

# Food Law

## Code of Practice (England)

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(Issued **XXXX**)

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Presented to Parliament pursuant to Section 40(1) of The Food Safety Act 1990, Regulation 6(1) of The Official Feed and Food Controls (England) Regulations 2009 (SI 2009/3255), and Regulation 26(1) of The Food Safety and Hygiene (England) Regulations 2013 (SI 2013/2996)

**Food Standards Agency**

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# Chapter 1 Introduction

The Food Law Code of Practice (England) (the Code) is issued under Section 40(1) of The Food Safety Act 1990, Regulation 6(1) of The Official Feed and Food Controls (England) Regulations 2009 and Regulation 26(1) of The Food Safety and Hygiene (England) Regulations 2013, which empower the Secretary of State to issue Codes of Practice concerning the execution and enforcement of that legislation by Competent Authorities.

The Code:

- is written by the Food Standards Agency (FSA) and issued by the Secretary of State
- is directed at Competent Authorities (Local Authorities and Port Health Authorities) responsible for the delivery of official food controls and other official activities
- outlines how the requirements of Regulation (EU) 2017/625<sup>1</sup> apply to Competent Authorities to ensure the quality, consistency, effectiveness and appropriateness of official food controls and other official activities
- describes the approach to be taken to ensure the efficient and effective co-ordination of official food controls and other official activities between Competent Authorities and other relevant government agencies, including Public Health England<sup>2</sup> and the FSA

Competent Authorities have a statutory duty to:

- enforce the requirements of food law
- have due regard to relevant provisions of the Code
- discharge their statutory duties as effectively as possible, using means that are most appropriate to the circumstances

This relies on authorised officers:

- understanding food law requirements
- referring to the law itself, the Code and other guidance
- seeking guidance when they are unclear

The United Kingdom (UK) has left the European Union (EU). The European Union (Withdrawal) Act 2018 (EUWA) provides that, from 1 January 2021, certain directly applicable legislation of the EU has been converted into UK law. Converted law is

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<sup>1</sup> Regulation (EU) 2017/625 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products

<sup>2</sup> Public Health England will be known as the National Institute for Health Protection from 1st April 2021



referred to as 'retained EU law'. The EUWA provides powers to make corrections to retained EU law to ensure it operates effectively as UK law. Examples of retained EU law relating to food and animal feed, include Regulation (EC) No 178/2002 on General Food Law and Regulation (EC) No 853/2004 on the hygiene of foodstuffs. Most food and feed safety law applied from 1 January 2021 in the UK in much the same way as it did before the UK exited the EU<sup>3</sup>.

All references to legislation in the Code are made on the basis that the legislation may be subject to amendment and/or revocation. When performing official food controls or other official activities, Competent Authorities must ensure that they correctly refer to current versions of relevant legislation referred to in the Code.

Competent Authorities that do not have due regard to relevant provisions of the Code could find their decisions or actions successfully challenged, and evidence gathered during a criminal investigation being ruled inadmissible by a court.

The FSA may, after consulting the Secretary of State, give a Competent Authority a direction requiring them to take any steps to comply with the Code.

The FSA may issue guidance, including Practice Guidance and National Regulator Guidance, for Competent Authorities. This may include updates to accommodate trials and changes as part of an FSA led change programme.

References to:

- chapters and sections are to the relevant parts of the Code unless stated otherwise
- legislation must be considered a reference to that legislation as amended from time to time (unless otherwise indicated)

There is a glossary with definitions of terms and abbreviations used throughout the Code.

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<sup>3</sup> References to EU Regulations in the Code are references to the retained EU law as found at the [legislation.gov.uk](https://www.legislation.gov.uk) website and should be read alongside any domestic legislation which amends it.

## **Chapter 2 Administration, liaison, and co-ordination**

### **2.1 Introduction**

Chapter 2 deals with:

- Competent Authorities' general obligations on the organisation of official food controls and other official activities
- the administrative arrangements, including designation of Competent Authorities, registration, and approval of food business establishments
- liaison arrangements<sup>4</sup> to ensure the:
  - efficient and effective co-ordination between Competent Authorities, delegated bodies, and other government departments responsible for official food controls and other official activities
  - consistency and effectiveness of official food controls and other official activities across the UK
- avoidance of conflict of interest
- monitoring requirements to ensure consistent, appropriate, and effective official food controls and other official activities

### **2.2 General requirements**

Competent Authorities must:

- have regard to:
  - the Code and the Food Law Practice Guidance (the Practice Guidance) when discharging their duties
  - the Framework Agreement on Official Feed and Food Controls by Local Authorities (the Framework Agreement), that reflects the requirements of the Code and is consistent with the principles of the Regulators' Code
  - any appropriate guidance
- apply equally the requirements of the Code to temporary employees, contract staff engaged in official food controls and other official activities and those employed by a Competent Authority
- if they consider public health or food safety is likely to be compromised by complying with the Code, discuss the matter with the FSA at the earliest opportunity and before any decision is taken
- provide the FSA with relevant datasets, as detailed in Chapter 2 of the Practice Guidance

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<sup>4</sup> Article 4(2) of Regulation (EU) 2017/625

## 2.3 Departure from the Code

The FSA may advise Competent Authorities to depart from the Code or provide the option to depart in the circumstances listed below:

- the need to depart from the Competent Authority's interventions programme that is based on the intervention rating schemes in the Code (including the type and frequency of intervention):
  - in response to a public health emergency
  - in response to a state of emergency
  - to accommodate the work of FSA approved feasibility studies, pilots, or pathfinder projects

When such a situation arises, the FSA will advise Competent Authorities via the FSA's platform for communications with local authorities, so the Competent Authority's service plan can be reviewed.

Competent Authorities must:

- where departures from the Code are advised, or the option to depart is provided, ensure they do not depart further than permitted, and follow any restrictions set out by the FSA
- contact the FSA, as soon as practicable, if such advice presents a significant disruption to their ability to deliver a risk-based intervention programme; or food safety is likely to be compromised
- respond to requests from the FSA to provide information about the action taken
- document any action taken

The FSA will, before providing advice, consider whether urgent action by Competent Authorities is necessary to protect public health or the interests of consumers.

## 2.4 Requirements relating to documented procedures, policies, plans and programmes

Competent Authorities must set-up, implement, maintain, and carry out official food controls and other official activities in accordance with documented procedures (and/or put arrangements in place, where applicable), policies, plans, programmes, and strategies as detailed in sections 2.4.1, 2.4.2, and 2.4.3 and Chapter 2 of the Practice Guidance, to ensure<sup>5</sup>:

- they are developed in consultation with relevant stakeholders
- they include instructions for authorised officers undertaking official food controls<sup>6</sup>

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<sup>5</sup> Article 12(1) of Regulation (EU) 2017/625; Chapter 2, paragraph 7.2 of the Framework Agreement

<sup>6</sup> Article 12(1) of Regulation (EU) 2017/625

- they consider relevant legislation, the Code and the Practice Guidance, the Framework Agreement, centrally issued guidance and the Competent Authority's policies and procedures, where relevant
- they are reviewed and updated<sup>7</sup>:
  - at regular intervals
  - in consideration of experience gained
  - whenever there are relevant changes in the organisation, to legislation or centrally issued guidance<sup>8</sup>
- deviations are discussed and agreed with relevant persons beforehand, and reasons for deviating are recorded in writing
- corrective action is taken in all cases where shortcomings are identified<sup>9</sup>
- they cover imported food, food hygiene including at the level of primary production and food standards issues, where applicable, having regard to work that might reasonably be anticipated within the Competent Authority's area and legislative responsibilities
- they adequately cover any referral arrangements to inland Competent Authorities and/or Competent Authorities with responsibility for imported food at a UK point of entry, where applicable

Competent Authorities must set up, maintain, and implement a control system<sup>10</sup> for all documentation relating to enforcement activities that ensures:

- up to date copies of appropriate documentation including legislation and guidance are available at all relevant locations and to all relevant staff
- all changes or amendments to documents are covered by the correct authorisation and are carried out without undue delay, to ensure timely availability
- superseded documents are removed from use

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<sup>7</sup> Article 12(3)(b) of Regulation (EU) 2017/625

<sup>8</sup> Chapter 2, paragraph 4.1 of the Framework Agreement

<sup>9</sup> Article 12(3) of Regulation (EU) 2017/625

<sup>10</sup> Chapter 2, paragraph 4.2 of the Framework Agreement

### 2.4.1 Documented procedures and/or arrangements

Type	Requirements
Approval	Competent Authorities must have a procedure(s) to ensure that there is a clear and consistent process for Food Business Operators (FBOs) to follow when applying for approval of their food business establishments, in accordance with Regulation (EC) No 852/2004 and Regulation (EC) No 853/2004 <sup>11</sup>
Food business establishment database	Competent Authorities must have a procedure(s) to ensure that the Competent Authority's database of food business establishments is accurate, reliable, and up to date <sup>12</sup>
Food incidents and alerts	Competent Authorities must have a procedure(s) to ensure that food incidents and alerts initiated and/or responded to by Competent Authorities are dealt with effectively, and within a timely manner <sup>13</sup>
Authorisation	Staff performing official food controls and other official activities must be duly authorised. Competent Authorities must have a procedure(s) to ensure that authorised officers (including the lead food officer(s)) engaged in official food controls and other official activities hold a suitable qualification (or equivalent) and they are competent and experienced in accordance with Chapter 3 of the Code and the Practice Guidance, where relevant to their level of authorisation and the range of tasks performed <sup>14</sup>

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<sup>11</sup> Article 148(1) of Regulation (EU) 2017/625

<sup>12</sup> Chapter 2, paragraph 11.2 of the Framework Agreement

<sup>13</sup> Chapter 2, paragraph 14.1 of the Framework Agreement

<sup>14</sup> Article 5(1)(e) of Regulation (EU) 2017/625; Chapter 2, paragraph 5.1 of the Framework Agreement

Type	Requirements
Control verification	Competent Authorities must have a procedure(s) to ensure that official food controls and other official activities are carried out consistently and effectively to a high standard, in conformance with relevant legislation, the Code, relevant centrally issued guidance and the Competent Authority's own documented policies and procedures. It must set out how the Competent Authority carries out risk-based internal monitoring. A record must be made of all internal monitoring and kept for 2 years <sup>15</sup>
Corporate Complaints	Competent Authorities must have a procedure(s) to ensure that complaints about the Competent Authority are investigated in accordance with centrally issued guidance, a record is made of all complaints received and of the actions taken <sup>16</sup>
Food complaints	Competent Authorities must have a procedure(s) to ensure that complaints about food and food business establishments are investigated in accordance with the Code, centrally issued guidance and the Competent Authority's policies and procedures <sup>17</sup>
Sampling	Competent Authorities must have a procedure(s) to ensure that samples are taken in accordance with the Code, the Practice Guidance, the Competent Authority's policies and procedures and relevant legislation, and that where unsatisfactory results are received, appropriate action is taken in accordance with the Competent Authority's sampling and enforcement policy <sup>18</sup>
Equipment	Competent Authorities must have a procedure(s) to ensure that equipment is properly maintained, calibrated, and is removed from service when found to be defective <sup>19</sup>

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<sup>15</sup> Article 12(2) of Regulation (EU) 2017/625; Chapter 2, paragraphs 19.1 and 19.3 of the Framework Agreement

<sup>16</sup> Chapter 2, paragraphs 17.1, 17.2 and 17.3 of the Framework Agreement

<sup>17</sup> Chapter 2, paragraphs 8.1, 8.2 and 8.3 of the Framework Agreement

<sup>18</sup> Chapter 2, paragraphs 12.5, 12.6 and 12.7 of the Framework Agreement

<sup>19</sup> Chapter 2, paragraph 6.2 of the Framework Agreement

Type	Requirements
Official food controls and other official activities	Competent Authorities must have a procedure(s) to ensure that the full range of official food controls and other official activities carried out by the Competent Authority are effective and appropriate, are carried out in accordance with the Code, relevant legislation and in an impartial and consistent manner <sup>20</sup>
Enforcement	Competent Authorities must have a procedure(s) to ensure that any follow up action or enforcement action taken by the Competent Authority is in accordance with the Code, the Practice Guidance and the Competent Authority's enforcement policy <sup>21</sup>
Control and investigation of outbreaks and food related infectious disease	Competent Authorities must have a procedure(s) to ensure that the control of outbreaks of food related infectious disease, and the investigation of notified food related infectious disease is carried out in accordance with centrally issued guidance <sup>22</sup>
Information	Competent Authorities must set-up, maintain and implement appropriate back-up systems for any electronic databases, and systems or documented procedures that have been designed to minimise the risk of corruption or loss of information held on its databases and ensure that reasonable security measures are in place to prevent access and amendment by unauthorised persons <sup>23</sup>
Registration	Competent Authorities must have procedures and/or arrangements in place to ensure that there is a clear and consistent process for FBOs to follow when applying for registration of their food business establishments <sup>24</sup>
Conflict of Interest	Competent Authorities must have procedures and/or arrangements in place to ensure that staff performing official food controls and other official activities are free from any conflict of interest <sup>25</sup>

<sup>20</sup> Article 12(1) and Articles 5(1)(a) and (b) of Regulation (EU) 2017/625; Chapter 2, paragraphs 7.2, 7.4 and 12.3 of the Framework Agreement

<sup>21</sup> Chapter 2, paragraphs 15.2 and 15.3 of the Framework Agreement

<sup>22</sup> Chapter 2, paragraphs 13.1 and 13.2 of the Framework Agreement

<sup>23</sup> Chapter 2, Paragraph 6.4 of the Framework Agreement

<sup>24</sup> Article 5(1)(b) of Regulation (EU) 2017/625

<sup>25</sup> Article 5(1)(c) of Regulation (EU) 2017/625

### 2.4.2 Documented policies

Type	Requirements
Sampling policy	The policy must set out the Competent Authority's approach to food sampling <sup>26</sup>
Enforcement policy	The policy must cover all areas of food law that the Competent Authority has a duty to enforce, including criteria for the use of all enforcement options that are available, and be approved by the relevant member forum or relevant senior officer <sup>27</sup>
Complaints policy	The policy must set out how complaints received about food and food business establishments are handled <sup>28</sup>

### 2.4.3 Documented plans, programmes, and strategies

Type	Requirements
Contingency plan	The plan must set out what the Competent Authority would do in an emergency <sup>29</sup>
Service plan	The plan must cover all areas of food law the Competent Authority has a duty to enforce, be documented in accordance with Chapter 2 of the Practice Guidance and the Framework Agreement. It must set out how the Competent Authority intends to deliver and resource official food controls and other official activities in its area, and address any variance in meeting the outcomes of the previous service plan. A performance review must be carried out at least once per year and be documented. The plan must be submitted for approval by a relevant member forum or relevant senior officer <sup>30</sup>

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<sup>26</sup> Chapter 2, paragraph 12.4 of the Framework Agreement, Regulation (EU) 2017/625 Chapter IV Sampling, analyses, tests and diagnoses

<sup>27</sup> Chapter 2, paragraph 15.1 of the Framework Agreement

<sup>28</sup> Chapter 2, paragraph 8.1 of the Framework Agreement

<sup>29</sup> Article 5(1)(i) of Regulation (EU) 2017/625

<sup>30</sup> Chapter 2, paragraphs 3.1, 3.2 and 3.3 of the Framework Agreement



Type	Requirements
Intervention programme	The programme must be established and implemented in accordance with the requirements of Chapter 4 and ensure that interventions are effective, appropriate and consistent. It should include all food business establishments for which the Competent Authority has food law enforcement responsibility <sup>31</sup>
Sampling programme	The programme must set out the details of the Competent Authority's intended risk-based food sampling priorities <sup>32</sup>
Training programme	The programme must ensure that authorised officers undertaking official food controls and other official activities receive appropriate training <sup>33</sup>
Alternative Enforcement Strategy (AES)	The strategy must set out how surveillance of food business establishments that can have Alternative Enforcement Strategies applied to them, will be conducted

## 2.5 Designation of Competent Authorities for food

Legislation has designated Local Authorities and Port Health Authorities (PHAs) as Competent Authorities to deliver official food controls, and other official activities for food, on those matters that are not the remit of the FSA<sup>34</sup>.

The FSA is responsible for:

- approval of establishments under Regulation (EC) No 853/2004 laying down specific hygiene rules on the hygiene of foodstuffs (including wholesale meat markets), where control falls to an official veterinarian<sup>35</sup>, and enforcement in such establishments
- establishments that are co-located with approved establishments in which minced meat, meat preparations, mechanically separated meat, meat products, rendered animal fats and greaves, treated stomachs, bladders and intestines, gelatine and/or collagen are also produced
- delivery of dairy hygiene inspections in milk production holdings

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<sup>31</sup> Article 5(1) of Regulation (EU) 2017/625

<sup>32</sup> Chapter 2, paragraph 12.4 of the Framework Agreement

<sup>33</sup> Article 5(4) of Regulation (EU) 2017/625 and Chapter 2 Paragraph 5.4 of the Framework Agreement

<sup>34</sup> Article 4(1) of Regulation (EU) 2017/625

<sup>35</sup> Article 18(2)(d) of Regulation (EU) 2017/625

- enforcement in relation to the matters regulated by Schedule 6 of The Food Safety and Hygiene (England) Regulations 2013, in so far as it applies in relation to raw cows' milk intended for direct human consumption
- the authenticity, traceability and labelling of wine sector products and enforcement in the wholesale market and wine sector products produced in the UK (including vineyards and wineries)

## **2.6 Local, regional, and national liaison**

### **2.6.1 Liaison requirements**

Competent Authorities must put in place liaison arrangements, where relevant, with:

- neighbouring Competent Authorities, delegated bodies, government agencies and any other appropriate body, to facilitate efficient, effective, and consistent enforcement in accordance with the Code, and centrally issued guidance<sup>36</sup>
- other delegated bodies or government organisations aimed at rationalising enforcement and reducing burdens on business<sup>37</sup>

Competent Authorities must:

- share information about compliance, fraudulent or deceptive practices of food business establishments with other relevant Competent Authorities and the FSA, as appropriate with due regard to Freedom of Information, and Data Protection legislation<sup>38</sup>
- respond to any reasonable communication from other Competent Authorities and the FSA, requesting information or assistance
- liaise with those Competent Authorities that are responsible for keeping registers of feed business establishments under Article 9 of Regulation (EC) No 1831/2003 laying down requirements for feed hygiene
- acknowledge and respond to Competent Authorities responsible for points of entry, in respect of inland referrals (with regards to imported food matters) to confirm the action taken
- share information they receive, at the earliest opportunity, with other relevant Competent Authorities and agencies, as appropriate, that indicate:
  - a change in the operations or ownership of a food business establishment
  - any withdrawal, suspension, or reinstatement of an establishment's approval

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<sup>36</sup> Chapter 2, Paragraphs 18.1 of the Framework Agreement

<sup>37</sup> Chapter 2, Paragraphs 18.2 of the Framework Agreement

<sup>38</sup> The General Data Protection Regulation (GDPR) and the Data Protection Act 2018

### **2.6.2 Liaison with the FSA**

Competent Authorities with food business establishments in their area that are subject to approval by the FSA, must liaise with FSA officials at those establishments, as appropriate, to:

- identify any risks and concerns about the establishment
- promote understanding of each other's roles within the establishment
- facilitate enforcement activities to make effective use of resources

Effective liaison with FSA officials at FSA approved establishments includes:

- proactive and informal communication when Competent Authority officers are attending FSA approved establishments
- maintaining ongoing discussions in relation to referrals or areas of common interest
- inviting FSA staff to local or regional meetings, where appropriate
- considering possible joint local training opportunities, and sharing of information

When receiving referrals from FSA officials at these establishments, Competent Authorities must:

- respond to referrals at the earliest opportunity, or advise when and how they will be able to respond
- offer advice to the FSA officials on any immediate action required to ensure future enforcement action can be successful, where the Competent Authority is unable to respond straight away
- proactively advise FSA officials on the outcomes of any non-compliance detected within the approved establishment, and explain why such an enforcement approach has been taken

### **2.6.3 Liaison in two tier Competent Authority areas**

In two tier Competent Authority areas, the District and County Council, must ensure that:

- effective day-to-day liaison arrangements between their respective Competent Authorities are in place, documented and operating satisfactorily
- initial registration information under Article 6(2) of Regulation (EC) No 852/2004 is supplied by the District Council to the County Council within 28 days of receipt
- where a food business establishment receives approval or conditional approval under Regulation (EC) No 853/2004, from the District Council, they inform the County Council within 28 days of approval being granted
- information they receive that indicates a change in the operations within a food business establishment, and information on any withdrawal, suspension, or

reinstatement of an establishment's approval, is passed to the other relevant Competent Authorities within 28 days

#### **2.6.4 Regional and local liaison groups**

Competent Authorities must be represented at relevant liaison groups by an officer(s) with an appropriate level of experience, normally the relevant lead food officer(s). Competent Authority liaison groups help to maintain effective and efficient delivery of official food controls and other official activities, co-operation, and consistency of enforcement.

