Code of Practice

The 'Food Law Code of Practice and Practice Guidance' have been issued under:

- Section 40 of the Food Safety Act 1990 (as amended)
- Regulation 26 of The Food Safety and Hygiene (England) Regulations 2013 / Regulation 24 of The Food Hygiene (Wales) Regulations 2006, and
- Regulation 6 of The Official Feed and Food Controls (England / Wales) Regulations 2009

To provide guidance for food authorities on enforcement issues under the legislation.

Note: Whilst the FSA is not a food authority, it is an enforcement authority and the principles set out in the Code have been mirrored in this chapter.

2.1.2 Requirement to enforce

Competent Authorities (CAs) must ensure that food law is complied with by monitoring and verifying that relevant legislative requirement that relevant legislative requirements are met through a system of official controls and other activities.

In case of suspicion of non-compliance, the CA shall perform an investigation to confirm or to eliminate that suspicion. Where the non-compliance is established and if appropriate, the CA shall take enforcement action when they find the law has not been complied with (Title VII, Articles 137 to 142 of retained Regulation (EU) 2017/625).

Where non-compliance is established, the competent authorities shall take:

- any action necessary to determine the origin and extent of the non-compliance and to establish the operator's responsibilities; and
- appropriate measures to ensure that the operator concerned remedies the non-compliance and prevents further occurrences of such non-compliance. When deciding which measures to take, the competent authorities shall take account of the nature of that non-compliance and the operator's past record with regard to compliance.

References: Retained Regulation (EU) 2017/625 Article 138 and retained Regulation (EC) 178/2002, Article 17, Paragraph 2.

Food law includes all statutes, regulations and administrative provisions governing food in general, and food safety in particular, whether at Community or national level. It covers all stages of production, processing and distribution of food, and also of feed produced for, or fed to, food-producing animals.

2.1.3 General principles

(EC) 178/2002 sets out the general principles and requirements of food law and lays down procedures in matters of food safety. It contains:

- definitions (of food, food business operator, and other terms)
- basic principles – FBO responsibility for food safety
- traceability requirements

2.1.4 Official Controls

Retained Regulation (EU) 2017/625 and the Regulation 2017/625 package insofar as it and they apply to food; set out the official controls that MUST BE performed to ensure the verification of compliance with feed and food law, animal health and animal welfare.

Key points covered are:

- organisation of official controls
- crisis management
- imports from third countries
- financing / charges
- national enforcement measures

2.1.5 Retained EU “Hygiene Regulations”

The “hygiene regulations” are defined and include:

- Retained Regulation (EC) 852/2004 dealing with the hygiene of foodstuffs. Key points:
 - applies to all food businesses
 - looks for good hygiene practice and HACCP based procedures
 - concept of industry guides
- Retained Regulation (EC) 853/2004 laying down specific hygiene rules for food of animal origin. Key points:
 - requirements beyond 852/2004 for food of animal origin
 - approval of meat premises
 - identification marking
 - objectives of the HACCP based procedures
 - food chain information
- Retained Regulation (EC) 2073/2005 on microbiological criteria for foodstuffs
- Retained Regulation (EU) 2019/624 concerning specific rules for the performance of official controls on the production of meat. It contains:

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- nature of official controls – for example, inspection, verification, auditing
- role of OV and MHI and trained, qualified operatives, and
- control on imports
- Retained Regulation (EU) 2019/627 concerning uniform practical arrangements for the performance of official controls on products of animal origin intended for human consumption
- Retained Regulation (EU) 2015/1375 laying down specific rules on official controls for *Trichinella* in meat and
- The Food Safety and Hygiene (England) Regulations 2013 and The Food Hygiene (Wales) Regulations 2006.

2.1.6 Legislative Amendments

Legislation is amended periodically, and it is important that the original published versions are read in conjunction with any amendments.

Note: Users must ensure that they access the latest [“consolidated” version of retained EU legislation](#) and its respective implementing enforcement legislation.

Volume 2, Chapter 14 of the MOC, provides links to all relevant retained EU legislation and UK statutory instruments on legislation.gov.uk.

2.1.7 Implementing enforcement regulations

The main domestic regulations include:

- The Food Safety and Hygiene (England) Regulations 2013 and The Food Hygiene (Wales) Regulations 2006.

Note: These provide enforcement powers in respect of the obligations that apply in retained Regulations (EC) 852/2004, 853/2004, 2073/2005 and 2015/1375, together with retained Regulation (EU) 2017/625, and the OCR package in so far as it and they relate to food. In practice the main OCR regulations that will be utilised will be retained Regulations (EU) 2017/625, (EU) 2019/624 and (EU) 2019/627.

- The Official Feed and Food Controls (England / Wales) Regulations 2009.

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Note: These provide enforcement powers in respect of the obligations that apply in retained Regulation (EU) 2017/625.

- The General Food Regulations 2004 (Wales) and The Food Safety and Hygiene (England) Regulations 2013 (England):
 - Provide enforcement powers in respect of the obligations that apply in retained Regulation (EC) 178/2002. For example:
 - Article 14 ‘the food safety requirements’
 - Article 19 ‘recall, withdrawal and notification requirements’

Articles 15 and 16 are the enforcement remit of the local “Food Authority”.

The Agency has a duty to verify FBO compliance with traceability requirements under Article 18 as read with retained Commission Implementing Regulation (EU) 931/2011). Failure by FBOs to provide traceability information is a contravention of retained EU legislation and may also constitute an obstruction of the AO.

Whilst responsibility to prosecute contraventions of Article 18 of retained Regulation (EC) 178/2002 is the remit of the local “Food Authority”, [see Regulation 5(6) Food Safety and Hygiene (England) Regulations 2013], failure to comply with the traceability requirements of ID marked products of animal origin is a contravention of Retained Regulation (EC) 853/2004, Annex II, Section 1, Part A, 4 and the FSA has responsibility for its enforcement and powers to prosecute.

Likewise, any obstruction of FSA personnel seeking traceability information during the performance of their functions under retained Regulations (EC) 178/2002 and (EU) 931/2011 or the hygiene package can be enforced by the FSA.

Note: Implementing enforcement regulations are also amended periodically, and reference should be made to the consolidated text on “legislation.gov.uk” or the original legislation as drafted in conjunction with the respective amendments. Unfortunately, legislation.gov.uk website is not always up to date so consider seeking guidance from legal when in doubt.

2.1.8 Regulators’ Code

In addition to the legal requirements imposed by the EU legislation, the FSA must have regard to the statutory Regulators’ Code (made under the Legislative and Regulatory Reform Act 2006) when setting standards, determining policies and procedures with respect to guidance provided and in the application of its regulatory functions. However, this will be subject to any legal requirements affecting the exercise of all regulatory obligations.

The principles of the Regulators' Codes are set out in the FSA Enforcement Policy [MOC Volume 1, Chapter 7, Annex 2].

2.1.9 Premises file and contents

A premise file must be maintained by the OV at all slaughter establishments supervised by the FSA. This should include details of the plant approval, the correct legal entity responsible for potential offences, all correspondence in date order, copies of all letters, formal notices, minutes of meetings, accounts of telephone conversations, audit reports and informal notes taken. Documents relating to the escalation of enforcement in slaughterhouses must also be uploaded onto SharePoint.

Audit reports, letters, formal notices and other correspondence served on FBOs of non-slaughter establishments must also be retained and sent to CSU York to be scanned and retained in electronic premises folders on SharePoint.

2.1.10 Security

The premises file and all enforcement documents must always be kept secure. When not being referenced or updated, the premises file should be kept in a locked filing cabinet within the FSA office in slaughterhouse establishments and in the appropriate electronic premises file for all other establishments. It will contain evidence that may be required at a later date, together with additional unused material that the prosecution (the FSA) may have to disclose should a case go to trial [see the Criminal Procedure and Investigations Act 1996 in Section 2.5.8]. All enforcement documents must be kept for 6 years in line with the FSAs retention policy.

2.2 Division of enforcement responsibilities

Some enforcement responsibilities are prescribed in legislation, e.g., Regulation 5 of The Food Safety and Hygiene (England) Regulations 2013

2.2.1 FSA enforcement responsibilities

- Red meat slaughterhouses (cattle, pigs, sheep and goats, domestic solipeds, large farmed game, ratites).
- White meat slaughterhouse (poultry, lagomorphs, farmed game birds).
- Game handling establishments (wild game dressing and cutting).
- Cutting plant.

- Establishments approved as ‘slaughterhouses’ for activities limited to the dressing of carcasses.
- Any of the following activities, where co-located with a slaughterhouse, cutting plant or game handling establishment:
 - minced meat
 - meat preparation
 - mechanically separated meat (MSM)
 - meat products
 - processing plant (for meat products, rendered animal fats and greaves, treated stomachs, bladders and intestines, gelatine and collagen)
 - cold storage

2.2.2 Official Controls

OVs are appointed by the Competent Authority to perform those official control activities set out in Article 18 of retained Regulation (EU) 2017/625 (the Official Control Regulation), e.g., ante and post-mortem inspection, general verification duties

Article 18,5 of retained Regulation (EU) 2017/625 also requires OVs to remain responsible for the “decisions” taken following those official controls provided for in Article 18, 2 and 18,4, even where the performance of an action is assigned by the OV to an official auxiliary. These “decisions” include, verifying compliance with Articles 40 and 41 (measures in case of non-compliance with requirements for food chain information), Article 43 (measures in case of non-compliance with requirements for live animals) and Article 45 (measures in case of non-compliance with fresh meat) of retained Regulation (EU) 2019/627 and where appropriate, declaring meat unfit for human consumption and verifying its disposal in accordance with all relevant animal by-product controls.

2.2.3 Other Official Activities

All OVs will be responsible for taking any action necessary to determine the origin and extent of a non-compliance and to establish an FBOs responsibilities, as set out in Article 138,1(a) of retained Regulation (EU) 2017/625. This may involve officially detaining food or animals to verify their compliance before a decision can be made on whether any other official activities may need to be undertaken.

Decisions concerning those tasks provided for in Article 138(1)(b), 138(2) and 138(3) will be made by directly employed AO of the Competent Authority, who are

suitably qualified, competent, and trained in enforcement, such as Field Veterinary Leads, Veterinary Co-ordinators, Veterinary Auditors and Unannounced Inspectors.

Decisions concerning the escalation of enforcement by contracted OVs (cOVs) in slaughterhouses or cOVs undertaking unannounced inspections, will be made by an FSA Veterinary Enforcement Delivery Manager (VEDM). This includes the decisions made after the provision of written advice, through to formal enforcement action and referrals for investigation.

[See Section 4 for further details and Annex 15 – Quick Start Guide - Procedure for enforcement escalation OV to Enforcement Delivery Managers.

2.2.4 Local authority (LA) enforcement responsibilities

- Hunters supplying small quantities of wild game or wild game meat directly to the final consumer / local retailers.
- Primary production of wild game carcasses by hunters, including game larders they operate.
- Producers supplying small quantities of meat from poultry and lagomorphs slaughtered on farm directly to the final consumer / local retailers.
- Butchers' shops (retailing meat to the final consumer or exempt under marginal, localised and restricted).
- Any of the following **not** co-located with slaughterhouses, cutting plants or game handling establishments:
 - meat preparations establishment
 - minced meat establishment
 - mechanically separated meat establishment
 - processing plant (for meat products, rendered animal fats and greaves, treated stomachs, bladders and intestines, gelatine and collagen)
 - cold stores where storage is the only activity
- Premises manufacturing composite products containing meat and other edible co products.
- Collection centres and tanneries that handle raw material for the production of collagen and gelatine.

2.3 Communication with FBOs

2.3.1 Communication channels

Effective communication is essential when guiding an FBO on compliance with legal requirements as well as best practice.

The majority of day-to-day compliance can be achieved through verbal discussion.

AOs should work to establish agreed lines of communication with the FBO and their staff. It is also important that contingency arrangements exist to avoid difficulties when the FBOs normal contact person is unavailable.

Where a duly authorised representative exists, it is essential to have some written confirmation that the person may act on behalf of the business and/or as a central point of contact.

2.3.2 FBO contact details

The AO must have available at the establishment the contact details for the FBO. For example:

- full name(s) and address(es), including full limited company name and registered office address
- e-mail address and telephone number(s)

Where any ownership or approval details change at an establishment, the FBO is obliged to inform the competent authority of that change:

The FBO shall ensure that the competent authority always has up to date information on establishments, including the notification of any significant change in activities and any closure of an existing establishment.

Reference: Retained Regulation (EC) 852/2004, Article 6, Paragraph 2.

This information should subsequently be provided to:

- FSA York Finance
- Approvals and Registrations Team
- Inspection team at a slaughterhouse/auditor

This will ensure that the AO is always aware of the legal entity responsible for any potential offences within the establishment, whether they are a sole trader, partnership or limited company.

2.3.3 Key communication functions

The AO is responsible for:

- advising the FBO on compliance with legal requirements,
- advising the FBO on corrective actions / measures when non-compliance with legal requirements have been detected,
- ensuring FBOs undertake preventative measures and discuss where they are not effective

2.4 Recording and monitoring enforcement actions

2.4.1 Chronos / FSA enforcement programme

Enforcement action taken by AOs must be recorded accurately in Chronos.

The purpose of the system is to generate records of live and historic enforcement interventions and to help AOs in their:

- assessment and prioritisation of enforcement action
- communication of enforcement action in real time to other members of the inspection team and wider FSA audit and Unannounced Inspection colleagues
- tracking or monitoring of enforcement action through to compliance or a referral for investigation

The system:

- acts as an aide memoire, providing a comprehensive record of enforcement action taken in the establishment
- enables the FSA to assess the FBOs record as regards compliance with regulatory food, welfare, TSE and animal by-products legislation
- contributes to the risk assessment process and will help set the frequency of future audits
- provides an outline of the non-compliances to both (VAs) and internal audit staff

2.4.2 Ongoing enforcement action

When attending any establishment as an OV, auditor or UAI, the AO must:

- familiarise themselves with all ongoing enforcement action, and

- where repeated contraventions on the same subject are identified, maintain the momentum of enforcement and continue to escalate the issue through the appropriate hierarchy of enforcement.

2.4.3 Completing Chronos

For Guidance on the completion of Chronos, see Annex 12 of Chapter 7 for the Chronos User Guide. Chronos is a 'live' system, updated as necessary every time enforcement action is taken.

2.4.4 Monitoring progress

The AO should regularly monitor progress towards compliance to identify whether the deficiency is likely to be rectified within the agreed time scale. If necessary, they should ask to see evidence of how corrective action is progressing, for example, planning permission application / copies of quotes for work / structural plans.

Where the work does not progress at the agreed rate, the AO should escalate the matter and consider serving a HIN to formalise a suitable time scale, thereby maintaining the momentum in enforcement.

However, it is important that an agreed action plan is set out at the start and that the AO takes a reasonable approach where certain issues arise that are outside the FBOs control.

2.4.5 Structural work

Where structural work must be undertaken, the 'corrective action' section of a Written Advice Letter or Hygiene Improvement Notice (HIN) should be specific enough to explain the legal requirement and the outcome to be achieved, without being too prescriptive about the exact way in which this must be achieved.

There may be many ways that the FBO can achieve compliance, but provided they comply with the legal requirement, they have the option to carry out work to an equivalent effect.

2.5 Gathering and preserving evidence

2.5.1 Introduction

The AO must gather evidence at the time the offence is witnessed, making detailed contemporaneous notes, which at a later stage can be relied upon in Court. It is often impossible to gather evidence retrospectively as it may no longer exist.

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Evidence may come in a variety of forms and must supplement a witness statement as an exhibit in order that it may be admissible in court. It is also useful to obtain corroboration and assistance from other colleagues where possible.

Detailed evidence gathering at the time of the offence will provide the AO with as much material as possible to support their witness statement and prove the elements of the offence or justify any other enforcement action in court, such as:

- appeals against the service of formal notices,
- appeals against the suspension or revocation of a Certificate of Competence or Temporary Certificate of Competence,
- appeals against the suspension or withdrawal of an establishment approval.

Note: Keep all evidence secure. It is fundamental to proving the offence should formal action be pursued.

2.5.2 Best evidence rule

The AO should also have regard to the 'best evidence' rule. Whenever possible, all original items of evidence should be preserved, for example, the original form of a document, rather than a photocopy. If the evidence is a part of a carcass, for example, SRM, a broken limb or the body of an animal, it should be preserved to maintain its integrity and stop any deterioration that would limit its evidential value.

If it is not practical or not possible to preserve the evidence, at the plant, for example, if perishable goods are involved and no facilities are available to freeze the product or keep it secure, the AO should contact FSA management to organise alternative facilities.

FBOs should be given the opportunity to view physical evidence or oversee its examination or analysis by an expert before any potential court case.

The AO should take photographs wherever necessary and/or sample evidence where perishable goods are destroyed on testing. If there is doubt about what evidence should be retained, the AO should obtain further advice from FSA Legal.

2.5.3 Note taking

When gathering evidence, remember to record the details of any other persons present, to identify all potential witnesses in the case. This will enable corroborative witness statements to be taken; or for the investigating officer to test the strength of the evidence overall.

The AO should make full use of their pocketbook to make factual contemporaneous notes. These may be referred to in court to help recollect facts and figures that are impossible to recall in detail after the event.

Note: In court, a witness is able to refer to contemporaneous notes recorded in their pocketbook that were made either at the time of the incident or shortly afterwards, whilst events are still fresh in their memory.

However, witnesses are not permitted to read from their witness statement when giving evidence, except in certain limited circumstances.

Note: Where an officer refers to their pocketbook when giving evidence in court, the defence is entitled to see that notebook.

2.5.4 Use of FSA official pocketbook

The pocketbook is essential for recording details of incidents at times when a plant daybook is not readily available in the slaughterhouse or generally to record events when in other further processing plants.

In slaughterhouses, the use of the pocketbook is not to replace the plant daybook for recording day-to-day activities but should supplement completion of the daybook.

Updated [Only official pocketbooks are to be used when conducting FSA activities.]

2.5.5 Important points

Pocketbooks may be inspected in court; therefore, the following guidance must be followed to maintain validity:

- Record name on front cover, designation and date started.
- Make all entries in pen and not pencil.
- Include only original entries and do not copy notes from elsewhere.
- Record the date and time at commencement, and upon completion.
- Enter the notes at the time 'the offence' is witnessed or as soon as possible afterwards (contemporaneously), whilst the facts are fresh in the memory.

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- To make alterations, AOs must strike a pen through the error, with a single line to make the correction and place their initials in the left-hand column to verify that they made the changes. **Notes must not be erased or obliterated with tip-ex.**
- Do not remove numbered pages from the notebook.
- Sign and date each entry at the base of each page.

Entries must be relevant, factual, legible, concise and written in English.

If accompanied by a colleague whilst witnessing a contravention, one AO may record the details in their pocketbook, whilst the other may read through the notes made and where they agree with what has been recorded, they may countersign at the end of the entry to acknowledge that it is a true and accurate account of events.

Where the AO and FBO have had a conversation regarding action to be taken to achieve compliance, it may be beneficial to ask the FBO to sign the notes taken by the AO as an accurate account of what was agreed.

2.5.6 Security

The AO is responsible for ensuring the security of their notebook and for producing it in court. Further notebooks are available from York – contact corporate support unit (CSU) by email or from SDP's.

2.5.7 Return of all notebooks

Notebooks remain the property of the FSA and **must** be returned to CSU York when an AO leaves FSA employment or retained by the SDP.

2.5.8 Disclosure of unused material

The Criminal Procedure and Investigations Act 1996 (CPIA) places an obligation on the prosecuting authority to retain and record all relevant information relating to any enforcement action.

The prosecuting authority – a term which includes all AOs, the wider FSA team, the Investigating Officer (IO), the prosecuting lawyers and the enforcement agency itself – has a duty to investigate all reasonable lines of enquiry and disclose to the defence all relevant unused material which:

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- might undermine the case for the prosecution, or
- might reasonably be expected to assist the defence case

This material may include:

- informal and formal memos
- email traffic
- previously unreported offences and/or warnings recorded on operational paperwork
- daybook entries
- contemporaneous notebook entries
- minutes Updated [or recordings] of meetings
- draft witness statements
- photographs used as exhibits, together with unused photographs. If photographs are downloaded onto a CD-R / DVD-R, retain both “Master” and “Working Copies” and where they are stored on an encrypted memory stick, retain the stick
- instructions to expert witnesses or analysts
- Completed EDP form Annex 17
- VEDM checklist
- ED policies, procedures and guidelines: structure, responsibilities, members, etc
- Risk assessments,
- Updated [Evidence of communication and meetings FBO-cOV, cOV-VEDM, TM-VEDM, etc]

Disclosure may also be ordered in civil appeals against FSA enforcement action, such as appeals against the service of formal enforcement notices, the suspension / revocation of Certificates and Temporary Certificates of Competence, and suspension / withdrawal of an establishment’s approval. Judicial Review cases are also subject to a similar ‘duty of candour’ requirement. In all cases it is important to bring all relevant material available, even though this may undermine the FSA position or assist the other side, to the attention of the legal team.

2.5.9 Storage and availability

Anything that is relevant to the case, and which is not used by the prosecution is unused material and can be potentially disclosable. It is therefore important that when notes are taken, emails written or drafts prepared, AOs should be mindful that the defence may be entitled to examine them and refer to them in open court. Even where there are good reasons for arguing that some material is so sensitive that the defence should not see them, there is a high threshold which needs to be met to satisfy the court that this is the case.

Updated [The AO and FSA team should therefore ensure that:]

- all material relevant to an enforcement intervention is recorded and retained
- all material is safely stored

The IO must be made aware of the existence of all relevant material as soon as possible after a referral for investigation is made.

2.5.10 Photographic evidence

Taking photographs in approved establishments for the purposes of evidence gathering is a fundamental part of the evidence gathering process.

The AO may inform the FBO of what is intended as a matter of courtesy, however, the FBO cannot stop an AO from taking photographs for the purposes of evidence gathering. Any attempt to obstruct the AO carrying out their duties is an obstruction and the person involved may be committing an offence. Further guidance around dealing with obstruction can be found in Annex 21, Chapter 7.

- When photographs are taken, details should be recorded in a contemporaneous notebook, including the photograph number, the subject, location, date and time. Colleagues should assist one another in this process where they are available.
- Photographs should be taken with an FSA/SDP provided mobile phone using the approved application and a record must be kept of how the digital information was downloaded and on to what medium it was stored.
- Where the subject in the photograph is not clear, it may assist the court to have a colleague appear in the photograph to point to the item that needs identifying.

