

# Food Standards Agency

## Enforcement Policy in Approved Meat Plants

### 1. Background

The Food Standards Agency (FSA) has responsibility for the enforcement of legislation in England and Wales (DAERA for Northern Ireland) relating to public health, animal welfare at slaughter and animal health controls in approved establishments under veterinary control.

### 2. FSA Strategic Plan 2015 to 2020

The FSA's main objective, as set out in the Food Standards Act 1999, is to protect public health from risks which arise in connection with the consumption of food (including risks caused by the way in which it is produced or supplied) and otherwise to protect the interests of consumers in relation to food.

### 3. FBO

This will be achieved through putting the consumer first, adopting a science and evidence based approach to the work we undertake and being open and independent in what we do.

### 4. Corporate Purpose

Through inspection, audit and verification we seek to provide assurance that FBOs (FBOs) Business Operators (BOs) Occupiers / Operators control risks to public health, animal health and animal welfare during meat production in slaughterhouses, cutting plants, game handling establishments and those establishments co-located to these premises (meat products, meat preparations, mincemeat and cold stores).

### 5. Regulators' Code

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

The principles of the Regulators' Codes require the FSA to:

- carry out its activities in a way that supports those they regulate to comply and grow
- provide simple and straightforward ways to engage with those it regulates and hear their views
- base its regulatory activities on risk
- share information about compliance and risk
- ensure clear information, guidance and advice is available to help those it regulates to meet their responsibilities to comply
- ensure its approach to regulatory activities is transparent.

## **6. Policy Aim**

This document explains the enforcement policy that FSA officials (Authorised Officers (AOs) / Persons / Inspectors) apply when taking enforcement action against FBOs / BOs / Occupiers of food premises contravening regulatory requirements. The aim of the policy is to ensure that enforcement decisions are transparent, accountable, proportionate, consistent and targeted at cases where action is needed and that the health of consumers and welfare of animals are protected.

Enforcement activity will be taken in accordance with the Code for Crown Prosecutors in England and Wales, together with guidance issued by the Home Office and the Meat Industry Guide.

AOs will also have due regard to the Food Law Code of Practice made under Section 40 of the Food Safety Act 1990 (as amended), Regulation 26 of the Food Safety and Hygiene (England) Regulations 2013, Regulation 24 of the Food Hygiene (Wales) Regulations 2006, Regulation 6 of the Official Feed and Food Controls (England) / (Wales) Regulations 2009 and associated practice guidance. To ensure consistency and proportionality, FSA staff will adhere to all procedures set out in the MOC when taking enforcement action.

## **7. FSA Strategy for FBO Compliance and Enforcement**

To achieve the objectives of this Policy, the FSA has developed an FBO Compliance and Enforcement Strategy. Through a process of advice / education or formal action, the strategy aims to:

- ensure our officials are fully trained, competent and supported in their role in the regulatory process

- guide and help FBOs understand their legal responsibilities under food hygiene and other related legislation and where they experience problems with achieving compliance
- advise and educate FBOs where they are having problems achieving the objectives of the legislation and need to take further responsibility for the production of safe food
- address non-compliances through effective application of the enforcement hierarchy
- ensure that where other means of enforcement fail to deliver compliance, non-compliances will be referred for investigation and formally investigated by suitably trained officers in accordance with the provisions of the Police and Criminal Evidence Act 1984 and their related Codes.

FBOs that pose the greatest potential risk to public health, animal health or welfare will be identified and the minimum standards expected of them will be made clear, together with any sanctions that will be imposed if acceptable standards are not achieved.

The FSA will monitor FBO audit scores in the categories of hygienic production, environmental hygiene and confidence in FBO food safety management systems based on HACCP principles. Depending on the number and severity of non-compliances found at audit, this will generate immediate enforcement action and a series of follow up visits, some of which may be announced and some unannounced, by either the Veterinary Auditor themselves or through a competent Official Auxiliary trained in unannounced inspection.

Routine official controls will continue to be applied in the normal way and FBO compliance will be monitored to ensure public health, animal health and welfare risks are safeguarded.

## **8. Intervention Protocol**

The FSA needs to ensure that all FBOs of approved meat establishments are complying with legal requirements and are taking responsibility for the production of safe meat. FSA resources are directed to non-compliant FBO establishments using non-compliances identified during official control activities outlined below:

- Results of FBO audits.
- Findings from unannounced inspections (e.g. routine or investigating complaints etc).
- Establishment level inspection and audit findings (serious deficiencies or where evidence of repeated stoppage exists).