Competent Authority liaison groups must, as appropriate:

- discuss matters of legal interpretation and consistency with colleagues in the appropriate regional or local food liaison group and the Primary, Home or Originating Authority if appropriate. Competent Authorities must avoid taking unilateral decisions on interpretations without seeking the views of other Competent Authorities
- undertake regular liaison to ensure that the advice given by groups of Primary or Home Authorities serving food businesses trading in the same sector of the industry is consistent
- request representation from a Competent Authority's Public Analyst and/or Food Examiner
- include appropriate representation from each Competent Authority, including District and County Councils in two-tier Competent Authority areas
- request representation from the FSA, PHAs, the Consultant in Communicable Disease Control (CCDC), Consultant in Public Health Medicine (Communicable Disease/Environmental Health) (CPHM (CD/EH)), and other experts or specialists as the need arises
- request representation from other delegated bodies
- discuss legal interpretation and consistency

In areas where there are commercial shellfish harvesting activities, Competent Authorities must refer to Chapter 7 of the Code for liaison arrangements.

#### **2.6.5 Competent Authorities at points of entry**

Competent Authorities with a point of entry for food imported into the UK, external temporary storage facilities or international rail terminal must establish routine local liaison and communication with relevant local organisations, to exchange information on food imports, and for the effective handling of incidents or suspected food crime.

#### **2.6.6 Division of responsibilities in two tier Competent Authority areas**

##### **2.6.6.1 District Councils**

It is expected that the District Council will investigate and take enforcement action in cases relating to the:

- microbiological quality of food, contamination by micro-organisms and their toxins and contamination by foreign matter, except where such contamination is found in establishments at the level of primary production when section 2.6.6.3 applies, as appropriate
- presence of chemical contaminants that might pose an imminent risk to public health but liaise closely with the County Council. Medical and other expert advice, including advice from the Public Analyst or Competent Examiner, must be sought in order to establish whether contamination by chemicals is likely to pose an imminent risk to health

### **2.6.6.2 County Councils**

It is expected that County Councils will investigate and take enforcement action in cases relating to:

- chemical contamination, except where such contamination is found in establishments at the level of primary production when section 2.6.6.3 applies, as appropriate
- the adulteration, composition, advertisement, presentation, and the provision of food information, apart from the identification marking requirements at Annex II of Regulation (EC) No 853/2004, which are enforced by District Councils
- an identified risk to health, notified by a Public Analyst as a result of sampling

### **2.6.6.3 Joint responsibility**

In the following circumstances, the District Council or the County Council or both may investigate and take enforcement action.

**Food Alerts:** Where a clearly identified risk to health has been notified by means of a Food Alert issued by the FSA, either the District Council, the County Council or both might be required to investigate and take enforcement action, such responsibility will be defined in the Food Alert.

**Use By Dates:** Where food is found to be on the market after its use-by date, Article 24(1) of Regulation (EU) No 1169/2011 provides that it is automatically deemed to be unsafe within the meaning of Article 14 of Regulation (EC) No 178/2002, enforcement of which is under The Food Safety and Hygiene (England) Regulations 2013, and is the responsibility of both the County and District Competent Authorities to enforce.

**Primary Production:** The FSA has not specified whether investigations and enforcement action in relation to primary production are undertaken at District or County level, but it is anticipated that most of this work will be undertaken by authorised officers at County level, and it must be agreed at a local level as to which Competent Authority takes responsibility, having regard to the principles of the Farm Regulators' Charter.

**Allergens:** District Council Competent Authorities in an area for which there is a County Council Competent Authority, have the power to enforce the provisions of Regulation 9(2) of The Food Information Regulations 2014 in relation to allergen requirements for non-prepacked and prepacked for direct sale foods (PPDS). It must be agreed at a local level how enforcement of these provisions will be shared.

## 2.7 Primary Authority and Home Authority

### 2.7.1 Primary Authority

Primary Authority is a statutory scheme administered by the Office for Product Safety and Standards (OPSS) on behalf of the Secretary of State for the Department for Business, Energy and Industrial Strategy (BEIS). In England, and Wales the scope of Primary Authority includes matters relating to food and feed. Food businesses that wish to benefit from Primary Authority in both nations will need to partner with both a primary authority in England and a primary authority in Wales.

The FSA endorses Primary Authority<sup>39</sup> and works with OPSS to support the delivery of Primary Authority for food regulators to deliver consistency between Competent Authorities and avoid unnecessary duplication of regulatory effort. The FSA expects Competent Authorities to fulfil their statutory obligations under Primary Authority.

Competent Authorities must have regard to the [BEIS Primary Authority Statutory Guidance](#), specifically to Part E which provides guidance on their responsibilities as 'enforcing authorities' within Primary Authority.

In their planning and delivery of official food controls and other official activities Competent Authorities should use the information held on the [Primary Authority Register](#) to determine whether businesses with whom they are dealing have Primary Authority partnerships. Where a business is in a co-ordinated partnership, for example through membership of a trade association, this may not be detailed on the Primary Authority Register, Competent Authorities should therefore also question the FBO about whether there is a Primary Authority partnership.

Where a business has a Primary Authority partnership, the Competent Authority must follow an inspection plan for the business where it has been developed by the primary authority and received consent from the Secretary of State. The Competent Authority must also provide feedback to the primary authority if this is required in the inspection plan.

If enforcement action by the Competent Authority is envisaged, the primary authority must be notified in accordance with statutory requirements. In most cases this should be carried out before action is taken, except where there is an urgent need to avoid significant risk of harm to human health, the environment, or financial interests of consumers, where the enforcement action must be notified retrospectively.

A primary authority may make visits in another Competent Authority area at the request of the business. These visits may be carried out as part of an information gathering exercise without the use of any powers. If the primary authority carries out a visit using powers to obtain evidence of contraventions, the relevant Competent Authority must be notified in advance where possible, or as soon as practicable.

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<sup>39</sup> Chapter 2, Section 9 of the Framework Agreement

### **2.7.2 Home Authority**

The FSA endorses the Home Authority Principle, which is governed by a Joint Statement of Commitment (JSoC), signed by the OPSS, the Chartered Trading Standards Institute (CTSI) and the Chartered Institute of Environmental Health (CIEH), in June 2011. Competent Authorities should, where possible, adopt and implement its provisions.

The Home Authority Principle seeks to maintain and support the essential elements of the regulatory landscape and to rationalise and streamline existing systems of professional support and network communication, enabling a coherent framework of business engagement to be developed.

Home Authorities operate in situations when a business does not have a Primary Authority partnership in place (for example, if a business chooses not to enter into a partnership or is legally unable to have one), but where there remains a clear need for regulatory activity in relation to that business to be co-ordinated. For example, instances of non-compliance that could be geographically widespread, potentially leading to similar but un-connected regulatory interventions by several Competent Authorities.

Home Authorities facilitate the sharing of intelligence amongst Competent Authorities and aim to achieve business compliance primarily in food safety and hygiene, and food standards. The Competent Authority located in the same area as a businesses' head office (or alternatively the Competent Authority where the goods or services are produced) is often best placed to act as the Home Authority for that business.

The Home Authority Principle expects a local authority to place special emphasis on goods and services originating from a business based within its own area, in an effort to regulate the business at source, thus giving rise to efficiencies in the regulatory system as a whole.

The Home Authority Principle enables regulators to focus on the protection of citizens, workers and the environment, whilst adhering to the principles of good regulation (proportionality, accountability, consistency, transparency and targeting).

Competent Authorities considering giving advice or taking enforcement action in relation to food businesses that have a Home Authority, must consider whether they need to contact the Home Authority before doing so. This may be necessary, for example, where the advice or enforcement action relates to centrally agreed policies or procedures of a food business.

## **2.8 Provision of discretionary services**

Competent Authorities may charge for the provision of discretionary services<sup>40</sup>, such as the provision of training or business advice, otherwise than for commercial purposes.

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<sup>40</sup> Section 93(1)(a) of the Local Government Act 2003

Competent Authorities that provide these services must ensure:

- they make readily available:
  - their fees and charges<sup>41</sup>
  - details of how their fees and charges were calculated and an explanation of whether compliance will affect fees and charges, where appropriate<sup>42</sup>
  - what the main features of the service(s) are<sup>43</sup>
  - any terms and conditions applicable to the provision of the service<sup>44</sup>
  - details on how to complain about the service provided<sup>45</sup>
- their conflict-of-interest procedure and/or arrangements, sets out how authorised officers will remain free of conflicts of interest when delivering official food controls, or other official activities and chargeable discretionary services<sup>46</sup>
- they make clear wherever details of these services are provided, that other providers of these services are available
- the FBO agrees to the provision of the service before it is provided, and is aware that it is voluntary
- they make clear to the FBO verbally, and in writing, if appropriate, that these services are separate to an official control or other official activities

## **2.9 Appointment of a Public Analyst**

Competent Authorities must:

- appoint one or more Public Analysts<sup>47</sup> who meet the minimum qualifications set out in The Food Safety (Sampling and Qualifications) (England) Regulations 2013
- ensure the appointed analyst(s) have the capacity for testing the range of samples and analytes required by the Competent Authority, or have in place arrangements to have such testing carried out under their supervision as permitted by section 30 of the Food Safety Act 1990

This section does not apply to District Council Competent Authorities in two tier Competent Authority areas, except where the functions of the County Council Competent Authority have been transferred to the District Council Competent Authority.

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<sup>41</sup> Regulation 8(1)(l) of The Provision of Services Regulations 2009

<sup>42</sup> Paragraph 6.2 of the Regulators' Code

<sup>43</sup> Regulation 8(1)(m) of The Provision of Services Regulations 2009

<sup>44</sup> Regulation 8(1)(i) of The Provision of Services Regulations 2009

<sup>45</sup> Paragraph 6.2 of the Regulators' Code

<sup>46</sup> Article 5(1)(c) of Regulation (EU) 2017/625

<sup>47</sup> Article 5(1)(d) of Regulation (EU) 2017/625; Chapter 2, Paragraph 12.8 of the Framework Agreement; Section 27 of the Food Safety Act 1990



## **2.10 Facilities and equipment**

Competent Authorities must:

- make available the necessary facilities and equipment that are required to ensure the effective delivery of all activities associated with the service to be provided<sup>48</sup>
- provide officers undertaking official food controls and other official activities with appropriate and properly maintained facilities and equipment, including appropriate personal protective equipment consistent with good industry practice, to ensure they can perform these efficiently and effectively<sup>49</sup>
- set-up, maintain and implement an appropriately configured database or other record management system that is accurate, reliable, and capable of:
  - implementing the relevant food hygiene and food standards and/or food hygiene at primary production intervention rating schemes, at the level of primary production, set out in section 4.4 and Annex 1
  - recording the full range of activities, including official food controls, complaint investigations, enforcement actions and controls at points of entry<sup>50</sup>
  - recording and retrieving the details of approved or conditionally approved and registered food business establishments,<sup>51</sup> including all activities undertaken
  - providing any information reasonably requested by the FSA<sup>52</sup>
  - receiving Food Alerts<sup>53</sup>

## **2.11 Enforcement email addresses**

Competent Authorities must notify the FSA of:

- their email address to which communications can be sent
- any changes to these details, as soon as practicable

## **2.12 Registration and approval of food business establishments**

### **2.12.1 Registration and approval requirements**

Competent Authorities must approve and register food business establishments in their area in accordance with the relevant legislation, the Code, the Practice Guidance, centrally issued guidance and the Competent Authority's policies and procedures.

### **2.12.2 Food establishment lists**

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<sup>48</sup> Paragraph 6.1 of the Framework Agreement

<sup>49</sup> Article 5(1)(e) and (f) of Regulation (EU) 2017/625 and Chapter 2, Paragraph 6.2 of the Framework Agreement

<sup>50</sup> Chapter 2, Paragraph 16.1 of the Framework Agreement

<sup>51</sup> Chapter 2, Paragraph 11.1 of the Framework Agreement

<sup>52</sup> Chapter 2, Paragraph 6.3 of the Framework Agreement

<sup>53</sup> Chapter 2, Paragraph 14.2 of the Framework Agreement

### **2.12.2.1 Registered establishment details**

Competent Authorities (except County Councils) must:

- maintain an up-to-date list of registered food business establishments within their area<sup>54</sup>
- update registered establishment details upon receipt of notification of a change to a food establishment operation or FBO
- supply the FSA, when requested, with a complete copy of their register of food business establishments
- ensure requests for information on food business establishments are handled with due regard to Freedom of Information, and Data Protection legislation<sup>55</sup>

### **2.12.2.2 Approved establishment details**

Competent Authorities must maintain an up-to-date list of food business establishments that have been approved or conditionally approved by them<sup>56</sup>.

Competent Authorities must:

- provide the FSA with a copy of the FBO's application form and approval issued by the Competent Authority, on request
- notify the FSA:
  - when an establishment has been approved or conditionally approved
  - where an approved establishment ceases activities that are the subject of the approval or conditional approval
  - where an approval or conditional approval has been withdrawn or suspended

Competent Authorities must supply the FSA, when requested with a complete list of approved food business establishments.

## **2.13 Approvals process**

### **2.13.1 Applications**

Competent Authorities must:

- ensure applications for approval are only accepted from FBOs for establishments that are under their control and that intend to engage in activities for which approval is required
- ensure exemptions from approval are fully considered
- ensure the FBO supplies all relevant information before their application for approval is determined

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<sup>54</sup> Article 10(2) of Regulation (EU) 2017/625

<sup>55</sup> The General Data Protection Regulation (GDPR) and the Data Protection Act 2018

<sup>56</sup> Article 10(2) of Regulation (EU) 2017/625

- deal with applications for approval promptly and ask FBOs to submit applications in the appropriate format, as set out in the Practice Guidance
- take into consideration all activities carried out in the food business establishment, and ensure they comply with the relevant legal requirements for each type of product produced

### **2.13.2 Determination of applications for approval**

Competent Authorities must:

- before reaching a decision on an application for approval make an on-site visit<sup>57</sup> in the form of an inspection
- verify whether the FBO complies with the relevant requirements of food law, and whether approval or conditional approval can be granted

### **2.13.3 Conditional and full approval**

Competent Authorities must ensure:

- they have regard to the requirements in Chapter 2 of the Practice Guidance on the approval of establishments
- they approve an establishment for the activities concerned only if the food business operator has demonstrated that it complies with the relevant requirements of food law<sup>58</sup>
- the decision to grant conditional approval, or extend conditional approval is done on a case-by-case basis and is based on professional judgement, but must not be given if non-compliance could lead to foods adversely affecting public health
- where conditional approval is granted after the first on-site visit, full approval must only be granted if it appears from a new official control visit to the establishment, carried out within three months of granting conditional approval, that the establishment meets the other relevant requirements of food law, including product specific requirements in Regulation (EC) No 853/2004<sup>59</sup>
- if clear progress has been made since the first on-site visit but the establishment still does not meet all of the relevant requirements, the Competent Authority may prolong the conditional approval
- conditional approval is never extended to more than a total of six months, except in the case of factory and freezer vessels, for which such conditional approval shall not exceed a total of 12 months

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<sup>57</sup> Article 148(2) of Regulation (EU) 2017/625

<sup>58</sup> Article 148(3) of Regulation (EU) 2017/625

<sup>59</sup> Article 148(4) of Regulation (EU) 2017/625

- for new start up food business establishments conditional approval is granted prior to full approval, so that the FBO can demonstrate their food safety management system is valid and to verify its effectiveness
- a unique identification mark (including approval code) is given to each food business establishment it approves or conditionally approves
- the FBO is notified in writing when approval or conditional approval is granted, and notification includes:
  - the nature and scope of the approval
  - any conditions or limitations that apply
  - the approval code, or where approval is granted following conditional approval, confirmation that the approval code allocated to them can continue to be used
- a copy of the written notification(s) is retained

#### **2.13.4 Refusal of approval**

When a Competent Authority has decided to refuse an application for approval it must notify the applicant in writing of the decision at the earliest opportunity and must include:

- the reasons for refusal
- the matters necessary to satisfy requirements of the Regulation(s)
- make clear that activities requiring approval must not be undertaken unless approval or conditional approval is granted
- details of their right of appeal against the decision and address of the Magistrates Court where an appeal may be made<sup>60</sup>

#### **2.13.5 Change of activities, ownership, or details**

When a Competent Authority becomes aware of a change in ownership or activities of an approved food establishment, they must carry out an assessment of the change and take any action necessary.

A significant change will likely require an establishment to have a new approval before it can operate.

#### **2.13.6 Establishments thought to be engaged in activities requiring approval**

Where a Competent Authority becomes aware of businesses engaged in activities that require approval, but that are not approved, they must inform the FBO, in writing, of the need for approval and consider appropriate enforcement action.

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<sup>60</sup> Regulation 12 of The Official Feed and Food Controls (England) Regulations 2009

## 2.14 Retention of records

Competent Authorities must ensure records relating to food business establishments, including those that have ceased trading, are retained for at least six years<sup>61</sup>, unless they are required for longer retention because of:

- litigation
- review by the Local Government Ombudsman
- the document management policy of the Competent Authority specifying a longer period
- advice issued by the FSA in accordance with section 2.3
- the establishment's next intervention being due beyond the minimum six-year retention period, in which case records must continue to be retained and include:
  - the information necessary to meet the Food Hygiene Rating Scheme (FHRS) data standard
  - the information necessary for the FSA to fulfil its duty to keep national lists (see section 2.12.2)
  - details on the type of activities undertaken by the business, including any special equipment, processes, or features, where relevant
  - details of any significant issues, including details of any non-compliance to be reviewed at future interventions

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<sup>61</sup> Chapter 2, paragraph 16.2 of the Framework Agreement

## Chapter 3 Authorisation, qualifications, and competency

### 3.1 Introduction

This Chapter:

- outlines the requirements for delegation of official food controls and other official activities to delegated bodies and natural persons
- outlines the qualifications and competency requirements for officers undertaking official food controls, other official activities, and any other activities related to these
- implements the training provisions of Regulation (EU) 2017/625 on official food controls and other official activities<sup>62</sup>

The qualification and competency requirements in this Chapter do not apply to those who have only indirect managerial responsibility for the Competent Authority's food law enforcement service such as Chief Executives, Directors, or Chief Officers, or to those employed in a support role such as administrative and legal staff.

In accordance with the Code, a competency assessment against the FSA 'Knowledge and skills for the effective delivery of official food and feed controls and other activities' (the Competency Framework) will only be required for officers whose authorisation is dated on or after 1 March 2021 and for existing officers (which includes regulatory support officers) who were authorised prior to this date, but whose authorisation needs to be extended to new activities on or after 1 March 2021.

For officers, whose authorisation is dated on or after 1 March 2021, their competency must be assessed against all the relevant activities in the Competency Framework) that they are required to undertake. For existing officers extending their authorisation on or after 1 March 2021, the assessment will only be required against any new activities they will be undertaking.

With regards to existing officers who were authorised prior to the 1 March 2021 and whose authorisations are not extended to new activities, competency assessment against the Competency Framework is not required until the new approach to competency assessment has been implemented, as part of the full implementation of the Competency Framework. The ongoing competency of these officers will be met through:

- maintaining continuing professional development (CPD) in accordance with the requirements of the Code
- be subject to the Competent Authority's control verification procedures (internal monitoring)

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<sup>62</sup> Article 5(4) of Regulation (EU) 2017/625

If significant issues or concerns with an officer's competency are identified by the Competent Authority, a competency assessment against the relevant activities of concern within the Competency Framework, will be required.

## **3.2 Delegation of official food controls and other official activities**

### **3.2.1 Delegation to authorising officers**

Competent Authorities must ensure that the power to authorise officers has been properly delegated to the authorising officer and that this delegation has been recorded, for example in the constitution of the Competent Authority.

### **3.2.2 Delegation to other Competent Authorities**

#### **3.2.2.1 Local Government Act**

Competent Authorities may be able to use authorised officers from other Competent Authorities to carry out their official food controls and/or other official activities using the provisions provided by the Local Government Act 1972 (as amended).

The Local Government Act 1972 (as amended) permits Competent Authorities to carry out functions on behalf of other Competent Authorities via a number of different methods:

- Delegation<sup>63</sup> - Competent Authorities can delegate the delivery of their functions to another Competent Authority, but the delegating Authority remains responsible for ensuring the functions are carried out
- Joint Committee<sup>64</sup> - Competent Authorities can establish joint committees with other Competent Authorities (usually through a legal agreement signed by participating Authorities) in order to discharge their functions
- Agreement<sup>65</sup> - Competent Authorities can enter into agreements (subject to consultation with the officers involved) with other Competent Authorities to place their officers at the disposal of the other Competent Authority, allowing these officers to carry out the functions of that other Competent Authority

Competent Authorities must ensure that if another Competent Authority carries out official food controls and/or other official activities on their behalf that there has been a proper delegation of these functions and this has been documented.

Competent Authorities should seek advice from their own legal teams before delegating any functions to another Competent Authority.

