

# **Food Law**

## **Code of Practice (Wales)**

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**(January 2018)**

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**Laid before National Assembly for Wales pursuant to section 40 of the Food Safety Act 1990 and regulation 6 of the Official Feed and Food Controls (Wales) Regulations 2009**

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## Chapter 1 – Introduction

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This Food Law Code of Practice (Code) is issued under section 40 (1) of the Food Safety Act 1990 (the Act), regulation 24 of the Food Hygiene (Wales) Regulations 2006<sup>1</sup>, and regulation 6 of the Official Feed and Food Controls (Wales) Regulations 2009<sup>2</sup>, which empower the Welsh Ministers to issue codes of practice concerning the execution and enforcement of that legislation by Food Authorities. It relates to Wales only.

Legislation relating to Official Controls requires the “Competent Authority” to carry out these Official Control functions. For the purposes of this Code, the term “Food Authority” will be used instead of Competent Authority, unless reference is made to a Competent Authority, other than the local authority, such as the Food Standards Agency (FSA). In these circumstances, the term used has the meaning set-out in the Glossary at Annex I. References to legislation should be considered a reference to that legislation in its current form (unless otherwise indicated). The legislation referred to above requires Food Authorities to have regard to this Code when discharging their duties.

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

In addition, the Food Standards Agency (FSA) can, after consulting Welsh Ministers, give a Food Authority a direction requiring them to take any specified steps in order to comply with this Code.

If, by complying with this Code, a Food Authority finds public health or food safety is likely to be compromised, they must discuss the matter with the FSA at the earliest opportunity.

Food Authorities have statutory duties to enforce legislation relating to food, including the primary production of food and imported food either from outside of the European Economic Area (EEA) or food which has come to the United Kingdom (UK) from another European Union (EU) Member State.

The purpose of enforcement is to ensure compliance with legislation relating to food in each Food Authority’s area in Wales. Every Food Authority must therefore discharge its duty as effectively as possible, using means that are most appropriate to the circumstances.

The effective discharge of this duty relies on authorised officers being familiar with the law they are appointed to enforce; referring to the law itself as well as to this Code, the Food Law Practice Guidance and other guidance; understanding what the law actually states and requires; and seeking guidance when they are unclear.

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<sup>1</sup> <http://www.legislation.gov.uk/wsi/2006/31/contents/made>

<sup>2</sup> <http://www.legislation.gov.uk/wsi/2009/3376/contents/made>

The FSA will issue Practice Guidance for Food Authorities which will be updated from time to time. Food Authorities must take account of such guidance, as well as any other appropriate Guidance issued by the FSA or the European Union.

Food Authorities must also have regard to the Framework Agreement on Local Authority Food Law Enforcement (the Framework Agreement)<sup>3</sup>, which reflects the requirements of this Code. The Framework Agreement is also consistent with the principles of the Regulators Code<sup>4</sup>.

The majority of UK law relating to food is contained in the Food Safety Act 1990 and in Regulations made under that Act or under the European Communities Act 1972<sup>5</sup>; these Regulations for the most part give effect to requirements of EU food law either by implementing Directives or providing enforcement mechanisms for directly applicable EU Regulations. However, Food Authorities should be aware of other legislation which affects the production and marketing of food to a greater or lesser degree, including (but not limited to) the Animal Health Act 1981<sup>6</sup>, the Consumer Protection Act 1987<sup>7</sup> and the Consumer Protection from Unfair Trading Regulations 2008.

Food Authorities should also note that Article 8(5) of Regulation (EC) No 853/2004 on the hygiene of foodstuffs provides for guides to good practice drawn up pursuant to Directive 93/43/EEC on the hygiene of foodstuffs<sup>8</sup> (known in the UK as “Industry Guides to Good Hygiene Practice”) shall continue to apply provided they are compatible with its objectives.

In this Code, references to live bivalve molluscs also include live echinoderms, live tunicates and live marine gastropods, in line with Annex III, Section VII (1) of Regulation (EC) No 853/2004<sup>9</sup> laying down specific hygiene rules for food of animal origin except for the parts of the Code which deal with purification of live bivalve molluscs.

References to Chapters and Annexes are to the relevant parts of this Code unless stated otherwise.