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- Video filming is often essential to demonstrate particular high-speed operations / operational practices or animal welfare incidents.
- If printed, it is useful to add details to the reverse of the photograph, clearly indicating the subject matter, location and other relevant details.

Although all AOs have powers to take **photographs or videos for the purpose of evidence gathering**, they must always seek the permission of the FBO if they are taking photographs for any other reason than evidence gathering.

Where FBOs prevent AOs from taking photographs, the FBO should be reminded that they may be committing an obstruction offence. If the FBO states the establishment has a no camera policy, the FBO should be advised that such a policy or notice has no legal effect on AOs who are authorised to carry out official controls and the policy / notice should be reported to FSA Management. FBOs cannot prevent AOs undertaking enforcement or from using evidence gathering equipment in a food establishment.

Note: Any verbal comment recorded whilst any filming is being undertaken must later be transcribed verbatim and will constitute part of the evidence if the case goes to trial.

Tip: In high humidity areas, give the camera lens time to adjust to the temperature / humidity before taking pictures or videos in order to prevent fogging.

Further guidance for FSA/SDP personnel can be found within the Operational Instructions on the Taking, Handling and Storing Photographic and Video Evidence document. [See Annex 19, Chapter 7]

2.5.11 Capture and download of images using the mobile phone camera or video

Prior to using your works mobile phone, download and use the “Timestamp Camera App” for taking photographs and videos to be used for evidential purposes. This app will time-date stamp all photographs and videos.

The pictures/videos taken using the Timestamp Camera App can be automatically uploaded to the Plant Folder in SharePoint to be accessible wherever the AO accesses their work profile (for example, Laptop or Thin Client).

Please see Annex 13, Timestamp Camera App Guide for further information.

Updated **[Note: The location function must be turned off within the TimeStamp app.]**

Avoid using non-work issued camera phones to take evidential images. Personal devices will contain personal photographs and mistakes made when selecting and separating personal images from evidential images may risk evidential photographs being missed, thereby failing to comply with evidential disclosure rules. Likewise, private images may be selected and downloaded by mistake, which could result in personal images being inadvertently disclosed to the defence.

2.5.12 Capture and download of images using a digital camera

When the AO intends to capture images using a digital camera, they should ensure the following:

- Ensure the memory card is clear of previous images, unless you have come from another visit and not had the opportunity to download the images.
- Updated [Capture photographic images or video footage of everything that can evidence the contravention of the legislation.]
- If poor quality images are captured, photographs must **not** be deleted as they will be classed as “unused material” under the CPIA 1996 [see 2.5.8]. Updated [If the case is referred for investigation, the Investigating Officer must be made aware of the existence of such images.]
- Updated [Full details of all images captured by an AO must be recorded on the “Supporting Evidence Photographic Report” [see Annex 6, Chapter 7]. Each witness must submit their own Supporting Evidence Photographic Report with a referral for investigation to avoid any confusion of which witness is exhibiting which photograph.]
- Updated [All images taken that relate to the case, together with the corresponding photographic evidence report, are uploaded into the plant folder within SharePoint.]
- Updated [Send all evidence that is part of a referral for investigation to CSU York.]

2.5.13 Supporting evidence photographic report

The ‘Supporting evidence photographic report’ has been introduced to provide a contemporaneous record of images taken whilst gathering evidence.

In ideal circumstances, the report should be completed at the time the evidence is gathered. However, when this is not feasible, it should be completed as soon as possible thereafter. Updated [One report should be generated for each individual who gathers photographic evidence.]

The report should be stored electronically in the same file as the images to which it relates.

A new report should be prepared to accompany images of each separate incident.

This is available at Annex 6 on 'Supporting evidence photographic report' of this chapter.

2.5.14 Samples: physical confirmation of the failure

Various different types of samples may be gathered as evidence, for example:

- rust / dirt scrapings
- samples of meat / offal / SRM
- trimmings of faecal or other contamination
- heads, mandibles, ears or limbs of animals
- whole carcasses or joints
- bodies of dead animals

The AO should always inform the FBO of their intentions to sample a product. They should enlist the services of a colleague to witness the collection of the sample (if available) and record details of what the sample was, where the sampling took place and how it was sampled; recording the date and time the sample was procured in their pocket notebook.

Samples should always be bagged and labelled with all relevant details and sealed with a tamper evident seal.

All samples must be kept under secure conditions in an environment where they will not deteriorate. Details must be maintained of all locations where samples are stored, all transportation between such locations and the temperature at which the samples have been maintained to ensure continuity of evidence. A temperature log for chillers, freezers, transport etc. must be maintained and relevant calibration records for thermometers as they may be required as evidence in court.

2.5.15 Post-mortem evidence

There may be circumstances where an animal has died in transit or in the lairage, and a post-mortem examination would be required, for example to support a case for a breach of animal welfare legislation.

Before undertaking any post-mortem examination, the AO must have regard to the requirements in chapter 6 on 'Notifiable diseases'.

Where the AO is to perform a post-mortem examination on site consideration must be given to the following:

- there should be suitable isolation facilities in the lairage to carry out the examination
- hygiene procedures must be followed and Cleansing and Disinfecting (C and D) carried out following examination and disposal
- the AO should have the appropriate protective clothing and equipment required for the procedure
- a detailed report of the findings must be prepared at the time
- photographic evidence should be gathered having regard to the guidance contained in this chapter
- appropriate specimens should be retained, for example, fracture site, limbs or bodies of animals / birds and stored as outlined below to maintain continuity of evidence

Note: Once examined, the specimen should be retained in a secure location in case the FBO requires their own appointed representative to view the evidence.

Where an on-site post-mortem examination is not considered appropriate, the carcass can be sent to the nearest APHA laboratory for examination. Continuity of evidence must be maintained as outlined below.

The HOD / FVC should be consulted before initiating an off-site post-mortem examination or advising the laboratory that the carcass is being sent.

The HOD / FVC will advise on any financial implications involved in the cost of the APHA post-mortem and report.

Note: Body parts that are required as evidence, but are, by definition, ABP must be retained until the conclusion of the court case. Afterwards, they must be disposed of appropriately.

2.5.16 Temperature readings: factual figures

The AO should ensure that where thermometers are used for evidential purposes, the thermometer used is calibrated annually, and where required for evidence in court is recalibrated prior to the case file being submitted. The calibration certificate must be checked to ensure it matches the thermometer being used and must be kept safe as it will be required as an exhibit in prosecution cases.

All relevant temperatures must be recorded where necessary. Check the legislation to identify any legal requirements or the elements of the offence that need to be proved, e.g. ambient temperatures for animal welfare cases and cutting rooms, surface temperatures and internal temperature for meat transportation etc. It is useful to ask a colleague to help record temperature details at the time the readings are taken.

Tip: The AO should ensure that when asked, they can explain what temperature related to which carcass / animal etc. together with its location.

2.5.17 Light meter readings: factual figures

When gathering evidence of poor lighting conditions, light meters contained on reliable mobile phone applications may be used, but where formal action is being undertaken, a calibrated light meter must be sourced with an up-to-date calibration certificate to ensure it is of known accuracy on the date of use. Ensure that the light meter corresponds with the calibration certificate and is within calibration before taking the reading.

Tip: Take a light meter reading when normal processing conditions exist and not when the sunshine is streaming in and no processing is being carried out.

2.5.18 Humidity readings: factual figures

When gathering evidence of poor humidity conditions/ventilation etc., ensure that a recently calibrated hygrometer is sourced and used to ensure it is of known accuracy on the date of use.

2.5.19 Internal Communication of Non-Compliance (ENF 11/22)

Where contraventions are discovered at cutting or further processing plants during audits or unannounced inspection and evidence indicates that the root cause

originated at a slaughterhouse or other plant under FSA supervision, the AO who identifies such issues should record all relevant details on the ENF 11-22 form.

The form and any accompanying evidence should be communicated to the AO with responsibility at the establishment where the contravention is suspected to have originated. It is important that sufficient supporting evidence is gathered to demonstrate the contravention occurred at the dispatching plant and enable the respective AO to undertake a thorough investigation and take any appropriate enforcement action.

There may be scenarios where evidence suggests the contravention occurred during transport, in which case it is vital that the AO identifies who is responsible for the transportation. If it is owned by the cutting plant / slaughterhouse, it will be considered part of the approved establishment and any failures with its chilling facilities or hygiene etc. will remain the jurisdiction of the FSA and colleagues can gather evidence from data loggers and take appropriate action.

If the transport is owned by a third party, it will likely be considered part of a registered business and jurisdiction for enforcement of hygiene deficiencies or faulty chilling equipment will rest with the Local Authority. Likewise, the appropriate LA will have to be contacted to obtain relevant temperature records.

Further details on the completion of the ENF 11-22 can be found on the reverse of the document.

2.6 Information obtained from unauthorised sources – Regulation of Investigatory Powers Act (RIPA)

2.6.1 Introduction

This topic covers instruction on dealing with information which may be provided under RIPA.

2.6.2 Information received

When plant staff or a member of the public wishes to supply information about potential offences or wrongdoing, care must be taken to protect their anonymity. You should take the following action:

- Obtain their details, including a contact number along with a safe a convenient time for a member of staff to speak to them. **These details must not be recorded in the plant Daybook / in the AOs**

contemporaneous pocketbook or somewhere which could be seen by others. These original notes should be kept in a safe place as they may be required at a later date.

- Contact the National Food Crime Unit (NFCU) via email foodcrime@food.gov.uk or submit a webform with the details. This can be found on the FSA website report a food crime.
<https://www.food.gov.uk/contactbusinessesreport-safety-concern/report-a-food-crime>
- If you wish to speak to someone from the NFCU in person for advice contact the Confidential hot line.
- You should not task an individual to obtain more information for you, because this may put the persons health and safety at risk. Tasking individuals in this way also requires an authority under RIPA legislation and failure to comply with these requirements will mean that it is almost impossible to conduct a successful investigation into the allegations, as the evidence obtained will be considered inadmissible.
- If the individual does not want you to take their personal details, direct them to the FSA website and the confidential hotline advising them that they can leave information anonymously.

If you believe that the individual is unlikely to want to speak directly with another member of staff from the FSA, obtain as much information as possible by asking the following questions:

- Who is involved in the wrongdoing?
- What/How has it happened?
- Where did it happen?
- When did it happen?
- Who else knows about the wrongdoing?

AOs must not approach anyone to act as an informer or obtain information in an undercover way.

2.6.3 Example 1

A disgruntled employee contacts you to inform you that the operator of an approved slaughterhouse and cutting plant is using the establishment at night, without FSA supervision to slaughter and process cattle which have no passports or missing ear tags. He is in a position to know when this is happening next and to contact you at the time it is taking place.

2.6.4 Example 2

A delivery driver from an approved establishment has delivered several consignments of over temperature sheep carcasses to a large city market. He is concerned that he may be prosecuted with the originating plant operators if a load is intercepted at the market. He is willing to provide information relating to dates times and consignment details of deliveries which he believes have not been chilled to the correct temperature before transportation.

3. Surrender, Detention, Seizure and Condemnation

- 3.1 Voluntary surrender
- 3.2 Online temporary detention
- 3.3 Detention under the Food Hygiene / Food Safety and Hygiene Regulations
- 3.4 Detention under the Food Safety Act 1990
- 3.5 Condemnation procedure
- 3.6 Seizure and Detention under Animal Welfare Legislation
- 3.7 Seizure under the Mandatory Use of CCTV in Slaughterhouses (England) Regulations 2018

3.1 Voluntary surrender

3.1.1 Meanings of voluntary surrender

Where meat has **not** been produced in accordance with the hygiene regulations or is **unfit** for human consumption, the AO should seek voluntary surrender of the meat.

Voluntary surrender is an everyday occurrence within a slaughterhouse and should always be evidenced by completing a 'Rejected Meat Receipt' (PMI 4/8). This will identify the carcass, part carcass, and offal and should be issued for all routine matters and signed by the AO and a responsible member of the plant management.

The FBO should be encouraged to sign an 'Agreement to Destroy Meat' (ENF 11/7) notice should be completed where any dispute arises, or where issues are more complex. For example, where:

- there are large quantities of meat

- an animal's identification is being questioned
- the farmer retains ownership of the carcass after processing and the FBO feels that their consent is required

This Notice should be completed before the meat is disposed of as an ABP and is in addition to the 'Rejected Meat Receipt'.

Reference: See chapter 9 on 'Forms for PMI 4/8 and ENF 11/7'.

3.1.2 Detention - Legal powers

Official detention is defined as “the procedure by which the competent authorities ensure that animals and goods subject to official controls are not moved or tampered with pending a decision on their destination; it includes storage by operators in accordance with the instructions and under the control of the competent authorities” – Article 3, retained Regulation (EU) 2017/625.

All AOs have powers to detain:

- “food” or “live animals” under the Food Safety and Hygiene (England) Regulations 2013 and the Food Hygiene (Wales) Regulations 2006 (as amended), for further examination of the product or to sample the product,
- “food” under the Food Safety Act 1990 (as amended), via the above Regulations, for further investigation

Formal detention provides the ability to quarantine suspected non-compliant product and verify its compliance with food law. There will be various occasions where an AO is conducting official controls and the status of the product is uncertain. Detention will permit further checks / investigation to be undertaken as necessary to determine the origin and extent of the non-compliance and to establish the operator's responsibilities.

The CA is also under an obligation, in the case of suspicion of non-compliance, to perform an investigation to confirm or to eliminate that suspicion.

See Article 137,3(b) and 138,1(a) of retained Regulation (EU) 2017/625.

3.2 Online temporary detention

3.2.1 Holding carcasses identified for rectification

In many slaughterhouses, the majority of detained carcasses are rectified on the detained rail, under the supervision of an MHI dedicated to that task.

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Colour-coded plastic hook tags can be used to identify carcasses for detention. The colour-coded tags are used to signify specific conditions and serve to alert the MHI to the action required. Make the FBO aware of the system. The colour-coded tags should be used to represent the following:

Colour	Use for
Red	Pathology
Yellow	SRM
Green	Contamination
Blue	Sample identification tag
Grey	TB carcasses

3.2.2 Labelling detained carcasses

Carcasses and offal that have been detained for further examination and that require more secure individual identification can be tagged using individually numbered talisman seal(s).

To maintain correlation between the carcass and offal, several talisman seals must be used. The individual seal numbers should be recorded with any other relevant details for the carcass and cross-referenced on the formal detention notice.

The seals must remain in place until the carcass and offal have been re-inspected and a decision made on the fitness of the carcass and offal for human consumption.

3.2.3 Detention tape

Detention tape should be used to help identify any boxed meat or shrink-wrapped pallets of boxed meat and should be used in conjunction with the formal detention notice.

3.2.4 When to formally detain

There may be occasions where meat cannot be dealt with immediately on the detained rail because:

- the AO may wish to undertake a further examination of the carcass to identify any signs of oedema / emaciation, fever or other pathological conditions that may not be evident when the carcass is still warm

- the AO is investigating the traceability of an ID marked product in accordance with Annex II, Section I, A4 of retained Regulation (EC) 853/2004
- the AO may wish to sample the product for the presence of any undesirable or illegal substance or veterinary residue

In such circumstances, the AO will require the FBO to store the suspect meat in a detained chiller and should ensure its security.

3.2.5 Assessment of the detention facilities and history and confidence in management

Detention facilities vary in type, size and security, the OV must assess how satisfactory the facilities are and how the FBO intends to detain meat that has to be stored for further examination / investigation.

The assessment should identify:

- how secure the facilities are, including number of people who are in possession of a key
- the level of confidence in management and their staff
- whether previously detained meat has ever been placed on the market, gone missing or been moved contrary to the OVs instructions
- whether the size of the detained facility is sufficient to accommodate all the suspect meat
- whether the meat has already received a health mark or identification mark

The decision whether to formally detain meat with a Detention of Food Notice (ENF 11/1) or a Detention Notice (ENF 11/26), when legally available as an option, will depend on all the above factors.

A Q&A on Formal Detention can be found in Annex 14 of Chapter 7, which provides further guidance on when to use detention powers and which formal notice can be used.

Reference: See chapter 9 on 'Forms' for ENF 11/1 and ENF 11/26.

It **may not** be necessary to formal detain product in routine non-contentious day to day situations, for example:

- where meat is stored over night for routine rework and has not been health marked, and

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- is secured in lockable detained facilities on the premises,
- where the FBO has always been compliant and has a good relationship with the FSA, or
- where carcasses have been tested for BSE / trichinella and are awaiting a negative test result prior to being health marked

However, where formal detention is legally available and:

- where there are contentious issues,
- a history of non-compliance at the plant,
- the FBO has no detention facilities, detention facilities that are too small / not secure enough,

detention may be required.

The AO must as a matter of good practice, formally detain the animal / food using the relevant formal detention notice (see below), to ensure that all non-compliant product is effectively secured, to demonstrate that the AO has formally detained the product **and** to allow formal action to be taken if the FBO breaches the requirements specified in a formal detention notice.

Note: Retained Regulation (EC) 853/2004, Annex III, Section I, Chapter IV, Paragraph 12 also requires the FBO to follow the instructions of the OV to facilitate post-mortem of all meat and offal. Where they fail to do so, this may constitute an offence of obstruction.

Where no formal detention notice is served, movement of the product by the FBO will not result in a breach of the detention notice, but may constitute an obstruction of the AO.

3.3 Detention under the Food Safety and Hygiene (England) Regulations 2013 and Food Hygiene (Wales) Regulations 2006

3.3.1 Relevant legislation

Powers to serve a Detention Notice (ENF 11/26) derive from Regulation 10(1) of The Food Safety and Hygiene (England) Regulations 2013 or Regulation 9(5) of The Food Hygiene (Wales) Regulations 2006.

3.3.2 General principle

The Detention Notice ENF 11/26 provides powers to an AO to detain any animal or food (specified in the notice), in any establishment subject to retained Regulation (EC) 853/2004, either on the premises, or at another location (specified in the notice).

Detention under the provisions of Regulation 10(1) or 9(5) is only possible in circumstances where further examination of the animal or food is required, or sampling of the product is undertaken (for example, when an animal does not match the details on its passport or where the presence of a potential residue is suspected).

3.3.3 Declaring unfit

Formal detention is inappropriate where an AO has evidence that animals or meat are required to be declared unfit for human consumption under retained Commission Implementing Retained Regulation (EU) 2019/627, Articles 40 to 45. Once meat has been declared unfit, it will become an ABP, is no longer food for human consumption and disposal must be in line with all relevant provisions of the retained EU and domestic ABP and TSE Regulations. See Annex 5 'Flow diagram' and chapter 2.8 'Animal by-products', section 5.

Note: where the FBO does not voluntarily surrender non-compliant product and the meat has to be declared unfit, **this must be done in writing**, setting out the rationale for the action [see Annex 16]. If the FBO refuses, a Disposal Notice under the domestic ABP Regulations should be served requiring the disposal of the product [see ENF 11/12 England and ENF 11/13 Wales].

3.3.4 AO duties

The AO should:

- discuss the reason for service of the detention notice with the FBO
- ensure detained animals or meat are accurately identified, e.g. for meat using an individually numbered talisman seal, the details of which must be recorded on the detention notice
- use FSA detention tape where product is stored alongside other products with which it could be confused
- once identified, ensure that the detained meat is secured so that it cannot be tampered with

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- record details of the date and time of service of the notice on the back of the form, in a pocketbook, or in the plant daybook
- ensure that the FBO can easily identify what has been detained at the time of service
- advise the FBO of the likely timescale for the examination / sampling, so that they can take steps to prevent deterioration of the product; for example, boning under FSA supervision and freezing to preserve the value of the meat

3.3.5 Service of a Detention Notice

The detention notice:

- should be served by hand on the FBO or their duly authorised representative
- must also be served on the FBO at the registered address of the business (for limited companies)
- may be handwritten
- must be served as soon as practicable

Note; the AO must always retain a copy of the notice served!

3.3.6 Time period

No time period exists within which the examination / sampling must take place, however, this must be completed as soon as practicable.

3.3.7 Right of Appeal

A statutory right of appeal does not exist under Regulation 10 for the service of a Regulation 10(1) detention notice under The Food Safety and Hygiene (England) Regulations 2013 or Regulation 9 of The Food Hygiene (Wales) Regulations 2006. However, the notice could be challenged via Judicial Review in the High Court. [Further guidance on a Judicial Review can be found in section 1.2.8]

3.3.8 Withdrawal

Where the product is found to be compliant, the notice may be withdrawn by completing the withdrawal section at the base of the detention notice, once the AO

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is satisfied that the animal / meat complies with the requirements of the hygiene legislation and there are no grounds for declaring it unfit for human consumption. The meat may then be ID Marked / Health Marked or released for human consumption.

Decision Not to Withdraw

If the AO is not satisfied that the meat is fit for human consumption, they should seek voluntary surrender and disposal as an ABP.

Where voluntary surrender is not forthcoming, prior to the meat having been health / ID marked, the AO should first send a letter to the FBO explaining why they are declaring the animal / meat unfit (see Annex 16). Where the FBO continues in their refusal to surrender the product, the AO must serve an ABP notice requiring the disposal of the meat under the ABP enforcement regulations.

Where meat has already been Health / ID marked and due to a breach of the Hygiene Regulations, it has not been produced, processed or distributed in accordance with this legislation, the AO may “Certify” the product under Regulation 29 of the Food Safety and Hygiene (England) Regulations 2013 or Regulation 27 of the Food Hygiene (Wales) Regulations 2006. If the FBO refuses to surrender the product, it may be formally seized and taken before a Magistrate to seek a Condemnation Order.

Where the FBO refuses to surrender the food, it may be possible for to be formally seized under the provisions of Section 9 (3) (b) of the Food Safety Act 1990 (as amended) and taken before a Magistrate (Justice of the Peace) to apply for a Condemnation Order. More guidance can be found at 3.4 below and at Annex 14.

Note: Detention under the provisions of Regulation 10(1) or 9(5) of the domestic hygiene regulations is intended to be used for short term issues to allow for the further examination / sampling of the product by the FSA.

Note; any detention for further examination or sampling, must involve examination or sampling of the product being detained. The AO of the FSA should take responsibility for any sampling or examination and not leave this to the FBO or another competent authority.