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<sup>63</sup> Section 101 of the Local Government Act 1972

<sup>64</sup> Section 102 of the Local Government Act 1972

<sup>65</sup> Section 113 of the Local Government Act 1972

### 3.2.2.2 Delegation of certain tasks of the Competent Authorities

Competent Authorities may delegate official food controls to one or more delegated bodies<sup>66</sup> and natural persons who are not themselves Competent Authorities.

Where delegating official food controls to delegated bodies or natural persons, the delegating Competent Authority must ensure:

- the delegated body or natural person have powers needed to effectively perform the controls being delegated<sup>67</sup>
- the delegation is in writing<sup>68</sup>
- the delegation contains a precise description of those official food controls the delegated body or natural persons may perform and the conditions under which they may perform those controls<sup>69</sup>
- there are arrangements in place for ensuring efficient and effective coordination between themselves and the delegated body or natural person<sup>70</sup>
- that the delegated body or natural person<sup>71</sup>
  - communicates the outcome of the official food controls and/or other official activities regularly and whenever these details are requested
  - immediately informs them of the outcome of official food controls and/or other official activities, where non-compliances are identified, unless specific arrangements are in place which provide otherwise
  - cooperates with them and where appropriate, provide them with assistance and access to premises and facilities
- audit the delegated body or natural persons that the controls have been delegated to, as necessary
- fully or partly withdraw the delegation where the delegated body:
  - fails to properly undertake these official food controls activities
  - fails to take appropriate and timely action to remedy any issues identified with their delivery of official food controls and/or other official activities
  - compromises their independence or impartiality
- provide the FSA with details of:
  - the delegated body or natural person
  - the specific tasks delegated to them

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<sup>66</sup> Article 3(5) of Regulation (EU) 2017/625

<sup>67</sup> Article 28(1) of Regulation (EU) 2017/625

<sup>68</sup> Articles 29 and 30 of Regulation (EU) 2017/625

<sup>69</sup> Articles 29(a) and 30(a) of Regulation (EU) 2017/625

<sup>70</sup> Articles 29(c) and 30(c) of Regulation (EU) 2017/625

<sup>71</sup> Article 32 of Regulation (EU) 2017/625



- any subsequent withdrawal or change in the tasks delegated

Where official food controls are delegated to a delegated body, the delegating Competent Authority must assign them a specific code<sup>72</sup> and ensure the delegated body<sup>73</sup>:

- has the expertise, equipment, documented control procedures<sup>74</sup> and infrastructure to carry out the controls delegated to them
- has a sufficient number of suitably qualified and competent individuals to perform efficiently and effectively official food controls delegated to them
- is impartial and free from any conflict of interest and, in particular is not in a situation that may, directly or indirectly, affect the impartiality of its professional conduct as regards the performance of those official control tasks delegated to it
- carries out official food controls in accordance with the Code, the Practice Guidance, and the Framework Agreement
- works and is accredited in accordance with standards relevant to the delegated tasks in question, including standard EN ISO/IEC 17020 Requirements for the operation of various types of bodies performing inspection
- has sufficient powers to perform the official food controls delegated to it

Where official food controls are delegated to a natural person, the delegating Competent Authority must ensure the natural person<sup>75</sup>:

- has the expertise, equipment, documented control procedures and infrastructure to carry out the controls delegated to them<sup>76</sup>
- acts impartially and is free from any conflict of interest as regards the exercise of those official control tasks delegated to them<sup>77</sup>
- is suitably qualified and competent to perform efficiently and effectively, the official food controls delegated to them<sup>78</sup>
- carries out official food controls in accordance with the Code, the Practice Guidance, and the Framework Agreement

Competent Authorities may also delegate other official activities to one or more:

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<sup>72</sup> Article 28(2) of Regulation (EU) 2017/625

<sup>73</sup> Article 29(b) of Regulation (EU) 2017/625

<sup>74</sup> Article 12(4) of Regulation (EU) 2017/625

<sup>75</sup> Article 30(c) of Regulation (EU) 2017/625

<sup>76</sup> Article 30(b)(i) of Regulation (EU) 2017/625

<sup>77</sup> Article 30(b)(ii) of Regulation (EU) 2017/625

<sup>78</sup> Article 30(b)(iii) of Regulation (EU) 2017/625

- delegated bodies unless prohibited by the rules referred to in Article 1(2) of Regulation (EU) 2017/625<sup>79</sup>
- natural persons where permitted unless prohibited by the rules referred to in Article 1(2) of Regulation (EU) 2017/625<sup>80</sup>

Where other official activities are delegated, the requirements above also apply, with the following exceptions:

- delegated bodies are not required to work and be accredited in accordance with standards relevant to the delegated tasks in question, including standard EN ISO/IEC 17020 Requirements for the operation of various types of bodies performing inspection<sup>81</sup>
- decisions concerning the action to take to ensure a FBO remedies non-compliances and prevent further non-compliances and written notification of the action must not be delegated<sup>82</sup>

### **3.3 Authorisation**

#### **3.3.1 Appointment of staff**

Competent Authorities must:

- appoint a sufficient number of suitably qualified and competent officers so that official food controls and other official activities can be performed efficiently and effectively<sup>83</sup>
- ensure that if they need to engage expertise in an area listed in Chapter I of Annex II of Regulation (EU) 2017/625, any expert holds a suitable qualification and is competent in the area for which the expertise is required

#### **3.3.2 Authorisation of officers**

This section applies to authorised officers, lead food officers and regulatory support officers.

Before Competent Authorities authorise or extend an officer's duties their lead food officer(s) must ensure officers:

- (a) carrying out official food controls or other official activities hold a suitable qualification, listed in sections 3.4.1, 3.4.2 and 3.4.3, relevant to their role, and the activities they will be authorised to undertake, unless the officer only performs:
  - regulatory support officer activities

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<sup>79</sup> Article 31(1)(a) of Regulation (EU) 2017/625

<sup>80</sup> Article 31(2)(a) of Regulation (EU) 2017/625

<sup>81</sup> Article 31(1)(b) of Regulation (EU) 2017/625

<sup>82</sup> Article 31(3) of Regulation (EU) 2017/625

<sup>83</sup> Article 5(1)(e) of Regulation (EU) 2017/625 and Chapter 2, Paragraph 5.3 of the Framework Agreement

- official food controls or certain tasks related to other official activities on products of animal origin at Border Control Posts (see section 3.5)
- (b) are subject to an appropriate competency assessment against the competencies set out in:
- the Competency Framework as published on the FSA website
  - Chapter 3 of the Practice Guidance
- (c) have their authorisation of legal powers and duties restricted, until they can demonstrate they meet the competencies, relevant to their role, and the activities they will undertake.

Competent Authorities must ensure:

- the decision to determine that an officer meets the suitable qualification and competency requirements, relevant to the activities the officer will be authorised to undertake, must be made by the lead food officer(s)
- officers returning to deliver official food controls, other official activities and/or regulatory support officer activities after a period of absence are subject to an appropriate competency assessment against the Competency Framework, which is proportionate to the length of the absence and relevant to the activities they will undertake
- officers who move from one Competent Authority to another are subject to an appropriate competency assessment which is proportionate to their previous experience, and relevant to the activities they will undertake
- officers receive the necessary training which is identified by a lead food officer(s), or another competent authorised officer, to address any deficiencies highlighted in an officer's competency assessment
- authorisation of officers is in writing
- officers performing duties, with regard to food law regulations, which include specific enforcement powers, not derived from the Food Safety Act 1990, are specifically authorised for those regulations
- they keep records, which may be computer-based, of their officer's:
  - qualifications, where relevant
  - competency assessment

### **3.3.3 Authorised officers**

These are officers, other than regulatory support officers, who undertake assessments of compliance with food law and take enforcement action, as appropriate.

### **3.3.4 Lead food officers**

Competent Authorities must:

- appoint one or more, suitably qualified and competent lead food officer(s), who are responsible for the operational management of food law matters
- notify the FSA of the:
  - name and contact details (telephone number and email address) of their appointed lead food officer(s)
  - details of any changes as soon, as practicable

A Competent Authority's lead food officer(s) may be an officer(s) employed by another Competent Authority or Competent Authorities provided they meet the necessary competency requirements for the area(s) for which they have been appointed.

### **3.3.5 Regulatory support officers**

Competent Authorities:

- may authorise regulatory support officers to perform any of the following activities as detailed in the Competency Framework:
  - alternative interventions
  - education, advice, and coaching
  - information gathering, excluding the sub-activity gathering, processing, and sharing intelligence
  - shellfish environmental monitoring<sup>84</sup>
- must ensure regulatory support officers have appropriate supervision

## **3.4 Qualification requirements**

### **3.4.1 Food Hygiene**

The 'suitable qualification' requirement for food hygiene enforcement is met if an officer holds one or more of the following qualifications or their antecedents<sup>85</sup>:

- Higher Certificate in Food Control awarded by the Environmental Health Registration Board (EHRB) or CIEH
- Higher Certificate in Official Control awarded by the Scottish Food Safety Officers Registration Board (SFSORB)
- A Certificate of Registration awarded by the EHRB to practice as an Environmental Health Practitioner
- A Diploma in Environmental Health awarded by the EHRB or the REHIS

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<sup>84</sup> Chapter 2, Article 59 of Regulation (EU) 2019/627

<sup>85</sup> The suitable qualifications detailed in section 3.4.1 require the successful completion of all elements, including written exams, portfolios, oral exams, practical exams, professional interviews, as specified by the awarding body.

- Advanced Professional Certificate in Food Hygiene and Standards Control (APC) awarded by CIEH
- Degree in Environmental Health
- Masters Degree in Environmental Health
- Environmental Health Practitioner (Integrated Degree) Apprenticeship

Lead food officer(s) must ensure officers holding one or more of the suitable qualifications listed below, have their authorisation of legal powers and duties restricted in accordance with Chapter 3 of the Practice Guidance, unless they hold one or more of the suitable qualifications listed above, or they can demonstrate the competency requirements, relevant to the restricted activities they will undertake:

- Higher Certificate in Food Premises Inspection awarded by the EHRB, IFST or the SFSORB
- Higher Certificate in Food Premises Inspection awarded by the EHRB, IFST or the SFSORB with the Food Standards Endorsement
- Higher Certificate in Food Premises Inspection awarded by the EHRB, IFST or the SFSORB with the Food Inspection Endorsement
- Ordinary Certificate in Food Premises Inspection awarded by the EHRB, IFST or SFSORB

### **3.4.2 Food standards**

The 'suitable qualification' requirement for food standards enforcement, is met if an officer holds one or more of the following qualifications or their antecedents<sup>86</sup>:

- CTSI Trading Standards Practitioner Certificate with the Food Standards unit from the Trading Standards Practitioner Diploma
- Trading Standards Qualification Framework (TSQF) Diploma in Consumer Affairs and Trading Standards (DCATS) with the Food Standards Service Delivery Module
- Trading Standards Qualification Framework (TSQF) Higher Diploma in Consumer Affairs and Trading Standards (HDCATS) with the Food Standards Service Delivery Module
- Diploma in Trading Standards
- Diploma in Consumer Affairs (DCA Part II) provided it includes the Food and Agriculture paper
- Trading Standards Qualification Framework (TSQF) Certificate of Competence in Food Standards service delivery module

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<sup>86</sup> The suitable qualifications detailed in section 3.4.2 require the successful completion of all elements, including written exams, portfolios, oral exams, practical exams, professional interviews, as specified by the awarding body.

- Trading Standards Qualification Framework (TSQF) Core Skills Certificate in Consumer Affairs and Trading Standards (CSCATS) with the Food Standards Service Delivery Module
- Diploma in Consumer Affairs Certificate of Competence in Food and Agriculture
- Higher Certificate in Food Control awarded by EHRB or CIEH
- Higher Certificate in Official Control awarded by SFSORB
- Advanced Professional Certificate in Food Hygiene and Standards Control (APC) awarded by CIEH
- A Certificate of Registration awarded by the EHRB to practice as an Environmental Health Practitioner
- A Diploma in Environmental Health awarded by the EHRB or the REHIS
- Degree in Environmental Health
- Masters Degree in Environmental Health
- Higher Certificate in Food Premises Inspection awarded by the EHRB, IFST or the SFSORB with the Food Standards Endorsement
- The Higher Certificate in Food Standards Inspection awarded by the SFSORB
- Environmental Health Practitioner (Integrated Degree) Apprenticeship

In addition, for food business establishments where quality assurance systems are to be assessed, officers should possess a Quality Assurance qualification, or equivalent professional experience and competency to enable them to assess quality assurance systems.

Officers holding one or more of the qualifications listed below must not be authorised for food standards enforcement, except for the enforcement of the provisions of Regulation 9(2) of The Food Information Regulations 2014, in relation to allergens in non-prepacked and prepacked for direct sale foods, unless they hold one or more of the suitable qualifications listed above:

- Higher Certificate in Food Premises Inspection awarded by the EHRB, IFST or the SFSORB
- Higher Certificate in Food Premises Inspection awarded by the EHRB, IFST or the SFSORB with the Food Inspection Endorsement
- Ordinary Certificate in Food Premises Inspection awarded by the EHRB, IFST or the SFSORB

Where a Competent Authority chooses to authorise, an officer holding one or more of the three qualifications listed above to enforce the provisions of Regulation 9(2) of The Food Information Regulations 2014, they must only do so if they can demonstrate the competencies for assessing products, labelling and other information as detailed in the Competency Framework, as far as they relate to allergen information in non-prepacked and prepacked for direct sale foods.

### **3.4.3 Food hygiene at the level of primary production**

If Competent Authority officers undertaking food hygiene enforcement at the level of primary production do not already hold one of the qualifications listed in sections 3.4.1 or 3.4.2, they must hold one or more of the following qualifications or their antecedents<sup>87</sup>:

- CTSI Trading Standards Practitioner Certificate with the Feed unit from the Trading Standards Practitioner Diploma
- Trading Standards Qualification Framework (TSQF) Higher Diploma in Consumer Affairs and Trading Standards (HDCATS) with the Animal Health Service Delivery Module
- Trading Standards Qualification Framework (TSQF) Diploma in Consumer Affairs and Trading Standards (DCATS) with the Animal Health Service Delivery Module
- Trading Standards Qualification Framework (TSQF) Diploma in Consumer Affairs and Trading Standards (DCATS) with the Agriculture Service Delivery Module
- Trading Standards Qualification Framework (TSQF) Certificate of Competence in Agriculture
- Trading Standards Qualification Framework (TSQF) Certificate of Competence in Animal Health
- Trading Standards Qualification Framework (TSQF) Core Skills Certificate in Consumer Affairs and Trading Standards (CSCATS) with the Agriculture Service Delivery Module

The 'suitable qualification' requirement for officers undertaking controls at food business establishments subject to the requirements of Regulation (EU) No 210/2013 on the approval of establishments producing sprouts, is met if they hold one or more of the suitable qualifications listed in section 3.4.1.

### **3.4.4 Equivalency of qualifications**

Existing or prospective Competent Authority officers may have a range of qualifications, additional training and experience that together indicate their competence to undertake specific enforcement activities identified in the Code. In such cases, the relevant professional and awarding bodies should be approached directly by either the existing Competent Authority employer or prospective officer for an assessment of equivalence (fees may be payable). The assessment of equivalence must be against the listed qualifications in sections 3.4.1, 3.4.2 and 3.4.3 as appropriate.

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<sup>87</sup> The suitable qualifications detailed in section 3.4.3 require the successful completion of all elements, including written exams, portfolios, oral exams, practical exams, professional interviews, as specified by the awarding body.

Competent Authorities must:

- consider suitable non-UK qualifications and experience where the qualification was obtained in a European Economic Area (EEA) Member State or Switzerland<sup>88</sup>
- make enquiries with the relevant professional and awarding bodies if they have any questions about this area before confirming an appointment

### **3.5 Requirements for staff undertaking import controls on products of animal origin at Border Control Posts**

#### **3.5.1 Official fish inspectors**

If the approval for the Border Control Post (BCP) permits the importation of any fishery products, aquatic invertebrates, live bivalve molluscs, live echinoderms, live tunicates and live marine gastropods intended for human consumption, the Competent Authority may appoint suitably trained environmental health officers or other persons who are appropriately trained to perform official food controls or certain tasks related to other official activities, to be official fish inspectors for that post in relation to such products.

Any such official fish inspector has all the powers of an official veterinary surgeon in relation to those products<sup>89</sup>.

#### **3.5.2 Documentary checks and identity checks**

Competent Authorities may authorise officers to undertake documentary and identity checks on animals, products of animal origin, germinal products, or animal by-products<sup>90</sup>.

#### **3.5.3 Physical checks**

Competent Authorities may designate authorised officers to undertake physical checks on<sup>91</sup>:

- aquatic animals<sup>92</sup>
- other products of animal origin (except meat and edible meat offal)
- germinal products
- animal by-products

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<sup>88</sup> The Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2019

<sup>89</sup> Regulation 26(11) of The Official Controls (Animals, Feed and Food, Plant Health Fees etc.) Regulations 2019, amending Regulation 12(4) of The Trade in Animals and Related Products Regulations 2011

<sup>90</sup> Article 49(1) of Regulation (EU) 2017/625

<sup>91</sup> Article 49(2)(b) of Regulation (EU) 2017/625

<sup>92</sup> Regulation (EU) No 2016/429



Competent Authorities may also designate officers to assist official veterinarians with physical checks on<sup>93</sup>:

- animals (other than those aquatic animals listed above)
- meat and edible meat offal

Officers who are designated to undertake or assist with physical checks must have successfully completed a programme of training provided for in Article 3 of Commission Delegated Regulation (EU) 2019/1081<sup>94</sup>.

#### **3.5.4 Decisions on consignments of products of animal origin**

Decisions<sup>95</sup> on consignments of:

- animals, products of animal origin, germinal products or animal by products must be taken by an official veterinarian<sup>96</sup>
- fishery products, aquatic invertebrates, live bivalve molluscs, live echinoderms, live tunicates, and live marine gastropods intended for human consumption can be taken by an official fish inspector<sup>97</sup>

### **3.6 Requirements for staff undertaking import controls on products not of animal origin at Border Control Posts**

Competent Authorities must ensure authorised officers undertaking official food controls or certain tasks related to other official activities on imports of high-risk food not of animal origin<sup>98</sup>, goods subject to an emergency measure<sup>99</sup> or specified conditions or measures<sup>100</sup>, and high-risk food contact materials<sup>101</sup> at BCPs fulfil the authorisation requirements specified in section 3.3.2.

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<sup>93</sup> Article 49(2)(a) of Regulation (EU) 2017/625

<sup>94</sup> Articles 49(2)(a) and 49(2)(b) of Regulation (EU) 2017/625

<sup>95</sup> Article 55 of Regulation (EU) 2017/625

<sup>96</sup> Article 55(2)(a) Regulation (EU) 2017/625

<sup>97</sup> Regulation 12(4) The Trade in Animals and Related Products Regulations 2011

<sup>98</sup> Article 47(1)(d) of Regulation (EU) 2017/625

<sup>99</sup> Article 47(1)(e) of Regulation (EU) 2017/625

<sup>100</sup> Article 47(1)(f) of Regulation (EU) 2017/625

<sup>101</sup> Regulation (EU) 284/2011

### **3.7 Competency requirements**

Competent Authorities must ensure:

- lead food officer(s)
- authorised officers
- officers performing official food controls or certain tasks related to official activities at BCPs (see sections 3.5 and 3.6)
- regulatory support officers

can demonstrate they meet the competencies, relevant to their role, and the activities they will undertake, as detailed in:

- the Competency Framework
- Chapter 3 of the Code and Practice Guidance

### **3.8 Training and Continuing Professional Development (CPD)**

#### **3.8.1 Training and CPD requirements**

Competent Authorities must ensure that authorised officers:

- (a) receive appropriate training based on the principles of continuing professional development<sup>102</sup>
- (b) receive regular additional training, as necessary
- (c) receive training on subject matters set out in Chapter 1 of Annex II of Regulation (EU) 2017/625 and on the obligations of the Competent Authority resulting from this Regulation, relevant to the activities they undertake
- (d) training and CPD is kept up to date, and reviewed on an annual basis
- (e) training is identified by a lead food officer(s) or another competent authorised officer to address any deficiencies highlighted in the competency assessment
- (f) keep records of training and CPD, which may be computer-based, of training undertaken<sup>103</sup>

Competent Authorities must ensure authorised officers remain competent by receiving a minimum of 20 CPD hours per year, relevant to the activities they are authorised to undertake.

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<sup>102</sup> Article 5(4) of Regulation (EU) 2017/625 and Chapter 2 Paragraph 5.4 of the Framework Agreement

<sup>103</sup> Chapter 2, Paragraph 5.5 of the Framework Agreement

Competent Authorities must ensure the 20 hours CPD are split as follows:

- a minimum of 10 hours on subject matters set out in Chapter 1 of Annex II of Regulation (EU) 2017/625 and on the obligations of the Competent Authority resulting from this Regulation, relevant to the activities they are authorised to undertake
- 10 hours on other professional matters

Regulatory support officers are not subject to minimum CPD hours requirements but must still receive relevant training appropriate to the activities they undertake.