The protocol also brings in a process for recommending the prompt withdrawal of approvals as the ultimate sanction for poor performance by FBOs, whilst taking an open and transparent approach to informing FBOs about what we are doing and why, in accordance with risk-based assessment methodology.

### **9. FSA Audit of FBO compliance within the following areas of control:**

- Good hygiene practices including proper and continuous application of procedures in respect of food chain information, the design and maintenance of premises and equipment, pre-requisites for operational hygiene, personal hygiene, training in hygiene and work procedures, pest control, water quality, temperature control and controls on food entering and leaving the establishment and any accompanying documentation.
- The application of HACCP based procedures, to verify that they are continuously and properly applied, in particular whether products of animal origin comply with community legislation on microbiological criteria and residues, contaminants and prohibited substances and do not contain physical hazards such as foreign bodies.
- The identification of animals and meat and to ensure traceability up and down the food chain.
- Procedures to ensure meat is fit for human consumption and does not contain patho-physiological abnormalities or changes, has no faecal or other contamination and does not contain Specified Risk Material (SRM).
- Procedures for handling and disposing of Specified Risk Material and Animal By-products.
- Relevant Community and National rules on the protection of animal welfare at slaughter and during transport.

### **10. Principal inspection tasks of the FSA**

- Inspection of food chain information.
- Ante-mortem inspection of all animals accepted for slaughter by the FBO, including clinical examination of suspect animals.
- Inspection of animal welfare standards.
- Post mortem-inspection of all carcasses and edible offal.
- Inspections of the removal and disposal of SRM and other animal by-products.

- The taking and identification of samples for laboratory testing for residues of veterinary medicines, zoonoses and zoonotic agents including TSEs and trichinella.
- Application of the Health Mark to carcasses when official controls have not identified any deficiencies that would render the meat unfit for human consumption (Regulation (EC) Regulation 854/2004, Article 5, Para 2 and Annex I, Section II, Chapters II, III and V).
- Surveillance, sampling and reporting of notifiable disease and supervision of emergency controls for animal disease outbreaks e.g. Foot and Mouth Disease.

### **11. Frequency of Official Controls**

The frequency of audit will be based on a risk assessment of individual premises. Regulation (EC) 854/2004 requires that the nature and intensity of auditing tasks depends on an assessment of risk. To make this assessment the FSA takes account of public and animal health risk, animal welfare risks and the type and throughput of the processes carried out.

The FBO's past record of compliance with the law, the way that the individual business is managed and their response to non-compliances identified by the FSA will contribute to determining the frequency of audits, and placing the FBO in a specific audit category.

The audit frequency for establishments that are subject to approval is set out in Chapter 4 of the MOC. Follow up audits, unannounced visits and enforcement will be conducted as per the instruction in Section 4, 15 of the MOC. A copy of the audit report will be given to the operator who should respond to the findings and agree corrective actions to be undertaken and dates for compliance to be achieved. This report will be used to update the risk assessment for the premises, which determines the date of the next audit. The latest audit frequency for individual establishments is published on the FSA website.

### **12. Unannounced Inspections**

Officials will visit without prior warning in cases of suspicion of non-compliance, or at any other time to provide assurance of compliance with all public health, animal health and animal welfare legislation. In accordance with Regulation (EC) 882/2004, Recital 13 and Article 3, 2.

### **13. Standards of Performance and Service**

After consulting with our government customers, industry clients, FSA Board and other stakeholders, we will agree our standards of performance and assess performance through monitoring, themed assessments and audit.

Joint FSA / FBO Statements of Resource provide a document tailored to the individual premises, detailing the FBO's operation and the FSA resource that will be required. The Statement of Resource records information on approval activities, operational hours, species, throughput information and FSA staffing levels to carry out statutory functions under the legislation.

FSA is subject to internal audit by auditors from the Regulatory and Legal Strategy Directorate and to external audit by the Food and Veterinary Office (FVO) of the EU Commission. Reports are published on the FSA website. Findings from internal audits are reported to the FSA Audit and Risk Assurance Committee, with FVO reports published by the European Commission.

The FSA monitors on-going performance and reports on these standards; at the end of each financial year in the FSA Annual Report and Accounts; quarterly to the FSA Board's Business Committee and quarterly to our Service Level Agreement (SLA) customers.

FSA internal audits provide assurance to the Chief Operating Officer, the Executive Management Team, the FSA Board's Business Committee and our stakeholders that enforcement activity carried out by Authorised Officers (AOs) meet the standards of performance set out generally in this Enforcement Policy and the detailed requirements, as set out in legislation and in our customer agreements.