3.3.9 AO checklist

Where the detained food is not released, specify the following information on the reverse of the Detention Notice:

- the nature of disposal and the category of ABP that the food was consigned under
- whether an agreement to destroy food Notice was signed by the FBO and the notice reference number
- whether the detention led to the food being certified, seized and taken before a court to seek condemnation

3.4 Detention of Food under the Food Safety Act 1990

3.4.1 Relevant legislation

Regulation 25 of The Food Safety and Hygiene (England) Regulations 2013 and Regulation 23 of The Food Hygiene (Wales) Regulations 2006 also allow the AO to detain suspect food for further investigation, but not to detain live animals.

Section 9 of the Food Safety Act 1990 will only apply to food that has been placed on the market and as such, the detention, seizure and condemnation provisions cannot be invoked until product has reached the point at which a Health or ID mark has been applied.

Section 9(3)(a) of the Food Safety Act 1990, provides powers for the AO to detain, inspect and seize any food that is thought may not comply with the “food safety requirements” in Article 14 of retained Regulation (EC) 178/2002 and is intended for human consumption. The “Detention of Food Notice” (ENF 11/1) can be used to formally detain product in such circumstances.

Note: Service of a formal “Food Detention Notice” (ENF 11/1) is inappropriate when the AO is required to declare material unfit for human consumption. This is because it has already been determined that the meat is unfit for human consumption and is therefore an animal by-product. Disposal as an ABP should therefore be in line with the requirements of the ABPs Regulations. See Annex 5 ‘Flow diagram’ in this chapter and chapter 2.8 on ‘Animal by-products’, section 5.

To formally detain a product that is not food with a food detention notice and require the same product to be disposed of as an ABP is contradictory.

A detention Notice (ENF 11/26) can also be used after a Health Mark or ID Mark is applied provided that further examination or sampling of the product is to be carried out.

3.4.2 When to serve a Food Detention Notice (ENF11/1)

When FBOs are

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- unwilling to surrender food that the AO has judged unfit, or
- un-cooperative with respect to the voluntary detention of meat after the ID Mark / Health Mark has been applied and is part of a further investigation into its fitness / compliance with the food safety requirements

the AO must formally detain and or seize (as appropriate) the food in accordance with Food Safety Act, Section 9.

Note: The AO shall as soon as is reasonably practicable, and in any event within 21 days, determine whether or not they are satisfied that the food complies with the food safety requirement.

Certification of Food

Legislation:

- Regulation 29 (3) of The Food Safety and Hygiene (England) Regulations 2013 and Regulation 27(3) of The Food Hygiene (Wales) Regulations 2006 allows for the Certification of food where it has not been 'produced, processed, or distributed' in accordance with the "Hygiene Regulations", it shall be treated for the purposes of Section 9 of the Food Safety Act, as failing to comply with the food safety requirements.
- Article 14 of Retained Regulation (EC) 178/2002 identifies the food safety requirements.
- Retained Regulation (EU) 2019/627, Articles 40, 41, 43 and 45 identify the circumstances where meat is required to be declared unfit for human consumption.

3.4.3 Reasons for service

Meat which fails to comply with food safety requirements under Article 14, retained Regulation (EC) 178/2002 includes:

- meat that is unsafe
- meat that is unfit for human consumption
- meat that is injurious to health.

3.4.4 Service of notice

Prior to serving a notice, the AO must have in their possession all the evidence to justify its service. The Detention of Food Notice should be served by hand on the person in possession of the meat who is deemed to be 'the owner'. A copy of the notice can be forwarded to the monetary owner, if different.

The AO must ensure that all detained food is suitably stored to minimise any deterioration; and securely stored in a lockable room where a security talisman tag has been applied to the chiller door to prevent its distribution.

Note: The owner of the meat could be the owner of the animal from which the meat was produced, for example, the farmer.

3.4.5 Content of notice

The notice must specify:

- a unique reference number to prevent it being confused with any other detention notice, see reference format in section 4.3.4
- description (carcase / box type, lot mark, colour, markings)
- quantity
- identification marks if any (detained tags, numbers or labels)
- the location where the product is being detained and any alternative location to where it may be moved (if applicable)
- why, in the officer's opinion, the food does not comply with the food safety requirements, linking the matter to Article 14 of Retained Regulation (EC) 178/2002

3.4.6 Number of notices

Where a quantity of meat of different types or batches is being detained, the AO can issue a separate Detention of Food Notice for each type or batch.

In more complex cases, to avoid the need to issue multiple Notices, the AO may also create a separate schedule or appendix to a notice listing all detained products. The schedule may be referenced in the box identifying the product in the body of the actual detention notice itself. This will allow food that has subsequently been inspected and found to be compliant to be identified and positively released without the need to re issue notices each time the details of a

detained product changes. The officer should sign and date next to the product that was examined / re-examined and is able to be released.

Where the meat that fails to comply with the hygiene requirements is part of a batch of the same class or description, it shall be presumed unless the contrary is shown, that the whole batch fails to comply and the AO should detain all of it. Part of the food may subsequently be seized if necessary and an Order for Condemnation of Food applied for. The Detention Notice must be withdrawn in respect of the remainder of product if the AO is satisfied that the problem affects only part of the batch.

Reference: 29 (3) of The Food Safety and Hygiene (England) Regulations 2013, Regulation 27 (3) The Food Hygiene (Wales) Regulations 2006 and the Food Safety Act 1990 Section 8 (3).

3.4.7 Right of appeal

No statutory right of appeal exists for a Detention of Food Notice under the Food Safety Act 1990. However, where voluntarily surrender is not forthcoming, the meat must be formally seized and taken before a Justice of the Peace to seek a Condemnation Order. The JP / Magistrate will be the arbiter of whether the product must be condemned. [See section 3.5 for the Condemnation procedure]

3.4.8 Time limit

The AO shall, as soon as is reasonably practicable, and in any event within 21 days, determine whether they are satisfied that the meat complies with the food safety requirement.

If they are satisfied that the food complies with food safety requirements, the AO must immediately withdraw the notice and if not, certify and seize the food to seek a Condemnation Order.

3.4.9 Withdrawal

If the notice is to be withdrawn, the AO must immediately serve a Withdrawal of Detention of Food Notice upon the recipient of the original Detention Notice - ENF 11/2.

If a Detention of Food Notice is withdrawn, or Condemnation Order is refused by the Court, compensation is payable to the owner of the food for any depreciation in its value which can be shown to result from the AOs actions.

3.4.10 AO checklist

Where the detained food is not released, specify in the AO checklist on the reverse of the Detention Notice:

- the nature of disposal and the category of ABP that the food was consigned under
- whether an Agreement to Destroy Meat Notice (ENF 11/7) was signed by the FBO and the Notice reference number
- whether the detention led to the food being certified, seized and taken before a court to have it condemned.

3.5 Condemnation procedure

3.5.1 When to apply for a condemnation order from the court

Where meat has been Health Marked / ID marked and it has not been produced, processed or distributed in accordance with the hygiene regulations, or breaches the 'food safety requirements' the OV should:

- formally detain the food (ENF 11/26 or 11/1)
- certify the food as non-compliant (ENF 11/25)
- formally seize the food (ENF 11/ 27) within 21 days of the issue of any "Food Safety Act Detention of Food Notice" (ENF 11/1)
- apply to a Magistrate for a Condemnation Order

3.5.3 Obtaining a condemnation order

In England and Wales, a Condemnation Order may be obtained from a Justice of the Peace at the Magistrates' court.

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3.5.4 Action to take

The AO is to follow the steps in the table below, making sure that all formal documents are served on the FBO in line with Regulation 30 of The Food Safety and Hygiene (England) Regulations 2013 or Regulation 28 of The Food Hygiene (Wales) Regulations 2006 and copies are handed to local management.

Reference: Food Safety Act 1990 Section 9 (3) (b), Section 9(4) (b).

Detain the food (ENF 11/1)	Ensure that any food that you suspect does not comply with the food safety requirements is formally detained using a Food Safety Act Detention of Food Notice (ENF 11/1) or Detention Notice (ENF 11/26). Reference: See chapter 9 on 'Forms' for ENF 11/1.
Complete and serve Certification of Meat Notice (ENF 11/25)	If the AO has determined that the food has not been produced, processed or distributed in accordance with the provisions of the "Hygiene Regulations" they must serve notice on the FBO with the reasons why it fails to comply. They must also inform FSA Legal to make them aware that legal representation may be required. Note the definition of Hygiene Regulations does not include retained Regulation (EC) 178/2002, or the retained ABP or TSE legislation. Reference: See chapter 9 on 'Forms' for ENF 11/25.
Complete and serve a Seizure of Food Notice (ENF 11/27)	If after certifying the meat, the FBO refuses to voluntarily surrender the food, complete a Seizure of Food Notice (ENF 11/27) and serve it on the FBO and a copy on the owner of the food where relevant. Reference: See chapter 9 on 'Forms' for ENF 11/27.
Complete and serve a Food Condemnation Warning Notice (ENF 11/3)	ENF 11/3 should be served on the owner / person in charge of the food (FBO). If relevant, a copy of the Condemnation Warning Notice should also be served on the owner of the animal from which the meat was produced, for example, the farmer.
Advise FSA legal adviser	FSA will arrange legal representation. A summary of events in the form of a witness statement and copy of all legal notices and relevant documents must be sent to FSA Legal.
Contact FSA Legal	Establish which court covers the area for the establishment where the detained food is held.
Contact the court	In England / Wales - speak to the Clerk of the Court to establish local procedures. Explain:

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	<ul style="list-style-type: none"> • the officer is authorised under the Food Safety Act 1990 and The Food Safety and Hygiene (England) Regulations 2013 or The Food Hygiene (Wales) Regulations 2006 • that the AO is seeking an Order for Condemnation of Food from a Justice of the Peace • the nature, quantity and location of the product detained, and confirm that the premises fall within that court's jurisdiction • the reason the Order is being sought referring particularly to the legislation under which the case is brought <p>In England and Wales establish with the Clerk a date, time and location for the court hearing. The location will generally be the local courtroom but could be the plant where the product is detained.</p>
<p>Complete and serve Food Condemnation Warning Notice (ENF 11/3)</p>	<p>Ensure that the notice is served by the most appropriate method available in the circumstances to ensure that all relevant parties are informed of the time and place of the hearing in good time. Document and retain records of service to show the court.</p> <p>Retain copies of the Condemnation Warning Notice, Certification of Meat Notice and Seizure of Food Notice to produce to the Justice of the Peace, the Clerk to the Court and the FSA legal representative.</p> <p>Reference: See chapter 9 'Forms' for ENF 11/3.</p>
<p>Attend the hearing</p>	<p>Prepare three copies of the Complaint for Condemnation of Food Order (ENF 11/15) and of the Order for Condemnation of Food (ENF 11/16) itself for the Justice of the Peace to sign.</p> <p>Read the papers again before going to court.</p> <p>Attend court early to meet the FSA advocate.</p> <p>On attending the hearing, the AO should take:</p> <ul style="list-style-type: none"> • their Authorisation Certificate / Warrant for the legislation being enforced • copy of the Certification of Meat failing to comply with the requirements of the Hygiene Regulations • copies of the Detention and/or Seizure Notice and a record of service • copies of the Condemnation Warning Notice and record of service

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	<ul style="list-style-type: none"> • copies of the Complaint for Condemnation of Food Order • copies of the Order for Condemnation of Food • contemporaneous notes which may be referred to (notebook or plant daybook) • a consolidated copy of the relevant legislation (highlight sections for easy reference) • copies of the Code of Practice • any additional evidence, for example, copies of a public analyst or expert report • a representative sample of the food if the hearing is to be held in court and the entire batch cannot be transported (where appropriate) <p>Reference: See chapter 9 'Forms' for ENF 11/15 and ENF 11/16.</p> <p>Explain clearly when presenting the evidence in court:</p> <ul style="list-style-type: none"> • why the meat should be condemned • quote the Regulation(s) which has / have been breached • what the problems are if the meat is not condemned • what the risk is to public health
--	--

If successful: maintain supervision to ensure meat is disposed of	If the Justice of the Peace issues an 'Order for Condemnation of Food', upon receipt of the Order, ensure that the person in charge of the meat (and the owner if notified) receives a copy. Ensure that the details of disposal have been recoded and that a copy of the waste transfer note has been kept on file.
If unsuccessful: meat is restored to owner	Where any issue of compensation arises, the AO must not discuss or negotiate any compensation for depreciation in value of the meat or food. The AO should ask the FBO / Owner of the food to put any complaint in writing to the HOD.

3.6 Seizure and Detention under Animal Welfare Legislation

Inspectors authorised to execute and enforce the retained EU Protection of Animals at the time of Killing legislation (Regulation (EC) 1099/2009) and the devolved Welfare of Animals at the Time of Killing Regulations have powers under Regulation 37 to:

- seize and detain any carcase or part of a carcase for further examining, investigating or testing,
- seize and detain any equipment or instrument for further examining, investigating or testing,
- seize any computers and associated equipment for the purpose of copying data, but only if the inspector has a reasonable suspicion that an offence under these Regulations has been committed and provided that they are returned as soon as practicable.

An inspector must, as soon as reasonably practicable:

- provide the person responsible for items seized with a written receipt identifying those items; and
- after deciding the items are no longer required, return them, apart from those to be used as evidence in court proceedings.

Where items have been seized for use in evidence in court proceedings and it is subsequently decided:

- no court proceedings are to be brought; or
- those items are no longer needed as evidence in court proceedings; or
- the court proceedings are completed and no order in relation to those items has been made by the court,

the inspector must return the items as soon as is reasonably practicable.

3.7 Seizure under the Mandatory Use of CCTV in Slaughterhouses (England) Regulations 2018

Inspectors in England who have entered premises for the purposes of executing and enforcing the Welfare of Animals at the Time of Killing (England) Regulations 2015 or retained Regulation (EC) 1099/2009, may for those purposes, or the purposes of executing and enforcing the CCTV in Slaughterhouses Regulations:

- seize or take a copy of any images or information obtained by such a CCTV system,

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- seize any CCTV equipment, including computers and associated equipment, installed as part of such a CCTV system which does not comply with regulation 3(2)(a), for the purposes of copying images or information.

Updated [The Inspector must as soon as reasonably practicable, provide the person appearing to be responsible for any items seized with a written receipt identifying those items, using the WEL 11-41 form;]

and

As soon as reasonably practicable after deciding that those items are no longer required, return them to that person, apart from those to be used as evidence in court proceedings.

Where items have been seized for use in evidence in court proceedings and it is subsequently decided:

- that no court proceedings are to be brought; or
- that those items are no longer needed as evidence in court proceedings; or
- the court proceedings are completed and no order in relation to those items has been made by the court,

an inspector must, as soon as is reasonably practicable return the items to the person appearing to be responsible for them.

If CCTV equipment is seized by an AO, the FSA need to be mindful that the FSA/OV's actions will have a direct consequence on the FBO's ability to comply with their legal duties to install and operate a CCTV system and/or retain CCTV images and information. If such action is being considered, advice should be obtained from FSA Legal.

4. Hierarchy of Enforcement

- 4.1 Introduction
- 4.2 Informal enforcement action: Written Advice
- 4.3 Formal enforcement action: Statutory Notice
- 4.4 Statutory Notices for Hygiene Contraventions
- 4.5 Remedial Action Notices (RAN)
- 4.6 Hygiene Improvement Notices (HIN)
- 4.7 Hygiene Emergency Prohibition Notices (HEPN)
- 4.8 Hygiene Emergency Prohibition Orders (HEPO)
- 4.9 Referral for investigation
- 4.10 Protocol for referral for investigation
- 4.11 Referral for investigation: FSA Legal
- 4.12 Change of FBO during enforcement action
- 4.13 Warrant to enter premises
- 4.14 Process for obtaining warrant to enter premises in England and Wales

4.1 Introduction

4.1.1 The hierarchy of enforcement

The hierarchy that an AO follows will be dependent on the legislation contravened, the enforcement powers available and the risk associated with the non-compliance.

Matters Requiring Immediate Rectification

Where contraventions need to be remedied immediately based on public health / animal health or animal welfare risk, AOs must first verbally request the FBO rectifies the issue, but where they fail to respond, the advice may be followed immediately with the service of a formal notice requiring immediate rectification, such as a Remedial Action Notice for breaches of the Hygiene Regulations, a Welfare Enforcement Notice for breaches of animal welfare legislation or Notice requiring the Disposal of an ABP (see later).

The officer may wish to formally detain or quarantine product suspected to be unfit and conduct further examination / investigation or sampling at the same time as the service of a RAN.

In less urgent cases, the AO must follow the hierarchy available to them under the respective legislation that they are enforcing.

Legislative Area Contravention	Verbal	Written	Formal Notice Available	Referral for Investigation
Retained Hygiene Regulations- (EC) 852/2004, (EC) 853/2004, (EU) 2017/625 and the OCR package in relation to food (EC) 2073/2005 (EU) 2015/1375 The Food Safety and Hygiene (England) Regulations 2013 and The Food Hygiene (Wales) Regulations 2006	Yes	Not required	RAN's are available to require immediate rectification for breaches of the "Hygiene Regulations". See Regulation 9(1) of The Food Safety and Hygiene (England) Regulations 2013 and devolved equivalents.	Yes
Retained Hygiene Regulations- (EC) 852/2004,	Yes	Yes	HIN's are available for breaches of the "Hygiene Regulations" that do not pose an immediate	Yes

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Legislative Area Contravention	Verbal	Written	Formal Notice Available	Referral for Investigation
(EC) 853/2004, (EU) 2017/625 and the OCR package in relation to food (EC) 2073/2005 (EU) 2015/1375 The Food Safety and Hygiene (England) Regulations 2013 and The Food Hygiene (Wales) Regulations 2006.			risk or cannot be rectified immediately. See Regulation 6(1) of The Food Safety and Hygiene (England) Regulations 2013 and devolved equivalents.	
Retained Food Safety Regulation (EC) 178/2002 and (EU) 931/2011 The Food Safety and Hygiene (England) Regulations 2013 and the General Food Regulations 2004	Yes	Yes	No formal notice is available because Retained Regulation (EC) 178/2002 is the EU Food Safety Regulation and is not part of the “Hygiene Regulations”	Yes
The retained TSE Regulations (EC) 999/2001, The TSE (England) Regulations 2018 and The TSE (Wales) Regulations 2018	Yes	Yes	No formal notice is available under the domestic TSE Regulations	Yes
The retained Animal By-product Regulations (EC) 1069/2009, (EU) 142/2011, The Animal By- products (Enforcement) (England) Regulations 2013 and The Animal By-products (Enforcement)			Formal notices are available under The Animal By-Products (Enforcement) (England) Regulations 2013, however, often such notices may not be relevant to the issue observed and a referral may follow verbal and written advice.	
	Yes	Yes	ABP Notice for the Disposal and where applicable storage pending disposal of ABP Regulation (25(2)(a) of The Animal By-products	Yes

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Legislative Area Contravention	Verbal	Written	Formal Notice Available	Referral for Investigation
(Wales) Regulations 2014			(Enforcement) (England) Regulations 2013 and the Wales equivalent.	
	Yes	May or may not be required depending on the imminent risk	ABP Notice requiring the cleansing and disinfection of premises and where applicable the method of such cleansing and disinfection. Regulation (25(2)(b) of The Animal By-products (Enforcement) (England) Regulations 2013 and the Wales equivalent.	Yes
	Yes	May or may not be required depending on the imminent risk	The prohibition of ABPs being moved or brought into food premises. The Animal By-products (Enforcement) (England) Regulations 2013 and the Wales equivalent.	Yes
The retained Animal Welfare Regulations Retained Regulation (EC) 1099/2009, The WATOK (England) Regulations 2015 and The WATOK (Wales) Regulations 2014			Welfare Enforcement Notice are available under Regulation 38 of the WATOK (England) Regulations 2015 and their Wales equivalent.	
	Yes	Not required	WEN's are available to require immediate rectification for breaches of the welfare at slaughter legislation where any avoidable pain, distress or suffering is evident	Yes
	Yes	Yes	WEN's are available to require rectification for more systemic breaches of the welfare at slaughter legislation e.g. SOP's	Yes

4.1.2.1 Enforcement Decision Making Function

Where AOs identify contraventions with the legislation, they provide verbal advice to the FBO. Where the FBO fails to implement corrective measures; enforcement is escalated. All AOs trained in enforcement will provide verbal advice, however, the decision to escalate enforcement action beyond verbal advice and the actions / measures required by the FBO will be determined by directly employed staff of the Competent Authority.

FSA Unannounced Inspectors / Veterinary Auditors / Field Veterinary Coordinators or Field Veterinary Leads will make decisions to escalate enforcement themselves and will act as decision makers in their own right.

They will also provide the rationale to escalate enforcement matters that fall under the “established non-compliance” provisions in Article 138,1(b) and 138,2 of retained Regulation (EU) 2017/625 and will communicate any relevant right of appeal, where one exists in accordance with Article 138,3.

4.1.2.2 Enforcement Decisions in slaughterhouses and further processing plants

Contracted OV Responsibilities

Contracted OVs (cOVs) in slaughterhouses and any cOVs conducting unannounced inspections (cUAI) are also responsible for verifying FBO compliance through a variety of official controls. Where they identify contraventions of the legislation, they will provide verbal advice and request that the FBO rectifies the issue.

COVs are responsible for the decisions regarding official control delivery and remain responsible for the decisions that flow directly from such official controls (Article 18(5) of retained Regulation (EU) 2017/625).

Where the FBO has been provided with verbal advice by a cOV and has failed to take appropriate corrective action, the decision to escalate enforcement action following on from verbal advice, will be referred to an FSA Veterinary Enforcement Decision Maker (VEDM).

To allow the VEDM to make a decision on the appropriate course of action, the cOV will:

- complete an EDP Form [Annex 17],
- set out the history of enforcement with regards to the specific non-compliance,

- attach all relevant supporting evidence, and
- draft appropriate enforcement documents,

4.1.2.3 VEDM Responsibilities

To arrive at an appropriate decision, the VEDM will review all relevant evidence, consider whether they agree with the proposed next steps, the actions / measures the FBO should take to bring them back into compliance and set out the rationale for that course of action.

The VEDM will also take account of the nature of the non-compliance and the operator's past record to determine the actions / measures they deem appropriate to ensure compliance. The action will include but will not be limited to those matters contained in Article 138(1)(b) and 138(2) of retained Regulation (EU) 2017/625.

VEDMs will maintain regular contact with contracted OVs and Technical Managers in their area to keep up to date with any new or emerging enforcement issues.

After careful examination of the evidence presented by the cOV, the VEDM will review all letters or formal notices etc. and where they agree, make any annotations necessary and send all completed and signed documents back the cOV, together with any signed enforcement documents.