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<sup>3</sup> <http://food.gov.uk/multimedia/pdfs/enforcement/frameworkagreementno5.pdf>

<sup>4</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300126/14-705-regulators-code.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf). In Wales, this applies to certain regulatory functions exercised by Welsh local authorities. These relate to reserved UK matters and to specific UK national regulators which operate in Wales. If it was not for the Framework Agreement, the Regulators Code would not apply as it does not cover functions of food control.

<sup>5</sup> <http://www.legislation.gov.uk/ukpga/1972/68/contents>

<sup>6</sup> <http://www.legislation.gov.uk/ukpga/1981/22/contents>

<sup>7</sup> <http://www.legislation.gov.uk/ukpga/1987/43/contents>

<sup>8</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1993:175:0001:0011:EN:PDF>

Council Directive 93/43/EEC on the hygiene of foodstuffs. Official Journal L175, 19.7.1993, p1-11. This has now been repealed

<sup>9</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:226:0022:0082:EN:PDF>

Regulation (EC) No. 853/2004 laying down specific hygiene rules for food of animal origin. Official Journal L226, 25.6.2004, p22-82.

## Chapter 2 – Communications

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### 2.1 – Inter-Authority Matters

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Food Authorities should share information about compliance and potential risks to consumers associated with food business establishments with other Food Authorities, and respond to any reasonable communication from other Competent Authorities requesting information or assistance.

Examples of when Food Authorities may request information or assistance from other Food Authorities may include but are not limited to:

- referrals of cross boundary enforcement issues or concerns;
- referrals of food complaints reported to a Food Authority in error;
- coordinating enforcement/ infectious disease control activities; and,
- ensuring registers of feed business establishments are complete and accurate in respect of food businesses who manufacture or place on the market products for use in feed.

Upon receiving a request or referral, a Food Authority should take the following action:

- acknowledge receipt of the communication and advise the originating Food Authority that the matter is being dealt with;
- investigate and/or take appropriate enforcement action, if necessary;
- inform the originating food authority of any action taken.
- ensure that responses to requests are open, transparent and provided without undue delay; and,
- keep the originating party updated on progress, particularly when action is ongoing, and the outcome will not be known for some time.

If the matter is of a serious nature, this should be referred to the FSA.

Food Authorities must pass information they receive which indicates a change in the operations within a food business establishment, and information on any withdrawal, suspension or reinstatement of an establishment's approval, to other relevant Food Authorities within 28 days.

Establishments at the level of primary production that have been registered with Rural Payments Wales (RPW) prior to 1 December 2006 are considered registered for the purposes of Article 6(2) of Regulation (EC) No 852/2004.

### **2.1.1 Liaison between Two-tier Food Authorities**

It should be noted that in parts of the UK where there are two tiers of local government and both are Food Authorities, the FSA has not specified whether investigations and enforcement action in relation to specific functions e.g. primary production, are undertaken at District or County level.

In Wales all local authorities are Unitary Authorities and the distinctions between District and County Councils do not apply.

### **2.1.2 Primary Authority Principle**

The principles of Primary Authority are set-out in the Regulatory Enforcement and Sanctions Act 2008, and are overseen by Regulatory Delivery (RD) on behalf of the Secretary of State for the Department for Business, Energy and Industrial Strategy (BEIS). The FSA works closely with the RD in its work to support the delivery of Primary Authority for food regulations.

The scheme allows businesses to form a statutory partnership with one or more local authorities, which then provide(s) robust and reliable advice for other authorities to have regard when carrying out inspections or dealing with non-compliance. A Primary Authority should support its partner business in complying with regulations by issuing assured advice, by coordinating enforcement action, and by developing an inspection plan.

Food Authorities and individual officers must have regard to the Primary Authority scheme in their operations and planning; for example, by routinely accessing the scheme's secure IT system to determine whether businesses with whom they are dealing have Primary Authority partnerships.

The FSA expects Food Authorities to fulfil their statutory obligations under the Primary Authority scheme: by notifying a Primary Authority of enforcement action, either in advance of taking the action, or, where permitted, retrospectively; and by complying with the requirements in relation to published inspection plans.

Further information and statutory guidance for the scheme can be found at <http://www.bis.gov.uk/brdo/primary-authority>.