### **3.8.2 Training programmes**

Competent Authorities must:

- develop and implement a training programme to ensure that authorised officers receive the training referred to in section 3.8.1 points (a) to (c), relevant to the activities they undertake
- ensure their training programmes are informed by, and address, any areas identified where an authorised officer's competence falls short of that required to perform their current role or to extend it to new areas of activity

## Chapter 4 Delivery of interventions

### 4.1 Introduction

This chapter covers the delivery of official food controls (their methods and techniques)<sup>104</sup>, other official activities and alternative interventions.

### 4.2 Delivery of official food controls and other official activities

Competent Authorities must ensure they perform official food controls on all operators regularly, on a risk basis and with appropriate frequency, taking account of<sup>105</sup>:

- 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 genetically modified organisms (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
- operators' past record as regards the outcome of official food controls performed on them and their compliance with the rules referred to in Article 1(2) of Regulation (EU) 2017/625
- the reliability and results of own controls that have been performed by the operators, or by a third party at their request, including, where appropriate, private quality assurance schemes, for the purpose of ascertaining compliance with the rules referred to in Article 1(2) of Regulation (EU) 2017/625
- any information that might indicate non-compliance with the rules referred to in Article 1(2)

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<sup>104</sup> Article 14 of Regulation (EU) 2017/625

<sup>105</sup> Article 9(1) of Regulation (EU) 2017/625

Competent Authorities must ensure:

- they perform official food controls regularly, with appropriate frequencies determined on a risk basis, to identify possible intentional violations of the rules referred to in Article 1(2) of Regulation (EU) 2017/625, perpetrated through fraudulent or deceptive practices, and taking into account information regarding such violations shared through the mechanisms of administrative assistance and any other information pointing to the possibility of such violations<sup>106</sup>
- official food controls are performed as much as possible in such a manner that the administrative burden and operational disruption for FBOs are kept to the minimum necessary, but without negatively affecting the effectiveness of controls<sup>107</sup>
- official food controls are performed with a high level of transparency<sup>108</sup>
- when performing their duties in the context of official food controls and other official activities they comply with the confidentiality obligations in Article 8 of Regulation (EU) 2017/625
- food businesses provide sufficient information to Competent Authorities to establish that food-related activities carried out at or in connection with food establishments comply with food law

Competent Authorities shall perform controls in the same manner, while taking account of the need to adapt the controls to the specific situation, irrespective of whether the animals and goods concerned are being imported, exported, or placed on the UK market<sup>109</sup>.

#### **4.2.1 Notification of official food controls**

Competent Authorities must carry out official food controls without prior notice, except in cases such as audits where prior notification of the FBO is necessary<sup>110</sup>. Prior notification must be necessary and duly justified for the official control to be carried out. Chapter 4 of the Practice Guidance provides further examples of where prior notification may be considered acceptable.

#### **4.2.2 Carrying out official food controls**

Authorised officers must use their professional judgement to determine what activities, at a food business establishment, are examined during an official control. It is their duty to assure themselves and the FSA that the relevant requirements of food law are being complied with.

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<sup>106</sup> Article 9(2) of Regulation (EU) 2017/625

<sup>107</sup> Article 9(5) of Regulation (EU) 2017/625

<sup>108</sup> Article 11(1) of Regulation (EU) 2017/625

<sup>109</sup> Article 9(6) of Regulation (EU) 2017/625

<sup>110</sup> Article 9(4) of Regulation (EU) 2017/625

Where there is a Primary Authority inspection plan in place authorised officers must follow it and must provide feedback to the Primary Authority if required.

Competent Authorities, as relevant and appropriate to the type of establishment, must:

- establish the scope of the business activities and the relevant food law that applies to the operations taking place, including any relevant changes since the last official control
- assess the risk of the business failing to meet the requirements of food law
- identify any actual or potential breaches of food law and, if appropriate, gather and preserve evidence
- thoroughly and systematically gather and record information from the observation of practices, procedures, and processes, including procedures based on Hazard Analysis and Critical Control Points (HACCP) principles, and through discussion with the FBO and their employees
- record sufficient information of the officer's findings to indicate what was examined/inspected, how compliance with food law is achieved at the food business establishment, and any deficiencies identified
- assess whether to take samples, and record details of samples taken
- determine relevant enforcement action and communicate any intention to carry out such action to the FBO and Primary Authority or Home Authority, where there is one. Where there is a Primary Authority, communication must be in accordance with statutory requirements of the Primary Authority scheme
- base inspections and audits on the relevant model form, where one has been developed, for the business concerned

#### **4.2.3 Written records of official food controls**

Competent Authorities must draw up written records of every official control that they perform. Those records may be on paper or in electronic form and must contain the information listed in Chapter 4 of the Practice Guidance<sup>111</sup>.

Competent Authorities must promptly inform the FBO in writing of any case of non-compliance identified through the official food controls and provide a copy of the written record to the FBO, except where:

- enforcement action or court proceedings require otherwise
- an official certificate or official attestation has been issued

#### **4.2.4 Initial inspections**

This section does not apply to establishments at the level of primary production, with the exception of food business establishments subject to the requirements of Regulation (EU) No 210/2013 on the approval of establishments producing sprouts.

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<sup>111</sup> Articles 13(1) and 13(2) of Regulation (EU) 2017/625

This section applies:

- to new food business establishments that come to the attention of the Competent Authority for the first time
- to food business establishments that have no historical risk-rating
- where there is a change in FBO

#### **4.2.4.1 Food Hygiene**

Competent Authorities must:

- determine the intervention rating(s) following an initial inspection
- ensure initial inspections take place within 28 days of registration or from when the Competent Authority becomes aware that the establishment is in operation, whichever is the sooner
- use information supplied by FBOs when registering their food business establishments to determine when to carry out an initial inspection

#### **4.2.4.2 - UPDATE START- Food Standards**

Competent Authorities must:

- determine the intervention rating(s) following an initial inspection
- ensure initial inspections take place within 28 days of registration or from when the Competent Authority becomes aware that the establishment is in operation, whichever is the sooner
- use information supplied by FBOs when registering their food business establishments to determine when to carry out an initial inspection

Competent Authorities should consider relevant information and data to enable them to consider the likely inherent risk of a new establishment. In doing so, consideration may be given to information collected through communication with the FBO as well as other information or intelligence available including a review of their website.

Where sufficient information is available to make a judgement on the likely inherent risk of a new establishment, in line with a risk-based approach, a Competent Authority may choose to employ any of the methods and techniques of official controls as defined in Article 14 of (EU) Regulation 2017/625 to validate these assumptions.

Competent Authorities have the flexibility to postpone initial official controls of newly registered food business establishments that are anticipated to be lower risk, if undertaking them would mean that official controls at higher risk and/or non-compliant establishments would be delayed.

Competent Authorities may consider undertaking initial official controls as a priority where they are aware that the business is unable to trade until the official control has been undertaken. This could include, for example, where the business is unable to trade on a market without an initial official control being undertaken. -UPDATE END-

## 4.3 Food intervention rating schemes

### 4.3.1 Frequency of interventions and requirements of a risk-based approach

Competent Authorities responsible for enforcing food law must ensure:

- that for food businesses within their area they determine the type of official control method or technique and frequency<sup>112</sup> using the relevant intervention rating scheme, food hygiene, food standards or food hygiene at the level of primary production, set out in section 4.4 and Annex 1, unless otherwise advised by the FSA in accordance with paragraph 2.3 of the Code
- that intervention programmes are planned so that establishments receive an intervention no later than 28 days after the due intervention date. In circumstances outside the control of the Competent Authority such as seasonal business closures, Competent Authorities have the discretion to defer an intervention
- their officers utilise the full range of scores available within the relevant intervention rating scheme at Annex 1
- for food hygiene, where businesses fall into more than one scoring category for a scoring factor, they must be allocated the highest score of those that are applicable
- **-UPDATE START - for Food Standards, where businesses fall into more than one scoring category for a scoring factor, they must be allocated the lowest score of those that are applicable -UPDATE END-**
- interventions for higher risk businesses or those that are likely to be high risk always take priority over interventions for lower risk businesses
- their officers when determining the intervention rating of an establishment consider information supplied by others, including:
  - other Competent Authorities
  - other sources such as trade bodies
  - Primary Authorities or Home Authorities
  - third party audits

### 4.3.2 Revision of intervention ratings

#### 4.3.2.1 Food Hygiene

Competent Authorities must ensure their officers:

- only revise the intervention rating(s) of a food business establishment at the conclusion of an inspection or audit, partial or full, and in accordance with section 4.4 and Annex 1 (or any amendment thereto that has been notified to Competent Authorities by the FSA)

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<sup>112</sup> Chapter 2, paragraph 7.1 of the Framework Agreement



- have gathered sufficient information to justify the revision of the intervention rating
- record the intervention rating, and justification for its revision

#### 4.3.2.2 **-UPDATE START - Food Standards**

**Competent Authorities must ensure their officers:**

- only revise the intervention rating(s) of a food business establishment at the conclusion of an appropriate official control activity and in accordance with section 4.4 and Annex 1
- have gathered sufficient information to justify the revision of the intervention rating
- record the intervention rating and a justification for its revision – **UPDATE END-**

When new information becomes available that might suggest the nature of an FBO's activities has changed, or the level of compliance has changed, the Competent Authority must:

- reconsider both the intervention rating and appropriateness of the next planned intervention for that establishment
- decide whether it is appropriate to conduct an inspection, partial inspection, or audit to investigate further
- revise the intervention rating as necessary
- record the intervention rating and a justification for its revision

#### **4.3.3 Alternative Enforcement Strategy**

Every Competent Authority must devise an Alternative Enforcement Strategy to determine how they will conduct official food controls at premises rated as low risk for food hygiene **-UPDATE START-or a score of no less than 4 for both inherent risk and compliance assessment for food standards in accordance with the requirements set out in Annex 1. -UPDATE END-**

### **4.4 Frequency of Controls and the Requirements of a Risk Based Approach**

#### **4.4.1 Food establishment intervention rating schemes**

This section does not apply to food establishments at the level of primary production (see section 4.4.3).

##### **4.4.1.1 Establishments intervention rated category A or B for food hygiene**

The appropriate planned intervention for an establishment that has been given an intervention rating of A or B for food hygiene must be an inspection, partial inspection, or audit, which must be carried out at appropriate intervals in accordance with the prescribed frequencies specified in Annex 1.

Any other additional intervention, such as sampling or education and training, must be recorded against the establishment for the purpose of monitoring enforcement actions

but must not be used as the intervention planned by the intervention frequency as given in Annex 1.

#### **4.4.1.2 Establishments intervention rated category C for food hygiene**

Establishments that have been given an intervention rating of C for food hygiene must receive an intervention at appropriate intervals in accordance with the prescribed frequencies specified in Annex 1. Such interventions may consist of either an inspection, partial inspection, or audit until such time as the establishment is considered by the Competent Authority to be broadly compliant with relevant food law. Once broad compliance has been achieved, planned interventions may alternate between:

- an inspection, a partial inspection, or an audit
- another type of official control

#### **4.4.1.3 Establishments intervention rated category D for food hygiene**

Establishments that have been given an intervention rating of D for food hygiene must receive an intervention at appropriate intervals, in accordance with the prescribed frequencies specified in Annex 1. Such interventions can alternate between either an intervention that is an official control and an intervention that is not an official control.

Competent Authorities are restricted in the type of official control for establishments that are category D but are also rated 30 or 40 for 'type of food and method of handling' within Annex 1. The official control for these establishments must be an inspection, partial inspection, or audit. Competent Authorities can alternate between these types of official food controls and other types of interventions.

#### **4.4.1.4 Establishments intervention rated category E for food hygiene**

Establishments that have been given an intervention rating of category E for food hygiene could be subject to an Alternative Enforcement Strategy.

Competent Authorities must ensure that these establishments continue to be subject to official controls, an important reason being so that complaints can be investigated.

These establishments must, as a minimum, be subject to an intervention by the Competent Authority, which could take the form of an Alternative Enforcement Strategy, in accordance with the prescribed frequencies specified in Annex 1.

Competent Authorities that decide to subject low-risk establishments to Alternative Enforcement Strategies must set out their strategies for maintaining surveillance of such establishments in either their service plan or enforcement policy.

It is not intended that the flexibility offered to implement Alternative Enforcement Strategies would preclude full inspection, partial inspection, or audit of such establishments, where any of these are the Competent Authority's preferred intervention option.

Where the establishment in question is subject to approval under Regulation (EC) No 853/2004 the use of Alternative Enforcement Strategies is not an appropriate form of intervention. The intervention for such an establishment must be an official control

#### **4.4.2 -UPDATE START- Food Standards intervention frequency**

##### **4.4.2.1 Establishments rated as 'Priority Intervention' for Food Standards**

The appropriate planned intervention for an establishment that has been given a priority intervention rating for food standards must be an inspection, partial inspection or audit, which must be carried out at appropriate intervals in accordance with the prescribed frequencies specified in Annex 1.

Any other additional intervention, such as sampling or education and training, must be recorded against the establishment for the purpose of monitoring enforcement actions but must not be used as the intervention planned by the intervention frequency as given in Annex 1.

##### **4.4.2.2 All other establishments for Food Standards**

All other establishments must receive an official control at appropriate intervals in accordance with the prescribed frequencies specified in Annex 1. Competent Authorities can use any of the methods and techniques of official controls<sup>113</sup> (individually or a combination thereof), as long as they are effective and appropriate in the circumstances. This can include the use of remote interventions or alternative enforcement strategies where appropriate.-UPDATE END-

#### **4.4.3 Primary Production**

In determining interventions at the level of primary production the Competent Authority must make best use of evidence available. Examples of local or other intelligence, which the Competent Authority may use when prioritising interventions and considering whether an inspection is necessary, include:

- whether fresh produce is grown which is ready to eat, for example:
  - leafy greens such as salad leaves, micro shoots, watercress, fresh herbs
  - stem and bulb vegetables such as radishes, celery, salad onions
  - berries such as strawberries and raspberries
  - tomatoes
  - mushrooms
- membership of an FSA approved assurance scheme, see Chapter 4 of the Practice Guidance
- change of activity
- track record of compliance
- types of water supply for application and irrigation
- use of untreated or insufficiently treated manure or compost
- intelligence generated by other statutory inspections

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<sup>113</sup> Article 14 of Regulation (EU) 2017/625

- consumer and customer (industry) problems
- an inspection plan issued by the primary authority
- surveillance information on problem products and products associated with foodborne illness

## **4.5 Sampling**

Food sampling and subsequent analysis and examination performs an essential function, providing intelligence and evidence on the safety and authenticity of food on the UK market, supporting enforcement action to protect consumers, and enabling the FSA to meet its statutory obligations as a Central Competent Authority.

Competent Authorities must ensure:

- food sampling is undertaken effectively and consistently in accordance with the requirements of the Code, and Chapters 2 and 4 of the Practice Guidance
- non-compliance is dealt with in accordance with the requirements of Chapter 6 of the Code, and Chapter 6 of the Practice Guidance

## **4.6 Import controls**

### **4.6.1 Nominated officer for imported food**

Competent Authorities with a BCP must nominate an officer or officers for imported food matters and proactively notify the FSA through the FSA's communications platform of:

- the name and contact details (telephone number and email address) of the nominated officer(s)
- any changes to these details, as soon as practicable

### **4.6.2 Inland controls**

Competent Authorities must ensure:

- that imported food controls form part of food establishments' inspections
- officers during official control and non-official control visits to food business premises consider:
  - if imported products comply with relevant imported food requirements
  - undertaking product traceability checks or in premises that are the first destination inland after import, confirming the presence of a Common Health Entry Document (CHED)
  - the legality of the importation of any product of animal origin and food not of animal origin from outside the UK

### **4.6.3 Monitoring of consignments**

#### **4.6.3.1 Animals and goods subject to official controls at border control posts**

Competent Authorities must:

- ensure official food controls on consignments of the categories of animals and goods referred to in Article 47 of Regulation (EU) 2017/625 upon arrival of the consignment at the border control post are performed in accordance with Articles 47 to 64 of Regulation (EU) 2017/625<sup>114</sup>. Those official food controls must include documentary checks, identity checks and physical checks<sup>115</sup>
- in the event of suspicion of non-compliance and of non-compliance of animals and goods entering the UK, perform official food controls to confirm or to eliminate that suspicion, and take appropriate measures, and follow-up decisions in cases of non-compliant consignments<sup>116</sup>

#### **4.6.3.2 Animals and goods other than those subject to official controls at BCPs**

Competent Authorities must:

- perform official food controls regularly, on a risk basis and with appropriate frequency, on animals and goods entering the UK to which Article 47 of Regulation (EU) 2017/625 do not apply<sup>117</sup>
- ensure the appropriate frequency of the official food controls is determined, taking into account<sup>118</sup>:
  - the risks to human, animal or plant health, animal welfare or, as regards GMOs and plant protection products, also to the environment, associated with different types of animals and goods
  - 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 goods
  - the history of compliance of the third country and establishment of origin or place of production, as appropriate, the exporter, or the operator responsible for the consignment
  - the controls that have already been performed on the animals and goods concerned
  - the guarantees that the Competent Authorities of the third country of origin have given, with regard to compliance of the animals and goods with the requirements established by the rules referred to in Article 1(2) of Regulation (EU) 2017/625 or with requirements recognised to be at least equivalent thereto
  - the quantity of consignments entering the port (particularly if material has not been seen before or only infrequently)

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<sup>114</sup> Article 43 of Regulation (EU) 2017/625

<sup>115</sup> Articles 49 and 54 of Regulation (EU) 2017/625

<sup>116</sup> Articles 65 to 72 of Regulation (EU) 2017/625

<sup>117</sup> Article 44(1) of Regulation (EU) 2017/625

<sup>118</sup> Article 44(2) of Regulation (EU) 2017/625

- any issues regarding the reliability of any checks that may have already been carried out
- FSA sampling priorities
- previous knowledge of the product
- the FSA's National Enforcement Priorities
- ensure official food controls:
  - always include a documentary check<sup>119</sup>
  - include identity checks and physical checks depending on the risk to human, animal or plant health, animal welfare or, as regards GMOs and plant protection products, also to the environment<sup>120</sup>
- ensure they carry out physical checks under appropriate conditions allowing investigations to be conducted properly<sup>121</sup>
- ensure official food controls are performed at an appropriate place within the UK, including<sup>122</sup>:
  - the point of entry into the UK
  - the point of release for free circulation in Great Britain
  - a BCP
  - the warehouses and the premises of the operator responsible for the consignment
  - the place of destination
- ensure where documentary checks, identity checks or physical checks show that animals and goods do not comply with the rules referred to in Article 1(2) of Regulation (EU) 2017/625, they take enforcement action in accordance with Articles 66 to 72, 137 and 138 of Regulation (EU) 2017/625<sup>123</sup>
- in the event of suspicion of non-compliance and of non-compliance of animals and goods entering the UK, perform official food controls to confirm or to eliminate that suspicion, and take appropriate measures and follow-up decisions in cases of non-compliant consignments<sup>124</sup>

#### **4.6.3.3 Samples taken of animals and goods other than those subject to official controls at BCPs**

Where samples on animals and goods are taken, the Competent Authorities must<sup>125</sup>:

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<sup>119</sup> Article 45(1)(a) of Regulation (EU) 2017/625

<sup>120</sup> Article 45(1)(b) of Regulation (EU) 2017/625

<sup>121</sup> Article 45(2) of Regulation (EU) 2017/625

<sup>122</sup> Article 44(3) of Regulation (EU) 2017/625

<sup>123</sup> Article 45(3) of Regulation (EU) 2017/625

<sup>124</sup> Articles 65 to 72 of Regulation (EU) 2017/625

<sup>125</sup> Article 46 of Regulation (EU) 2017/625

- inform the operators concerned and, where appropriate, the customs authorities
- decide whether the animals or goods need to be detained pending the results of the analysis, test or diagnosis carried out, or whether they can be released provided that the traceability of the animals or goods is ensured.

#### **4.6.4 Official controls on means of transport and packaging**

Competent Authorities at BCPs and other points of entry into the UK must perform official food controls on the following whenever they have reason to believe that their entry into the UK may pose a risk to human, or plant health, animal welfare or, as regards GMOs and plant protection products, also to the environment<sup>126</sup>:

- means of transport, including where empty
- packaging, including pallets

#### **4.6.5 No permanent presence at a point of entry**

Where there is no permanent Competent Authority presence at a point of entry, and it is not considered by the relevant Competent Authority to be a point of entry for food, they must (at least once every three months) contact:

- the port operator
- other relevant agencies
- Her Majesty's Revenue and Customs (HMRC)
- other commercial operators

The purpose of these arrangements is to provide Competent Authorities with updated information on food being imported. This will enable risk-based judgements to be made on the targeting of enforcement action and to ensure that emergency controls or restrictions on certain higher risk foods are being enforced.