The cOV must:

- serve the signed letters / formal notices etc. in accordance with the guidance on service within this Chapter,
- retain a copy of the letter / formal notice etc. for the plant file for reference and as evidence,
- record all enforcement interventions in the plant Day Book and in Chronos.

Referrals for investigation should be discussed with the VEDM prior to submitting the ENF 11-6. If the VEDM agrees with the course of action, they will communicate their final decision to the cOV and submit the referral and all relevant documents to CSU to be logged and referred onto FSA Legal Services.

Note: welfare referrals must be submitted to the Welfare Triage Panel for consideration. The VEDM will be part of the panel considering the appropriateness of the referral for formal investigation.

The table below identifies the enforcement documents requiring a decision by the VEDM.

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Form Reference	Title	Decision to be approved by the VEDM	Comments
ENF 11/1	Detention of Food Notice – Food Safety Act	No	Formal Detention is an action flowing directly from an OC. The decisions for which remain with the OV.
ENF 11/2	Withdrawal of Detention of Food Notice	No	See above
ENF 11/3	Food Condemnation Warning Notice	Yes	
ENF 11/6	Referral for Investigation	Yes	
ENF 11/7	Agreement to destroy meat	No	
ENF 11/11	Notice of intention to apply for a Hygiene Emergency Prohibition Order	Yes	
ENF 11/12	Notice for the disposal of Animal By-Products	Yes	
ENF 11/13	ABPR Cleaning & Disinfection Notice	Yes	
ENF 11/14	ABPR Notice Prohibiting By-Products being brought on to the Premise	Yes	
ENF 11/15	Complaint for Condemnation of Food Order	Yes	
ENF 11/16	Order for Condemnation of Food	Yes	
ENF 11/17	Complaint for Hygiene Emergency Prohibition Order	Yes	
ENF 11/18	Hygiene Emergency Prohibition Order	N/A	Issued by the Court
ENF 11/19	Notice of Intention to Apply for a Warrant of Entry	Yes	
ENF 11/20	Application for Warrant to Enter Premises	Yes	
ENF 11/21	Warrant to Enter Premises	N/A	Issued by the Court
ENF 11/23	Hygiene Improvement Notice	Yes	
ENF11/24	Remedial Action Notice	Yes	
ENF 11/25	Certification of Meat Failing to Comply with the Requirements of the Hygiene Regulations	Yes	

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ENF 11/26	Detention Notice – Food Hygiene Regs	No	
ENF 11/27	Seizure of Food Notice – Food Hygiene Regs	Yes	
ENF 11/28	Hygiene Emergency Prohibition Notice	Yes	
ENF 11/29	Risk Assessment Form	Yes	
WEL 11/34	WATOK Enforcement Notice	Yes	
WEL 11/35	WATOK Completion Notice	Yes	
WEL 11/36	WATOK Refusal to Issue a Completion Notice	Yes	
WEL 11/37	WATOK Seizure and Detention Receipt	Yes	
WEL 11/38	CCTV Enforcement Notice	No	CCTV legislation is not made under retained EU law and the requirements for CCTV do not fall under Article 1(2) of 2017/625
WEL 11/39	CCTV Completion Notice	No	See above
WEL 11/40	CCTV Refusal to Issue a Completion Notice	No	See above
WEL 11/41	CCTV Seizure Receipt	Yes	Seizure of equipment is a matter to be determined by the CA.
Chapter 2.3, Annex 2b	CoC suspension letter	Yes	
Chapter 2.3, Annex 2c	CoC revocation letter	Yes	
Chapter 2.3, Annex 2d	Return of CoC after suspension letter	Yes	
Chapter 2.3, Annex 2e	Failure to re-train revocation letter	Yes	
Chapter 2.3, Annex 2f	Return of CoC after review letter	Yes	
Chapter 2.3, Annex 2g	Return of CoC after FTT decision letter	Yes	

4.1.2.4 Approach to the hierarchy

The approach to the hierarchy of enforcement and level at which the AO commences enforcement action will be dependent upon:

- the urgency / severity of the situation
- the most appropriate course of action that will control the risk
- the enforcement tools available under that piece of legislation
- the history of the FBO and their willingness to comply
- the FSA Operations Enforcement Policy

4.1.3 Enforcement; informal and formal action

The term 'Enforcement' is not defined in legislation, and neither is there any legal definition of informal and formal enforcement action. The OCR however, uses the expression "Other Official Activities" to define certain actions taken by the CA other than Official Controls, which includes actions where established non-compliance has been identified.

4.1.4 Subject of enforcement action

Any FBO or person who is the subject of enforcement action should be kept fully informed of any intended or actual enforcement intervention by the AO.

4.1.5 The health mark and enforcement hierarchy

The application of the health mark is not part of the hierarchy of enforcement. However, the AO is not permitted to apply the health mark in red meat plants where:

- the animal and meat have not undergone ante-mortem and post-mortem inspection respectively in accordance with (EU) 2017/625 Article 18, paragraph 4 and paragraph 2 (a) and 2 (c)
- there are grounds for declaring the meat unfit for human consumption, or in the OVs opinion, after examination of all relevant information, the meat constitutes a risk to public or animal health or is not suitable for human consumption in accordance with Retained Regulation (EU) 2019/627, Articles 40, 41, 43, 45.
- where the meat fails to comply with the provisions of Article 14.5 of Retained Regulation (EC) 178/2002 in that the food is unacceptable for

human consumption according to its intended use, for reasons of contamination (whether by extraneous matter or otherwise), or through putrefaction, deterioration or decay

Similarly, the Identification Mark (Retained Regulation (EC) 853/2004, Article 5,2) should only be applied by the FBO to products in poultry slaughterhouses and all cutting plants if the product has been manufactured in accordance with the requirements of retained Regulation (EC) 853/2004, in establishments meeting the requirements of Article 4 of retained Regulation (EC) 853/2004.

This breach will:

- constitute an offence under Regulation 19 of The Food Safety and Hygiene (England) Regulations 2013 and Regulation 17 of The Food Hygiene (Wales) Regulations 2006
- potentially warrant the service of a Remedial Action Notice under Regulation 9(1) of the same Regulations, immediately prohibiting the use of the mark

4.1.6 When to give verbal advice

The first stage of enforcement action considered by the AO should always be education and advice. Whilst it is the FBOs responsibility to know which legal provisions are applicable to their business, the AO should ensure that, where necessary, they clarify and update the FBO on any relevant legal requirements. This is to ensure that the FBO understands the outcome to be achieved.

Verbal advice should go hand in hand with all stages in the enforcement process to help the FBO achieve compliance and understand why enforcement action is being taken. For example, AOs must always try to explain to the FBO why immediate action may be required, why a statutory notice is being served, or why the matter is being referred for investigation, if appropriate.

Where verbal advice is of a technical nature, it may be helpful for this to be followed up with a letter in writing confirming the discussion / meeting.

It is important that the AO does not continue to give verbal advice where this is being ignored, without escalating enforcement action in the appropriate way.

Note: Where immediate action is required on public health or animal welfare grounds, verbal advice should be given, but if ignored it may be appropriate to move straight to - enforcement action to secure compliance as soon as possible (for example, Public Health - RAN, Animal Welfare – WATOK Enforcement Notice).

4.1.7 Records

Unless the AO witnesses a one-off low risk issue; if it appears likely that enforcement may be escalated, or the FBO has a history of non-compliance, verbal advice should be recorded on Chronos, the FSA enforcement system.

4.2 Enforcement action: Written Advice

4.2.1 Written Advice

Letters of advice when produced later in court will help to demonstrate fairness and proportionality in the enforcement approach and that the FBO may have ignored previous advice.

Advisory letters should be sent, where:

- the FBO or a staff member has failed to take appropriate corrective action following verbal advice and/or
- where there is a contravention of the Regulations which does not have an immediate impact on public health or animal welfare

The AO should inform the FBO of the intention to write an advisory letter. Ideally, the AO should meet with the FBO or their representative before drafting such an advisory letter to discuss all the issues including the timescale for completion. It is good practice to ask the FBO to confirm in writing their agreement to any timescale.

Accurate minutes of any meeting with the FBO should be taken in respect of achieving compliance.

Letters of advice must be typed and sent on FSA official letterhead paper. In the case of advisory letters sent to limited companies, these must be addressed to the FBO c/o The Company Secretary and sent to the Company's Registered Office address. A copy must also be handed to plant management. A copy of the letter may be sent as an email attachment provided that it is also sent by post.

4.2.2 Updated [Composing Letters of Advice]

The guidance below lists the points that an AO should follow when drafting letters.

Letters of advice must be typed and sent on FSA letterhead paper. They should also include the date of the letter, the establishment reference number (or CPH

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number for diary holdings) and the FSA reference. [Details of the correct format for reference numbers can be found in MOC Chapter 7, Section 4.3.4]

The letter should be addressed to either an individual or to the Food Business Operator. Where being addressed to an individual, avoid using titles such as Mr, Mrs, Ms etc and use the individuals full name or the initial from their first name followed by their surname. For example: Dear J. Smith / John Smith. In the event that the AO does not know the name of a particular individual to whom the letter should be addressed to, Dear Food Business Operator should be used.

It is advisable to separate the letter out into sections for ease of reading and clarity around the different parts of the letter. The suggested sections are:

Title: If the letter is in direct response to an inspection / audit / UAI etc. a reference to that can be used to provide context to the letter. If the letter is in response to an identified non-compliance, then this could be cited along with the date of the alleged contravention.

Legislation: The relevant retained EU law and Domestic Implementing regulations should be cited. Where more than one needs to be cited, they should be grouped together by theme. For example, where the letter is going to refer to hygiene and ABP issues, the EU and domestic hygiene legislation should be cited first followed by the EU and domestic ABP regulations.

Following the provision of the relevant legislation, a statement should be provided explaining that “All references to EU legislation are references to retained EU law”.

Introduction: A brief explanation of why the letter is being written, together with dates and times of any visit / audit / inspection / incident and details of the individual(s) who conducted the visit if they are not the signatory of the letter.

Contraventions: The contraventions that have been identified should be listed, including the date and time they were identified and the full legislative provision that the FBO is failing to comply with in both REUL and/or domestic implementing regulations. Where verbal advice has been provided previously for the same contravention, dates of such advice should be included to demonstrate that the hierarchy of enforcement has been followed. The AO should identify and describe the risk posed by the contravention.

Where the letter is being used to advise of multiple contraventions, they should repeat the previous step and group the contraventions by theme. For example, all hygiene contraventions should be listed first, followed by ABP contraventions etc.

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Corrective Actions / Measures Required: The corrective actions that would achieve compliance should be listed. It should be explained that works to an equivalent effect may be undertaken providing compliance with the regulations is achieved.

Root Cause Analysis: If the AO identifies that existing corrective measures are incapable of effectively dealing with the problem, it is not necessary for the AO to identify the root cause of the problem in the letter. It is acceptable, however, to add a standard statement requiring the FBO to review and update their corrective measures, to ensure they are effective at curing the root cause of the problem and dealing with any non-compliant product.

Time Limits for Compliance: A date should be supplied by which time compliance should be achieved. Where possible, this date should be pre-agreed with the FBO to ensure that it is an appropriate time frame. Where it has not been pre-agreed, the FBO should be requested to confirm agreement in writing.

General Obligations on the FBO / BO / Occupier: The FBO should be reminded of their general duty under the retained EU law and the specific provision cited.

Offences: The letter should state to the FBO that a contravention of the legislation stated within the letter is an offence and specify where. For example: for hygiene offences Regulation 19 of the Food Safety and Hygiene (England) Regulations 2013 creates an offence not to comply with the specified EU provisions.

Best Practice / Good Manufacturing Practice / Good Hygienic Practice: General advice can also be provided on good manufacturing / industry practice. Add a link to relevant guidance documents that may exist on FSA / Defra / HMRC / WSTA websites. This may include guidance from respected institutions and EU Guidance documents / Commission Notices etc.

Appeals: There is not a statutory right of appeal against written enforcement advice, however, a Judicial Review may still provide a challenge to the way in which a decision has been taken.

The letter should be signed off by thanking the FBO for working in conjunction with the FSA. The AO should ensure that their name and contact details are included at the end of the letter in case the FBO wishes to discuss any of the details of the letter.

When drafting written advice, the AO must not warn of prosecution action in the event of future contraventions, as this could prejudice any future formal investigation.

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A template letter can be found in Annex 20 and further guidance around Accessibility can be found on the FSA Intranet.

4.3 Formal enforcement action: Statutory Notice

4.3.1 Preparation for formal action

Before taking formal enforcement action, the AO should:

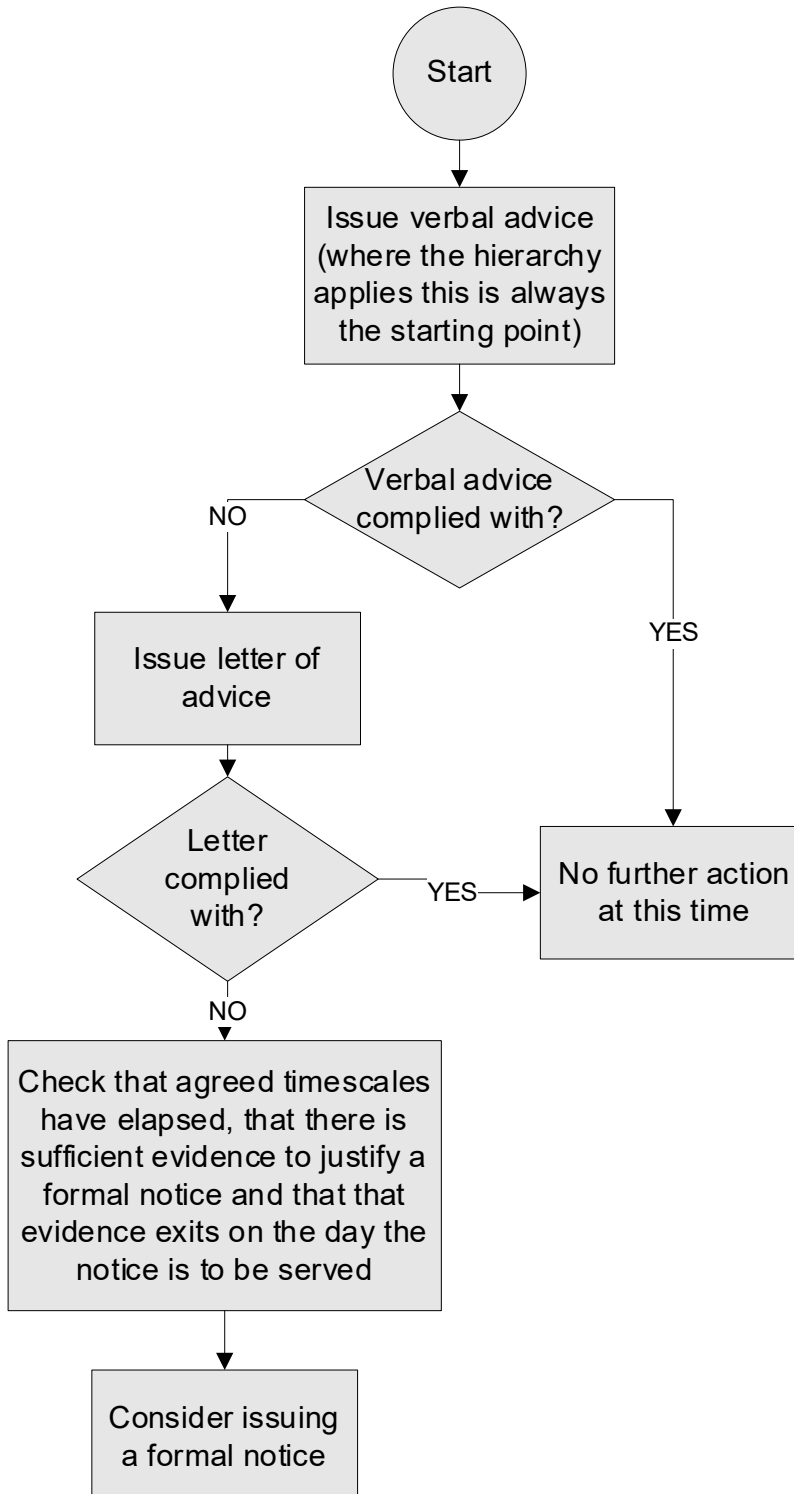
- advise the FBO verbally of this intention
- be aware of all ongoing enforcement action by reviewing the enforcement history on Chronos
- have regard to the FSA Operational Enforcement Policy
- ensure that evidence has been secured to demonstrate that the contravention still exists that will warrant the escalation of enforcement action
- gather evidence to justify the service of the formal notice and to support any potential appeal against the service of the notice.

4.3.2 Statutory notices

Statutory Notices are legal documents and care must be taken to ensure they are completed correctly and used appropriately. They should only be signed by AOs.

4.3.3 Checklist prior to serving statutory notices

The diagram below lists the points that an AO should follow before serving a Statutory Notice. The AO should:



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At the time of signing and serving a formal Statutory Notice, the FSA AO should ensure that *all* the following checks are complied with:

- the notice has a unique reference number to prevent it being confused with any other formal notice, see suggested format below,
- the formal notice is addressed to and served on the correct person / partners or legal entity,
- local plant management have received a copy of any formal notice where the original was served on the limited company and sent c/o 'The Company Secretary' to the Registered Office address,
- the notice is clearly worded, concise and easily understood; it is typed (unless drafted by hand and served immediately), dated and signed by the AO,
- the notice accurately describes the non-compliance and associated risk without just copying the wording of the legislation,
- the notice clearly describes the action required to remedy the breach of the legislation and should match the problem identified in the contravention box,
- the notice provides a relevant time frame within which compliance should be achieved,
- an official up to date version of the notice should be used (taken from the MOC),
- all sections must have been completed correctly and where options exist in the notice, any references that are not relevant should be deleted as necessary,
- the notice includes all required information on rights of appeal, and
- a copy of the notice served must be retained and copied / scanned as a permanent record

If **any** of the above checks are not complied with, the AO must ensure action is taken to secure compliance before proceeding to serve the Notice.

4.3.4 Unique reference numbers on enforcement documents

All enforcement notices require the officer to insert a unique reference number, which allows them to be referenced accurately in all correspondence with FBOs and in any legal proceedings. Likewise, other enforcement documents also benefit from some form of referencing, to prevent them from being mixed up with any other similar documents.

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There is no legal format for the way in which a reference number is created, however, for consistency it may be useful to follow the example format below, for all enforcement documents:

- Plant number – 4-digit approval number (e.g. 0000)
- Initials of the Document Type (e.g. HIN)
- The Year (e.g. YYYY)
- A sequential number, indicating the number of that type of document served that calendar year (e.g. 01)

E.g. “0000 – HIN – 2021 – 01”

Examples of commonly used documents:

Plant Profile	0000 - PP - 2022 - 01
Remedial Action Notice	0000 - RAN - 2022 - 01
Agreement to Destroy Meat Notice	0000 - ATDM - 2022 - 01
Detention of Food Notice	0000 - DOFN - 2022 - 01
Detention Notice	0000 - DN - 2022 - 01
Written Advice	0000 - WA - 2022 - 01
Hygiene Improvement Notice	0000 - HIN - 2022 - 01
Hygiene Improvement Notice Compliance Letter	0000 - HINCL - 2022 - 01
WATOK Enforcement Notice	0000 - WEN - 2022 - 01
WATOK Completion Notice	0000 - WCN - 2022 - 01
Refusal To Issue a WATOK Completion Notice	0000 - RTIWCN - 2022 - 01
CCTV Enforcement Notice	0000 - CCTVEN - 2022 - 01
CCTV Completion Notice	0000 - CCTVCN - 2022 - 01
Refusal To Issue a CCTV Completion Notice	0000 - RTICCTVCN - 2022 - 01
ABP - Disposal Notice	0000 - ABP-DN - 2022 - 01
ABP C&D Notice	0000 - ABP-C&DN - 2022 - 01
ABP Prohibiting ABP Being Brought Onto Premises Notice	0000 - ABP-PABPBBOPN - 2022 - 01
ENF 11/22 Internal Communication of non-compliance	0000 - ICONC - 2022 - 01
Written Advice Declaring Animals or Meat Unfit for Human Consumption	0000 - WADUHC - 2022 - 01

A sequential number should be used for each successive document of a particular type, starting at the beginning of each calendar year.

4.4 Statutory notices for hygiene contraventions

4.4.1 The Food Safety and Hygiene (England) Regulations 2013 and the Food Hygiene (Wales) Regulations 2006

The Food Safety and Hygiene (England) Regulations 2013 and The Food Hygiene (Wales) Regulations 2006, provide powers to serve 3 different types of notices for hygiene non-compliances:

- Remedial Action Notice (Regulation 9(1))
- Hygiene Improvement Notice (Regulation 6)
- Hygiene Emergency Prohibition Notice and Order (Regulation 8)

Reference: See section 3 on 'Surrender, detention, seizure and condemnation' in this chapter for details of detention of animals or food for further examination and sampling under Regulation 10(1) of the England Regulations and 9(5) of the Welsh Regulations and detention for further investigation under Section 9 of the Food Safety Act 1990, via the provisions of Regulation 25 of the domestic England Regulations and Regulation 23 of the domestic Welsh Regulations.

4.4.2 Service details

Regulation 10(1) and 9(5) Detention Notices served under The Food Safety and Hygiene (England) Regulations 2013 and The Food Hygiene (Wales) Regulations 2006, should be served on the FBO, or their duly authorised representative.

The Food Safety Act Detention Notice should be served on the person in charge of the food.

4.4.3 Formal service and delivery of notices

Formal notices must be served on the correct legal entity responsible for any potential offences and to the correct address for that entity.

4.4.4 Finding company addresses

[Checks on a company's registered office details](#) may be done by logging on to Companies House website and clicking on to the free company details link under the 'find company information' heading.

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The organisation can also be contacted on 03031234500, or by email at enquiries@companies-house.gov.uk between 08:30 and 18:00, Monday to Friday.