### **2.1.3 Home Authority Principle**

The FSA endorses the Home Authority Principle, which is governed by a Joint Statement of Commitment (JSoC) signed by the BRDO (now RD) the Trading Standards Institute (TSI) (now Chartered Trading Standards Institute (CTSI) and the Chartered Institute of Environmental Health (CIEH), in June 2011. Food 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 alongside Primary Authorities.



Home Authorities operate in situations when a business does not have a Primary Authority partnership in place (e.g. 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 local 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 Food Authority located in the same area as a business's head office (or alternatively the Food 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). The Home Authority Principle is a voluntary scheme to 'promote efficient and effective approaches to regulatory inspection and enforcement which improve regulatory outcomes without imposing unnecessary burdens on business, the Third Sector and other regulated entities'.

Food Authorities considering giving advice or taking enforcement action in relation to food businesses which 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. It might not be necessary, however, where such action relates to matters of an exclusively local nature. The secure database for Home Authority is hosted via TS Interlink<sup>10</sup>.

#### **2.1.4 Regional and Local Liaison Groups**

Food Authorities must be represented at an appropriate level of knowledge and competence, normally by the relevant lead food officer or officers, at meetings of regional or local food liaison groups, to help maintain enforcement consistency with other Food Authorities.

Food Authorities must ensure that regional or local liaison groups include appropriate representation from each Food Authority and from Food Examiners and Public Analysts. Representation from the FSA, Port Health Authorities (PHA), the Consultant in Communicable Disease Control (CCDC)/Consultant in Public Health Medicine (Communicable Disease/Environmental Health (CPHM (CD/EH))), and other experts or specialists must be considered as the need arises.

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<sup>10</sup> <https://secure.tslinkonline.co.uk/>

Matters of legal interpretation and consistency must be discussed with colleagues in the appropriate regional or local food liaison group and the Primary, Home or Originating Authority if appropriate. Food Authorities must avoid taking unilateral decisions on interpretations without seeking the views of other Food Authorities.

Groups of Primary or Home Authorities serving food businesses trading in the same sector of the industry must undertake regular liaison to ensure that the advice given by Primary or Home Authorities across a sector is consistent.

In areas where there are commercial shellfish harvesting activities, Food Authorities must refer to Chapter 8.1.1 for liaison arrangements.

## 2.2 – Managing Incidents and Alerts

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This section deals with food incidents and food alerts that are first identified by Food Authorities.

A schematic representation of the process that Food Authorities should follow when dealing with a food incident or hazard and an Incident Reporting Form is included in Annex II and Annex III of this Food Law Code of Practice. The food incident report form is also available online at:

<http://www.food.gov.uk/enforcement/enforcework/report>

### 2.2.1 Documented Procedure

Food Authorities must set up and implement a documented procedure for dealing with food incidents and hazards that are identified within their area.

### 2.2.2 Food Incidents

#### 2.2.2.1 Definitions

Food Incident:

A “food incident” is defined for the purposes of the Code 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 in to 3 separate categories, which may overlap:

- Food Hazards - a food-related incident involving (or suspected to involve) a biological, chemical and/or physical agent in food, 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].
- Food fraud and food crime – See 2.3.
- Non-Hazardous Incidents which may impact on the food supply chain. These may include issues of quality, provenance, authenticity, composition and labelling.

Food Hazard:

Food Authorities should categorise food hazards according to the following criteria:

- Localised food hazard – one in which food is not distributed beyond the boundaries of the Food Authority and is not deemed to be a serious localised food hazard. These should be reported to the FSA by the Food Authority, and dealt with locally in conjunction with other relevant agencies.
- Serious localised food hazard – one in which food is not distributed beyond

the boundaries of the Food Authority but which involves: or may involve: allergens, E. coli O157 or other Verocytotoxin-producing Escherichia coli (VTEC), Clostridium botulinum, Salmonella typhi or Salmonella paratyphi, or which the Food Authority considers significant. For example, this may be because of the vulnerability of the population likely to be affected, the numbers involved or any deaths associated with the incident. These should be notified by the Food Authority to FSA and other relevant agencies at the earliest opportunity, by the quickest available means and confirmed in writing on the incident report form.