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<sup>126</sup> Article 44(4) of Regulation (EU) 2017/625

## **Chapter 5 Incidents, alerts, and food crime**

### **5.1 Introduction**

This Chapter deals with:

- food incidents, food hazards and Food Alerts
- how Competent Authorities are expected to respond and liaise, as appropriate, with other Competent Authorities, government departments, delegated bodies, FBOs, the FSA, other relevant agencies (which might include primary, home, originating, and neighbouring authorities, medical specialists, Food Examiners, Public Analysts, and microbiologists), and countries outside the UK
- the role of the National Food Crime Unit (NFCU) and addressing food criminality

### **5.2 Food incidents and food hazards**

#### **5.2.1 Food Incidents**

A 'food incident' is defined as any event where, based on the information available, there are concerns about actual or suspected threats to the safety, quality or integrity of food that could require intervention to protect consumers' interests. Quality should be considered to include food standards, authenticity, and composition.

Food incidents are split into two categories, which may overlap:

- hazardous incidents are incidents involving (or suspected to involve) a food hazard, or the condition of any food, with the potential to cause an adverse effect on the health or safety of consumers (including outbreaks of foodborne disease and/or infectious intestinal disease)
- non-hazardous incidents that do not have the potential to cause an adverse effect on the health or safety of consumers but may impact on the food supply chain. These may include issues of quality, provenance, authenticity, composition, and the provision of food information

Within each of these categories there may be elements of dishonest intent, which therefore indicate the potential presence of food/feed fraud or, when present at a greater scale, food crime.

#### **5.2.2 Food hazards**

A 'food hazard' is defined as anything present in food with the potential to harm the consumer, either by causing illness or injury; these can be a biological, chemical, and/or physical agent.

Competent Authorities should categorise food hazards and notify the FSA where necessary, according to the following criteria:



- **Localised food hazard** – one in which the affected food is not distributed beyond the boundaries of the Competent Authority and is not deemed to be a serious localised food hazard. These should be dealt with locally by the Competent Authority, in conjunction with other relevant agencies and should not be reported to the FSA by the Competent Authority.
- **Serious localised food hazard** – one in which the affected food is not distributed beyond the boundaries of the Competent Authority, but involves or may involve:
  - undeclared allergens, a serious anaphylaxis reaction requiring medical intervention as a result of allergens in food, hospitalisation, or death as a result of allergens in food
  - E. coli O157 or other Verocytotoxin-producing Escherichia coli (VTEC)
  - Clostridium botulinum
  - Salmonella typhimurium, Salmonella paratyphi, Salmonella enteritidis
  - Listeria monocytogenes
  - hazards that the Competent Authority considers significant because of, for example, an Incident Management Team/Outbreak Control Team has been established associated with the food, the vulnerability of the population likely to be affected, the numbers involved, the severity of the illness (hospitalisation) or any deaths associated with the incident

These should be notified by the Competent Authority to the FSA Incidents Team and other relevant agencies at the earliest opportunity and by the quickest available means and confirmed in writing on the incident report form.

- **Non-localised food hazard** – one in which the affected food is distributed beyond the boundaries of the Competent Authority. These should be notified by the Competent Authority to the FSA Incidents Team and other relevant agencies at the earliest opportunity and by the quickest available means and confirmed in writing on the incident report form

A Competent Authority should seek the advice of the FSA if it is in doubt as to whether a food incident amounts to a food hazard.

## 5.3 Action by the Competent Authority

### 5.3.1 Responses to pre-incident contact by the FSA

If the FSA's horizon-scanning functions identify a food safety issue which might impact the UK, the FSA may need to verify this by contacting the FBO directly to confirm if they have received any implicated product(s) or ingredients. Before contacting the business, the FSA will email the relevant Competent Authority to ask if they are content that contact is made.

### 5.3.2 Incidents involving more than one Competent Authority.

In accordance with the Competent Authority's documented procedure(s) for food incidents and Food Alerts, Competent Authorities should discuss and agree a lead

Competent Authority to take the lead for the investigation of incidents that require involvement of more than one Competent Authority.

### **5.3.3 Food hazards assessment**

#### **5.3.3.1 General requirements**

Once a food hazard has been identified, the Competent Authority must:

- immediately carry out an assessment to determine the likely scale, extent, and severity of the risk to public health or safety of the hazard, involving other agencies as appropriate<sup>127</sup>
- appropriately categorise the food hazard(s) as a localised, serious localised or non-localised food hazard(s)
- if in doubt, contact the FSA Incidents Team to seek advice as to whether a food incident should be notified to the FSA. An assessment should be carried out to determine the likely scale, extent, and severity of the risk to public or animal health or safety of the hazard, involving other agencies as appropriate

The assessment should include the following:

- the nature of the hazard
- the toxicity of the contaminant, the allergenicity of an undeclared ingredient/constituent, or the virulence and pathogenicity of the organism
- the type of injury which might be caused by a physical contaminant
- the population likely to be affected and its vulnerability
- the geographical spread of the hazard
- the likely quantity and distribution of the affected food in the food chain up to the point of consumption
- the ability and willingness of the producer or distributor to implement an effective withdrawal of the product
- the ability to identify accurately the affected batch(es) or lot(s)
- the accuracy and extent of records held by the producer or distributor
- the likely effectiveness of any trade withdrawal at all stages of the food chain
- the likely effectiveness of any consumer recall
- the stage(s) at which the fault is likely to have occurred (for example in processing, packaging, handling, storage, or distribution) and its likely significance to the problem
- whether other products produced in the same establishment may have been affected

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<sup>127</sup> Article 115(2)(c) of Regulation (EU) 2017/625

- whether the affected food has been imported
- whether any of the affected food has been exported
- whether there are wider implications for others in the same industry or for establishments using similar processes in other food industries
- the possibility that a malicious or fraudulent act has caused the complaint or problem
- whether the root cause of the incident or hazard is known, and corrective action taken to avoid recurrence.

When a Competent Authority becomes aware of a food hazard, it must take action to protect public health and safety at the earliest opportunity, including, if necessary:

- detain or seize the food concerned if it is located within the Competent Authority's area
- consider the use of other powers as appropriate, relevant to the circumstances involved
- notify the FSA via the FSA Incidents Team, and other relevant agencies, by the quickest available means<sup>128</sup> if an FBO in their area has withdrawn or recalled food from the market in accordance with Article 19 of Regulation (EC) No 178/2002<sup>129</sup>, due to non-compliance with the food safety requirements of that Regulation (see Chapter 5, Root Cause Analysis section of the Practice Guidance)
- in the event of a localised food hazard, issuing appropriate media messages, or responding to local press statements as appropriate to alert the public to the hazard. In doing so the following must occur:
  - the relevant FBOs must be consulted before the identity of a named business or branded food is discussed with, or released to, the media
  - such media releases must be sent to the FSA Incidents Team without delay
  - the Competent Authority must notify the FSA immediately if the FBO raises objections to the release of such information

Responsibility for action at a local level remains with the Competent Authority unless and until the FSA, in writing, notifies the Competent Authority otherwise.

#### **5.3.4 Deliberate contamination and malicious tampering**

Food may be contaminated deliberately. If such an incident occurs, Competent Authorities should follow the arrangements in this Chapter, except where the deliberate contamination is thought to be due to malicious tampering.

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<sup>128</sup> Chapter 2 Paragraph 14.5 of the Framework Agreement

<sup>129</sup> Regulation (EC) No 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.

Arrangements for dealing with malicious tampering incidents have been established between the FSA, Food Standards Scotland (FSS), the police forces throughout the UK and, if necessary, the National Crime Agency (NCA) will be involved in the investigation.

When malicious tampering is suspected, Competent Authorities must:

- contact the FSA Incidents Team at the earliest opportunity
- hand over responsibility for dealing with such incidents to the police if requested by them to do so
- co-operate fully with police investigations into such incidents
- respect police requests for confidentiality, whenever possible
- if the occasion arises when the need to alert consumers to the existence of a food hazard outweighs the need to maintain confidentiality, notify the FSA Incidents Team before undertaking such action

### **5.3.5 Food Hazards Associated with Outbreaks of Foodborne Illness**

If a food hazard has resulted in an outbreak of food-borne illness, the Competent Authority must consider, with their CCDC, CPHM (CD/EH), the activation of their Outbreak Control Plan.

Non-localised and serious localised outbreaks must immediately be notified to the FSA Incidents Team and the relevant public health body.

Competent Authorities must arrange with their Public Analyst and Food Examiner to be notified promptly if they identify a food hazard during the course of the analysis or examination of a food sample.

### **5.3.6 Non-hazardous food incidents**

Non-hazardous food incidents are incidents where there are contraventions of food law, but these do not involve food hazards.

These must normally be resolved by the Competent Authority and the FBO, through liaison with the primary authority, Home Authority or originating authority, as appropriate, and in line with each Competent Authority's enforcement policy. However, significant food incidents, even if they do not involve food hazards, should be reported to the FSA immediately. In determining significance, consideration should be given to the following factors:

- breaches of food law
- requirement for a co-ordinated response
- the disadvantage to consumers
- disproportionate impact on a sector of the population
- distribution beyond the UK

- reputational damage to England (or the UK)
- public concern
- likelihood of media interest

Where a Competent Authority is in doubt about whether a 'non-hazardous' food incident requires to be reported to the FSA, the issue should be discussed with the FSA for clarification.

### 5.3.7 Access to information

To facilitate the investigation of an outbreak or suspected outbreak of disease, the investigation of a food hazard or other food-related emergency or criminal investigation, Competent Authorities must:

- provide details of relevant food business establishment records if requested by the relevant authority responsible for public health protection, CCDC, the CPHM (CD/EH), the FSA or other similar enforcement or surveillance body
- ensure such requests are handled with due regard to Freedom of Information, and Data Protection legislation<sup>130</sup>

## 5.4 Food Alerts

### 5.4.1 Definitions

- **Food Alert for Action (FAFA)** – is a communication from the FSA to a Competent Authority and consumers concerning a food hazard or other food incident, where specific actions/responses are required to be undertaken by the Competent Authority. A 'Food Alert Update' should be read accordingly. Similar action and messaging may also lead to a consumer focus FAFA. The alert to consumers and the alert to Competent Authorities will not necessarily include the same information or require the same action
- **Product Recall Information Notice (PRIN)** – advises of recall of a food, where no specific action is required to be undertaken by the Competent Authority. Recall relates to the recall of food from the consumer
- **Allergy Alert** – is issued by the FSA to quickly communicate allergen risks directly to the consumer. Competent Authorities receive copies of these Allergy Alerts for information purposes only

### 5.4.2 Facilities for receiving Food Alerts and updates

Competent Authorities must:

- have facilities to receive Food Alerts and updates from the FSA by an electronic mail system that is acceptable to the FSA<sup>131</sup>

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<sup>130</sup> The General Data Protection Regulation (GDPR) and the Data Protection Act 2018

<sup>131</sup> Paragraph 14.2 of the Framework Agreement

- advise the FSA of their electronic mail address and of any changes to these details at the earliest opportunity

#### **5.4.3 Action by Competent Authorities on receiving Food Alerts**

Competent Authorities must ensure that:

- systems are in place to ensure that Food Alerts can be responded to outside normal working hours. This includes obtaining and providing information to enable Food Alerts to be issued out of hours
- any action specified by the FSA in a Food Alert is undertaken promptly, and in accordance with any risk management advice/assessment provided by the FSA
- if they propose to take alternative actions, this is agreed with the FSA before implementing them
- where they anticipate difficulties in complying with a request for action given in an Alert, they must contact the FSA's Incidents Team immediately
- they document their response to the outcome of each Food Alert<sup>132</sup>

#### **5.4.4 Media relations - Food Alerts**

Competent Authorities wishing to enhance local publicity can, where permitted by the FSA, use a press release/media statement issued by the FSA as a basis for a local press release. In such cases, the Competent Authority must ensure that the local statement is accurate, relevant, and consistent with the FSA statement.

If Competent Authorities wish to display Food Alerts on their website, they must ensure that:

- any material from FSA Food Alerts or press/media releases is edited to specify what local action has been taken in response to the Alert
- the website includes local contact information

### **5.5 Tackling food criminality**

#### **5.5.1 The role of the National Food Crime Unit**

The FSA's NFCU works with partners to protect consumers from serious food/feed fraud and related criminality within the food and feed supply chain, which can impact on the safety or authenticity of the food and drink they consume.

The strategic objectives of the NFCU are to:

- prevent food or feed being rendered unsafe or inauthentic through dishonesty
- disrupt offending and bring offenders to justice
- build domestic and global counter food crime capability

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<sup>132</sup> Paragraph 14.3 of the Framework Agreement

The NFCU delivers these objectives through a collaborative approach with Competent Authorities and other law enforcement partners, industry at all levels and through working with the third sector and academia.

### **5.5.2 Fraud and food crime**

The NFCU defines food crime as serious fraud and related criminality in food supply chains. This remit also includes drink and animal feed.

Dishonesty may manifest itself in substitution, adulteration, misrepresentation or concealment of facts, forgery, diversion of food waste. Dishonest intent is a key element of any fraudulent offending.

Competent Authorities continue to have a role in investigating fraud within the food supply chain; the escalation of a potential fraud investigation into one of food crime involves consideration of the scale of offending and degrees of organisation, co-ordination and planning involved in the planning and commission of such fraud.

The seriousness of suspected criminal activity will influence whether the NFCU look to lead, support, or coordinate an investigation. The NFCU will consider, in determining the Unit response the:

- tactical priorities of the NFCU, as set out in its control strategy. These priorities are communicated to relevant regulatory partners through periodic NFCU reporting and the representations of the NFCU Regional Intelligence Officers
- geographical scope and scale of the suspected offending
- nature and extent of the actual, potential, or intended harm to:
  - the public
  - a FBO
  - confidence in the UK food industry

NFCU has agreed a Memorandum of Understanding with the Association of Chief Trading Standards Officers (ACTSO) that outlines details of how the Unit and Trading Standards partners will look to work together.

Food crime offences will normally be prosecuted under the Fraud Act 2006, Proceeds of Crime Act 2002, or as conspiracy to defraud under Common Law. Very occasionally, it may be appropriate to prosecute food crime under other legislation or food regulations.

### **5.5.3 Reporting suspicions of food crime to the NFCU**

The NFCU develops, receives, and disseminates intelligence in line with general data handling requirements and guidance specific to the management of law enforcement information.

Competent Authorities should share with the NFCU any identified suspicions of food/feed fraud or food crime. This intelligence enables incidents to be assessed and trends to be identified at local, regional, national levels and internationally. It enables enhanced assessments to be made to direct resources to best protect the public and industry from the effects of food crime.

Intelligence received by the NFCU which is relevant to a Competent Authority will be lawfully shared where appropriate.

## **5.6 Communication and liaison between Competent Authorities and countries outside the UK**

### **5.6.1 Notification of food hazards or incidents regarding imported food**

Competent Authorities that have points of entry including BCPs within their area must follow the guidance outlined in the Practice Guidance for actions to take concerning imports rejected, at the point of entry, where there is a serious direct or indirect risk to public or animal health, food, or feed safety. For actions relating to imported foods not at points of entry in the event of a food law non-compliance, please refer to sections of the Code on Food Hazards and Non-hazardous Food incidents.

### **5.6.2 Notification of trans-border matters**

Trans-border matters that may have policy implications, matters relating to food hazards and incidents are dealt with by the FSA.

See Chapter 5 of the Practice Guidance for further information on trans-border matters.

### **5.6.3 Liaison and communications with countries outside the UK**

Competent Authorities should follow the guidance outlined in the Practice Guidance concerning responding to enquiries, assisting and co-ordinating communication with countries outside the UK. This includes the transmission and reception of requests for assistance from countries outside the UK.

Any subsequent responses in relation to requests for assistance, data or enquiries on food law enforcement issues and non-compliances from other countries should be sent via the FSA Incidents Team and/or the FSA Imports and Exports Team.

### **5.6.4 Disclosure of information to countries outside the UK**

See Chapter 5 of the Practice Guidance for further information regarding disclosure of information to countries outside the UK.

### **5.6.5 Communication with Food Standards Scotland**

A Memorandum of Understanding is in place between the FSA and FSS to ensure liaison arrangements continue to deliver a coordinated incident handling response across Scotland, England, Northern Ireland, and Wales.



## 5.7 Out of hours service

Competent Authorities must:

- put in place procedures to ensure that responsible officers can be contacted in the case of emergency for example, serious hazard incidents <sup>133</sup>
- advise the FSA of emergency telephone number(s) to enable contact to be made outside the Competent Authority's normal office hours
- ensure information on out-of-hours/emergency contacts (the name(s), telephone number(s) and email address(es)) is provided in the manner and at the frequency required by the FSA
- proactively notify the FSA of any changes to these details as soon as practicable via the FSA's communications platform

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<sup>133</sup> Paragraph 14.1 of the Framework Agreement

## Chapter 6 Enforcement

### 6.1 Introduction

This Chapter deals with how Competent Authorities must use the powers available to them to ensure non-compliances are rectified in an effective and timely manner.

### 6.2 Proportionality and consistency

Competent Authorities must:

- ensure that enforcement action taken by their authorised officers is<sup>134</sup>:
  - in accordance with Chapter 6 of the Practice Guidance
  - reasonable
  - proportionate
  - risk-based
  - consistent with good practice
- take account of the following when considering whether to initiate enforcement action:
  - the Code for Crown Prosecutors
  - the Competent Authority's enforcement policy<sup>135</sup>
  - the Regulators' Code
  - the nature of the non-compliance and the FBO's past record regarding compliance<sup>136</sup>
  - whether a Primary Authority Partnership is in place, and of any Primary Authority Advice issued
- ensure the reasons for any departure from the criteria set out in the Competent Authority's enforcement policy are documented

### 6.3 Hierarchy of enforcement

Competent Authorities must ensure their authorised officers:

- take account of the full range of enforcement options available to them. This includes educating food business operators, giving advice, informal action, sampling, detaining, and seizing food, serving Hygiene Improvement Notices/Improvement Notices, Remedial Action Notices, Hygiene Prohibition Procedures/Prohibition Procedures, and Prosecution Procedures
- operate a graduated and educative approach to enforcement (the hierarchy of enforcement), only moving to formal action where informal action does not achieve the desired effect where circumstances indicate:
  - a significant risk to health

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<sup>134</sup> Chapter 2, paragraphs 7.3, 12.2 and 15.3 of the Framework Agreement

<sup>135</sup> Chapter 2, paragraph 15.4 of the Framework Agreement

<sup>136</sup> Article 138(1) of Regulation (EU) 2017/625

- fraudulent practices
- deceptive practices
- take an approach that results in the timely remedy of non-compliance with food law
- prioritise action that eliminates or contains risks to<sup>137</sup>:
  - human health
  - animal health
  - plant health
  - animal welfare
  - the environment (with regards to genetically modified organisms (GMOs))

## **6.4 Dealing with non-compliance**

### **6.4.1 Suspected non-compliance**

Where Competent Authorities suspect non-compliance, they must:

- carry out an investigation, having regard to the requirements in Chapter 6 of the Practice Guidance, in order to confirm or eliminate that suspicion, which may include<sup>138</sup>:
  - performance of intensified official food controls for an appropriate period
  - detention of food to allow investigations to be carried out

### **6.4.2 Established non-compliance**

Where non-compliances are established<sup>139</sup>, Competent Authorities must ensure:

- they take action necessary to determine the origin and extent of the non-compliance and to establish the operator's responsibilities
- they take appropriate enforcement action to ensure the FBO remedies the non-compliance and prevents further occurrences of the non-compliance
- that non-compliances have been remedied before deciding that no further action is required
- when deciding what action to take, they take account of the nature of the non-compliance and the operator's past record regarding compliance
- when enforcement action is envisaged the Primary Authority, if there is one, must be notified in accordance with statutory requirements of the Primary Authority scheme
- that where action is needed to secure compliance, officers clearly explain to the FBO in writing, with reasons, as appropriate:

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<sup>137</sup> Article 137(1) of Regulation (EU) 2017/625

<sup>138</sup> Articles 137(2) and 137(3) Regulation (EU) 2017/625

<sup>139</sup> Article 138 of Regulation (EU) 2017/625

- the action or measure being taken by the Competent Authority
  - what the non-compliance is
  - the action needed to secure compliance
  - the time scale for achieving compliance
  - the rights of appeal and any applicable time limit in accordance with Article 138(3)(b) of Regulation (EU) 2017/625
- officers make a clear distinction between statutory requirements and good practice
  - officers are prepared to discuss advice, decisions, and correspondence with FBOs

## **6.5 Revisits**

Competent Authorities must ensure:

- revisits focus on the non-compliances identified at the last programmed intervention
- that non-compliances have been remedied before deciding that no further action is required
- the timing of any revisit is determined by the action taken because of the earlier intervention and the severity of the non-compliances identified
- whenever practicable, revisits are undertaken by the officer who undertook the original intervention

### **6.5.1 Requirement to revisit - food hygiene**

Competent Authorities must carry out a food hygiene revisit at food business establishments which have the following scores, as set out in the intervention rating scheme in Annex 1 of the Code:

- a compliance score of 15 or higher for hygiene and/or structure and/or
- a confidence in management/control procedures score of 20 or higher

### **6.5.2 -UPDATE START-Requirement to revisit - Food Standards**

#### **6.5.2.1 Priority interventions**

Competent Authorities may wish to carry out a revisit for food standards at food business establishments assessed as requiring a priority intervention, depending upon the nature of the non-compliance(s) and the date of the next planned intervention. Competent authorities may also bring forward the date of the priority intervention depending on the nature and/or scale of the non-compliances found.