Type of Notice	Legislation	Purpose	Should be served upon
Detention Notice	Regulation 10(1) of The Food Safety and Hygiene (England) Regulations 2013 / Regulation 23 Food Hygiene (Wales) Regulations 2006	To detain any live animal or food for the purpose of further examination / sampling of the animal or food by the CA	The FBO
Detention of Food Notice	Section 9 Food Safety Act 1990 [via Regulation 25 of The Food Safety and Hygiene (England) Regulations 2013/ Regulation 23 Food Hygiene (Wales) Regulations 2006]	To detain food while further investigation is carried out	The person in charge of the food (the FBO)
Certification of Meat Notice	Regulation 29 of The Food Safety and Hygiene (England) Regulations 2013/ Regulation 27 of The Food Hygiene (Wales) Regulations 2006	To certify that food has not been produced, processed or distributed in accordance with the Hygiene Regulations and fails to comply with the food safety requirements	The FBO or person in charge of the food.
Seizure of Food Notice	Section 9 Food Safety Act 1990 [via Regulation 25 of The Food Safety and Hygiene (England) Regulations 2013/ Regulation 23 of The Food Hygiene (Wales) Regulations 2006]	To seize food in order that it may be taken before the court to be condemned	The person in charge of the food (the FBO)

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Remedial Action Notices	Regulation 9 Food Safety and Hygiene (England) Regulations 2013 / Regulation 9 Food Hygiene (Wales) Regulations 2006	To seek compliance with hygiene matters that require immediate rectification.	FBO or Duly Authorised Representative
Hygiene Improvement Notice	Regulation 6 of The Food Safety and Hygiene (England) Regulations 2013 / Regulation 9 of The Food Hygiene (Wales) Regulations 2006	To seek compliance with hygiene matters that do not require immediate rectification or it is not practical for the FBO to comply immediately	FBO
Hygiene Emergency Prohibition Notice (and Order)	Regulation 8 of The Food Safety and Hygiene (England) Regulations 2013 / Regulation 9 of The Food Hygiene (Wales) Regulations 2006	To impose a prohibition on the: <ul style="list-style-type: none"> • use of a process or treatment • use of the premises or equipment relating to its construction • use of the premises or equipment relating to its state or condition 	FBO
Hygiene Prohibition Order	Regulation 7 of The Food Safety and Hygiene (England) Regulations 2013/ Regulation 7 of The Food Hygiene (Wales) Regulations 2006	Prohibition of a food business proprietor or manager from participating in the management of any food business	FBO
Welfare Enforcement Notice	Regulation 38 of The WATOK (England) Regulations 2015 and The WATOK (Wales) Regulations 2014	To: <ul style="list-style-type: none"> • require a person to take steps to remedy a contravention of the EU or domestic welfare at slaughter Regulations 	The Business Operator / person

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		<ul style="list-style-type: none"> • require a person to reduce the rate of operation to the extent specified in the notice, • prohibit a person from carrying on an activity, process or operation or using specified facilities or equipment. 	
CCTV Enforcement Notices	The Mandatory Use of CCTV in Slaughterhouses (England) Regulations 2018	<ul style="list-style-type: none"> • Requiring the taking of steps to remedy a contravention of the Regulations, • Requiring the rate of operation to be reduced until specified steps have been taken to remedy a contravention, • Prohibiting the carrying out of activities, processes or operations or using equipment / facilities, until specified steps have been taken to remedy a contravention. 	The Business Operator / person in charge
Animal By-products notices	Regulation 25 of The Animal By-Products (Enforcement) (England) Regulations 2013 and The Animal By-Products (Enforcement)(Wales) Regulations 2014	<ul style="list-style-type: none"> • Requiring disposal and where applicable, storage pending disposal of ABP, • Requiring the cleansing and disinfection of premises and where applicable 	The occupier or person in charge of or responsible for the premises

		the method of such cleansing and disinfection, <ul style="list-style-type: none"> • Prohibiting ABP being moved in or on to premises or specifying the conditions of such movement in conjunction with the satisfactory cleansing and disinfection. 	
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4.5 Remedial Action Notices

4.5.1 When to use a Remedial Action Notice (ENF 11/24 (E and W))

RAN may only be used:

- when any of the requirements of the Hygiene Regulations* are being breached, or
- when inspection under the Hygiene Regulations is being hampered

*“The Hygiene Regulations” in this context means either the provisions of the retained EU Hygiene Regulations (852/2004, 853/2004, 2073/2005 and 2015/1375), retained Regulations 2017/625 and the Regulation (EU) 2017/625 package in so far as it and they relate to food and The Food Safety and Hygiene (England) Regulations (2013) / The Food Hygiene (Wales) Regulations 2006.

Note*: Retained Regulation (EC) 178/2002 is not included within the definition of the “Hygiene Regulations” and as a result RANs may not be used to address breaches of this regulation.

RANs should be used specifically where the AO considers that the FBO should take immediate action to achieve compliance, where the rate of operation of the plant is detrimental to its ability to comply with the Hygiene Regulations and may be used to direct the FBO to maintain sampling at the frequencies determined within retained Regulation (EC) 2073/2005.

The AO must verbally request that the FBO rectifies the situation and instigate service of the notice if compliance is not met. It is essential to gather the necessary evidence at the time the contravention is identified to justify service of the notice , in case an appeal against the RAN is lodged by the FBO.

The AO must verbally inform the FBO of the intention to serve the notice and record the information in Chronos.

4.5.2 Purpose of a RAN

A RAN places a legal requirement on a FBO to take immediate action to achieve compliance with the Hygiene Regulations. The AO must specify on the notice whether the RAN is intended to:

- prohibit the use of any equipment or any part of the establishment specified in the notice, or
- impose conditions upon or stop a process, or
- require the rate of operation to be reduced to such extent as specified in the notice, or to be stopped completely

RANs can be used to direct a FBO to immediately rectify any of the deficiencies, which fall under retained Regulations (EC) 852 and 853/2004, (EC) 2073, (EC) 2015/1375, (EU) 2017/625 and the retained Regulation (EU) 2017/625 package in so far as it and they relate to food, together with the domestic hygiene regulations themselves.

In the case of maintenance and structural problems, that do not pose any imminent risk to public health and can only be rectified in the longer term, a Hygiene Improvement Notice should be used. This would be served under Regulation 6 of The Food Safety and Hygiene (England) Regulations 2013 / Regulation 6 of The Food Hygiene (Wales) Regulations 2006.

4.5.3 Identification of the non-compliance

Where the RAN is being served under section 9(1)(a), because a requirement of the Hygiene Regulations is being breached, the AO is required to:

- specify how the requirement(s) of the Hygiene Regulations have been breached in the “contravention” box of the RAN. It is not sufficient to merely repeat the legal requirement set out in the legislation, as this does not specify the precise nature of the breach.
- describe the specific contravention observed, referencing its location in the establishment and enough information to differentiate it from other areas with which it could be confused. The description of the issue should specify how it fails to meet the legal requirements specified in the notice and identify any relevant risks to the product,

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- ensure that each notice only cites one breach / contravention, 4.5.13
- cite the relevant legal reference(s) of the Hygiene Regulations that are being breached, ensuring this identifies the exact provision(s) that place an obligation on the FBO. This should include the Articles setting out the general obligations to comply with the relevant provisions in the Annexes to the EU Regulation, and the specific requirement contained in that Annex, for example, retained Regulation (EC) 853/2004, Article 3 and Annex III, Section I, Chapter IV, Paragraph 7(b) (i),
- if the non-compliance is covered by more than one legal provision, cite the most relevant provision that applies. Where there are no specific requirements, use the more generic references which apply to the scenario in question.
- describe the measure(s) / action(s) which, in your opinion, the FBO must take to remedy the breach identified in the “contraventions” box of the notice. Sometimes, it may not be possible to identify the exact solution to a problem, for example, an engineering solution to a ventilation / humidity issue. In such cases, it is acceptable to set out the requirements of the regulations that must be complied with and any objectives of that regulation to avoid contamination. The FBO may also be directed to contact an engineer to try and find a solution to such problems.
- ensure that the contravention(s), legal reference(s) and action(s) all link to one another. The measure(s) to be taken must be relevant to the issues specified in the contravention box of the notice. The AO must not require the FBO to undertake actions to remedy failures which they have not identified as contraventions in the earlier part of the notice
- if a RAN is served under Regulation 9(1)(d), allowing conditions to be imposed on a process in the establishment, ensure that the process in question is specified in the notice; examples of a process might be “evisceration”, “dressing” and “skinning” or “wrapping”, “packaging”, “microbiological sampling” etc.

FBOs have a responsibility to monitor all significant hazards in a process, determine where a process is out of control through effective monitoring of a critical limit, identify the root cause of such non-compliances and rectify them through effective control measures / corrective actions, as part of their HACCP based procedures. However, in many cases FBOs will have failed to monitor and failed to undertake the corrective actions identified in their HACCP plan.

Whilst HINs can be used to require compliance with the systemic HACCP deficiencies, RAN can also be used to address any immediate hygiene risks

evident as a result of the FBOs failure to have taken any appropriate corrective actions.

In some cases – for example, where a slaughter process is clearly out of control, where the root cause of a serious problem is unknown, or where an AO has already served a RAN which has been breached by the FBO – the AO should consider serving a RAN which prohibits the carrying out of a process (under Regulation 9(1)(d)) or requiring the FBO to stop operations completely (under Regulation 9(1)(e)).

RANs to Stop a Process

In cases where:

- the process is clearly out of control and the FBO is not taking responsibility to address the root cause(s),
- where the root cause(s) is/are varied, or
- where an AO has already served a RAN, which has been breached by the FBO and already referred for investigation

The AO should consider serving a RAN which prohibits the carrying out of a process (under Regulation 9(1)(d)) or requiring the FBO to stop operations completely (under Regulation 9(1)(e)). This may be done in conjunction with a refusal to apply a health mark or the detention of meat if applicable.

A RAN may be used to stop the operation completely in circumstances such as pest infestation, failure of sterilisers, inadequate overnight cleaning, failure of the hot water supply, lack of potable water supply or where the behaviour of the FBO is hampering adequate health inspection.

Note: Where the notice has the effect of stopping the operation completely, the AO must ensure that the action requested of the FBO is proportionate to the risk.

4.5.4 Service and withdrawal

A separate RAN should normally be served on an FBO in respect of each separate deficiency (there may be rare cases where there are multiple breaches that are clearly of the same theme, see below in 4.5.13).

Notices should be served on the correct legal entity and at the correct address. If this is a limited company, it should be posted to the registered office address, c/o the Company Secretary. The notice must also be handed to someone in charge at the plant and a copy retained.

If the business is a limited company, service is not deemed to have occurred unless the notice has been served on the company at their registered office address of that company by post – See Regulation 30, The Food Safety and Hygiene (England) Regulations 2013 and devolved equivalents.

4.5.5 Tagging

All equipment that has been the subject of a RAN must be clearly identified and cross referenced. Tagging the equipment using a numbered security seal, may be used to clearly identify it for the FBO to action any deficiency.

4.5.6 Who to serve the notice on

RANs must be served on the FBO or a “duly authorised representative” of the business. Information on the identity of any duly authorised representative will be contained in the approval document for the business. If this person is not defined by the business or that person is not present / has left the business; the notice must always be directed by default to the FBO.

The notice may be handed to an FBO if they are a sole trader or to all partners in the business, if they are present at the plant.

4.5.7 Alternative service methods

Where it is not possible to identify the name and address of the FBO on whom the notice should be served, it can be served by addressing it to the FBO in their capacity as “occupier” of the establishment at which corrective action is required (naming the establishment). The notice may then either be handed to someone else at the establishment who appears to be in charge, or by attaching the notice or a copy of it to some conspicuous part of the establishment.

The provisions relating to the service of hygiene related notices are contained within Regulation 30 of The Food Safety and Hygiene (England) Regulations 2013/Regulation 28 of The Food Hygiene (Wales) Regulations. They correspond with the provisions of Section 50 of the Food Safety Act 1990.

4.5.8 Information for notices

A copy of the Notice served must be retained and the following information is to be recorded on the reverse of the Notice:

- the name of the plant representative to whom any copy notices have been handed (in circumstances where the original has been posted to the FBO at the plant or served at the registered office address of a limited company)
- any comments made by the FBO or plant representative when handed the notice
- details of any food detained at the same time as the service of the RAN
- the reference number of any Detention Notice served
- details of any appeal that is lodged by the FBO in respect of the service of the RAN

4.5.9 Rights of appeal

The FBO has the right of appeal in accordance with (Regulation 22 (England), Regulation 20 (Wales)) to a Justice of the Peace regarding the decision of the AO to serve a Remedial Action Notice. If the FBO appeals, the AO / VEDM must notify CSU York Transactions Team immediately.

The provisions of the Remedial Action Notice remain in force until such time as the appeal is upheld.

4.5.10 If removed or defaced or destroyed

The notice is the property of the FSA. If the AO discovers that any notice affixed to an establishment has been removed, defaced, or destroyed, the notice should be replaced as soon as possible, and the events recorded in the officer's pocketbook and/or plant daybook if at a slaughterhouse.

4.5.11 Failure to comply

Failure to comply with a RAN is an offence (Regulation 9(5) of The Food Safety and Hygiene (England) Regulations 2013 / Regulation 9 (7) of The Food Hygiene (Wales) Regulations 2006). If the operator has failed to comply with such a notice, the AO should complete a Referral for Investigation report - ENF 11/6.

4.5.12 Corroborative evidence rules

The service of a notice should be evidenced or corroborated in some way wherever possible. If a notice is served by hand, either secure a second AO to corroborate this fact or ask the FBO to sign your pocketbook to acknowledge receipt. Both, the AO who served the original notice and the corroborating officer

should sign a copy of the notice and indicate the date and time of service and should also make a note of the details of service in the Plant Daybook and/or their pocketbook.

A witness is required to observe any AO fixing a notice to the premises wherever possible, or a photograph is required to evidence it has been attached.

When posting a notice, the OV should obtain a proof of postage certificate and retain this as evidence. Where this is not possible, the AO should record the details of where the notice is posted and the postage address in their pocketbook and have a colleague corroborate the postage and countersign the entry. Where no colleague is available to corroborate postage, record details of posting in the same way as above and photograph the envelope.

It is also possible to send notices via recorded delivery, however, if the FBO has a history of refusing to accept such correspondence, the notice should always be posted at a post office and a certificate of posting obtained as above.

4.5.13 Multiple contraventions

Where different contraventions have been identified, a different notice should be served for each and every separate contravention.

A notice containing multiple contraventions:

- will be more complicated to draft and it is more likely that an FBO may be confused by what the AO is trying to convey; this may affect the validity of the Notice as it is important that enforcement requirements placed upon an FBO are **clear**,
- will require actions that must be capable of curing all the issues cited in the contravention section,
- cannot be withdrawn if there are certain issues still outstanding, even where some issues have been complied with,
- cannot be referred for investigation as certain aspects of the notice may have been complied with and some not,
- if appealed, will result in all of the issues being the subject of the appeal, even where some may have been actioned.

In limited circumstances, it may be acceptable to cite more than one issue and legal reference on a RAN or HIN (see section on HINs), provided that:

- the legal references and contraventions relate to the same theme, for example, maintenance, cleanliness of the premises

- the actions the AO requires the FBO to take are capable of curing all the contraventions identified earlier in the notice,
- where multiple issues of the same theme are identified, it may be useful to list them on a schedule that is annexed to the Notice.

4.5.14 Withdrawal of a RAN

A RAN is often used to correct problems with operational practices that pose a potential risk to the safe production of food. They may be left in place until the AO is satisfied that the FBO has complied with the legal requirement. There may often be occasions where the non-compliance is intermittent, and the AO wishes to be satisfied that the FBO / their staff have changed their behaviour before withdrawing the notice.

However, the AO must monitor the situation and come to a determination within a reasonable time frame given the non-compliance they are requiring the FBO to correct. The time frame for removing the notice may vary depending on the nature of the non-compliance; however, if the Notice is breached, it must be referred for investigation.

If the officer is satisfied that the actions required by the Notice have been complied with, it must be withdrawn and it is not appropriate to leave the notice in place for long periods after this point as it does not offer certainty for the FBO as to whether they will face any future legal proceedings, since they are now complying with the Hygiene Regulations.

However, in situations where compliance with the requirements are intermittent, it is important to remember that there is no maximum timeframe to leave a RAN in place, and no requirement about when a RAN has to be withdrawn, except that it should be withdrawn once the AO is satisfied that it has been complied with.

Notification of withdrawal of a RAN must be achieved in the same way that the notice was served. If the FBO is a limited company, and the Notice was served at the company's registered office address (with a copy of the Notice having been handed to a member of staff in charge at the production plant), the withdrawal notice must also be sent in the post to the registered office address, and a second copy should be handed to someone appearing to be in charge / duly authorised representative at the plant.

4.6 Hygiene Improvement Notices

4.6.1 When to use a Hygiene Improvement Notice (ENF 11/23 (E and W))

HIN should be used:

- where there is a record of non-compliance with breaches of the Hygiene Regulations
- where the history of compliance by the FBO is such that the AO has reason to believe that an informal approach will not be successful
- where formal action is proportionate to the risk to public health

A HIN should not be used for non-hygiene related matters, for example, failure to comply with the provisions of the Animal By-Product Regulations, WATOK or TSE Regulations.

Both verbal and written advice should be given to a FBO prior to a HIN being served. However, there may be circumstances where the AO believes this informal approach will be unsuccessful or the issue is a repetitive one. If these informal stages are to be bypassed, the AO must have suitable evidence to demonstrate that the FBO has ignored previous informal advice in this area, prior to circumventing these requirements.

4.6.2 Purpose of a HIN

The purpose of a HIN is to place a legal requirement on a FBO to take action to achieve compliance with the retained EU Food Hygiene Regulations.

A HIN may require the FBO to:

- address any hygiene deficiency that does not require immediate action
- repair a structural defect with the building
- to build or construct additional facilities to cope with an increased throughput
- address failures to implement and maintain a sound HACCP based system

The identified action must be stated on the HIN.

4.6.3 When not to issue a HIN

A HIN cannot be used to impose a continuing burden, and should not be used in the following circumstances:

- where the contravention might be a continuing one, for example, wooden pallets stored in the presence of unprotected fresh meat and the Notice would only secure an improvement at that point in time
- where breaches exist that pose a potential and imminent risk to health and urgent action is needed; in these cases, it is more appropriate to use a RAN and in more serious situations (subject to agreement from the relevant Head of Operational Delivery) a Hygiene Emergency Prohibition Notice
- for the failure by an operative to implement good operational hygiene

An HIN cannot be issued unless a contravention of the Hygiene Regulations is identified.

4.6.4 Service

HINs can only be served on the FBO (i.e. a sole trader / on each partner / a limited company). Only the AO who observes the deficiency should serve the formal notice.

Note: Where the FBO is a limited company, the envelope is to be addressed to the limited company c/o The Company Secretary at the Registered Office. However, details of the Company Secretary must never be used on the formal notice itself, as that must only be addressed to the FBO.

If the Notice has been served by post on the FBO, a copy of the Notice should be handed to someone at the plant address by the AO that observed the deficiency. Details of how the notice was served should be recorded on the back of the HIN.

4.6.5 Service checklist

When serving a HIN the AO must:

- have in their possession all the evidence to justify its service
- verbally inform the FBO of the intention to serve the notice
- state why it is served, and the action needed to remedy the breach
- sign, date and if possible, type the HIN

4.6.6 Drafting and serving a notice to a sole trader

Ensure that the name of the individual FBO on the formal Notice clearly identifies that individual beyond doubt and will need to include both their forename(s) and surname.

Where family members have the same first names, try to include any additional forenames that the person may have, to avoid confusion. The notice may be served by hand on the sole trader at the plant or addressed to them personally at the plant address. A copy of the Notice should be posted to the FBO at the plant address and proof of posting obtained.

4.6.7 Drafting and serving a notice to a partnership

Where a number of individuals act as the FBO under a partnership arrangement, a copy of the Notice must be served on each and every partner. The box identifying the FBO must include each and every partner's full name.

The notices may be served by hand on each partner at the plant or addressed to each of them personally at the plant address, with a covering letter explaining that the **same** notice has been served on the other partners in the business. Proof of posting should be obtained.

4.6.8 Drafting a notice to a FBO with limited liability status

Where the FBO has limited liability status, the name of the FBO will be the full name of the limited company, as registered at Companies House, for example, 'ABC Meat Ltd'. The Notice must be sent by post to the registered office or principal address of the company, with a copy of the Notice handed to the relevant person in charge at the plant. The **envelope** must be addressed to the limited company c/o 'The Company Secretary', where one exists.

Note: Whilst a company secretary is no longer a legal requirement within a limited company structure, where they exist, they are generally the person responsible within a limited company structure, who is responsible for receiving formal documentation. They are **not**, however, the FBO or proprietor, and therefore the company secretary details should **not** be referred to on the formal notice itself.

4.6.9 Content of notice

The notice must specify the:

- grounds for believing the FBO is failing to comply with the Hygiene Regulations
- precise nature of the alleged breach
- measures needed to be taken to secure compliance
- timescale (date) for compliance (minimum 14 days)
- appeal provisions, including the name and address of the relevant local court

Note: Where an FBO undertakes alternative works of equivalent effect, this may be acceptable.

4.6.10 Drafting the notice

The AO is required to:

- describe the contravention that has been observed that constitutes a breach of the Hygiene Regulations. It is not sufficient to merely repeat the legal requirement set out in the legislation, as this does not specify the precise nature of the breach
- cite the relevant legal reference(s) within the Hygiene Regulations, ensuring that this identifies the exact point or paragraph that places an obligation on the FBO, including the general obligation for the FBO to comply with the relevant provisions within the Annex(es) of the legislation where applicable; for example, Article 3 **and** Annex II, Chapter X, Point 1 of retained Regulation (EC) 852/2004
- where the contravention breaches various legal requirements, use the most relevant and specific provision where this exists; however, where there are no specific requirements, use a more generic references which applies to the contravention in question
- describe the measure(s) / action(s) in the AOs opinion the FBO must take to secure compliance with the contravention(s) identified earlier in the notice
- ensure the contravention(s), legal reference(s) and action(s) all link to one another. The AO must not require the FBO to undertake actions or measures that are not relevant to the identified contravention detailed earlier in the notice or are not directly able to cure that breach

- set out a timescale which is a minimum of 14 clear days from the date the notice is served
- in rare cases where the AO identifies more than one legal reference and contravention on the same notice, it is important that these are clearly of the same theme and that the time frame for compliance is suitable for all issues

4.6.11 Drafting notices with more than one legal breach identified

A notice will generally only deal with one contravention. This will avoid potential problems if the Notice is appealed, where all of the issues cited on the notice will be held in abeyance until the court makes a determination on the validity of the Notice.