Where FSA internal audit identifies variations from the required standard, this is reported to FSA management, including any corrective action to be taken. Audit findings and progress on implementing corrective action are both reported in summary to the FSA Operations Senior Management Team and to the FSA Audit and Risk Assurance Committee on a quarterly basis.

The Multi-Annual National Control Plan for the UK details the roles and responsibilities of the different organisations involved in monitoring compliance with, and enforcement of feed and food law, animal health and welfare rules and plant health requirements. An annual report on performance is provided to the European Commission and also published on the FSA website.

## **14. Openness**

Guidance to FBOs on compliance with the legislation is available through the Guide to the Food Hygiene & Other Regulations for the Meat Industry (MIG). Information is also available in the MOC. Both are available at the FSA website: [www.food.gov.uk](http://www.food.gov.uk)

The FSA will be open about how its charges are set. The charging legislation and arrangements are detailed in the Finance Manual and provided to FBOs of all establishments. Any proposed changes in respect of charges will be brought to the attention of FBOs and a full consultation will be undertaken.

The FSA will discuss with FBOs any failure to comply with legislation, or other problems identified during our inspections and audits. Any failure by the FBO to

comply with the relevant legislation will be dealt with in line with instruction contained in the Enforcement Chapter of the MOC.

## **15. Rights of Appeal**

Where rights of appeal exist to the Magistrates Court or First Tier Tribunal in England and Wales, this will be clearly set out on the reverse of all formal notices served at the time the action is taken.

## **16. Active Co-operation**

The FSA believes that preventative action is better than corrective action and will actively work with business to help them comply with the law. The FSA will inform the FBO when new legislation is introduced or changes to existing legislation are made, though the FBO bears the ultimate responsibility to ensure that he is aware of the current law. The likely impact on operational procedures will be discussed so that the FBO can introduce the necessary changes.

Where requested, the FSA in all of our communications will assist in explaining legal requirements and distinguish these from best practice. Reasonable time scales will be set for the FBO to achieve compliance, taking account of the risk posed to public health, animal health and animal welfare. Requirements on FBOs that go beyond the requirements of the legislation will not be imposed.

The FSA will provide a courteous, cost efficient service and encourage businesses to seek advice from us. Advice will be made available:

- directly from the Official Veterinarian (OV) and Official Auxiliary (OA) at the approved establishment,
- from the Head of Operational Delivery (HOD), Field Veterinary Coordinators (FVCs) and Audit Veterinary Leads (AVLs), and
- from the FSA, or the Rural Affairs Departments.

The FSA will work with Local Authorities, APHA and other enforcement agencies to ensure that our activities are co-ordinated to avoid any gaps, or unnecessary overlaps in inspection or delays in taking action where necessary.

## **17. Applying Proportionality to Risk**

The FSA will work with businesses, so that they understand their legal obligations. Any enforcement action taken, or remedial action required will be proportionate to the risk to public health, animal health, and animal welfare, while meeting legal obligations.

8B18. Consistency

FSA Authorised Officers (AOs) will aim to carry out their duties in a fair, equitable and consistent manner. They hold professional qualifications, are provided with on-going training and will exercise their professional judgment within a framework designed for consistency. That system includes:

- providing operational instructions via the MOC
- holding teleconferences and discussion forums with FVCs to facilitate problem solving
- contribution to Liaison Groups with Local Authorities on food and animal health issues
- providing a reactive and pro-active service to advise on any veterinary and enforcement matters via the Operations Assurance team, with systems in place to provide consistent advice and ensure that all responses are in line with the latest FSA / Rural Affairs Departments policy and legal advice.

## **18. How the FSA will enforce**

There are various sanctions the FSA can use to deal with contravention of the legislation. The choice of tool depends on the alleged offence, the severity of non-compliance, the history involved and the willingness of the FBO to comply with the legal requirements. These tools include verbal and written warnings, the service of statutory (formal) notices, detention and seizure of unfit foodstuffs and declaring meat unfit for human consumption. More serious contraventions may result in prosecution in the courts, and / or the suspension / withdrawal of the establishment's approval.

FSA officers are authorised to enforce public health, hygiene and animal welfare at slaughter legislation in approved establishments. There will be instances where the AO refers specific contraventions to other enforcement agencies cited in the legislation as the designated Enforcement Authority who has responsibility to investigate and where appropriate prosecute such offences. e.g. Local Authority (LA) Trading Standards / Environmental Health Departments, Environment Agency, Scottish Environment Protection Agency, Veterinary Medicines Directorate, Animal & Public Health Agency, Rural Payments Agency and Health and Safety Executive.