- Non-localised food hazard – one in which food is distributed beyond the boundaries of the Food Authority. These should be notified by the Food Authority to FSA and other relevant agencies at the earliest opportunity, by the quickest available means and confirmed in writing on the incident report form (see link at Chapter 2.2).

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

#### **2.2.2.2 Deliberate Contamination and Malicious Tampering**

Food may be contaminated deliberately. If such an incident occurs, Food Authorities should follow the arrangements in this section, except where the deliberate contamination is thought to be due to malicious tampering. For the purposes of the Code, “malicious tampering” means the deliberate contamination of food by terrorist activity, or with a view to blackmail or extortion.

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

Food Authorities should contact the FSA Consumer Protection Unit at [wales.foodincidents@food.gov.uk](mailto:wales.foodincidents@food.gov.uk) at the earliest opportunity if malicious tampering is suspected and hand over responsibility for dealing with such incidents to the Police if requested by them to do so.

Food Authorities should co-operate fully with Police investigations into incidents of malicious tampering and respect Police requests for confidentiality whenever possible. However, there may be occasions when the need to alert consumers to the existence of a food hazard outweighs the need to maintain confidentiality. The Food Authority should contact the FSA before undertaking such action.

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

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

Serious localised outbreaks must immediately be notified to the FSA Consumer Protection Unit at [wales.foodincidents@food.gov.uk](mailto:wales.foodincidents@food.gov.uk) and Public Health Wales (PHW).

Food 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.

#### **2.2.2.4 Action by the Food Authority - Food Hazards**

Once a food hazard has been identified, the Food 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.

These other agencies might include Primary, Home, Originating and neighbouring Food Authorities, Medical Specialists, Food Examiners, Public Analysts and Microbiologists.

Food Authorities must have procedures in place to call the appropriate agencies together at short notice, to implement urgent control measures whenever they are required and to identify a lead authority where necessary.

The assessment must 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 geographical spread of the hazard;
- the type of injury which might be caused by a physical contaminant;
- the population likely to be affected and its vulnerability;
- the likely quantity and distribution of the 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 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;
- whether the food has been imported;
- whether any of the 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; and
- the possibility that the complaint or problem has been caused by a malicious act; and,
- whether the root cause of the incident or hazard is known, and corrective action taken to avoid recurrence.

When a Food Authority becomes aware of a food hazard, action must be taken to protect public health and safety at the earliest opportunity, including, if necessary, detaining or seizing the food concerned if it is located within the Food Authority's

area (see Chapter 7.6).

Food Authorities must also consider the use of other powers under the Food Hygiene (Wales) Regulations 2006 or the Food Safety Act 1990 as appropriate, relevant to the circumstances involved.

Where a Food Authority becomes aware that a food business operator in their area has withdrawn or recalled food from the market in accordance with Article 19 of Regulation (EC) No 178/2002, due to non-compliance with the food safety requirements of that Regulation, the Food Authority should confirm that the FSA has been made aware. This may be done through direct contact with the FSA Consumer Protection Unit in Wales or via the FSA website.

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

#### **2.2.2.5 Localised Food Hazards - Media Relations**

In the event of a localised food hazard, it is likely a Food Authority will wish to issue appropriate media messages or respond to local press statements as appropriate to alert the public to the hazard. The relevant food business operators 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 without delay. The Food Authority must notify the FSA immediately if the food business operator raises objections to the release of such information.

#### **2.2.2.6 Action by the Food Authority – Non-Hazardous Food Incidents**

Food incidents that are contraventions of food law, but not food hazards must normally be resolved by the Food Authority and the food business operator, through the Primary, Home or Originating Authority if appropriate.

Significant food incidents that are not food hazards should be reported to the FSA immediately. In determining significance, consideration should be given to the following factors:

- breaches of food law;
- possible 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 Wales (or the UK);
- public concern; and,
- likelihood of media interest.

Where a Food 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.

## **2.2.3 Food Alerts**

### **2.2.3.1 Definitions**

The FSA utilises the following communications to raise awareness of food incidents:

- Food Alert For Action (FAFA) – is a communication from the FSA to a Food Authority concerning a food hazard or other food incident, where specific actions / responses are required to be undertaken by the Food Authority. A “Food Alert Update” should be read accordingly.
- Product Recall Information Notice (PRIN) – advising of recall of a food, where no specific action is required to be undertaken by the Food Authority. Recall relates to recall of food from the consumer.
- Allergy Alert – is issued by the FSA to quickly communicate allergen risks directly to the consumer. Food Authorities receive copies of these Allergy Alerts for information purposes only.