Where different contraventions need to be remedied within different time frames; for logistical and operational reasons, you cannot place separate time scales for different issues on the same notice and therefore the contraventions should be the subject of separate notices.

The more contraventions that are cited in a Notice, the more complicated the Notice will be to draft, and it is more likely that an FBO may be confused by what the AO is trying to convey. This may also affect the validity of the Notice as it is important that enforcement requirements placed upon an FBO are **clear**.

The actions / measures the FBO must take that are specified by the AO in the notice, must be capable of curing all the issues cited in the contravention section. Failure to do so will make it problematic to ensure that the actions the FBO must take, marry up with all the relevant contraventions identified by the Notice and will secure compliance.

It may be acceptable to cite more than one legal reference or issue on a notice, provided that:

- the legal references link to all the contraventions described by the AO
- they relate to the same theme
- the actions / measures the AO requires the FBO to take are capable of curing all the contraventions identified in the notice and ensure all legal obligations are adequately dealt with.

4.6.12 Posting

Ideally, all HINs should be posted at a Post Office and a certificate of posting obtained. Where it is impractical to gain access to a Post Office the notice should be posted in a post box, corroboration obtained by a colleague where they are available, and a record made in the AOs pocketbook which should be countersigned.

It is possible to send notices via recorded delivery, however, if the FBO has a history of refusing to accept such correspondence, the notice should always be posted at a post office and a certificate of posting obtained as above.

4.6.13 Right of appeal

Recipients have a right of appeal against the service of a Hygiene Improvement Notice to the Magistrates' Court. During the appeal period, the requirements of the notice are suspended.

In the event of an appeal by someone who is aggrieved by the service of the HIN, the AO is to inform CSU York Transactions Team immediately, who will arrange legal representation through FSA Legal for the appeal hearing.

4.6.14 Requests for notice extension

If the FBO were to request an extension to a HIN, this request must be in writing and requested prior to the expiry of the notice. This will be an informal arrangement between the AO and FBO as there is no legal basis for the AO to extend the notice. It will constitute an informal undertaking by the AO not to refer the matter for investigation unless the FBO continues to be non-compliant after the agreed extension date.

Where there is a genuine reason for such an extension, the AO should discuss with the FBO the length of time required to comply and confirm their agreement to the extension in writing.

The AO must review the works carried out by the FBO after the agreed extension date specified in the letter has expired. They should either withdraw the Notice or refer the breach of the Notice for investigation; see below.

4.6.15 Failure to comply

Failure to comply with an HIN is an offence.

If the FBO has failed to comply with a notice, complete a Referral for Investigation report for the breach of the formal notice as well as a breach of the substantive offence that led to the notice being served in the first place.

Reference: See the topic 4.9 on 'Referral for investigation' for additional information.

4.6.16 Compliance and withdrawal

After the service of a HIN, an AO must check that it is complied with by the stated date.

Where compliance is achieved, an AO must confirm formally in writing that they are satisfied with the works carried out.

Measures that achieve the same outcome as those specified in the notice must be accepted as achieving compliance.

A template letter is available in Annex 4 to this chapter that can be used as the basis of a letter to the FBO where:

- the AO is satisfied that the action required in the HIN has been carried out and compliance has been achieved to their satisfaction, or
- the AO has served the HIN in error and/or it has to be withdrawn due to a technicality or is legally defective in some way.

Reference: See Annex 4 (a) and (b) for letter templates on 'Hygiene Improvement Notice and defective notice withdrawal.

4.7 Hygiene Emergency Prohibition Notices

4.7.1 Caution

Hygiene Emergency Prohibition Notices (HEPN) should only be issued by AOs after consultation with FSA Legal.

4.7.2 When to use

Issuing a HEPN should only be considered after discussion with the FVC, and where there is an imminent risk of injury to health that requires the backing of the court, for example, contamination of the potable water supply.

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Reference: Specific examples and further guidance are given in the Code of Practice made under Regulation 26/Regulation 24 of the Regulations.

The HEPN must be served on the FBO by using the same procedures as outlined in the topic 'Hygiene Improvement Notices'.

Notify the FVL in case a review of the FBOs approval is required.

Note: Limited timescales are imposed for the service of the HEPN on the FBO and the subsequent Notices required before the application to the court for the Order (see below).

4.8 Hygiene Emergency Prohibition Orders

4.8.1 Application process

The table below provides an overview of the application process for a HEPO.

Stage	Description
1	<p>A HEPN must first be served on the FBO. It has an immediate prohibition effect on a process / equipment or the premises. Once served the AO should contact FSA legal to immediately arrange for a hearing at the local Magistrates Court.</p> <p>The AO must give the proprietor at least <u>1 full day's notice</u> of their intention to apply to the court for a HEPO by serving a HEPN on the FBO.</p> <p>Once served the AO should contact the local court to immediately arrange for a hearing.</p> <p>Note: A copy of the HEPN must be affixed in a conspicuous position to the premises at which the notice relates.</p>
2	<p>The AO must apply for a HEPO from a magistrates' court with jurisdiction in the area where the plant is located. The application to the Court must be made within three days of the service of the HEPN. The day of the service of the notice is regarded as day one. There is no legal requirement for the application to be heard in three days, although the court should be asked to list the hearing at the earliest opportunity. Once made the HEPO supersedes the HEPN. The AO must also affix a copy of the HEPO in a conspicuous position to the premises at which the HEPO relates.</p>
3	<p>The AO must serve on the FBO a Notice of Intention to Apply for a HEPO at least one day prior to making an application to the Court for a HEPO.</p>

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4	<p>Once the FBO applies, in writing, for the HEPO to be lifted, the application must be determined as soon as practicable and within 14 days. Once the AO is satisfied that the proprietor has taken significant steps to remove the health risk(s) specified in the notice, the AO should sign the withdrawal certificate at part 5 of the HEPN.</p> <p>Regulation: The Food Safety and Hygiene (England) Regulations 2013 / The Food Hygiene (Wales) Regulations 2006, Regulation 8.</p>
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4.8.2 Sources of advice

Advice should be sought from FSA Legal, who will assist in vetting the HEPN and preparation of the case prior to the court's hearing of a HEPO.

4.8.3 Evidence

Monitoring of the prohibition and any action taken by the proprietor must be recorded. Suitable evidence should be gathered prior to serving the HEPN for production in court. A statement should be produced setting out the incident and evidence that supports the application to the Court.

4.8.4 Procedure

The table below shows the steps for an AO to follow when applying for a HEPO.

Stage	Description
Contact local court to arrange hearing	The hearing must take place within three days of service of the HEPN. On establishing dates and times, the AO must notify the FBO by serving a Notice of Intention to Apply for a HEPO.
Prepare for hearing	<p>Prior to the hearing the AO should:</p> <ul style="list-style-type: none"> • read all the relevant papers • prepare to be questioned as a witness • bring all relevant evidence to court <p>The AO should also prepare three copies of:</p> <ul style="list-style-type: none"> • the HEPN

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	<ul style="list-style-type: none"> • the Notice of Intention to Apply • the Complaint for a HEPO • the draft HEPO duly completed and ready for signing by the Justice of the Peace <p>The AO must monitor the premises whilst awaiting the hearing and record any breaches of the notice or changes in circumstances at the plant.</p>
At the hearing	It is crucial that the AO gathers appropriate evidence at the time the HEPN was served and that this evidence is presented to the court.

Stage	Description
Court will decide whether to issue the HEPO or not	<p>If the order is granted the AO should have produced a draft HEPO for signature by the Magistrate. The Order must then be served on the FBO as soon as possible and a copy affixed to the premises in a conspicuous place.</p> <p>Any breaches of the order whilst in force should be recorded and evidence collected. The matter should then be referred for investigation.</p>
Risk is removed	The AO must then formally cancel the HEPO by writing to the FBO. The withdrawal of such a HEPO must not be unreasonably withheld. Once the order has been complied with, the business can recommence the process / operation or use of equipment / the premises connected with their business.

4.9 Referral for investigation

4.9.1 Appropriate uses

Referring an incident for investigation is not, in itself, enforcement. Its purpose is not to remedy a breach but to allow the relevant legal team to determine if there is a case for prosecution. However, the hierarchy of enforcement should be followed where necessary to ensure prosecutions are only brought in appropriate cases.

An immediate referral for investigation is required in the following circumstances:

- Presentation of SRM on three or more occasions.

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- SRM being consigned from the premises still attached to the meat (except in the case of VC being consigned to approved cutting premises)
- Where contraventions of the legislation have been escalated through their natural hierarchy and the FBO continues to breach the requirements.
- Where FBOs have failed to test bovine animal's, which require BSE testing
- contraventions of retained Regulation (EC) 1099/2009 and / WATOK, where avoidable pain, distress or suffering has occurred during handling or slaughter
- breaches of the retained EU or domestic food safety or hygiene legislation leading to an imminent risk to public health
- obstruction of FSA personnel engaged in official duties
- failure to comply with any formal enforcement notice

“Note, for animal welfare cases a RFI triage proforma should be completed and the case submitted to the Welfare Triage Panel before initiating the referral for investigation (see Guidance at Annex 14)”

<p>AO decision made to refer the case for formal investigation. Unless the suggested referral comes from a cOV, in which case, the VEDM must make the decision to refer the case for formal investigation.</p>	<p>Remember that at this stage it is just a recommendation - the FBO is innocent until proven guilty in a court of law.</p>
<p>The AO must send all evidence, together with the ENF 11/6 and the latest FBO audit report, to CSU at FSA York within 10 days of the offence being identified and the AO's decision being made to refer investigation. COVs must send this information to the VEDMs who will pass it onto CSU in York if they support the decision to formally refer the matter for investigation. The information should reach CSU within 10 working days from the AOs / VEDMs decision to refer the matter after the offence was identified.</p>	<p>Hygiene offences carry a 12-month time limit from when they are discovered by the AO; within which charges should be laid at the court. The time-limit between identifying obstruction contraventions and laying charges at the court is 6 months. The time-limit between identifying animal welfare cases and laying charges is 6 months, beginning with the date on which evidence which the prosecution thinks is sufficient to justify the proceedings comes to the prosecutor's knowledge. The IO must be afforded enough time to investigate the offences identified.</p>

4.9.2 Evidence

The AO must collect adequate evidence at the time of the offence before referring the matter for investigation.

Where a formal notice is being served, the AO must gather evidence at the time, to justify its service in case of an appeal and to evidence the original contravention of the retained EU requirements.

Evidence must be gathered again if the notice is breached, because breach of the notice is a separate offence.

The AO must identify the contravention(s) and update Chronos

Regard should be given to the Enforcement Policy and relevant guidance prior to any referral for investigation being put forward.

4.9.3 Referral to FSA Legal

Where the AO considers that an incident requires investigation, the matter will be referred to FSA Legal for an investigation to be undertaken.

Note: See the table in Section 4.11 on 'Protocol for a referral for investigation'.

4.9.4 Decision to prosecute

In England and Wales, the decision whether or not to prosecute for contraventions of food safety, hygiene and SRM controls is made by an experienced prosecutor in FSA Legal, having been investigated fully by an FSA Investigating Officer.

The decision to prosecute for contraventions in England of the animal welfare, TSE (RMOP and BSE testing) and animal by-product legislation will be made by a lawyer at the Crown Prosecution Service (CPS), on the basis of an investigation carried out by an FSA Investigating Officer. The decision to prosecute for contraventions of the equivalent legislation in Wales is the responsibility of the Welsh Government, again on the basis of an FSA investigation.

4.9.5 Rules of evidence

The AOs main task will be to gather facts and evidence at the time of the offence, which may be used in court at a later stage. An AO must not attempt to conduct a full investigation as specific training is needed to ensure that the investigation is

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carried out in compliance with the Police and Criminal Evidence Act 1984 (PACE) (or equivalent) requirements. Only specially trained FSA Investigation Officers conduct investigations. AOs must not attempt to caution or interview suspects or to take statements, unless specifically trained to do so.

4.9.6 Statements

Statements will be taken by an FSA Investigation Officer. They are a record of specific events an individual witnessed in a chronological order. They must refer to all relevant evidence and produce these as exhibits for the case, e.g.:

- photographs / videos
- physical samples
- copies of notices
- copies of daybook entries
- copies of relevant parts of the FBOs HACCP plan and records of corrective actions undertaken

Exhibits are usually identified by the initials of the AO and then consecutively numbered. The IO will assist with numbering when preparing the final statement.

Note: Where the AO is satisfied that the action required or work specified in a formal notice has been completed, the date that it was completed should be specified in a witness statement and on the back of the copy notice.

4.10 Protocol for a referral for investigation

4.10.1 Protocol for a referral for investigation

The table below outlines the process and rationale for a referral by the AO for formal investigation.

Process	Rationale
If an AO is referring the matter, they should discuss the issue with the rest of the inspection team (in slaughterhouses), where relevant when the contravention occurs, and prior to	This will ensure that the entire inspection team is aware of all formal enforcement action taking place at the plant.

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Process	Rationale
<p>completing Chronos and the 'Referral for Investigation'.</p> <p>"Note, for animal welfare cases an RFI triage proforma should be completed and the case should be triaged before initiating the referral for investigation (see Guidance at Annex 15)"</p>	<p>All members of the Inspection Team are Authorised Officers and must assist with any enforcement intervention as and when required, including acting as a witness in court if necessary.</p> <p>Remember that at this stage, the referral is a recommendation for investigation. The FBO is innocent until proven guilty.</p>
<p>The AO is to ensure the inspection team is aware of any proposed enforcement action before the FBO is advised of referral.</p>	<p>This will forewarn and forearm colleagues that a contravention has been referred for investigation.</p>
<p>A summary of all enforcement should be shared at team meetings, detailing the stage to which any investigation has progressed.</p>	<p>The team as a whole will be more effective in identifying similar breaches, and no individual AOs will unknowingly condone activities that another AO has attempted to stop.</p>
<p>If advice is needed on the correct enforcement approach, the AO should consult with FSA Legal at an early stage if necessary.</p>	<p>Early advice will provide the necessary support to quickly address any queries regarding an enforcement intervention. Likewise, it will avoid unnecessary mistakes, lead to a more consistent approach, reduce legal challenges, improve evidence gathering and ultimately improve the success of cases in court.</p>
<p>AO / VEDM decision made to refer the case for formal investigation.</p>	<p>Remember that at this stage it is just a recommendation – the FBO is innocent until proven guilty in a court of law.</p>
<p>The AO is to collect all evidence relating to the referral</p>	<p>All relevant evidence must be identified, secured and supplied with the prosecution file to enable the referral for investigation to be considered by the lawyer assessing the case. In particular, photographs must be taken to assist the court, especially where the nature of the offence may be difficult to visualise or</p>

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Process	Rationale
	where photographs / videos are essential to prove the elements of the offence.
The AO must send all evidence together with the ENF 11/6 and the latest FBO audit report, to the CSU at FSA York within 10 working days of the offence being identified and the AOs decision being made to refer the case for investigation must also be included, together with the outcome of the Triage Panel in the case of animal welfare referrals.	Hygiene offences carry a 12-month time limit from when they are discovered by the AO; within which charges should be laid at the court. The time limit between identifying obstruction contraventions and laying charges at the court is 6 months. The time limit between identifying animal welfare cases and laying charges is 6 months, beginning with the date on which evidence which the prosecution thinks is sufficient to justify the proceedings comes to the prosecutor's knowledge. The IO must be afforded enough time to investigate the offences identified.
Once received, CSU will acknowledge receipt of the recommendation and associated paperwork and allocate a unique number to the referral. This number will be notified to the AO in the confirmation email. (If confirmation is not received within 5 working days the AO should contact CSU.)	Confirmation will be sent to provide assurance that the documentation has been received.
Inform the FBO as a matter of courtesy	After a recommendation for investigation has been passed forward, it is inappropriate for Officers to pass comment on the potential outcome of any investigation under consideration.

4.10.2 Process to be followed

Process	Rationale
If compliance is achieved after a referral for investigation has been made, the OV must record this in Chronos, including compliance with any formal notice and	This will demonstrate the effectiveness or not of the operator's 'Due Diligence' systems and identify any defences or

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Process	Rationale
inform the Investigating Officer (IO) in the case.	mitigation that the operator may wish to put forward.
Where additional information is required, FSA Legal will request further details, to gain a better understanding of the issues involved.	Where evidence is lacking, the issue is complex, the approach taken by the AO requires further explanation. FSA Legal may contact relevant colleagues to ensure that a comprehensive and informed picture can be gained of the issues surrounding the referral.
This may include checking that: <ul style="list-style-type: none"> all the necessary evidence has been gathered 	To prove the elements of the offence beyond all reasonable doubt.
<ul style="list-style-type: none"> the correct course of action has been taken 	To stand up to legal scrutiny.
<ul style="list-style-type: none"> all formal notices have been correctly drafted and served 	To make sure that all the procedural requirements relating to enforcement have been followed.
<ul style="list-style-type: none"> all formal notices must only request the FBO undertake a course of action required by the Regulations 	To ensure that the notice is legally compliant and defensible in case of an appeal.
<ul style="list-style-type: none"> time limits within which recommendations should be put forward by the AO after an offence has been identified 	To ensure that long delays are not holding up the recommendation process and the FSA does not have to defend any 'abuse of process arguments' by the defence alleging delays in investigating offences
<ul style="list-style-type: none"> the hierarchy of enforcement has been followed and the approach to enforcement has been both reasonable and proportionate to the contravention identified 	To ensure that all operational instructions in the MOC and the FSA Operations Enforcement Policy have been complied with.
<ul style="list-style-type: none"> all formal notices have been correctly drafted and served 	To make sure that all the procedural requirements relating to enforcement have been followed.
Updated [Where an AO identifies further contravention(s) of a case that has already been referred for investigation, the AO must discuss the issue with the FBO in the usual way, gather additional	Updated [Although RFI is the highest level of the FSA enforcement hierarchy and no additional enforcement may need to be undertaken by the AO, it is

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Process	Rationale
evidence and record the issue on the relevant systems (e.g. Chronos, Slaughter Hygiene Verification - SHV, and in the Day Book, their Pocket Book etc.), The AO must also contact the relevant IO of this further contravention. Where the IO has already submitted the prosecution file to lawyers, a new referral will need to be made of the contravention. If the prosecution case file is still open, the IO will take a further statement from the AO. Please follow the Chronos User Guidance on Managing further contraventions after an RFI to understand how to add further contraventions into Chronos.]	important for the IO and the FSA Legal team to build an overall view of the extent of a contravention and whether or not the FBO is repeatedly committing the same offence. The collection of the evidence on further contraventions and its communication to the IO will further strengthen an existing case or be the start point for a further referral.]

4.11 Referral for investigation: FSA Legal

4.11.1 FSA protocol

The table below outlines the process and rationale for formal investigation by the FSA.

Process	Rationale
FSA Legal Services will review the referral and appoint an IO to formally interview the alleged defendant(s), take statements from all relevant AOs and any other potential witnesses.	FSA Legal will inform the AO and CSU, which IO has been appointed to each case.
<p>When the investigation is complete:</p> <ul style="list-style-type: none"> • FSA lawyers will review all case files relating to hygiene and SRM contraventions • Crown Prosecution Service (CPS) lawyers will review all welfare, ABPR, RMOP and BSE testing infringements in England • Welsh Government will review all welfare, ABPR, RMOP and BSE testing infringements in Wales <p>Potential actions could be:</p> <ul style="list-style-type: none"> • not enough evidence exists to pursue the case 	

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Process	Rationale
<ul style="list-style-type: none"> procedural errors have been identified and no further action is taken, but it is recommended that enforcement action is restarted it is not in the public interest to take formal action 	<p>When a decision is made NOT to take the case forward FSA Legal will advise the AO / ITL and CSU.</p>
<ul style="list-style-type: none"> The case is pursued with a view to prosecute the FBO and/or defendants and charges are laid with the local Magistrates Court. 	<p>When a decision is made to take the case forward to court, the IO must inform the AO / FSA / ITL and CSU prior to informing the FBO of this intention. This will ensure the Inspection Team is aware of the fact that the FBO will be facing formal action, so that they are aware of any potential conflict.</p>
<ul style="list-style-type: none"> Where the operator pleads not guilty and the case goes forward to trial, all witnesses must be informed by the IO of where and when their presence will be required at court. 	<p>Any AO who is unfamiliar with court procedure may benefit from some discussion with their FVC or the IO before any court appearance. Arrangements can also be made for a visit to the court before the trial takes place. Witnesses will be sent a copy of their statement to review before appearing at court.</p>
<ul style="list-style-type: none"> When the case has gone to court and the outcome determined, this information will be cascaded back to all AOs involved in the case and CSU team through FSA Legal. 	<p>Witnesses are not required to attend court when the FBO offers a guilty plea, however, the outcome of the case will be cascaded to all witnesses.</p>

4.12 Change of FBO during enforcement action

4.12.1 New FBO

From the moment a new FBO takes over an establishment, they are responsible for its condition and operation. Any enforcement action initiated prior to the

change of ownership should be reassessed. Where the new FBO fails to immediately address any outstanding issues, these should be pursued by the AO, through the hierarchy in the normal way by starting the enforcement from verbal advice. Where there are a number of issues, it may be beneficial to set these out in an advisory letter, with any appropriate time scales. If matters need immediate rectification, formal notices may be served on the new FBO and any historical notices will no longer have any legal effect.

4.12.2 Re-issue of notices

In the event of the premises changing ownership whilst a formal notice is still in force, the existing Notice should be cancelled, because it will not be enforceable against the new FBO.

If the new FBO fails to address the outstanding issues the issue should be escalated in line with the usual hierarchy. If ultimately a new notice is necessary, evidence must be gathered at the time the new notice is served to justify its service and to support any potential challenge if the notice is appealed.

Note: Where the FBO has changed, the Approvals and Registrations Team should be informed so that an FVC can assess the new FBOs operating practices.

4.13 Warrant to enter premises

4.13.1 Access refused

An AO who has been refused entry to an establishment should always point out the legal powers that the officer has, and which legislation provides that power. If the FBO continues to refuse access, the AO should notify the FBO of the obstruction provisions within the legislation and advise they contact their legal adviser if they need to check such details.

If access is still refused, the AO should contact their FVC/HOD immediately for further advice. In the event that access to an establishment is refused, it may be necessary for an AO to apply to a Justice of the Peace, for a Warrant to Enter Premises, to gain access to carry out their duties.

FSA Legal should be contacted for advice on any refusal by the FBO to grant entry to an AO.