Where the OV is presented with information relating to alleged offences occurring outside the premises that cross Local Authority boundaries or are of such scale that they require coordination centrally, the issues will be passed to the relevant FSA Divisions in London, Cardiff or Aberdeen for appropriate action. Issues may also be passed to the Welsh Government Department for Rural Affairs and the Scottish Government Rural Directorate (SGRD).

Advice to FBOs from FSA AOs will be expressed clearly and simply, and provided in writing on request. The advice will explain why remedial action is necessary, specify any relevant time scales for compliance and clearly distinguish legal requirements from those which are best practice.

An OV will be available to provide guidance on compliance and good hygiene practices at all stages of the enforcement process. AOs will generally invite the FBO to discuss the circumstances of the contravention before formal enforcement action is taken e.g. the service of a formal enforcement notice, or where a referral for investigation is made. This may, however, not be possible where the FSA takes immediate action to protect public health, animal health or animal welfare, or to prevent the destruction of evidence.

Where immediate action is taken, the FSA will always state the reasons for such action at the time. These reasons will also be confirmed in writing where a formal enforcement notice is issued under the domestic food hygiene or animal health legislation.

### **19. When does the FSA take Enforcement Action?**

The FBO is responsible for the safe production of meat and the welfare of animals at their premises. Advice is available from the Guide to the Food Hygiene & Other Regulations for The Meat Industry (MIG) and from the OV.

Enforcement action will be initiated when the FBOs food safety management systems or standard operating procedures are failing to protect public health, animal health or animal welfare and will follow a sequence of events known as the “Hierarchy of Enforcement”, except where stated otherwise in this policy.

The aim of enforcement action is to secure compliance through co-operation, advice and persuasion. However, AOs will take immediate formal enforcement action where FBOs do not adequately control risks to public health, animal health or animal welfare. All instructions regarding the way in which the enforcement approach should be progressed are detailed within the MOC.

AOs within plants have a wide range of statutory powers that can be drawn on to enforce the legislation. The point at which the AO uses these powers and the particular powers selected will depend on the risk posed to public health or animal welfare, the previous history of the FBO and their willingness to comply with the legal requirements.

Particular enforcement priorities are:

- repeated presentation of SRM
- SRM being consigned from the premises still attached to the meat (except in the case of VC being consigned to approved cutting premises)
- failure to test bovine animals which require BSE testing
- contraventions of WATOK, especially where non-compliance causes avoidable excitement, pain, suffering or injury to an animal

- breaches of domestic and European food hygiene legislation which present an immediate risk to public health
- repeated failures to follow legislative requirements
- obstruction of FSA personnel engaged in official duties
- failure to comply with all formal Notices
- operating without obtaining approval for an additional activity
- operating with approval, for the wrong species
- operating with approval, but with no official controls staffing.

Where enforcement of hygiene issues relate to structural deficiencies within the premises, the FBO will be given realistic timescales, within which to carry out maintenance work, taking account of the risk to the safety of the meat for consumption.

It should be noted that whilst the OV can provide advice on legislative compliance, only the courts can interpret the law.

## **20. Informal Enforcement**

Most day-to-day enforcement will be achieved through verbal discussion or agreement following daily checks and routine audits. Reasonable timescales to rectify deficiencies will be established with the FBO based on the risk. Where the FBO fails to rectify the contravention, enforcement will be escalated.

## **21. Written Advice and Guidance.**

Where the FBO has asked for advice to be put in writing, or they have not followed previous verbal advice, the AO will provide written clarification on:

- relevant legal requirements
- the contraventions that have been identified
- any risks that these may pose to public health or animal welfare
- corrective action required
- time scales for compliance
- best practice requirements that may differ from legal obligations.

Where changes are required, the AO will offer guidance on the legal requirements that must be met, but it is ultimately the responsibility of the FBO to achieve compliance by their chosen method.

## **22. The Health Mark and Identification Mark**

Under the provisions of Article 5 Regulation (EC) 853/2004, FBOs may only place products of animal origin on the market provided that they have been produced in accordance with the requirements of Regulations (EC) 852/2004, 853/2004, 854/2004, 2073/2005 and 2075/2005 and been appropriately and correctly marked with a health mark or an identification mark.