#### **6.5.2.2 Other interventions**

Food standards revisits, or remote follow up activity, must be carried out as appropriate at other food business establishments that are not subject to priority intervention where non-compliances are identified to ensure that issues have been addressed and no further action is required.-UPDATE END-

## **6.6 Operating in another Competent Authority's area**

An authorised officer can enter business establishments in other Competent Authority areas to obtain evidence of non-compliance(s) in their Competent Authority areas<sup>140</sup>.

When exercising powers in another area, the Competent Authority should ensure its authorised officers:

- liaise with relevant Competent Authorities in advance (whether or not the business being visited is a food business), but where it is not possible to give prior notice, for example in an emergency, the relevant Competent Authorities must be notified as soon as practicable
- do not give advice or recommend changes to an FBO's systems or procedures. Such matters must be passed to the Competent Authority for the area the business is based for appropriate action
- inform the relevant Competent Authorities of the outcome of any visit, as appropriate
- only use enforcement powers associated with their powers of entry (which includes taking samples in connection with the investigation of suspected offences within their own area)

Other enforcement powers (which include seizure and detention of food, hygiene emergency prohibition notices and emergency prohibition notices) must only be exercised by authorised officers of the Competent Authority in which the business is located.

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<sup>140</sup> Section 32 of the Food Safety Act 1990 and Regulation 16 of The Food Safety and Hygiene (England) Regulations 2013

## **Chapter 7 Matters relating to live bivalve molluscs**

### **7.1 Introduction**

This Chapter deals with the:

- establishment and maintenance of local shellfish liaison groups
- need for registration documents or permanent transport authorisations
- classification and monitoring of production and relaying areas
- publication of information about prohibited areas

### **7.2 Liaison arrangements**

Competent Authorities must establish and maintain a shellfish liaison group in areas where there are commercial shellfish activities. The group should comprise of representatives from relevant bodies to ensure a timely exchange of information, contributing data which will be used to help inform decisions on appropriate measures that protect public health. Membership may also include fishermen or shellfish gatherers at the discretion of the relevant Competent Authority. The function of the group is likely to vary depending on the local shellfish industry.

### **7.3 Registration and permanent transport authorisation documents**

#### **7.3.1 Registration documents for live bivalve molluscs**

Under Regulation (EC) No 853/2004, unless issued with a permanent transport authorisation, each gatherer of live bivalve molluscs (including Pectinidae and non-filter feeding gastropods and echinoderms) to be placed on the market, must provide a registration document identifying each batch that they harvest. The registration document must be completed upon landing and accompany the batch from the classified harvesting area (or in the case of Pectinidae, non-filter feeding gastropods and echinoderms from the area of sea it is harvested) and between establishments, up to and including arrival of the batch at a relaying area, purification centre, dispatch centre or processing establishment.

Competent Authorities must:

- issue such registration documents to gatherers, including fishing vessels that harvest live bivalve molluscs. A link to the model registration form is available in the Practice Guidance
- use a unique number on the document issued to enable the registration documentation to be monitored and the unique number must be given to the harvester or gatherer before they carry out harvesting
- provide registration documents on demand and not make any charge for the issue of such documents, nor can they unreasonably refuse to issue the documents to a gatherer

- retain a record of all registration documents that have been issued by them for at least one year. The record should include the unique number(s) and details of the harvesters to whom they have been issued and the production areas for which the harvester requires the registration documents
- issue registration documents to gatherers who are harvesting within the area of another Competent Authority only, with the agreement of that other Competent Authority
- Competent Authorities are:
  - required to check the details recorded on a registration document when live bivalve molluscs come ashore
  - responsible for establishments receiving batches of live bivalve molluscs. When these are from outside their local area, they are encouraged to contact the issuing Competent Authority when inspecting registration documents

FBOs must also keep copies of registration documents for each batch sent and received, for at least twelve months after its dispatch or receipt, or a longer period as specified by the Competent Authority.

### **7.3.2 Permanent Transport Authorisations**

A Competent Authority can issue to gatherers a Permanent Transport Authorisation (PTA) as an alternative to separate registration documents when the gatherer also operates the purification centre, dispatch centre, relaying area, or processing establishment to which their harvested live bivalve molluscs are being delivered. However, all establishments operated by the gatherer must fall within the jurisdiction of the single Competent Authority.

In deciding whether to issue a PTA, a Competent Authority must consider the requirements of Regulation (EC) No 853/2004, Annex III, Section VII, Chapter I, paragraph 7. In addition, the history of an operator's compliance with relevant food safety legislation and the application of management control procedures must be an influencing factor in any decision.

Where a Competent Authority is not satisfied with the operators' compliance with food safety legislation, they can withdraw the PTA.

A PTA should be issued for each individual shellfish harvesting bed.

### **7.3.3 Examination of registration documents**

Competent Authorities must carry out regular examinations of registration documents to verify their accuracy. The examination of documents and any verification sampling would normally be carried out as part of the inspection of dispatch or purification centres, but can be carried out at any stage during the supply process.

#### **7.3.4 Purification centres**

Approval of new purification centres or modifications to existing centres must be handled in accordance with the action required following receipt of a form requesting approval.

#### **7.3.5 Sampling as part of the inspection**

Inspections of dispatch or purification centres can include the taking of samples for laboratory tests. The Competent Authority must investigate test results that show breaches of the food safety requirements.

If necessary, further sampling and laboratory tests should be undertaken in the relevant harvesting area, relaying area, dispatch, or purification centre, to establish the cause of the non-compliance and any corrective action which is required.

Where necessary, Competent Authorities should communicate test results which do not comply with food safety requirements, to neighbouring Competent Authorities responsible for the relevant harvesting area, relaying area, or dispatch or purification centre.

Competent Authorities should:

- communicate the results of any testing of live bivalve mollusc samples to the FBO from where the samples were procured
- notify the FSA of any test results that may indicate a significant variation in the quality of production and/or relaying areas

### **7.4 Production and relaying areas**

It is the responsibility of the FSA to classify bivalve mollusc production and relaying areas. These areas must fulfil the criteria necessary for the classification of bivalve mollusc beds. The procedure and criteria for the classification of bivalve mollusc production and relaying areas is set down in Article 52 of Commission Implementing Regulation (EU) 2019/627.

Competent Authorities must only permit harvesting or relaying of bivalve molluscs in an area, after an application for the classification of the area has been submitted to the FSA for approval, and pre-classification checks shows it has met the requirements in the FSA classification protocol. It should be noted that, the live bivalve molluscs must be treated in accordance with the (A, B, or C) classification of the area from which they were harvested prior to placing on the market.

#### **7.4.1 Monitoring production and relaying areas**

Authorised officers must carry out periodic checks at least once every month in harvesting and relaying areas, to ensure that the classification status granted by the FSA is compliant with the classification criteria.

The conditions that must be observed are specified in Title V to Commission Implementing Regulation (EU) 2019/627.



### **7.4.2 Imported live bivalve molluscs**

Imported live bivalve molluscs for human consumption or processing require pre import notification and official food controls. This is to ensure that they are safe for human consumption.

Competent Authorities must ensure:

- consignments of live bivalve molluscs for human consumption or processing are accompanied by a CHED and appropriate health certification
- they have been subject to official food controls at a BCP

### **7.5 Closure Notices (temporarily closing harvesting areas)**

Competent Authorities must:

- where sampling results show that health standards for molluscs have not been met or that there may otherwise be a risk to human health, close the classified production or relaying area concerned, to prevent the harvesting of live bivalve molluscs or, if the closure relates to *E. coli*, the FSA may reclassify the area, for example, downgrade in accordance with the Regulation<sup>141</sup>
- inform interested parties, such as producers, gatherers, and operators of purification centres or dispatch centres, immediately of the closure of any area, and as required by Article 65 of Commission Implementing Regulation (EU) 2019/627 to act promptly to close, reclassify, or re-open production areas or for Class A production areas, where live bivalve molluscs are subject to the application of measures as referred to in Article 62(2)<sup>142</sup>. When the closure of a production area is required, the FSA recommends that a formal Closure Notice should be used as the means to inform interested parties
- inform the FSA with immediate effect and liaise with the FSA over the issue of a Closure Notice. Liaison with the FSA might include consideration of whether any action should be taken to withdraw any live bivalve molluscs from sale that have already been distributed locally or nationally

The Competent Authority must:

- ensure that when Closure Notices are used, they are issued quickly, and that all known FBOs in their district, who either have registration documents already issued, or have a permanent transport authorisation (issued by the Competent Authority in accordance with Annex III, Section VII, Chapter I, paragraph 7 of Regulation (EC) No 853/2004), are notified of the Closure Notice and its effect. This might best be achieved by sending a copy of the Notice to all known interests

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<sup>141</sup> Chapter III, Article 62 of Commission Implementing Regulation (EU) 2019/627

<sup>142</sup> Chapter IV, Article 66 of Commission Implementing Regulation (EU) 2019/627

- prominently display Closure Notices where food businesses and casual gatherers harvesting live bivalve molluscs might reasonably be expected to see them

Competent Authorities with a shared jurisdiction must also be advised, who must, in turn, fulfil their responsibility by informing FBOs affected by the closure within their own area. A Closure Notice cannot be time limited.

The Competent Authority must:

- liaise with the FSA as soon as possible in relation to taking additional samples to determine when the closed area can reopen
- remove a Closure Notice immediately when it is satisfied that harvesting can resume
- ensure that all known interested parties are aware that they must not harvest during a closure period

In the event that Competent Authority decides not to issue a Closure Notice to inform interested parties of a closure, it will need to satisfy itself that the means of communication chosen satisfies the legal requirements as described above.

## Glossary

### **-UPDATE START-Alternative Enforcement Strategies (AES)**

Methods by which low risk establishments are monitored to ensure their continued compliance with food law. AES does not apply to establishments approved pursuant to Regulation (EC) No 853/2004.-UPDATE END-

### **Alternative interventions**

Alternative interventions are interventions other than official food controls conducted at low-risk food businesses and include Alternative Enforcement Strategies.

### **Animals**

Has the meaning as defined in Article 3(9) of Regulation (EU) 2017/625 when read with Article 4(1) of Regulation (EU) 2016/429 meaning vertebrates and invertebrate animals.

### **Approved establishment**

An establishment that has been approved pursuant to Article (4) of Regulation (EC) No 853/2004 for handling, preparing, and/or producing products of animal origin.

### **Aquatic animals**

Has the meaning as defined in Article 4(3) of Regulation 2016/429 to means animals of the following species, at all life stages, including eggs, sperm and gametes:

fish belonging to the superclass *Agnatha* and to the classes *Chondrichthyes*, *Sarcopterygii* and *Actinopterygii*

aquatic molluscs belonging to the phylum *Mollusca*

aquatic crustaceans belonging to the subphylum *Crustacea*

### **Audit**

Has the meaning as defined by Article 3(30) of Regulation (EU) 2017/625 to mean a systematic and independent examination to determine whether activities and related results comply with planned arrangements and whether these arrangements are implemented effectively, by the FBO, and are suitable to achieve objectives.

This includes planned partial or full audits:

a 'full audit', is an examination of planned arrangements and whether they are implemented effectively and will consider all aspects of a FBO's operations

a 'partial audit', is an audit that covers only certain aspects of a FBO's operation

### **Authorised officer**

Means a person (whether, or not an officer of the enforcement authority) who is authorised by the Competent Authority, either generally or specifically, to act in relation to matters arising under food law. If regulations made by the Secretary of State so provide, no person shall be so authorised unless they have such qualifications as may be prescribed by food law regulations.

## **Awarding bodies**

In relation to the Code, the awarding bodies are: The Chartered Institute of Environmental Health (CIEH); The Chartered Trading Standards Institute (CTSI) and The Institute of Food Science and Technology (IFST).

### **Broadly compliant (Food hygiene)**

An establishment that has an intervention rating score of not more than ten points under each of the following parts of Annex 1: Food hygiene scoring system Part 2: Level of (Current) Compliance - Hygiene and Level of (Current) Compliance – Structure; and Part 3: Confidence in Management.

### **-UPDATE START-Broadly compliant (Food standards)**

An establishment that has an intervention rating score of 3, 4 or 5 for all four Compliance Assessment risk factors.-UPDATE END-

### **Border Control Post (BCP)**

Has the meaning defined in Article 3(38) of Regulation (EU) 2017/625 to mean a place, and the facilities belonging to it, designated for the performance of official controls provided for in Article 47(1) of Regulation (EU) 2017/625.

### **Central Competent Authority**

Has the meaning as defined in part, by Article 3(3)(a) of Regulation (EU) 2017/625 to mean the central authority of the UK competent for the organisation of official food controls and other official activities and in the UK. In England, Wales and Northern Ireland, the Central Competent Authority is the Food Standards Agency.

### **Competent Authority**

Has the meaning as defined in Article 3(3) of Regulation (EU) 2017/625 to mean the Competent Authority responsible for the performance of official controls and of other official activities, in accordance with that Regulation and the rules referred to in Article 1(2).

### **Chartered Institute of Environmental Health (CIEH)**

A membership and awarding body for the environmental health sector.

### **Chartered Trading Standards Institute (CTSI)**

CTSI represents Trading Standards professionals working in the UK and overseas - in Local Authorities, business and consumer sectors and central government. CTSI exists to:

promote and protect the success of a modern vibrant economy

safeguard the health, safety, and wellbeing of citizens by enhancing the professionalism of its members

## **Common Health Entry Document (CHED)**

The Common Health Entry Document is used for food and feed of non-animal origin subject at their entry into the UK to any of the measures or conditions provided for in points (d), (e), or (f) of Article 47(1) of Regulation (EU) 2017/625.

## **Consultant in Communicable Disease Control (CCDC)**

A senior role within the health protection team who provides leadership, management, and oversight of the health protection function, including the response to incidents and outbreaks.

## **Compliant**

Conforming with the requirements of the law.

## **Conditional approval**

Approval granted by a Competent Authority pursuant to Article 148 (4) of Regulation (EU) 2017/625 if it appears to a Competent Authority that an establishment meets all the infrastructure and equipment requirements. Conditional approval must not exceed a total of six months, except in the case of factory and freezer vessels, for which such conditional approval shall not exceed a total of 12 months.

## **-UPDATE START-Confidence in Management (CIM)**

The Confidence in Management score is part 3 of the Hygiene Rating Intervention Rating Scheme and is one of the risk factors considered under the Compliance Assessment for food standards. The Competent Authority assesses the business' food safety management/control procedures using their judgement on the likelihood of satisfactory compliance being maintained in the future. Factors that influence the Competent Authority's judgement include: the previous record of compliance with the FBO; knowledge on food safety and standards; attitude towards food standards and hygiene compliance and satisfactory food safety management procedures.-UPDATE  
END-

## **Consignment**

Has the meaning as defined in Article 3(37) of Regulation (EU) 2017/625 to mean a number of animals or quantity of goods covered by the same official certificate, official attestation, or any other document, conveyed by the same means of transport and coming from the same territory or a country outside the UK, and, except for goods subject to the rules referred to in point (g) of Article 1(2) of Regulation (EU) 2017/625, being of the same type, class or description.

## **Consultant in Public Health Medicine (CPHM)**

The role of the CPHM in the case of a food poisoning outbreak is to determine if there is a true outbreak and initiate and coordinate any necessary action including the use of the local outbreak control plan. They also advise the person in charge of any immediate actions necessary to control the outbreak.

## **Continuing Professional Development (CPD)**

How members of a profession maintain, improve, or broaden their knowledge and skills and develop the qualities required in their professional lives.

## **Control verification procedures**

More commonly referred to as internal monitoring procedures, has the meaning as defined in Article 3(6) of Regulation (EU) 2017/625 to mean the arrangements put in place and actions performed by the Competent Authorities for the purpose of ensuring that official controls and other official activities are consistent and effective.

## **Could**

Is generally used to indicate those provisions which are for guidance only.

## **Delegated body**

Has the meaning as defined in Article 3(5) of Regulation (EU) 2017/625 to mean a separate legal person to which the Competent Authorities have delegated certain official control tasks or certain tasks related to other official activities.

## **Discretionary services**

A service which a Competent Authority is authorised, but not required to provide.

## **Documentary check**

Has the meaning as defined in Article 3(41) of Regulation (EU) 2017/625 to mean the examination of the official certificates, official attestations and other documents including documents of a commercial nature, which are required to accompany the consignment as provided for by the rules referred to in Article 1(2), by Article 56(1) or by implementing acts adopted in accordance with Articles 77(3), 126(3), 128(1) and 129(1).

## **Enforcement authority**

Has the meaning as defined by Regulation 2(1) of The Food Safety and Hygiene (England) Regulations 2013 to mean the authority which, is responsible for executing and enforcing the Hygiene Regulations.

## **Environmental Health Registration Board (EHRB)**

An awarding body in the UK which issues certificates of registration to those who have successfully completed an approved course of study in the subject of environmental health that includes and accredited course, work based learning and professional examinations.

## **Escherichia coli O157**

(*E. coli* O157)

A VTEC strain that can cause illness in humans. Symptoms can range from mild gastroenteritis to severe bloody diarrhoea, and kidney damage.

**Establishment**

Has the meaning as defined by Article 2(c) (EC) No 852/2004 to mean any unit of a food business.

**European Economic Area (EEA)**

Consists of the EU Member States and the three countries of the European Free Trade Association (EFTA). An agreement concerning the four fundamental pillars of the internal market, namely the free movement of goods, people, services, and capital.

**Evidence**

Information or items which provide proof of an allegation.

**Export**

The action of sending or transporting a commodity outside of a relevant territory.

**Feasibility study**

A small-scale preliminary study, conducted as part of an FSA led Programme, in order to identify feasibility, time, cost, adverse events, predict an appropriate sample size, and help to develop the study design prior to larger scale 'Pathfinder' project.

**Food Hygiene Rating Scheme (FHRS)**

A scheme that applies to England, Wales and Northern Ireland, designed to give information to the public on what each food business had achieved on their last food hygiene inspection, carried out by the local authority, rated from 0 (urgent improvement needed) – 5 (Hygiene standards are very good).

**Food Alert**

Communication from the FSA to a Competent Authority concerning a food hazard or other food incident, where specific actions/responses are required to be undertaken by the Competent Authority. A 'Food Alert Update' should be read accordingly.

**Food business**

Has the meaning as defined by Article 3(2) of Regulation (EC) No 178/2002 to mean any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of production, processing, and distribution of food.

**Food business operator (FBO)**

Has the meaning as defined by Article 3(3) of Regulation (EC) No 178/2002 to mean the natural or legal persons responsible for ensuring that the requirements of food law are met within the food business under their control.

**Food examiner**

Any person who possesses the requisite qualifications to conduct examinations.

## **Food hygiene**

The measures and conditions necessary to control hazards and to ensure fitness for human consumption of a foodstuff, taking into account its intended use as set out in Regulation (EC) No 853/2004.

## **Food Standards Agency (FSA)**

The Central Competent Authority in England, Wales, and Northern Ireland.

## **Food Standards Scotland (FSS)**

The Central Competent Authority in Scotland.

## **Formal action**

The taking of action against a food business operator as set out in the legislation including the service of a statutory notice to remedy non-compliance with legal requirements, the issuing of a Simple Caution or the institution of legal proceedings for breaches of legal requirements.

## **Framework Agreement**

Framework Agreement on Official Feed and Food Controls by Local Authorities.

## **Full approval**

Full approval must only be given to an establishment if it appears from a new official control of the establishment, carried out within three months of granting conditional approval, that the establishment meets all relevant requirements of feed or food law.

## **Hazard**

Has the meaning as defined by Article 3(14) of Regulation (EC) No 178/2002 to mean a biological, chemical, or physical agent in, or condition of, food or feed with the potential to cause an adverse health effect.

## **Home Authority**

Means the authority where the relevant decision-making base of an enterprise is located

## **Hazard Analysis Critical Control Points (HACCP)**

HACCP is a systematic preventive approach to food and feed safety from biological, chemical, and physical hazards in production processes, that can cause the finished product to be unsafe, and designs measurement to reduce these risks to a safe level.

## **Hygiene**

The measures and conditions necessary to control hazards and to ensure fitness for human consumption of a foodstuff considering its intended use.

## **Hygiene Emergency Prohibition Notice**

A notice served by the authorised officer where there is an imminent risk of injury to health which prohibits the use of a process, treatment, premises, or equipment, as



appropriate, as specified in Regulation 8 of The Food Safety and Hygiene (England) Regulations 2013.

### **Hygiene Regulation**

As defined by Regulation 2 of The Food Safety and Hygiene (England) Regulations 2013.