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Where there is a threat of violence, reference should be made to [the bullying and harassment policy](#) for guidance. A report must also be made to the local police force.

Examples of when it is necessary to apply for a Warrant to Enter Premises include:

- circumstances where the AO needs to enter to find out if there has been a contravention of any relevant legislation, or
- entry is required to find out if there is evidence of any such contravention
- reasonable access has been refused or the AO believes it will be refused,
- the AO has given the occupier notice of intention to apply for a warrant
- the premises are unoccupied
- asking for permission, or giving notice of asking for permission would defeat the object of the entry
- where urgent access is needed

4.13.2 Execution of the warrant

The warrant must be executed within one month and is no longer valid once the AO has used it to gain access. It cannot be used twice. When executing a Warrant to Enter Premises in England or Wales, Code B of the Codes of Practice, made under the Police and Criminal Evidence Act 1984 (PACE), should be complied with. Legal advice on this and other aspects of the Warrant should be obtained **before** entry is attempted. FSA Legal will advise further.

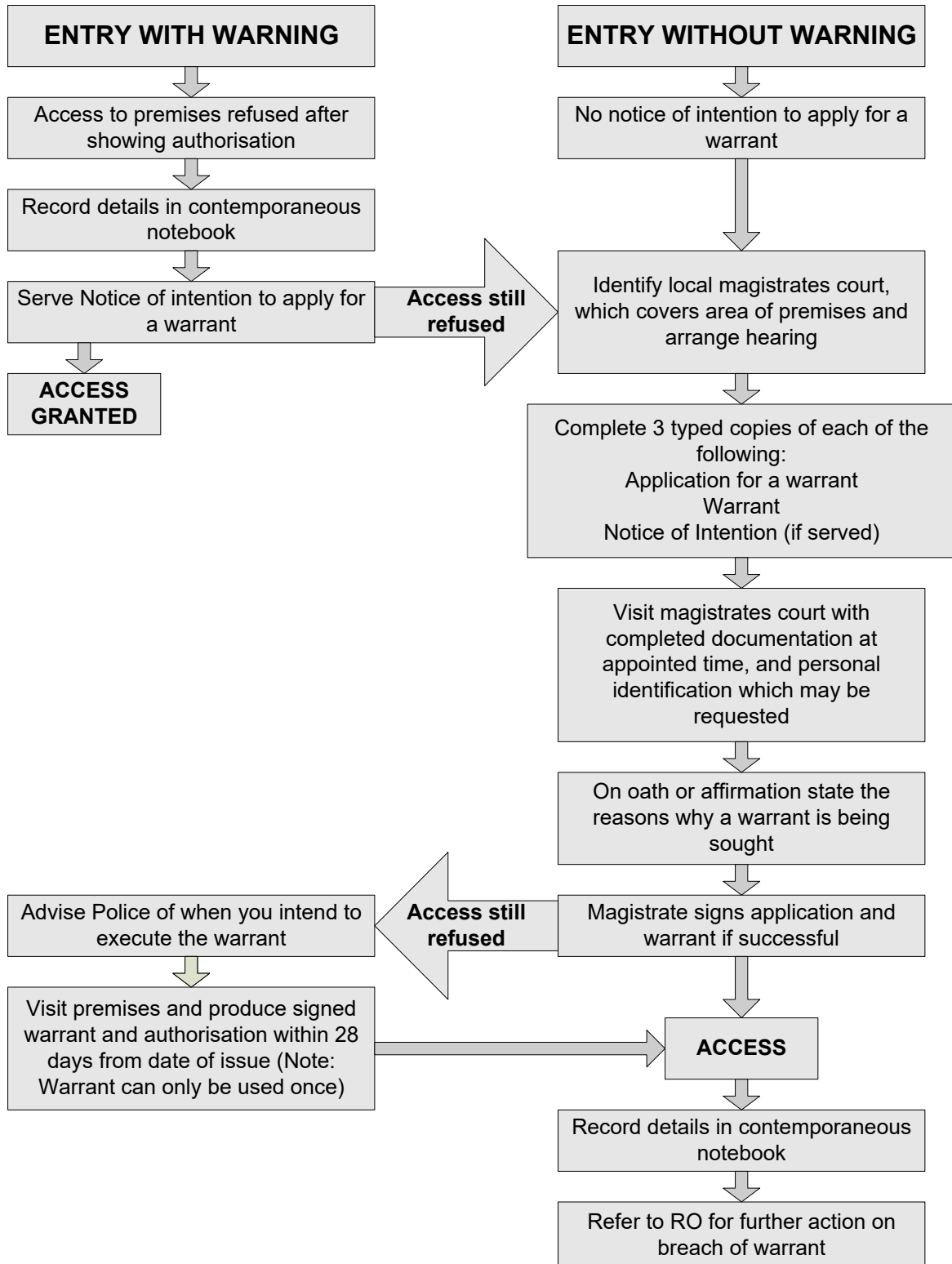
4.13.3 Access

Advise the local police of the intention to execute the Warrant at a certain time and date. The establishment must be visited as soon as possible and, on production of the Warrant to Enter Premises, the occupier should grant access. If the occupier fails to grant access, he or she will be in breach of the warrant. Record the events in the contemporaneous notebook and inform the FVC/HOD.

4.13.4 Forced entry

The Warrant to Enter Premises allows the use of force to gain entry when necessary. However, the AOs should never attempt a forced entry themselves, but should contact the Police for assistance.

4.14 Process for obtaining a warrant to enter premises in England and Wales



5. Risk Based Enforcement

- 5.1 Why a 'risk Based' approach: Legal references
- 5.2 Risk management
- 5.3 Risk assessment: Defining impact and likelihood
- 5.4 Recording procedure

5.1 Why a 'risk based' approach: Legal references

5.1.1 Introduction

The FSA adopts a risk-based system of assessing public health and animal welfare risk in line with both legal requirements and codes of enforcement practice.

5.1.2 Risk analysis and risk assessment

Food safety and hygiene legislation makes various references to the competent authority applying a risk-based approach to the delivery of official controls.

Retained Regulation (EC) 178/2002, Article 6, Paragraphs 1 and 2 state that:

'in order to achieve the general objective of a high level of protection of human health and life, food law shall be based on risk analysis, except where it is not appropriate to the circumstances or the nature of the measure', and that

'Risk assessment shall be based on the available scientific evidence and undertaken in an independent, objective and transparent manner'.

5.1.3 General rules on official controls

Retained Regulation (EU) 2017/625, Article 9, 1 requires Competent Authorities to perform official controls on all operators regularly, on a risk basis and with appropriate frequency, taking account of identified risks associated with animals and goods, the activities under the control of operators, the location of the activities or operations of operators, the use of products, processes, materials or substances that may influence food safety, integrity and wholesomeness, or feed safety, animal health or animal welfare, plant health or, in the case of GMOs and

plant protection products, that may also have an adverse impact on the environment;

Any information indicating the likelihood that consumers might be misled, in particular as to the nature, identity, properties, composition, quantity, durability, country of origin or place of provenance, method of manufacture or production of food;

The operators' past record as regards the outcome of official controls performed on them and their compliance with the rules referred to in Article 1(2);

Article 9,2 - Competent authorities shall perform official controls regularly, with appropriate frequencies determined on a risk basis, to identify possible intentional violations of the rules referred to in Article 1(2), perpetrated through fraudulent or deceptive practices.

5.1.4 Risk based enforcement

Retained Regulation (EU) 2017/625, Article 138,1 states:

When deciding which measures to take, the competent authorities shall take account of the nature of that non-compliance and the operator's past record with regard to compliance.

5.1.5 Regulators Code

In accordance with the [Regulators Code](#), the FSA bases its regulatory activities on risk. Paragraph 3.2 requires Regulators to "...consider risk at every stage of their decision-making processes, including choosing the most appropriate type of intervention or way of working with those regulated; targeting checks on compliance; and when taking enforcement action."

5.1.6 Suspected breaches

Where breaches have been identified:

- persistent offenders should be identified quickly and face proportionate and meaningful sanctions
- regulators must act in a way that is proportionate to the risks as they understand them, except where immediate action is required

5.1.7 Risk based enforcement, not risk based compliance

FBOs have a duty to comply with the general hygiene requirements laid down in Annex II to retained Regulation (EC) 852/2004, (see Article 4) as well as specific requirements contained in Annex II and III of retained Regulation (EC) 853/2004, (see Article 3).

All legal references applicable to taking a risk-based approach apply to the competent authority and not the FBO. Therefore, whilst the FSA must take a risk based and proportionate approach to its enforcement interventions, the FBO must comply with **all** relevant legal requirements. The FBO cannot conduct a risk assessment and decide to comply only with certain areas that **they** consider to be medium to high risk.

5.2 Risk management

5.2.1 Purpose of a risk management system

The purpose of a risk management system is to communicate effectively between colleagues when describing and comparing risks and to ensure that the different components of the risk assessment process have been defined.

In this way, we can objectively compare both food hygiene and animal welfare risks at different premises, where FBOs employ different food safety management systems and have different attitudes towards compliance.

5.2.2 Defining risk

The risk assessment consists of two independent components:

- likelihood – how likely is it that the risk is realised
- impact – how bad the outcome could be if it were realised

When describing risk, it is helpful to use a consistent approach to help avoid ambiguity.

5.2.3 Examples of how to describe risk

The following examples are typical high risk issues, that would be escalated immediately, and for which a risk assessment should not have to be recorded:

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- the risk that carcasses with faecal contamination are produced, because the FBO has not implemented or maintained their HACCP based system to prevent dirty livestock from being slaughtered, resulting in consumers getting food poisoning – high public health risk
- the risk that animals arriving at the slaughterhouse cannot lie down, stand up or turnaround without difficulty, because the FBO has used untrained staff without the necessary competence / CoC to lairage animals, resulting in animals being placed in a race and being overcrowded, thereby experiencing avoidable pain / distress / suffering – high animal welfare risk

Low risk

- ‘the risk that wrapped and packaged meat will become cross contaminated from contact with a wall with a cracked tile, because the FBO has not implemented an adequate maintenance programme to replace broken tiles, which means they cannot be effectively cleaned, resulting in the potential for consumers getting food poisoning – This is a technical breach of structural maintenance requirement. There is no risk to the product if it is wrapped and packaged and cannot come into contact with the walls – low public health risk.

If unwrapped product were to be stored in the same area in direct contact with cracked wall tiles, the risk would increase.

- ‘the risk that wrapped vacuum packed meat will become contaminated from contact with used packaging and from other environmental contamination, because the wrapped meat is removed from non-waxed boxes, that are not easy to clean, and replaced in similar boxes, resulting in the potential for consumers getting food poisoning – Whilst the unwaxed packaging material is not capable of being effectively cleaned, the product is already wrapped in modified atmosphere packaging. This will prove low risk to the vac packed product in question. However, the situation would need to be logged and monitored, to ensure the risk of cross contaminating by the food handler to other un-wrapped products from the dirty packaging did not arise. Low public health risk - but the risk could increase depending on the likelihood factors. Also if the labelling of the new boxes did not have the correct labelling or ID marks applied, this would be a separate contravention.

5.3 Risk assessment: Defining impact and likelihood.

5.3.1 Categorising impact

Updated [Impact can be categorised as:

- 1 = minor impact, technical breach with minimal or no implications
- 2 = moderate impact
- 3 = major impact
- 4 = catastrophic impact]

5.3.2 Rating the impact

If completing the risk assessment documentation, the AO must:

- Assess and describe the 'Reasonably Foreseeable Worst-Case Impact' (RFWCI) for the event. This is not intended to capture the worst possible scenario that has far-fetched or improbable consequences, but those reasonably foreseeable outcomes of consequences flowing from the scenario.
- Rate the impact: 1 for a minor impact, up to 4 for a catastrophic impact.
- It is **not** a requirement to envisage bizarre events or acts of God.
- It **is**, however, a requirement to understand that many risks are 'reasonably foreseeable' through a pro-active approach to risk management.

5.3.3 Scoring the impact

The impact rating will be determined by:

- the species of meat being processed
- the bacteria associated with that type of meat
- the intended customers of the FBO
- whether the customers are part of a vulnerable group

5.3.4 Categorising likelihood

Likelihood can be defined and categorised as:

1 = unlikely – not expected to happen

2 = possible – may occur occasionally

3 = likely – will probably occur

4 = has happened or is almost certain to occur at any moment

5.3.5 Likelihood factors

- Has the event already occurred, or could it occur at any moment?
- Intensity (speed of the line, pressure by management for operatives to do the job, operative being paid per carcass and not by time).
- Personnel (number of staff to train, competencies, turnover).
- Duration (how long does the activity take, does it require a long concentration span?).
- Accident, incidents, near misses (past history of the FBO).
- Supervision of staff.
- Environment, age of equipment, ventilation, maintenance.
- Complexity of operation – multi species.

5.3.6 Recording likelihood data

When describing the likelihood factors, the account must be backed up with objective evidence. The likelihood should describe an unambiguous data driven account.

Gather and retain suitable evidence to demonstrate that the likelihood factors have been accurately considered.

5.3.7 Assessing likelihood

Impact and likelihood are treated as independent variables when undertaking a risk assessment.

Care should be taken to ensure that once the RFWC impact has been considered, you **do not** assess the likelihood of the RFWC factor, for example, food poisoning and death occurring in consumers.

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It is the likelihood of the risk being realised that must be assessed, for example, assess the likelihood of carcasses becoming contaminated within the plant that could potentially lead to the RFWC factor.

5.3.8 Rating likelihood

- Look at the likelihood data for the risk.
- Check that the data is related to the concern and not the impact.
- Rate the likelihood.

5.3.9 Risk matrix

The risk score is a multiple of the reasonably foreseeable worst case impact and likelihood factors that prevail at the specific plant in question resulting from the food safety management systems the FBO has in place.

Likelihood	Almost certain or Has happened	4	GA	AR	R	R
	Likely	3	GA	AR	R	R
	Possible	2	G	GA	AR	R
	Unlikely	1	G	G	GA	AR
			1 Minor	2 Moderate	3 Major	4 Catastrophic
		Impact				

G	Green
GA	Green / Amber
AR	Amber / Red
R	Red

5.3.10 Scoring

A Risk Matrix score is achieved once the impact and likelihood scores have been identified using the guidance in 5.3.1 and 5.3.4 respectively. Those two scores are multiplied against each other to give a Risk Matrix score between 1 and 16. A higher risk issue is going to have a higher score whilst a lower risk issue will have a lower score. Scores between 1 and 3 are classed as low risk. Guidance on the recording procedures for low risk and medium to high risk contraventions are detailed in Section 5.4 below.

5.3.11 Trend

Assigning a trend allows you to indicate whether the risk is increasing, unchanged or decreasing, even where the overall score on the matrix remains the same.

For example, where an overall score is $4 \times 4 = 16$, the FBO may have taken some corrective action to improve the process and initial indications suggest that this has started to work. In this case the trend could change to demonstrate an improving status, even though the overall risk score may still remain unchanged.

All risks in the red (R) and amber red (AR) zone should have appropriate countermeasures by the competent authority to manage both the likelihood and impact with actions by the FBO to address both.

Trend	
Unknown; baseline to be established	-
Situation Worsening; risk increasing	R
Situation Stable; risk unchanged	A
Situation Improving; risk decreasing	G

5.4 Recording procedure

5.4.1 Recording requirements for risks scoring 4 to 16 (ENF 11/5)

All contraventions must be recorded in the Chronos Enforcement System (ENF 11/5).

Updated [**Reference:** See chapter 7, Section 2.4 – Recording and Monitoring Enforcement Actions.]

Where the assessed risk scores medium to high, between 4 and 16, the AO should progress the matter through the hierarchy in the normal manner, gathering evidence at the time the offence is identified.

Reference: See topic 2.6 on 'Gathering and preserving evidence' for additional information.

5.4.2 Exception reporting requirements: low risks scoring 1 to 3 (ENF 11/29)

Where it has been determined that the risk posed is low, with a score between 1 and 3, the:

- non-compliance must be recorded in Chronos, evidence of the low likelihood factors must be retained, to justify the low-risk assessment
- the rationale for not escalating the non-compliance, perceived to be low risk, must also be recorded on the 'Risk Assessment for Enforcement Form' (ENF 11/29)

The assessment by the AO must detail the appropriate evidence and back up the likelihood factors. This will act as 'tangible' evidence of the decision-making process that:

- justifies the reason for not progressing the non-compliance
- provides a rationale for colleagues to ensure a consistency of approach

Non-compliance should always be brought to the attention of the FBO. [Updated \[However, where there is no justification in escalating the issue, an entry should also be made in the 'Contravention Update' column of the Chronos record.\]](#)

Note: All issues identified as a low-risk (1 – 3) must be assessed by the FVCs and re-assessed at successive audit frequencies by Veterinary Auditors to identify any changes to the likelihood factors and at monthly frequencies in slaughterhouses or where likelihood factors change.

Where the likelihood factors remain the same, the AO must record this in their contemporaneous pocketbook or in the plant Day Book at a slaughterhouse.

Note: Where the likelihood factors have changed and the risk has increased, evidence must be gathered and the issue progressed through the hierarchy in the usual manner, copying in the VEDM as required. [Updated \[The existing Chronos record should be updated with new Competent Authority Actions to reflect this.\]](#)

For example, an isolated maintenance issue that has no major impact on public health should be pointed out to the FBO and recorded in Chronos. [Updated](#)

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[Where the risk assessment results in a low-risk score, the matter can be recorded and closed off by cross referencing the ENF 11/29 with the Status column in Chronos.]

Where the unresolved maintenance issue becomes more serious or where other minor maintenance issues emerge that individually may not pose a major risk to public health, but cumulatively may lead to the deterioration in the fabric of the building, this will be indicative of a failure by the FBO to have in place and implement a suitable maintenance programme.

Updated [In such circumstances, it would be reasonable for all these matters to update the existing Chronos entry and escalated through to compliance.]

Reference: Retained Regulation (EC) 852/2004, Annex II, Chapter I, Para 1.

Other non-compliances that may constitute a low risk might include:

- minor cleaning issues in non-production areas
- operatives not wearing the appropriate protective clothing (for example, snoods) in boxed meat areas
- other low risk issues the FBO has identified themselves through effective monitoring systems, that have not been rectified immediately, but for which the risk is being managed and a plan exists for the matter to be resolved and the appropriate improvements to their process is being implemented

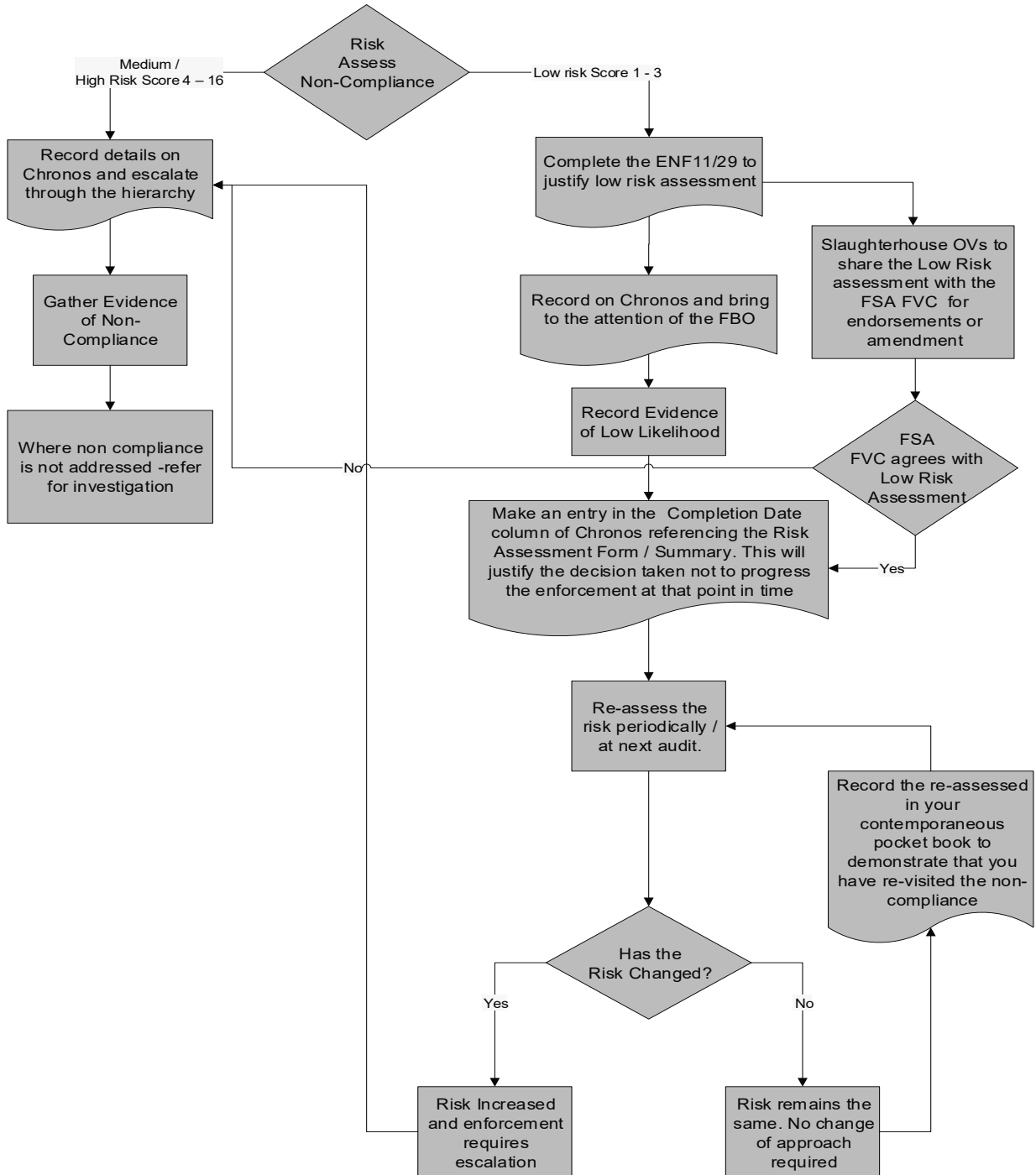
Reference: See chapter 9 on 'Forms' for ENF 11/29.

5.4.3 Audit

An audit trail must be established to demonstrate that the FSA is managing risk appropriately. Veterinary Auditors will review the risk assessment to satisfy themselves it provides the appropriate assurance and ensure the quality of documentation by monitoring the effective recording of evidence for low risk issues.

5.4.4 Risk assessment process

The flowchart below outlines the steps in the risk assessment process.