The Health Mark must be applied under the supervision of the OV. There will, however, be circumstances where the Health Mark will not be applied to red meat. These include the following:

- where the animal has not undergone both ante and post mortem inspection in accordance with Annex I, Section I, Chapter III, paragraph 2 (a) EC Regulation 854/2004, and
- where there are grounds for declaring meat unfit for human consumption, (see decisions concerning food chain information, decisions concerning live animals and decisions concerning meat in Regulation (EC) 854/2004, Annex I, Section II, Chapters II, III and V), or
- where the meat fails to comply with the provisions of Article 14.5 of Regulation (EC) 178/2002, in that the food is unacceptable for human consumption according to its intended use, for reasons of contamination, whether by extraneous matter or otherwise, or through putrefaction, deterioration or decay.

The Identification Mark (Article 5, 2 of Regulation (EC) 853/2004) must only be applied by the FBO to products in poultry slaughterhouses, all cutting and further processing plants and to red offal where the product has been manufactured in accordance with the requirements of Regulation (EC) 853/2004 in establishments meeting the requirements of Article 4 of Regulation (EC) 853/2004.

Where the product has not been manufactured in accordance with the requirements detailed above, any application of the Identification Mark to meat will contravene Article 5, 2 of Regulation (EC) 853/2004 and may constitute an offence under Regulation 19 of the Food Safety and Hygiene (England) Regulations 2013 or Regulation 17 of the Food Hygiene (Wales) Regulations 2006, and may be referred for investigation.

## **23. Formal Enforcement**

Where the FBO has not complied with previous verbal and / or written advice, the AO may seek compliance by serving a formal statutory notice. Such notices will specify the grounds for believing the FBO is failing to comply with the legislation, the precise nature of the alleged contravention, and the measures to be taken to secure compliance within certain timescales.

Statutory Notices available under the Food Safety and Hygiene (England) Regulations 2013 and the Food Hygiene (Wales) Regulations 2006 include Remedial Action Notices, Hygiene Improvement Notices, Hygiene Emergency Prohibition Notices and Hygiene Emergency Prohibition Orders. Such notices can only be issued for contraventions of the specified community or national provisions and cannot be used for failure to comply with best practice guidelines.

Statutory Notices are also available under:

- The domestic Animal By-Product (Enforcement) Regulations:
  - Notice For The Disposal of Animal By-Products,
  - Notice to require Cleansing and Disinfection,
  - Notice Prohibiting Animal By-Products being Brought onto The Premises
- The Welfare of Animals at the Time of Killing Regulations:
  - | • WATOK Enforcement Notices.

## **24. Hygiene Improvement Notices (HINs)**

Where the hygiene contravention does not pose an imminent risk to public health, where the FBO's food safety management systems are deficient, or where structural, training or maintenance issues need rectifying in the medium to longer term, it will be more appropriate to serve a HIN.

Generally, HINs will only be served after verbal and written advice has failed, and:

- evidence still exists of a contravention of the Hygiene Regulations; and
- taking formal action is proportionate to the risk to public health.

However, a HIN may in certain circumstances be served straight away where history indicates that an informal approach will not be successful.

When the HIN has been complied with, the AO will formally write to the FBO confirming that they are satisfied with the work carried out. If compliance is not achieved within the time specified by the Notice, an offence may have been committed. A referral will be made by the AO that a formal investigation is pursued for the contravention of the legislation, together with the breach of the notice.

Where the FBO is aggrieved by the service of a HIN, a right of appeal exists to the Magistrates Court in England and Wales. The Notice will be suspended pending the outcome of the appeal.

## **25. Remedial Action Notices (RANs)**

Where the AO considers that the FBO must take immediate action to remedy a contravention of the Hygiene Regulations, the AO will first provide verbal advice to the FBO on how to comply. Where the FBO ignores this request or the AO is not satisfied with the action taken, and they remain concerned that the requirements of the Hygiene Regulations are being contravened or that inspections performed under these Regulations are being hampered, they may serve a RAN to require immediate compliance by the FBO. An AO does not need to send a letter of advice before serving a RAN, provided that the circumstances which the RAN intends to address required immediate action.

RANs are most suitable where a contravention of the Hygiene Regulations exist that poses a potential and / or actual immediate risk to public health and urgent action is needed, or where official controls staff are unable to perform adequate inspections. They may also be used for continuing offences that require urgent action.

RANs require immediate action by the FBO, and can be used to:

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

RANs will be withdrawn only when the AO is satisfied that the FBO has addressed the deficiency identified in the Notice. Any evidence that the notice has been breached may constitute an offence and the AO will refer the substantive breach of the legislation as well as the breach of the notice for a criminal investigation.

If an FBO feels aggrieved by the service of a RAN, a right of appeal exists to the Magistrates Court in England and Wales. The appeal rights will be set out on the back of the notice.