### **2.2.3.2 Responding to Food Alerts**

Food Authorities must ensure that their documented procedure for dealing with food incidents and hazards includes the effective response to Food Alerts issued by the FSA. This documented procedure must be developed in consultation with:

- members of the relevant Food Liaison Group;
- PHW;
- Public Analyst;
- CCDC; and,
- relevant officers of the Food Authority, e.g. Emergency Planning Officer.

The documented procedure must include, as a minimum, the following:

- details, including contact details, of the lead officer for such matters; liaison arrangements between Trading Standards and Environmental Health Departments;
- any arrangements for the reception of and response to Alerts received outside office hours;
- arrangements to ensure that Food Alerts and updates are brought to the attention of an officer with authority to initiate appropriate action without undue delay;
- arrangements for the liaison with other relevant bodies, including neighbouring Food Authorities, both within and outside normal office hours;
- arrangements to provide adequate staff resources to allow effective response to alerts; and,
- arrangements to provide adequate equipment, including access to Council Offices out of hours, to allow an effective response to be made.

### **2.2.3.3 Facilities for Receiving Food Alerts and Updates**

Food Authorities must have facilities to receive Food Alerts and Updates from the FSA by an electronic mail system that is acceptable to the FSA. Food Authorities

must put in place systems to ensure that Food Alerts can be responded to outside normal working hours.

Food Authorities must advise the FSA of their electronic mail address and of any changes to these details at the earliest opportunity by emailing [lasupportwales@food.gov.uk](mailto:lasupportwales@food.gov.uk).

#### **2.2.3.4 Action by Food Authorities**

Food Authorities must ensure that any action specified by the FSA in a Food Alert is undertaken promptly, and in accordance with any risk assessment carried out by the FSA. If Food Authorities propose to take alternative actions, they must agree these with the FSA before implementing them. Where a Food Authority anticipates difficulties in complying with a request for action given in an Alert, they must contact the FSA's Consumer Protection Unit immediately.

#### **2.2.3.5 Media Relations - Food Alerts**

Food 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 Food Authority must ensure that the local statement is accurate, relevant and consistent with the FSA statement.

If Food Authorities wish to display Food Alerts on their websites 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. It must also include local contact information.



## **2.3 – Addressing Food Criminality**

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### **2.3.1 Food Fraud and Food Crime**

Food crime for the purposes of this Code means, serious dishonesty which has a detrimental impact on the safety or the authenticity of food, drink or animal feed. Food crime can be thought of as serious food fraud.

Seriousness is intended to be a subjective test based on the facts of the individual scenario. It will normally be based on the likely level of detriment to an important interest such as the general public, a food business or the UK food industry. A particular scenario may also be judged serious by virtue of its geographic scope, scale, media/political sensitivities or the overall public interest. Food Authorities should discuss any suspicions of dishonesty with the Welsh Food Fraud Coordination Unit (WFFCU), however minor they may appear. The full extent and impact of food criminality may not be immediately apparent when information is first received.

Dishonesty will generally involve some kind of intentional deception, forgery, misrepresentation or concealment of facts.

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

The distinction between the terms food fraud and food crime is one of scale, impact or complexity. This might mean that the food crime is more likely to have cross-regional, national or international reach, that there is significant risk to public safety, or that there is a substantial financial loss to consumers or businesses.

### **2.3.2 The Role of the National Food Crime Unit (NFCU)**

The FSA's National Food Crime Unit is an intelligence unit that works with partners to protect consumers from serious criminal activity that impacts on the safety or authenticity of the food and drink they consume.

### **2.3.3 Role of Welsh Food Fraud Coordination Unit (WFFCU)**

The Welsh Food Fraud Coordination Unit (WFFCU) works with the NFCU and other partners to gather, record and disseminate intelligence in Wales. In addition, the WFFCU provide coordination, support and advice to Food Authorities in Wales on matters relating to food fraud investigation and food crime. The WFFCU has the capability to conduct financial investigations with respect to money laundering and the confiscation of criminal assets under the provisions of the Proceeds of Crime Act 2002. This service is available to all Welsh Local Authorities.