### **Identity check**

Has the meaning as defined in Article 3(42) of Regulation (EU) 2017/625 to mean a visual inspection to verify that the content and the labelling of a consignment, including the marks on animals, seals and means of transport, correspond to the information provided in the official certificates, official attestations and other documents accompanying it.

### **Institute of Food Science and Technology (IFST)**

A professional body concerned with all aspects of food science and technology.

### **Import**

The action of bringing in goods and/or services from another country outside of Great Britain.

### **Informal action**

Bringing to the attention of a food business operator and giving advice on non-compliances with food safety law in order that any non-compliance can be quickly remedied.

### **Inspection**

To mean the examination of any aspect of feed, food, animal health and animal welfare in order to verify that such aspect(s) comply with the legal requirements of feed and food law and animal health and welfare rules. This includes partial or full inspections:

a 'full inspection', is a check on compliance with legal requirements and will consider all aspects of an FBOs operations

a 'partial inspection', which is an inspection that covers only certain aspects of an FBOs operations

### **Intervention**

Regulatory actions taken by a government in order to affect or interfere with decisions made by individuals, groups, or organizations regarding social and economic matters. Interventions include official food controls and other interventions such as education, advice and coaching, information and intelligence gathering (including sampling where the analysis is not to be carried out by an Official Control Laboratory).

### **Investigation**

The action taken by the Competent Authority to gather evidence where non-compliance is suspected.

### **Lead Food Officer (LFO)**

The Authorised Lead Food Officer(s), appointed by the Competent Authority in relation to food, who demonstrates the requirements, set out in the Code, the Competency Framework and Chapter 3 of the Practice Guidance.

### **Live bivalve molluscs (LBM)**

References to live bivalve molluscs also include live echinoderms, live tunicates, and live marine gastropods, in line with Annex I, Section 2 of Regulation (EC) No 853/2004 laying down specific hygiene rules for food of animal origin (Regulation (EC) No 853/2004), except for parts of the Code which deal with purification of live bivalve molluscs.

### **Local Authority (LA)**

Has the meaning as defined in Section 270 of the Local Government Act 1972 to mean a country council, a district council, a London borough council, or a parish council.

### **Local Government Association (LGA)**

The LGA are the national voice of local government, working with councils to support, promote and improve local government services.

### **Malicious tampering**

For the purposes of the Code, means the deliberate contamination of food by terrorist activity, or with a view to blackmail or extortion.

### **May**

On its own indicates an optional exercise of a power or function.

### **May not**

Indicates a prohibition.

### **Memorandum of Understanding (MoU)**

A written agreement on the exchange of information between two or more parties.

### **Monitoring**

To mean conducting a planned sequence of observations or measurements with a view to obtaining an overview of the state of compliance with food law.

### **Must**

Is used to confirm an obligation.

### **National Enforcement Priorities (NEPs)**

The NEPs for animal feed and food hygiene at the level of primary production assist Competent Authorities and businesses in maintaining standards and safeguarding public health.

### **Non-compliance**

A failure to comply with the one or more requirements of a food law.

**Non-routine incident**

A food incident, which cannot be dealt with using everyday resources and procedures.

**Non-UK country**

A country outside the UK.

**Official attestation**

Has the meaning as defined by Article 3(28) of Regulation (EU) 2017/625 to mean any label, mark or other form of attestation issued by the operators under the supervision, through dedicated official food controls, of the Competent Authorities or by the Competent Authorities themselves, and providing assurance concerning compliance with one or more requirements laid down in this Regulation or in the rules referred to in Article 1(2) Regulation (EU) 2017/625.

**Official certificate**

Has the meaning as defined by Article 3(27) of Regulation (EU) 2017/625 to mean a paper or electronic document signed by the certifying officer and providing assurance concerning compliance with one or more requirements laid down in the rules referred to in Article 1(2) of Regulation (EU) 2017/625.

**Official control**

Has the meaning as defined by Article 2(1) of Regulation (EU) 2017/625 to mean activities performed by the Competent Authorities, or by the delegated bodies or the natural persons to which certain official control tasks have been delegated in accordance with Regulation (EU) 2017/625 in order to verify compliance by the operators and that animals or goods meet the requirements laid down in the rules referred to in Article 1(2) of 2017/625, including for the issuance of an official certificate or official attestation.

**Official control laboratory**

A laboratory accredited for the purposes of analysis, and which appears on the list of official food control laboratories.

**Official control methods and techniques**

Are those control methods and techniques described in Article 14 of Regulation (EU) 2017/625.

**Official fish inspector**

Has the meaning provided for by Regulation 12(4) of The Trade in Animals and Related Products Regulations 2011 to mean suitably trained Environmental Health Officers or other persons who are appropriately trained to perform official controls or certain tasks related to other official activities at BCPs on imported fishery products, aquatic invertebrates, live bivalve molluscs, live echinoderms, live tunicates and live marine gastropods intended for human consumption. Any such official fish inspector has all the powers of an official veterinary surgeon in relation to those products.

### **Official Plant Health Officer**

Has the meaning as defined by Article 3(33) of Regulation (EU) 2017/625 to mean a natural person appointed by a competent authority, either as staff or otherwise, and appropriately trained to perform official controls and other official activities in accordance with this Regulation and the relevant rules referred to in point (g) of Article 1(2).

### **Official Veterinarian**

Has the meaning as defined in Article 3(32) of Regulation (EU) 2017/625 to mean a Veterinarian appointed by a Competent Authority, either as staff or otherwise, and appropriately qualified to perform official food controls and other official activities in accordance with this Regulation and the relevant rules referred to in Article 1(2) of Regulation (EU) 2017/625.

### **Originating authority**

Means the authority in whose area final food production takes place.

### **Other interventions**

Education, advice, and coaching provided at a food establishment and information and intelligence gathering (including sampling where the analysis and examination is not to be carried out by an Official Laboratory).

### **Other official activities**

Activities, other than official food controls, which are performed by the Competent Authorities, or by the delegated bodies or the natural persons to which certain other official activities have been delegated in accordance with Regulation (EU) 2017/625. Including activities aimed at verifying the presence of animal diseases or pests of plants, preventing, or containing the spread of such animal diseases or pests of plants, eradicating those animal diseases or pests of plants, granting authorisations or approvals, and issuing official certificates or official attestations.

### **Outbreak**

an incident in which two or more people experiencing a similar illness are linked in time or place

a greater than expected rate of infection compared with the usual background rate for the place and time where the outbreak has occurred

a single case for certain rare diseases such as diphtheria, botulism, rabies, viral haemorrhagic fever, or polio

a suspected, anticipated, or actual event involving microbial or chemical contamination of food or water

### **Pathfinder project**

A project, conducted as part of an FSA led programme, which increases understanding of an element of the new regulatory model. In doing so, pathfinder projects will assist in

finding out what works best for implementation. Knowledge gained is shared openly for the benefit of the wider organisation/programme.

### **Physical check**

Has the meaning as defined in Article 3(43) of Regulation (EU) 2017/625 to mean check on animals or goods and, as appropriate, checks on packaging, the means of transport, labelling and temperature, the sampling for analysis, testing or diagnosis and any other check necessary to verify compliance with the rules referred to in Article 1(2) of Regulation (EU) 2017/625.

### **Port Health Authority (PHA)**

Has the meaning as defined in Section 2 of the Public Health (Control of Diseases) Act 1984 to mean in relation to a port or part of a port any local authority whose district, or any part of whose district, forms part of, or abuts on, that port or part of a port, and any conservators, commissioners or other persons having authority in, over or within that port or part of a port.

### **Premises**

Premises means any fixed or moveable structure used for the purposes of a food business operation.

### **Primary Authority**

Has the meaning as defined in and set out in Section 25 of the Regulatory Enforcement and Sanctions Act 2008 to mean in relation to a regulated person, a qualifying regulator for the exercise of the partnership functions in relation to that person as nominated by the Secretary of State, or in relation to a regulated group, a qualifying regulator for the exercise of the partnership functions in relation to the members of the group as nominated by the Secretary of State.

### **Primary Production (Food)**

The production, rearing or growing of primary products including harvesting, milking, and farmed animal production prior to slaughter. It also includes hunting and fishing and harvesting of wild products as defined in Article 3(17) of Regulation (EC) No 178/2002.

### **Public Analyst**

Scientists that ensure the safety and correct description of food by testing for compliance with legislation as specified in in Section 27 of the Food Safety Act 1990 and Regulation 4 of The Food Safety (Sampling and Qualifications) (England) Regulations 2013.

### **Public Health England**

Public Health England is an executive agency of the Department of Health and Social Care in the United Kingdom. Public Health England will be known as the National Institute for Health Protection from 1st April 2021.

### **Records**

Means information preserved in writing or the like.

## **Royal Environmental Health Institute of Scotland (REHIS)**

A membership and awarding body for the environmental health sector.

### **Risk**

The chance or probability that a person will be harmed or experience an adverse health effect if exposed to a hazard.

### **Safety**

The quality of averting or not causing injury, danger, or loss.

### **Sampling**

To mean taking feed or food or any other substance (including from the environment) relevant to the production, processing and distribution of feed or food or to the health of animals, in order to verify through analysis compliance with feed or food law or animal health rules.

## **Scottish Food Safety Officers Registration Board (SFSORB)**

A committee of the Royal Environmental Health Institute of Scotland, who determine the pre-registration academic standard to be attained by persons applying for the award of the Higher Certificate in Food Premises Inspection, the Ordinary Certificate in Food Premises Inspection, and the Higher Certificate in Food Standards Inspection qualifications.

### **Shellfish environmental monitoring**

The collection of shellfish and water official control samples from designated sampling points as part of the Shellfish Official Control Monitoring Programmes, in accordance with Article 57 and Chapter II of Title V of Commission Implementing Regulation (EU) 2019/627.

### **Should**

Is used to confirm best practice.

### **Simple Caution**

A simple caution (once known as a formal or police caution) is a formal warning that may be given by the police to persons aged 18 or over who admit to committing an offence ('offenders'). The simple caution scheme is designed to provide a means of dealing with low-level, first-time, offending without a prosecution. A simple caution may only be given where specified criteria are met. Further detail is set out in Ministry of Justice guidance note: 'Simple Cautions for Adult Offenders'.

### **Standards**

Rules or principles defined in food safety law that are used as the basis for judgment against.

### **Surveillance**

To mean a careful observation of one or more food businesses, or FBOs or their activities.

## **The National Food Crime Unit (NFCU)**

The National Food Crime Unit provides a nationwide focus on enforcement against serious fraud and related criminality in food and feed supply chains.

### **Verification**

To mean the checking, by examination and the consideration of objective evidence, whether specified requirements have been fulfilled.

### **Verocytotoxin-producing Escherichia coli (VTEC)**

They are zoonotic pathogens associated with food and waterborne illness which cause a potentially fatal illness which symptoms include, diarrhoea and haemorrhagic.

### **Vulnerable risk groups**

Vulnerable risk groups are those that include people likely to be more susceptible to the effects of poor food hygiene such as those who are under 5 or over 65, people who are sick or immuno-compromised.

### **Writing**

Has the meaning as defined by Schedule 1 of the Interpretation Act 1978 to mean typing, printing, lithography, photography, and other modes of representing or reproducing words in a visible form, and expressions referring to writing are construed accordingly.

## Annex 1 – Food Establishment Intervention Rating Schemes

This Annex deals with the food hygiene and food standards intervention ratings, and minimum frequencies for interventions at all food establishments, with the exception of primary production and animal feed establishments.

### A1.1. Food hygiene scoring system

**Part 1: The potential hazard** - Three factors determine the potential hazard:

#### A. Type of food and method of handling

Score	Guidance on the scoring system
40	Manufacturers of high-risk food, wholesalers, and packers who re-wrap or re-pack high-risk foods. In this context, high-risk foods may be regarded as foods which support the growth of micro-organisms and are ready to eat without further treatment that would destroy pathogenic micro-organisms or their toxins.
30	Preparation, cooking, or handling of open high-risk foods by caterers and retailers, except caterers that prepare typically less than 20 meals a day (see below).
10	Preparation, cooking, or handling by small caterers of open high-risk foods but serve less than 20 meals on a single day. Handling of pre-packed high-risk foods. Other wholesalers and distributors not included in the categories above; Manufacture or packing of foods other than high-risk. Establishments involved in the filleting, salting of fish for retail sale to final consumer.
5	Retail handling of foods other than high-risk, and other ambient shelf stable products. Any other businesses not included in the categories above.

Score:



## Method of processing

Establishments that undertake a specific method of processing (including those that extend the shelf life of the product) that has the potential to increase the risk to public health beyond that of the normal cooking or storage, should be given an additional score under this section. However, it may only be allocated once, i.e., the maximum score under this section is 20.

Score	Guidance on the scoring system
20	<p>The overriding principle to assess is whether the process itself creates an increased risk and/or the intention is to increase the shelf life of the product by applying it.</p> <p>Below is a non-exhaustive list of processing types that should be allocated an additional score of 20. Authorised officers will need to make a judgement regarding additional processing types not listed below:</p> <ul style="list-style-type: none"><li>• Canning or other aseptic packing of low-acid foods</li><li>• Vacuum packing</li><li>• Sous-vide cooking</li><li>• Manufacture of cook/chill food, i.e. cooked and prepared meals or foods which may be eaten cold or after reheating. (The simple reheating of cook-chill meals is excluded from the scope of this paragraph)</li><li>• Fermentation of meats for example, to produce salamis and other fermented sausages</li><li>• Air drying for example, dried hams, biltong, jerky</li><li>• Freeze drying</li><li>• Addition of salt and/or other preserving agents</li><li>• The cooking and cooling of meat products prior to service for example, production of hams by retailers, including butchers; this is not intended to be applied to simple catering operations where foods may often be pre prepared and subsequently re heated</li><li>• Establishments that manufacture, prepare, or serve high risk uncooked or lightly cooked ready to eat food of animal origin whose nature poses a residual microbiological food safety hazard. This is intended to include caterers/manufacturers producing foods such as steak tartare and other raw meat dishes, fish and meat carpaccio, types of sushi or sashimi, ceviche, and burgers less than thoroughly cooked</li></ul>
0	Any other case not included above.

**Score:**

## Consumers at risk

This factor is intended to reflect the number of consumers likely to be at risk and the potential geographical extent of any incident if there is a failure of food hygiene and safety procedures.

Score	Guidance on the scoring system
15	Food businesses involved in either the manufacture, distribution, packing or wrapping operations of food which is distributed nationally or internationally.
10	Businesses serving a substantial number of customers, including a significant proportion from outside the local area, for example, superstore, airport caterer, motorway service area caterer. Manufacturers not included in the category above.
5	Businesses, most of whose customers are likely to be living, staying, or working in the local area, for example, supermarket or shop, local convenience store or high street or local restaurant.
0	Businesses typically supplying less than 20 consumers each day.

Score:	
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## PLUS

An **additional** score of 22 (in addition to the score above) should be included for establishments involved in the production or service of food **intended specifically** for consumption by consumers which are likely to include a vulnerable risk group of more than 20 persons.

In this context, vulnerable risk groups are those that include people likely to be more susceptible to the effects of poor food hygiene such as those who are under 5 or over 65, people who are sick or immuno-compromised.

Score	Guidance on the scoring system
22	Production and/or service of high-risk foods in establishments where the ultimate consumers of the product produced include a vulnerable risk group of more than 20 persons.
0	Any other case not included above.

Score:	
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## Part 2: Level of (current) compliance

The food hygiene and safety procedures (including food handling practices and procedures, and temperature control), and the structure of the establishment (including cleanliness, layout, condition of structure, lighting, ventilation, facilities etc.), should be assessed separately using the scoring system below.

The score should reflect compliance observed during the inspection according to the guidance set out below.

In circumstances where the failure to comply involves both elements of the establishment's structure and procedures, this non-compliance should be reflected in the scores awarded for both the 'hygiene' and 'structural' factors.

Score	Guidance on the scoring system
25	Almost total non-compliance with statutory obligations.
20	General failure to satisfy statutory obligations – standards generally low.
15	Some major non-compliance with statutory obligations – more work required to prevent fall in standards.
10	Some non-compliance with statutory obligations and industry codes of recommended practice* that are not considered significant in terms of risk (but may become significant if not addressed). Standards are being maintained or improved.
5	Good standard of compliance with statutory obligations and industry codes of recommended practice* with only minor contraventions.
0	High standard of compliance with statutory obligations and industry codes of recommended practice*; conforms to accepted good practices in the trade.

\*where a relevant code/industry guide has been published.

<b>Score - Hygiene</b>	
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<b>Score - Structural</b>	
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### **Part 3: Confidence in management/control procedures**

The Confidence in Management score should assess whether a business' food safety management/control procedures are appropriate, with the identification of the correct hazards and controls, whilst the assessment of the level of current compliance achieved as a result of practices being carried out should be considered as part of the compliance with food hygiene and safety procedures element in Part 2.

Where management has an effective food safety management system in place which is well understood by the workforce, they should achieve a good standard in Part 2, and consequently a low score for that risk factor.

Confidence in management is not meant to reconsider this aspect. It is to elicit a judgement on the likelihood of satisfactory compliance being maintained in the future.

Assessment of 'Management' may include two elements; corporate management (any company-wide systems and processes for food controls) and local management (implementation by local management of corporate systems and separate branch or 'in store' systems and processes).

Where the establishment has a Primary Authority, the Primary Authority may provide guidance via an Inspection Plan to assist with scoring for Confidence in Management based on corporate management systems being properly implemented where this is the case. Officers should not attempt to reassess the corporate management element but should consider the score based upon the degree of local implementation by local management.

Officers should also reflect the level of reassurance provided by checks undertaken on the food safety management systems directly at an individual establishment via an independent third party as part of an assurance scheme which address applicable legislation.

The confidence in management/control procedures score is not solely about documented procedures and their implementation. Factors that will influence the officer's judgement include:

- the 'track record' of the company, its willingness to act on previous advice and enforcement, and the complaint history
- the attitude of the present management towards hygiene and food safety
- hygiene and food safety knowledge, including hazard analysis/HACCP and the control of critical points
- satisfactory food safety management-based procedures

In determining 'satisfactory' in respect of HACCP based procedures, officers should consider, based on the principle of proportionality, the need for a permanent procedure or procedures based on HACCP principles, i.e. commensurate with the nature and size of the food business. In some food businesses there are not critical control points, and, in some cases, good hygiene practices can replace the monitoring of critical control points. The requirement for businesses to retain records also needs to be flexible in order to avoid undue burdens for very small businesses.

For small businesses which present only basic hygiene hazards, it may be sufficient

that the business has in place good hygiene practices and understands and applies it i.e. meets the prerequisites. The requirement for records needs to be balanced with the nature and size of the business. Documentation and record keeping may not be necessary under the flexibility afforded by Article 5 of Regulation (EC) No 853/2004. Officers should consider guidance in relation to the application of Article 5 in order to make a judgement on whether the business requires documented food safety management procedures, and if so on the level of documentation required. The level of documentation will vary between businesses depending on the types and complexity of operations being undertaken and on the level of controls being implemented.

Score	Guidance on the scoring system
30	<p>Poor track record of compliance.</p> <p>Little or no food safety knowledge and understanding. Little or no appreciation of hazards, risks, or quality control. No food safety management procedures.</p> <p>Does not recognise or accept the need for food safety and hygiene controls.</p>
20	<p>Significantly varying record of compliance.</p> <p>Insufficient food safety knowledge and understanding. Poor appreciation of hazards and control measures.</p> <p>No food safety management procedures or unsatisfactory progress in terms of developing, documenting, and implementing food safety management procedures, commensurate with the type of business since the last intervention rating.</p> <p>Some reluctance in recognising or accepting the need for food safety and hygiene control procedures.</p>
10	<p>Satisfactory record of compliance.</p> <p>Access to relevant food safety advice source and/or Guides to Good Practice or assurance schemes commensurate with type of business.</p> <p>Understanding of significant hazards and control measures in place. Has implemented satisfactory food safety management procedures or is making satisfactory progress towards documented food safety management procedures, commensurate with type of food business.</p> <p>Officers will need to ensure that a business is demonstrating it is actually 'making satisfactory progress' towards food safety management procedures. A score of 10 can be awarded for more than one intervention cycle if the:</p> <ul style="list-style-type: none"> <li>• previous non-compliances have been addressed but different non-compliances have arisen</li> <li>• overall risk has not increased</li> </ul>

Score	Guidance on the scoring system
5	<p>Good record of compliance.</p> <p>Food safety advice available in-house or access to, and use of, technical advice from a Primary or Home Authority, trade associations and/or from Guides to Good Practice or assurance scheme commensurate with type of business.</p> <p>Effective management control of hazards.</p> <p>Having effective self-checks with satisfactory documented food safety management procedures commensurate with type of business.</p> <p>Audit by Competent Authority confirms general compliance with procedures with minor non-conformities not identified as critical to food safety.</p>
0	<p>Excellent record of compliance.</p> <p>Food safety advice available in-house or access to, and use of, technical advice from a Primary Authority or Home Authority, trade associations and/or from Guides to Good Practice or assurance schemes commensurate with type of business.</p> <p>Food Business Operator/Manager knowledgeable and competent.</p> <p>Has effective self-checks with satisfactory documented food safety management procedures commensurate with type of business and may have external audit processes in place.</p> <p>Audit by Competent Authority confirms good compliance with food safety procedures.</p>

Score:

## PLUS

An **additional** score of 20 (in addition to the score above) should be included where there is a significant risk of:

- food being contaminated with *Clostridium botulinum* and the micro-organism surviving any processing and multiplying; or
- ready-to-eat food being or becoming contaminated with micro-organisms or their toxins that are pathogenic to humans, for example, *E. coli* O157 or other VTEC, *Salmonella* sp.; *Bacillus cereus*

In this context, significant risk means the probability that an incident is likely to occur. The following matters should be considered when assessing this factor:

- the potential for contamination or cross-contamination by the specified micro-organisms
- the likelihood of survival and growth of the specified micro-organisms
- the existence of procedures based on HACCP principles and confidence in their implementation, including documentation and records of monitoring of controls

- the extent and relevance of training undertaken by managers, supervisors, and food handlers
- whether intervention by the Competent Authority is necessary to reduce the probability of an incident occurring

The additional score must only be applied on a case-by-case basis, must not be applied generically to whole categories of food business establishments, and must be removed at the next inspection if the significant risk no longer exists.