## **26. Hygiene Emergency Prohibition Notices (HEPNs) and Hygiene Emergency Prohibition Orders (HEPOs)**

These will be served where there is an imminent risk of injury to health (i.e. the health risk condition is satisfied), or where there is no, or low, confidence that the FBO will comply with a RAN and the backing of the court is necessary.

The health risk condition will be fulfilled where there is a risk of injury to health from a process, treatment, the construction of the premises or equipment used for the purposes of the business. The service of an HEPN will provide the FBO with a day's notice of the officer's intention to apply to the Court for the Magistrate to issue an HEPO.

An application for the Order must be made within 3 days of the service of the HEPN and if granted by the court, will have the effect of affirming the Notice that had stopped the operation. If the Court does not agree with the application, or the FBO suffers loss by reason of complying with the Notice where the FSA does not apply for the HEPO within the 3-day period, then the FSA may be liable to pay the FBO compensation. The HEPO will remain in force until the AO is satisfied that the imminent risk has been removed. A breach of the Notice will constitute an offence.

Where the FBO is aggrieved by the decision of the Magistrate in issuing an HEPO, they may appeal to the Crown Court.

## **27. Hygiene Prohibition Orders**

Where:

- an FBO has been convicted of an offence / offences under the Food Safety and Hygiene (England) Regulations 2013 or the Food Hygiene(Wales) Regulations 2006, and
- the Court is satisfied that the “health risk condition” is fulfilled with respect to the food business concerned, or
- the Court thinks it proper to do so in all the circumstances of the case,

The FSA may apply to the court for it to issue an Order that imposes a prohibition on the FBO from participating in the management of any food business, or any food business of a class or description specified in the order (Regulation 7). The circumstances where the FSA may apply to the Court to issue an Order to Prohibit a person will be in line with the Food Law Code of Practice and Practice Guidance, for example; where repeated offences are identified for failure to clean, maintain equipment, disregarding health risks or knowingly using unsafe food.

## **28. Detention and Seizure Provisions – Food Safety**

Where the OV needs to carry out any examination / investigation, or take samples from any animal or food of animal origin, they may detain any animal or food by serving a formal detention notice on the FBO, their duly authorised representative, or the person in charge of the food.

- If after the investigation / sample or further examination the meat is required to be declared unfit for human consumption, the FBO will be required to treat the meat as an animal by-product (see below).
- If satisfied that the food is fit for human consumption, the detention notice will be withdrawn and the meat can be health or identification marked.

- Where the meat has already been health or identification marked, and evidence comes to light that any aspect of Regulation (EC) 854/2004, Annex I, Section II, Chapters II, III or V) that should have been applied prior to health marking / ID marking has been breached, the AO should seek voluntary surrender of the meat by the FBO and declare it unfit.
- Where food has deteriorated or becomes non-compliant after Health / ID Marking and surrender is not forthcoming, the OV must certify the food as not having been produced / processed or distributed in compliance with the requirements of the Hygiene Regulations and formally seize the food to seek a Condemnation Order from a Magistrate.

## 29. Declaring Meat Unfit

The health mark must not be applied in circumstances where Regulation (EC) No 854/2004, requires that the meat is declared unfit for human consumption. In such circumstances where the meat cannot be rectified so that it is compliant, it will no longer be considered food. The material should not be formally detained under food detention provisions and should be disposed of by the FBO as an animal by-product in accordance with the requirements of the European and domestic animal by-product regulations.

The OV will declare meat unfit for human consumption where any of the matters specified in Annex I, Section II, Chapters II, III and V of Regulation (EC) No 854/2004 (decisions concerning food chain information, live animals and meat) are satisfied, including:

- where food chain information is not available, or where it demonstrates that the rules on veterinary medicinal products have not been complied with; that the animal comes from a holding subject to a movement prohibition or has a condition adversely affecting human or animal health
- where the animal is not correctly identification and its origin is not reasonably ascertainable
- where the animal has a disease communicable to animals or humans through handling or eating the meat
- where it has derived from an animal that has not undergone ante or post mortem inspection
- contains SRM
- where it shows soiling, faecal or other contamination
- where in the opinion of the OV, after examination of all relevant information, it may constitute a risk to public or animal health or is for any other reason

not suitable for human consumption, or for any other matters falling under the decisions concerning meat are present

- where characteristics that pose a health risk are identified in wild game at post mortem inspection
- where any of the specific hazards identified in Annex I, Section IV, Chapter IX of Regulation (EC) 854/2004 are present.

In addition, meat cannot be health marked where it fails to comply with the provisions of Article 14, Paragraph 5 of Regulation (EC) no 178/2002 in that the food is unacceptable for human consumption according to its intended use.