5.4.5 Reporting considerations 1: proactive risk assessment

An initial risk assessment should be undertaken when the potential risk is first identified. Where the risk is then realised because the event has occurred, a further assessment will need to be undertaken.

It is important that initial risk assessments are not undertaken in hindsight and that all potential risks are identified.

5.4.6 Reporting considerations 2: frequency v likelihood

The likelihood rating for non-compliances should not be scored low after the risk has already been realised.

Do not confuse **frequency** with **likelihood** and score the risk low because the event has only occurred infrequently.

If an event could happen at any time, or has already occurred, the likelihood score must be **high**.

The frequency with which an event occurs is academic, once it has happened.

5.4.7 Reporting considerations 3: FSA controls not a likelihood factor!

The likelihood of an event occurring should not result in a low score, when the FSA has an inspection point at a specific stage in the process that is able to identify a problem.

The presence of an FSA inspection point should not be used to mitigate the risk score.

The likelihood of an event occurring will not be affected by the presence of the FSA Operations Group. It is the FBOs systems and controls that are being assessed to determine the likelihood factor [Y], not the presence of the FSA carrying out an inspection checks at a particular point in the process.

5.4.8 Other factors to be considered

The FSA has identified certain high-level outcomes that are to be achieved:

- to limit food borne illness caused by meat
- to detect and control animal diseases

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- to achieve high standards of animal welfare in approved establishments
- to facilitate the international trade of animal products
- meat entering the food chain is free from SRM
- animals intended for the food chain are tested for BSE / TSE where BSE testing is required
- meat from all animals tested for BSE / TSE does not enter the food chain unless tested negative
- meat from over age animals does not enter the food chain
- evidence of deliberate fraud

Where such contraventions are identified, that compromise these outcomes, the overall risk (reputational / business / public health / animal welfare) to the organisation will be high. Updated [As such these matters should always be recorded on Chronos and progressed through the hierarchy.]

5.4.9 ENF 11/29 risk assessment form

It is important that the FSA can objectively assess the consistency of risk assessments. To ensure consistency of approach, the Risk Assessment Form (ENF 11/29):

- must contain valid data
- must demonstrate the data can be tested and is true
- must be consistent and appropriate (for example, the impact is reasonably foreseeable, the likelihood is of the risk being realised)
- must demonstrate competent authority controls are proportionate to the risks

6. Intervention Protocol

- 6.1 Introduction
- 6.2 Strategic aims
- 6.3 Background
- 6.4 Summary of risk rating
- 6.5 Approvals
- 6.6 Identification for review of approval
- 6.7 Additional controls
- 6.8 Low risk establishments
- 6.9 Medium risk establishments: Improvement necessary
- 6.10 Serious risk establishments: Urgent improvement necessary or Successive Improvement Necessary
- 6.11 Approach to FBOs identified as Serious risk establishments and support to frontline teams
- 6.12 Dealing with adverse behaviour by the FBO
- 6.13 Routine monitoring
- 6.14 Support available
- 6.15 Routine publication of audits and naming Urgent improvement necessary establishments on FSA website
- 6.16 Flowcharts
- 6.17 Review

6.1 Introduction

This document provides guidance to HODs, OMs, FVLs, FVCs, VEDM, Service Delivery Managers, and frontline teams on:

- Monitoring performance of approved meat establishments; and
- Action that should be taken in the event that an FBO does not put in place measures to raise levels of compliance with legal requirements.

[FBOs can access this protocol.](#)

6.2 Strategic aims

The goal of the Intervention Protocol is to safeguard consumers and improve public health by improving overall business compliance through:

- Targeting high impact intervention where risks to public health exist
- Seeking prompt compliance in high-risk areas of non-compliance and targeting intervention.
- Provide a graduated and proportionate response to legislative non-compliance ensuring advisory and deterrent elements, along with the escalation of sanctions, where necessary, based on the level of non-compliance risk at individual establishments.

6.3 Background

As part of the intervention protocol, we want to ensure that all FBOs of approved meat establishments are complying with legal requirements and are taking responsibility for the production of safe meat. FSA resources and attention will be directed to non-compliant FBO establishments utilising non-compliances identified during official control activities outlined below:

- results of FBO audits
- findings from unannounced inspections (for example, routine or investigating complaints)
- establishment level inspection and audit findings (serious deficiencies or where evidence of repeated stoppage exists)

The protocol also brings in a process for recommending the appropriate withdrawal of approval as the ultimate sanction for poor performance by FBOs,

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whilst taking an open and transparent approach to informing FBOs about what we are doing and why, in accordance with risk-based assessment methodology.

It will provide operational staff with clarity on when to act and what action to take. However, the FSA must take action quickly in the event of serious FBO non-compliances / or persistently contravening the regulations. Where a FBO fails to put in place the necessary measures leading to significant public health, animal health and welfare improvement, FSA officials will review their approval status where evidence exists indicating the presence of major or critical non-compliances. This could lead to their approval being withdrawn or suspended.

By gathering high quality evidence at the earliest stage via audits, unannounced inspections and regular official control activities, prompt intervention will be taken with the right enforcement actions.

Openness is one of the core principles of the FSA and underpins our strategic outcome that consumers and customers should have the information and understanding they need to make informed choices. Evidence suggests that consumer confidence and purchasing choice can also be a powerful incentive to drive up the standards of businesses.

Advice and education that can be applied will often secure sustained compliance as well as delivering a more cost-effective enforcement regime. Voluntary compliance is likely to be more sustainable in the long term than formal enforcement action as outlined in the following illustration:



6.4 Summary of risk rating

Actions taken by official staff will be driven by findings from audits, unannounced inspections and other official control activities. The FSA will use results from inspections and audit of FBOs to support informed tactical actions. Using these, we will

- escalate where necessary quickly the enforcement activity for high risk and/or persistent non-compliances; and
- Identify and prioritise criteria to assess risk-based planning and delivery of official controls.

Educational approaches should be considered at low and medium risk establishments and [FSA training materials](#) are available.

The table below presents a summary of tactical information on required actions, using the audit outcomes as a guide to plant level characteristics of compliance.

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Compliance Category	FBO status	Intervention
<p>Serious Risk</p> <p>Urgent Improvement Necessary (2 month audit category)</p> <p>Successive outcomes of Improvement Necessary</p>	<p>Approval will be formally reviewed if the outcome of Official Controls indicate the major or critical non-compliances are open</p>	<p>Serious Risk category is the trigger for a formal review of approval.</p> <p>The FVL will conduct a preliminary examination of the results of official controls/local intelligence and identify the major and or critical non-compliances which have been evidenced and cross referenced with the Corrective Actions Report to see if they remain open.</p> <p>Where the critical/major non-compliances remain open The HOD will issue a letter to the FBO setting out the serious deficiencies which have been identified and providing the FBO with an opportunity to provide adequate guarantees over future production. The time provided for response to be commensurate with the major/critical non-compliances. FBO to be removed from audit cycle pending the response.</p> <p>FVL conducts an assessment visit once response is received/timescale for response elapses and makes recommendation whether to withdraw or suspend the approval or to allow the approval to remain if they are content the major and or critical non-compliances are resolved.</p>
<p>Medium risk</p>	<p>Major non compliances identified for which improvement is required by the time of the next full audit</p>	<p>Monitor via unannounced inspections (UAs) in cutting plants and routine attendance in slaughterhouses and follow up audit visits. Advice FBO on educational programmes aimed at improving compliance (FSA training package).</p>

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Compliance Category	FBO status	Intervention
Improvement Necessary (3 month audit category)		Establishment will move into the serious risk category if they are unable to improve sufficiently by the time of the next audit.
Low Risk Good / Generally Satisfactory (12 – 36 month audit category)	Compliant	<p>Monitor via UAI in Cutting Plants and routine attendance in slaughterhouses and follow up visits.</p> <p>Advice FBO on educational programs aimed at improving compliance (FSA training package) where conditions are deteriorating during interim audit period. Reasonable timelines to correct deficiencies.</p>

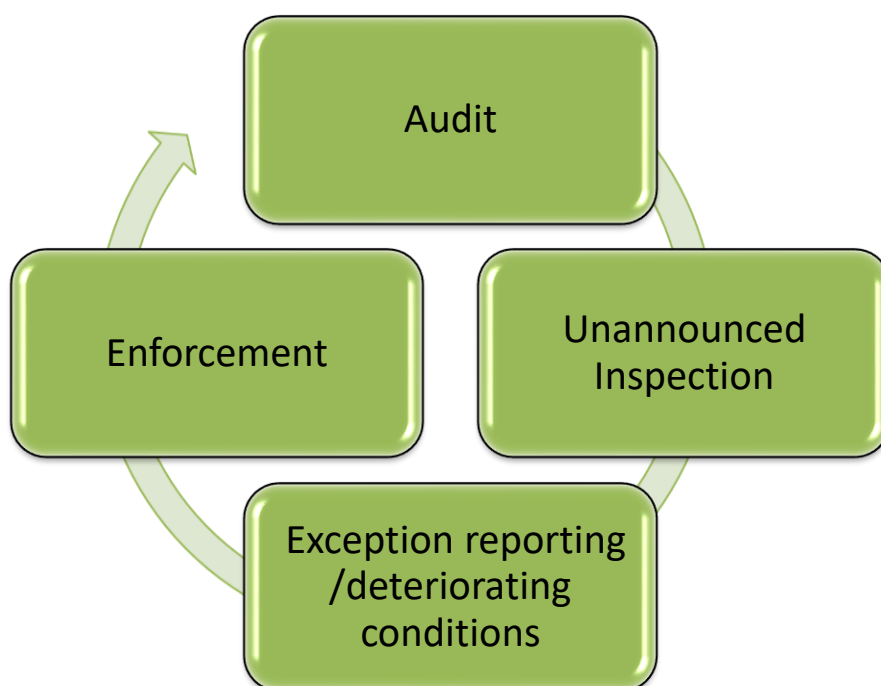
6.5 Approvals

Approval of establishments must be kept under review by the competent authority whilst carrying out official controls (Article 148 of Retained Regulation (EU) No 2017/625). This regulation also includes the requirement to include initiating action to withdraw or suspend the approval in certain circumstances (Article 138).

The process for a review of approval leading to a suspension or withdrawal is detailed in Chapter 1 of the MOC.

In this intervention protocol the FSA is strengthening the links between official control activities, enforcement, and review of approvals. Audit is a useful tool for risk-profiling premises. Having good quality audits / UAs, and good quality enforcement action, will ensure that the right evidence is available to review approval, where there are concerns around non-compliance, repeated stoppages and/or deficiencies.

Activities / enforcement / approvals cycle



6.6 Identification for review of approval

Drawing on findings from the carrying out of official controls, or as a result of local intelligence, FVLs will have responsibility for initially assessing whether to undertake the process to initiate a review of approval in accordance with this protocol. Other matters which trigger a review of approvals are outlined in the

approvals policy, for example, fire. HODs have an overarching responsibility to make sure that appropriate action is being taken.

6.7 Additional controls

Past experience has demonstrated that introducing additional controls may provide an effective incentive to the FBO and deliver improvements in compliance. The HOD should consider whether additional official controls are required (up until satisfactory compliance is achieved), taking advice from the FVL / Coordinator. For example, an additional AO may be brought in to focus upon enforcement and hygienic production and practice, allowing the resident AO to continue to carry out daily duties. It will also ensure that public health risks are safeguarded ahead of any such review.

Charges for the cost of these additional controls may be made towards the FBO.

The HOD has ultimate responsibility for determining where additional controls should be put in place. Updated [The HOD should inform the FBO in writing prior to additional controls being introduced, explaining reasons for this action and that charges for these additional controls will be passed onto the FBO. Any changes to resourcing (for example, requirement for a second OV) should be communicated to the contract Technical Manager (TM) and to the Head Office for the contract supplier in advance, in the normal way.]

The Statement of Resources must also be amended by FSA Service Delivery Managers to reflect changes to resourcing.

When reviewing corrective actions taken by the FBO the following considerations must be taken into account:

- confirm what actions were taken and why, the appropriateness of the actions
- review any records that demonstrate the effectiveness of the corrective actions
- observation the changes; a follow-up inspection may be needed to confirm that the corrective action has been completed and is effective

Once appropriate action has been taken to address non-compliances, the additional resource should be removed and this made clear to the FBO, backed up by evidence from the FSA enforcement programme demonstrating improving conditions, Adjustments can then be made to the Statement of Resources.

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The HOD should inform the FBO where normal resourcing is being re-established, drawing on advice from the FVL / Coordinator, with formal confirmation provided in writing. The contract supplier should be advised on any changes.

6.8 Low risk establishments

Low risk establishments will have audit outcomes of Good and Generally Satisfactory, with audit frequencies of 12 and 18 months (18 months for slaughterhouses only).

All cutting plants not co-located to a slaughterhouse will have at least one interim UAI. Field Veterinary Coordinators should monitor the results of all UAIs and ensure enforcement action and/or official control activities are escalated accordingly and as per the Intervention Protocol.

The FSA reserves the right to carry out an early audit if the results of UAI or other enforcement action indicates compliance has significantly deteriorated since the last 'Good' or 'Generally Satisfactory' audit outcome.

Compliance Category	FBO status	Intervention
Low Risk Good / Generally Satisfactory (12 / 36 months audit frequencies)	Compliant	Monitor via UAIs and follow up visit. Advise FBO on educational programs aimed at improving compliance (FSA training package) any minor non-compliances with reasonable timelines to correct deficiencies in line with the FSA enforcement policy.

6.9 Medium risk establishments: Improvement necessary

Establishments entering into the 'Improvement Necessary' audit outcome will be subject to a further full audit within 3 months. In addition to this they will also receive a partial audit during that three-month period. This action is designed to drive up improvement in lower compliance premises by linking audit outcomes to follow-up action.

A letter will be sent to the FBO accompanying the audit outcomes report explaining the need for improvement and encouraging the FBO to look at their

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most recent audit report and/or UAI report (where applicable) and in particular the Corrective Action Report and Enforcement Programme. These should identify key areas where the FBO needs to take action or make improvements. Updated [The FBO will be advised that a failure to exit the Improvement Necessary outcome by the time of their next full audit will result in a review of approval.]

Improvement Necessary establishments will be those which are exhibiting major non-compliances that are likely to compromise public health (including food safety), animal health and welfare, or which may lead to the production and handling of unsafe food if remedial action is not taken.

There is a role for the FSA as a regulator to work with FBOs to facilitate compliance. The key to a successful working relationship is communication. There is nowhere that this is more important than in relation to guiding the FBO on compliance with legal requirements.

Improvement Necessary premises have the following audit outcome profile:

Audit outcome	Definition	Non-compliance threshold
Improvement necessary	Major non-compliances identified at audit and/or non-compliances during the audit period not always responded to and corrected promptly.	3-6 majors during audit or during audit period No critical during audit period

The FBO will be required to tactically address non-compliance concerns over the next audit period.

Compliance Category	FBO status	Intervention
Medium risk Improvement Necessary	Major non-compliances identified for which improvement is required by the time of the next full audit	Monitor via UAIs and follow up visits. Advise FBO on educational programs aimed at improving compliance (FSA training package) Establishment will move into the serious risk category if they are unable to improve sufficiently to exit the 'Improvement Necessary' status by the time of the next audit

Medium risk establishments should be identified utilising official control activities and dealt with in order of non-compliance, for example, by prioritising premises which are demonstrating significant enforcement.

6.10 Serious risk establishments: Urgent improvement necessary

In line with audit outcomes, establishments can be identified as Urgent Improvement Necessary based on the severity and quantity of non-compliances.

Urgent Improvement establishments may have a critical non-compliance where the contravention poses an imminent and serious risk to public health (including food safety), animal health and welfare and/or multiple major non-compliances (as per MOC guidance) which are likely to compromise public health (including food safety), animal health and welfare or may lead to the production and handling of unsafe or unsuitable food if no remedial action is taken.

Audit outcome	Definition	Non-compliance threshold
Urgent Improvement necessary	Multiple major non-compliances or a critical non-compliance identified during audit visit, interim audit period or from the results of other official controls such as Unannounced Inspections.	1 critical or >6 major non-compliances during audit or during audit period
Successive outcomes of Improvement Necessary	Official intervention required to ensure public health safeguards.	3-6 majors during successive audits

Urgent Improvement Necessary interventions and procedures are of paramount importance and the FSA needs to escalate enforcement activity quickly to influence food business perceptions around risk and consequences of non-compliance.

6.11 Approach to FBOs identified as Serious Risk Establishments and support to frontline teams

Updated [Following an audit which places an establishment in Urgent Improvement Necessary or keeps them in Improvement Necessary, notification will be sent to the FBO by the Head of Delivery, this is to emphasis the seriousness of the FBOs current position following audit.] This letter will inform the

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FBO that they will now be subject to a formal review of approval if the Agency is not content the major/critical non-compliances identified in the audit are still resolved.

As a starting point, the FBO has a responsibility to operate in compliance with the regulations and should be encouraged to look at their most recent audit report and/or UAI report (where applicable) and in particular the Corrective Action Report and Enforcement Programme. An FBO may determine other ways of achieving compliance with the law as these may be equally valid.

The FVL will now have the responsibility to conduct a formal review of approval. The Corrective Action report and Enforcement Programme will be key in identifying the outstanding major/critical non-compliances.

Where the trigger point is identified from the outcome of an audit the review will initially be a desk top exercise considering the results of official controls to identify which major/critical non-compliances appear to be unresolved.

Where the trigger point is identified by the outcome of other intelligence the FVL will either conduct a similar desk top exercise or arrange an unannounced assessment to establish if major/critical non-compliances are present.

A letter identifying the issues found during the desk top exercise or the FVL visit will be drafted by the FVL on behalf of the HOD. This letter will explain to the FBO that they now have an opportunity to provide adequate guarantees over future production and will provide the timescale for which they need to provide these guarantees.

The HOD will then review the letter and if in agreement that a review of approval is now appropriate will send the letter to the Approval and Registration Team to issue the letter in the HOD's name and to update Establishment & People to show the establishment is no to be removed from the audit cycle.

HODs should also consider and authorise any additional controls recommended by the FVL, and/or UAI within the interim audit period.

Updated [Any interim unannounced inspection should check the FBO is making progress against any agreed timescales. Any issues or concern over action being taken should be raised with the contract TM in the first instance, as appropriate, or with the Field Veterinarian in the case of standalone cutting plants.]

Following receipt of the FBOs guarantees the FVL should then visit the premises to verify the adequacy of the guarantees provided by the FBO.

The guarantee will be a clear undertaking of action by an FBO to permanently remedy the major/critical non-compliances which have made that FBO subject to this review. There must be clear evidence of the intended action, the timescale for implementation and the expected outcome.

Updated [Where the FVL is not content the major/critical non-compliances have been permanently resolved or the guarantees have not yet taken full effect a recommendation to withdraw or suspend the approval respectively will be made to the Head of Operational Assurance and Excellence.

If no guarantees are provided within the timeframe given to the FBO approval will be withdrawn.]

6.12 Dealing with adverse behaviour by the FBO

It is appreciated that, whilst many FBOs will respond positively and will want to put in place measures for improvement, others may react in a negative way. There are a wealth of [resources available on Digital Workplace on avoiding confrontation or aggression in the workplace](#), including a code of conduct, and what to do when an incident happens.

6.13 Routine monitoring

HODs should review action taken at establishments within their areas at their Operations Management Team meetings, drawing on advice from their FVLs.

Trends of compliance are monitored at a national level at the Field Management Group meeting. This includes a review of latest audit scores and changes to establishments that are identified as Serious Risk Establishments.

6.14 Support available

Updated [FVLs / Coordinators will ensure that support is in place for frontline teams and will liaise with the contract TMs and AOs working at establishments identified as Serious Risk Establishments to ensure a consistent approach is taken.]

The Head of Field Operations will offer guidance and support to the HOD and staff, as will legal and veterinary and technical colleagues.

Updated [The Operational Division's Approvals and Registrations Team will receive the review of approvals from the FVL and compile a submission to the Head of Operational Assurance and Excellence.] This submission will provide a background to the case, referencing the FVL report and accompanying evidence.

6.15 Routine publication of audits and naming Urgent Improvement Necessary establishments on FSA website

The FSA publishes [results of FBO audits](#) on the FSA website.

If an FBO is not satisfied with a score awarded in any section of the audit report, the FBO does have the right of appeal against the outcome of the audit. Any appeals must be made in writing within 14 calendar days of receiving an audit report. There is a form to complete and the process is explained in the letter issued to the FBO, accompanying the FBO audit report.

Chapter 4 on 'Audit, HACCP Based Procedures and Verifying Operators Own Checks', sets out the appeal procedure. We will not publish an audit report on the FSA website until after an appeal process has been undertaken and the audit has been finalised. Necessary FSA interventions will continue during the appeal period.

6.16 Flowcharts

The process flowchart is available at Annex 11.

6.17 Review

These guidelines will be kept under review yearly and will be updated as required.

7. Annexes

- Annex 1 [Examples of enforcement of the retained \(EU\) Hygiene legislation](#)
- Annex 2 [Enforcement Policy](#)
- Annex 3 [Enforcement Concordat](#)
- Annex 4a [Template for HIN compliance letter](#)
- Annex 4b [Template for HIN/RAN cancel letter](#)
- Annex 5 [Flow diagram: The treatment of animals, meat and food unsuitable for the human food chain](#)
- Annex 6 [Supporting evidence photographic report template](#)
- Annex 7 Updated [Removed]
- Annex 8 Updated [Removed]
- Annex 9 [Intervention Protocol - Action letter to FBO providing an opportunity to provide guarantees over future production](#)
- Annex 10 [Intervention Protocol - FVL Review of Approval Report](#)
- Annex 11 [Intervention Protocol – Process flowchart](#)
- Annex 12 [Chronos User Guide](#)
- Annex 13 [Timestamp Camera App Guide](#)
- Annex 14 [Q&A on Formal Detention](#)

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- Annex 15 [Quick Start Guide – Procedure for enforcement escalation cOV to Enforcement Delivery Managers](#)
- Annex 16 [A proforma letter for OVs to Declare product Unfit for Human Consumption](#)
- Annex 17 [EDP Form cOV to VEDM](#)
- Annex 18 [Q&A on the Enforcement of Prerequisites](#)
- Annex 19 [Operational Instructions for Taking, Handling and Storing Photographic and Video Evidence](#)
- Annex 20 [Written Advice Template Letter](#)
- Annex 21 [Q&A on Obstruction](#)