The additional score must also be consistent with the baseline assessment of Confidence in Management/Control Systems. If confidence in management is assessed as 0 or 5, and there is also assessed to be a significant risk of contamination of food with one of the specified micro-organisms, then one of the assessments cannot be correct, and each should be reviewed. Establishments should not pose a significant risk if there is high or moderate Confidence in Management/Control Systems.

Score	Guidance on the scoring system
20	Significant risk of food being contaminated with <i>Cl. botulinum</i> , and the organism surviving any processing and multiplying; or Significant risk of ready-to-eat food being contaminated with micro-organisms or their toxins that are pathogenic to humans.
0	Any other case not included above.

Score:	
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Inspection Ratings:									Total:	
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#### Part 4: Food hygiene intervention frequencies

Category	Score	Minimum intervention frequency
A	92 or higher	At least every 6 months
B	72 to 91	At least every 12 months
C	52 to 71	At least every 18 months
D	31 to 51	At least every 24 months
E	0 to 30	A programme of Alternative Enforcement Strategies or interventions every three years

Establishments rated as low risk (30 or less) need not be included in the planned inspection programme but must be subject to an Alternative Enforcement Strategy at least once in every 3 years.

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## **A1.2 -UPDATE START-Food Standards scoring system**

### **A1.2.1 Food Standards Risk Assessment**

The Risk Profile for an establishment is based on two separate risk elements: the Inherent Risk Profile and Compliance Assessment:

- the Inherent Risk Profile considers the inherent risks associated with the business, such as the scale of supply and the potential for product harm
- the Compliance Assessment considers the FBO's performance and track record

Each risk sub-category for Inherent Risk Profile (Table 1) and Compliance Assessment (table 2) has a score of 1-5.

An establishment must be risk assessed against each sub-category within the Inherent Risk Profile and Compliance Assessment elements of Tables 1 and 2.

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**Table 1: Inherent Risk Profile – Guidance on the scoring system**

The inherent risks associated with a food establishment.

Inherent risk factors	Guidance	1 Serious hazard	2 Significant hazard	3 Minor hazard	4 Low hazard	5 Very low hazard
<b>Scale of supply and distribution</b>	<p>This factor considers the number of consumers likely to be at risk if the food establishment fails to comply with food standards legislation - the greater the number of customers, the greater the potential impact of any non-compliance. In scoring an establishment consideration may be given to:</p> <p>Activities of establishment in terms of both supply and distribution</p> <p>Establishment type</p> <p>Method of supply, for example establishment to establishment, retail at physical premises, online/distance sales</p>	Establishments supplying/distributing food internationally and nationally (including manufacturers, packers, import /export)	Establishments supplying/distributing food regionally (including wholesalers / distributors, small scale manufacturers, supermarkets).	Establishments supplying/distributing food locally (including manufacturers and large retailers /caterers).	Establishments supplying/distributing food locally, with known local suppliers to the business (including small and local food establishments selling ready to eat food, such as corner shops, cafés and restaurants).	Other food establishments supplying/distributing food locally on a limited scale which have a discrete customer base (including childminders, nurseries, playgroups, bed and breakfasts).

Inherent risk factors	Guidance	1 Serious hazard	2 Significant hazard	3 Minor hazard	4 Low hazard	5 Very low hazard
Ease of compliance	<p>This factor considers the volume and complexity of food standards law that applies to the establishment and with which it has a responsibility to ensure compliance.</p> <p>Consider the range and complexity of products, processes, and services that the establishment is responsible for, such as the provision of food information, the involvement of any third parties in the supply of food, raw materials used and their associated specifications.</p> <p>When scoring this risk factor, take into account:</p> <ul style="list-style-type: none"> <li>Any product-specific legislation that applies, particularly where the legislation introduces specific compositional or marketing standards</li> <li>Whether the establishment supplies a wide or limited range of products* subject to different legal requirements</li> <li>Products where there is evidence of ongoing compliance issues</li> <li>Protected Geographical Indication or any specific requirements</li> </ul> <p>*Considers the variety of product range for example, multiple product lines/markets. Distinction around wide and limited range in terms of product catalogue, import requirements and product range requiring third party authorisation.</p>	<p>Establishments responsible for producing or labelling a wide range of food products affected by product-specific legislation.</p> <p>Establishments responsible for compliance with legislation where a degree of validation and interpretation is needed, for example food supplements, novel foods.</p>	<p>Establishments responsible for producing or labelling a limited range of foods affected by product-specific requirements.</p>	<p>Food establishments responsible for producing or labelling products not covered by product-specific legislation.</p> <p>This may also include retailers or caterers that supply non-prepacked foods which require reduced labelling or food information in line with national provisions, and establishments that make claims and/or using marketing terms.</p>	<p>Food establishments that retail of a wide range of prepacked foods, or products originating from a third country and are not responsible for producing or labelling food.</p>	<p>Food establishments that retail UK labelled prepacked foods or single ingredient foods such as primary produce.</p>

Inherent risk factors	Guidance	1 Serious hazard	2 Significant hazard	3 Minor hazard	4 Low hazard	5 Very low hazard
<b>Complexity of supply chain</b>	<p>This factor considers the complexity of a food establishment's supply chain. A more complex supply chain increases the risk as there is greater potential for problems with the foods and raw materials used which could enter the supply chain. The effectiveness of product recall procedures may also be affected by this issue. Things to consider include:</p> <ul style="list-style-type: none"> <li>• Where FBO sits within the supply chain</li> <li>• Traceability records</li> <li>• Use of known and/or approved suppliers and any monitoring or checks undertaken by the FBO</li> <li>• Supply chain assurances - What is the risk of the supply chain being interrupted?</li> <li>• Any known non-compliance within food chain</li> <li>• Third country imports</li> <li>• Recognition of activities undertaken by establishment</li> </ul>	Food establishments sourcing ingredients and raw materials from multiple suppliers including importing from countries outside UK equivalent regulatory oversight.	Food establishments sourcing ingredients/products from multiple suppliers and importing from outside of the UK.	Food establishments sourcing ingredients/products from within UK.	<p>Food establishments with a limited number of known local suppliers to the business.</p> <p>Appropriate internal assurances / verifications in place.</p>	Single integrated supply chain, with appropriate evidence of supplier assurance approval checks.

Inherent risk factors	Guidance	1 Serious hazard	2 Significant hazard	3 Minor hazard	4 Low hazard	5 Very low hazard
<b>Responsible for information</b>	<p>This factor considers the level of responsibility a food business has in the communication of food information to consumers. The more responsibility a food business has, the greater the risk that there could be non-compliances, for example due to human error or the potential opportunity for misleading claims or labelling to be applied to a food.</p> <p>Consider the following:</p> <ul style="list-style-type: none"> <li>How much control does the business have over the provision of food information, for example, is the business part of a chain with little control at a local level, or an independent business that has full control?</li> <li>How is the information presented to the final consumer? What mechanisms are in place to ensure the accuracy of information?</li> <li>Does the food business produce and/or amend labels? (Includes breaking down from bulk and repackaging or providing information in relation to loose food)</li> <li>Is the food business making or applying any claims which are subject to legislative requirements?</li> </ul>	Establishments responsible for producing, labelling, and/or importing a wide range of products which are subject to product-specific legislative requirements.	Establishments responsible for producing, labelling, packing and/or importing a limited range of products which are subject to product-specific legislative requirements.  Food establishments responsible for producing or labelling products subject to general labelling requirements.	Establishments supplying non-prepacked or prepacked for direct sale foods.  Catering establishments with complex menus, or menus that make claims about the food, for example fresh farmed salmon, made using fresh and organic local ingredients.	Establishments that supply a range of products, but do label food, for example retail of prepacked food or catering establishments with basic menus.	Establishments supplying a limited range of prepacked food only.
<b>Potential for product harm</b>	<p>This factor considers the extent to which consumers may suffer harm.</p> <p>For consumers, this includes physical or financial harm and other forms of consumer detriment. Consideration should also be given to foods which are aimed at particular consumer groups, for example medical foods or 'free-from' foods specifically aimed at hypersensitive consumers.</p> <p>Harm to other establishments considers how the supply of non-compliant food could disadvantage legitimate establishments.</p>	Establishments responsible for the composition and/or labelling of foods for targeted groups and which have a potential immediate impact on health and/or food safety.  Consider the potential effect on targeted groups in the event of non-compliance.	Establishments responsible for the composition and/or labelling of high value foods and/or where there is an enhanced risk or incentive to substitute, adulterate or contaminate the food for the purposes of fraud or market gain.	Establishments responsible for the composition and/or provision of food information which could be potentially misleading or harmful for consumers.	Establishments selling a wide range of products where they don't have responsibility for the composition of the food or the provision of food information.	Establishments selling a limited range of products which do not have responsibility for the composition of the food or the provision of food information.

**Table 2: Compliance Assessment - Guidance on the scoring system**

Assesses the FBO's performance and track record. Consideration given to how well they have complied with regulatory standards as well as consideration of historical performance and current data and inspections.

Compliance risk factors	Guidance	1 Serious non-compliance	2 Significant non-compliance	3 Broad compliance, with only minor non-compliance	4 Good compliance	5 High and sustained compliance
<b>Confidence in management (CIM)</b>	<p>This factor considers the actual risk of whether an establishment will be compliant with food law, taking into account the ability of the FBO to understand and effectively mitigate risks.</p> <p>An establishment that has effective management systems in place will effectively control the inherent risks, and this should be recognised.</p> <p>The attitude and behaviour of the FBO in response to any non-compliances and their willingness to rectify problems is another key indicator of what confidence officers can have in an establishment.</p> <p>Consider the following:</p> <ul style="list-style-type: none"> <li>• Staff training records</li> <li>• Traceability records/capability</li> <li>• In-house checks</li> <li>• Audit arrangements</li> <li>• Previous compliance history and complaint management</li> <li>• Confidence in staff –knowledge and experience.</li> <li>• Incident management</li> <li>• Attitude/willingness to engage, achieve compliance and rectify problems</li> <li>• Willingness to share information with the competent authority</li> <li>• Have there been any recalls or enforcement action, or has intelligence been received regarding the establishment?</li> <li>• Due diligence systems</li> <li>• Resilience and contingency plans</li> <li>• Allergen management policies and procedures</li> <li>• Does the establishment have a complaints handling procedure in place? Do they carry out trend analysis and how is this reviewed and addressed?</li> </ul>	<p>Poor track record of compliance. Little or no technical knowledge.</p> <p>No appreciation of hazards/no quality control.</p> <p>Lack of awareness of relevant food law and associated controls.</p> <p>No staff training/supervision.</p> <p>Evidence of previous formal enforcement action.</p> <p>Disproportionate number of justified complaints since last inspection.</p> <p>Unwillingness to act on advice or enforcement action.</p> <p>Unreactive approach to dealing with any non-compliance, resulting in immediate risk to consumers or could give rise to potentially fraudulent actions/activities.</p>	<p>Varying record of compliance. Staff training / supervision is inadequate.</p> <p>Poor understanding of relevant food law and necessary controls.</p> <p>Significant number of justified complaints.</p> <p>Reluctance to engage.</p> <p>Slow to respond to and rectify any non-compliances in a timely manner, resulting in the potential for consumers to be misinformed.</p>	<p>Satisfactory record of compliance</p> <p>History of minor non-compliance only</p> <p>Staff can demonstrate a basic understanding of relevant food law and necessary controls.</p> <p>Complaint levels do not cause concern either due to volume or nature.</p> <p>Good attitude to compliance but may struggle to implement and maintain legal requirements and may rely on LA support.</p>	<p>Good record of compliance.</p> <p>Staff can demonstrate good awareness of relevant food law and necessary controls.</p> <p>Low level of complaints not of a serious nature. Fully engaged with a good attitude towards compliance.</p>	<p>Excellent record of full and continued compliance</p> <p>Internal/external technical advice available.</p> <p>Minor complaints with evidence of a proactive approach to handling and reviewing complaints.</p> <p>Evidence of a proactive approach / attitude.</p> <p>Fully engaged, understands law and responsibility to ensure compliance.</p> <p>Full appreciation of the risks associated with the business.</p>

Compliance risk factors	Guidance	1 Serious non-compliance	2 Significant non-compliance	3 Broad compliance, with only minor non-compliance	4 Good compliance	5 High and sustained compliance
<b>Current compliance level</b>	<p>This factor considers the level of compliance observed based on the official control that is being undertaken and/or any complaints or intelligence received about the business.</p> <p>Consider the following:</p> <ul style="list-style-type: none"> <li>Have issues found during the previous inspection been resolved?</li> <li>Assurance – consider what advice has been sought?</li> <li>Levels of compliance with other areas of legislation not related to food standards, for example food hygiene or fair-trading issues</li> </ul>	General failure to comply with statutory obligations including safety critical matters or matters that involve deliberate deception for financial or market gain.	Significant non-compliances with statutory obligations relating to technical non-compliance matters.	Satisfactory level of compliance. Minor technical (non-safety critical) non-compliances only.	Good level of compliance with statutory obligations.  Any non-compliances found are minor in nature.	High level of compliance with statutory obligations  Conforms to relevant industry good practices.
<b>Management systems &amp; procedures</b>	<p>This factor considers any internal/external quality management systems and assurances that are in place, and how these are implemented and verified.</p> <p>When considering this factor there is an expectation that this factor is proportionate to the size, scale and nature of the establishment.</p> <ul style="list-style-type: none"> <li>Good understanding of processes and hazards among management and workforce</li> <li>Any changes to activities since last visit have been reflected in the management system</li> <li>Evidence of adequate controls in place at relevant stages of production.</li> <li>Internal assurance procedures (for example, specifications and label checks)</li> <li>Third party assurance schemes</li> <li>Allergen management.</li> <li>Food Safety Management</li> <li>Training and records management</li> <li>Primary Authority partnership</li> <li>Recognition of good practice</li> <li>How do they keep up to date on the risks associated with their establishment?</li> <li>Are there internal/external audits that have taken place and if so, what were the findings?</li> <li>Quality Assurances checks</li> <li>If there are third party assurances is there any documentation to review?</li> </ul>	<p>No management system or procedures in place, or system not being implemented.</p> <p>Failure to identify and address risks.</p> <p>Non-compliance with systems/procedures may lead to serious repercussions/ immediate risk to consumer health.</p>	<p>Management systems not in place or inadequate for the nature, size or scale of the business.</p> <p>Evidence of system/procedures not being used where non-compliance could affect consumer health or mislead consumers.</p>	<p>Appropriate management systems and procedures in place with minor gaps.</p> <p>Systems and procedures are followed and are subject to appropriate review.</p>	<p>Good management systems and procedures in place covering the majority of risks.</p> <p>System and procedures are internally audited.</p> <p>For some establishments this could include supplier quality assurances, food traceability and food assurance schemes.</p>	<p>Effective management systems and assurance procedures in place which appropriately address risks.</p> <p>Demonstrable ongoing commitment to ensuring appropriate management controls are in place, including ongoing verification of the management control system.</p> <p>For some establishments, this may be achieved through membership of recognised industry assurance schemes.</p>

Compliance risk factors	Guidance	1 Serious non-compliance	2 Significant non-compliance	3 Broad compliance, with only minor non-compliance	4 Good compliance	5 High and sustained compliance
<b>Allergen Information</b>	<p>This factor considers a food business's understanding and implementation of allergen controls and information requirements.</p> <p>Consider the policies and procedures in place that link the provision of allergen information to the presence of allergens as an intentional ingredient in food. Also consider the potential for the unintended presence of allergens in food and associated precautionary allergen labelling.</p> <p>Consider whether allergen management is adequately addressed within a food safety management system, taking into account the specific nature of the business. Are staff aware of the 14 regulated allergens and are they able to provide, accurate, up to date information on them?</p> <ul style="list-style-type: none"> <li>• Are pre-packed, non-prepacked and pre-packed for direct sale foods labelled in accordance with legislation?</li> <li>• Are records kept of ingredients to ensure allergen information can be passed on to customers?</li> <li>• Has a risk assessment for allergen cross-contamination been carried out?</li> <li>• Are the controls to control/prevent allergen cross contamination being implemented and are they adequate? Do they match the risk assessment?</li> <li>• Does the business use Precautionary Allergen Labelling based on the findings of a risk assessment?</li> <li>• Are procedures in place to ensure any product/ingredient changes are accurately recorded and reflected in allergen information?</li> <li>• Is accurate allergen information provided to consumers?</li> <li>• Is there a procedure for ensuring allergen information is kept up to date? How are staff updated?</li> <li>• For establishments who do not take physical ownership of food, how do they ensure allergen information requirements are complied with?</li> <li>• If food is delivered, how do they ensure that allergen information is passed to consumers?</li> </ul>	<p>Poor understanding and implementation of allergen controls, labelling and information requirements that are relevant to the food establishments activities.</p> <p>No allergen controls, policies or procedures in place, or systems are not effectively implemented.</p> <p>Presence of undeclared/ unintended allergens that could pose a risk to consumers.</p>	<p>Insufficient understanding around allergen controls, labelling and information requirements. and measures to be taken to mitigate these to safeguard consumers.</p> <p>Evidence of non-compliance resulting in concerns around potential risk posed to consumers.</p>	<p>FBO demonstrates satisfactory understanding and implementation of allergen controls and labelling and information requirements.</p> <p>No non-compliances which result in concerns around potential risk to consumers.</p>	<p>Evidence of good understanding of allergen controls and labelling and information requirements which is supported by appropriate policies and procedures.</p> <p>No non-compliances which result in concerns around potential risk to consumers.</p>	<p>FBO demonstrates thorough understanding and implementation of allergen controls and labelling and information requirements</p> <p>System of allergen controls in place that is specific to the nature of the business and FBO is able to demonstrate all necessary steps to manage allergens are taken</p> <p>Proactive approach to allergen issues and regular monitoring to ensure continued effectiveness of controls.</p> <p>No non-compliances which result in concerns around potential risk to consumers.</p>



### A1.3 Decision Matrix

The decision matrix determines the frequency of official controls that each establishment must be subject to.

The individual risk factor scores for Inherent Risk Profile and Compliance Assessment are averaged and rounded up or down to the nearest whole number to produce a single overall score for each risk category.

Before applying these two scores to the decision matrix, the following rule must be considered. The rule is to provide assurance in relation to poor performing establishments and ensure they are prioritised in the decision matrix due to the higher risk they present:

Table: Scenario rule

Scenario	Rule
An establishment with one or more serious non-compliance score (score of 1) under the Compliance Assessment risk category	Overall Compliance Assessment score of 1 given regardless of the other compliance scores.

The two final scores must then be plotted on to the decision matrix to determine the minimum frequency at which official controls must be carried out.

Table: Decision Matrix

Inherent Risk Profile	5	12 Months	24 Months	60 Months	72 Months	120 Months
	4	Priority Intervention 6 Months	12 Months	36 Months	48 Months	72 Months
	3	Priority Intervention 6 Months	12 Months	24 Months	36 Months	60 Months
	2	Priority Intervention 3 Months	Priority Intervention 6 Months	12 Months	24 Months	36 Months
	1	Priority Intervention 1 Month	Priority Intervention 3 Months	Priority Intervention 6 Months	12 Months	24 Months
		1	2	3	4	5
		Compliance Assessment				



Competent Authorities can use any of the methods and techniques of official controls as long as they are effective and appropriate in the circumstances. This includes the option for interventions to be carried out remotely in all establishments other than those subject to priority intervention.

The overarching principle is to ensure that the most effective official control activity is chosen and that the Officer is satisfied that through either a single method, or a combination of methods and techniques, compliance with food law can be verified.-  
UPDATE END-

DRAFT