In circumstances where meat is declared unfit for human consumption, it must be stained and disposed of by the FBO in accordance with the European and domestic Animal By-product Regulations. Where the FBO fails to comply with this requirement, a "Notice for the Disposal of Animal By-products" will be served requiring the FBO to dispose of the material. Where the formal notice is breached, the matter will be referred for investigation and the FSA may arrange for the notice to be complied with at the expense of the FBO.

### **30. Animal Welfare Contraventions**

Where an animal is subjected to any avoidable excitement, pain or suffering these matters will be dealt with swiftly. Formal WATOK Enforcement Notices (WENs) are available under the welfare at slaughter legislation and these can be used to require immediate rectification of any welfare breach or risk to animal welfare. Where minor contraventions are witnessed, the AO will verbally advise the Business Operator of the contravention that has been witnessed and confirm their findings in writing in most cases within 5 working days.

WENs can also be used as part of a hierarchy, such as where (BO) fails to comply with the Standard Operating Procedure (SOPs) requirement and there is no immediate evidence of avoidable excitement, pain or suffering having been committed.

If the OV considers the welfare non-compliance as serious, they will recommend the referral for investigation of the person / or persons who caused or permitted the activity to take place and can take action to suspend or revoke the slaughterers Certificate or Temporary Certificate of Competence (CoC / TCoC).

#### **Seizure and Detention**

Inspectors have powers to:

- seize and detain carcasses / equipment / instruments for further examination, investigation or testing,

- seize any computers and associated equipment for the purposes of copying data.

However, where items have been seized, Inspectors will provide to the person appearing to be responsible for the item, a written receipt identifying the items seized.

### **31. Appeals**

The right of appeal against:

- the suspension or revocation of a Certificate of Competence,
- the suspension or revocation of a Temporary Certificate of Competence,
- the service of a WEN, and
- the refusal to issue a completion notice,

are all to the First Tier Tribunal.

### **32. Referral for Criminal Investigation**

The FSA will usually refer matters for investigation to FSA Legal Services Group in the following circumstances:

- contraventions of SRM controls
- contraventions of the Welfare of Animals at the Time of Killing (England) Regulations 2015 and Welfare of Animals at the Time of Killing (Wales) Regulations 2014
- contraventions of Regulations (EC) 1069/2009 and (EC) 142/2011 and the Animal By-products (Enforcement) (England) Regulations 2013 and Animal By-products (Enforcement) (Wales) Regulations 2014
- contraventions of Regulations (EC) 178/2002, 852/2004, 853/2004, 2073/2005, 2075/2005, the General Food Regulations 2004, The Food Safety and Hygiene (England) Regulations 2013, The Food Hygiene (Wales) Regulations 2006, that leads to an immediate risk to public health
- deliberate or persistent failure to comply with the requirements of the legislation
- obstruction of an AO acting in the execution of their duty
- failure to comply with any formal enforcement notice

- failure to comply with BSE testing requirements.

The protocol for referral for investigation is set out in the Enforcement Chapter of the MOC.

Where an AO considers that an incident requires a referral for investigation, the matter will be referred to FSA Legal Services, who will consider whether a formal investigation is appropriate and consistent with FSA policies.

In England and Wales, the decision whether or not to prosecute for contraventions of hygiene rules is made by an experienced prosecutor in the Legal and Investigations Team, after investigation by an FSA Investigating Officer.

The decision whether or not to prosecute for contraventions of the Welfare of Animals at the Time of Killing Regulations, Animal By-Product Regulations and monitoring under the TSE Regulations will be made by a lawyer in the Crown Prosecution Service on behalf of Defra Legal Services, on the basis of an investigation carried out by the FSA Investigation Officers.

### **33. Code for Crown Prosecutors (CCP)**

Lawyers in both the CPS and the FSA apply the Code for Crown Prosecutors (CCP) produced by the Director for Public Prosecutions. The CCP is a two part test which is sometimes referred to as the “Full Code Test”.

The first stage is the Evidential Stage. The lawyer must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction in relation to each offence. This involves making an assessment of the strength of both the prosecution evidence (collected as a result of an investigation and including any interview with the suspect), and any representations or evidence put forward by the suspect in case this may amount to a defence. If the lawyer thinks that there is insufficient evidence, review of the file will stop at this point.

If there is sufficient evidence in respect of at least one offence, the lawyer will go on to consider the Public Interest Stage. The lawyer must consider various factors including:

- The seriousness of the offences (taking into account both the culpability (blameworthiness) of the suspect, and any harm to the victim). “Culpability” may include considering any steps taken by the suspect – both at the time of the offences and since the offences – which would mitigate the extent to which they were to blame for the offences. “Harm” may include considering what potential harm to the public may have resulted from the offence;
- Whether prosecution may have an impact on the community;
- Whether prosecution is a proportionate step, taking into account different factors including the likely cost of taking the matter to court.

Account will also be taken of FSA recommendations, but the decision-making process will be an entirely independent one.

### **34. Simple Cautions**

Simple Cautions (previously known as Formal Cautions) may be considered only when all the appropriate prosecution criteria are met, the FBO admits the offence, but the circumstances surrounding the infringement are such that a more lenient approach to prosecuting is appropriate. The Caution will be cited as an example of previous contraventions at Court, and where the FBO is subsequently found guilty of a similar offence, the Court will take the Caution into account when sentencing. All simple cautions will follow the criteria laid down in MoJ Guidelines. If the decision to offer a simple caution is rejected by the FBO, then the file will be progressed with a recommendation to prosecute.

### **35. Suspension / Withdrawal of Establishment's Approval**

Under Regulation (EC) 882/2004, Article 32(2) (e) the approval of an establishment must be kept under review by the competent authority and this review may be routine or targeted.

If it is found that there is serious deficiency or repeated stoppage, EU Regulations require that action should be initiated to withdraw the establishments' approval. If however, the FBO can guarantee future production and that the deficiencies will be resolved within a reasonable timescale, the FSA may alternatively suspend the establishment's approval. However, if the FBO can provide these guarantees, deficiencies can be resolved immediately and there will be no future stoppages, then approval may continue.

The FSA will as a matter of course make use of appropriate enforcement tools at their disposal to control any food hazards. However, where such action fails and the OV is not satisfied that the specific deficiencies will be rectified in the future, a case will be put forward to withdraw the approval of the establishment.

### **36. Rights of Appeal**

Where the FSA has been minded to withdraw or suspend the approval of an establishment, or refuses to grant a conditional or full approval, a right of appeal exists under the domestic Official Feed and Food Control Regulations. Appeals must be brought within one month of the date on which the notice of the decision was served on the FBO and the FBO may continue to operate during the appeal period to any existing enforcement sanctions imposed on them.

### **37. Imposing Conditions**

The domestic Official Feed and Food Controls Regulations also make provision to allow the competent authority to impose separate conditions for the protection of public health where an approval is refused or withdrawn and the FBO has appealed against this decision.

The conditions will not replicate existing requirements under the EU Food Hygiene Regulations, or have the effect of preventing the FBO from operating. The FBO can only appeal against the decision to impose a condition by way of a judicial review.

In the case of non-compliance with a condition issued under this provision of the Regulation, the FBO's right to continue operating pending the appeal would automatically cease. Should the FBO then refuse to cease operating, an offence would be committed and an injunction from the Court restraining the FBO from operating would be sought.

### **38. Setting Conditions**

Examples of conditions that may be set include:

- imposing conditions on throughput, e.g. restricting the numbers of livestock processed in a given period
- imposing conditions to restrict specific activities at the establishment, e.g. restricting the processing of a particular species of animal, or size of animal
- imposing conditions on the dispatch of carcasses, e.g. checking the temperature of carcasses prior to despatch from the slaughterhouse.

### **39. RIPA**

The FSA is a public body that can authorise Directed Surveillance and the use of Covert Human Intelligence Sources (CHIS). It cannot authorise "Part Three – Property Interference". The circumstances in which such surveillance is necessary will be rare, and should be discussed with the SIO and Investigations Manager in the first instance.

### **40. Application of the Policy**

All officials (AOs) will adhere to the policy when making enforcement decisions. It will be read in conjunction with relevant guidance on enforcement contained within the MOC and applicable legislation.

Any intended departure from this policy in exceptional circumstances must be referred to and be fully supported by FSA Senior Managers.

In cases of an emergency, or where exceptional conditions prevail; for example a notifiable disease outbreak, the FSA may suspend all or part of this policy where necessary, in order to achieve effective running of the service, where there is a risk of injury, or risk to the health of FSA employees or members of the public.

#### **41. Complaints**

Complaints about the service we provide will be dealt with under the FSA complaints procedure. This explains the rights of complaint, details of the process and the likely time scales involved.

A copy of the Complaints procedure 'How to complain or make comments about our service' can be obtained from the FSA York, Kings Pool, Peasholme Green, York, YO1 7PR.

#### **42. Review**

This document will be subject to an annual review by FSA Legal, with changes made as and when required.