### **2.3.4 Reporting Suspicions of Food Fraud to the Unit**

Food Authorities in Wales should share with the WFFCU any suspicions of food fraud, including historic cases. Suspicions or information about food fraud or food crime should be reported to the WFFCU by emailing a completed Intelligence Report

to [foodfraudwales@ceredigion.gcsx.gov.uk](mailto:foodfraudwales@ceredigion.gcsx.gov.uk) or through submission of an Intelligence Report to your Authority's Trading Standards Local Intelligence Liaison Officer (LILO) marked for dissemination to the WFFCU. If you require assistance with completion the WFFCU can be contacted on 0207 276 8787.

## **2.4 – Communication between Competent Authorities**

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### **2.4.1 Information Supplied to the FSA**

#### **2.4.1.1 Food Hazards**

Food Authorities must notify the FSA as soon as they become aware of a:

- serious localised food hazard;
- non-localised food hazard;
- serious localised outbreak of food-borne illness; and,
- withdrawal or recall of food by a food business operator due to non-compliance with the food safety requirements of Regulation 178/2002 (Article 19)<sup>11</sup>;
- suspected cases of food fraud / food crime; and,
- significant 'non-hazardous' food incidents.

#### **2.4.1.2 Approved Establishment Details**

Food Authorities must notify the FSA by email at [lasupportwales@food.gov.uk](mailto:lasupportwales@food.gov.uk) when:

- an establishment has been approved or conditionally approved;
- an approved establishment ceases activities that are the subject of the approval or conditional approval;
- an approval or conditional approval has been withdrawn or suspended;
- a live bivalve mollusc purification centre or modification to an existing centre is proposed (see Chapter 8.1.4)

#### **2.4.1.3 Food Authorities at Points of Entry**

Food Authorities with a point of entry, External Temporary Storage Facilities (ETSF) or international rail terminal must establish routine local liaison and communication with relevant local organisations for general exchange of information on food imports and for the effective handling of incidents. These contacts include, where appropriate:

- neighbouring Food Authorities, particularly for joint boards and ports, which fall under the jurisdiction of more than one local authority;
- her Majesty's Revenue and Customs (HMRC), Border Force and Convention on International Trade in Endangered Species (CITES) teams;
- Animal and Plant Health Agency (APHA);
- PHW;
- Natural Resources Wales (NRW);
- Welsh Government;
- Food and Environment Research Agency (FERA);
- Port operator; import agents; ITSF – Internal Temporary Storage Facilities

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<sup>11</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:031:0001:0024:EN:PD>

- (formerly 'transit sheds') \ ETSF operators;
- Maritime and Coastguard Agency (MCA); and,
- The Medicines and Healthcare Products Regulatory Agency (MHRA).

#### **2.4.1.4 Notification of Food Hazards or Incidents Regarding Imported Food**

The Rapid Alert System for Food and Feed (RASFF) is a network managed by the European Commission to facilitate communications between members of the network in responding rapidly to serious direct or indirect risks to human health relating to food and feed. Members consist of clearly identified contact points in the Commission, European Food Safety Authority (EFSA), European Free Trade Association (EFTA) Surveillance Authority (Norway, Liechtenstein, Iceland and Switzerland) and the 28 EU Member States.

The legal basis for the network is laid down in Regulation (EC) No 178/2002 and Regulation (EU) No 16/2011. The FSA is the national contact point (NCP) for the RASFF in the UK and undertakes all the specified responsibilities, including out of office hours. For RASFF alert notifications, where there is a risk identified that requires rapid actions in another member country, members of the network shall send alert notifications to the Commission contact point without undue delay and in any event within 48 hours from the moment the risk was reported to them.

All Food Authorities must send details of any non-compliant imports, either at the point of entry or inland, where there is a serious direct or indirect risk to health to the FSA's Consumer Protection Unit using the Incident Report Form found at Annex III.

This will include imports rejected for reasons such as, chemical, microbiological or foreign body contamination or imports from a country which is not authorised to export that category of products to the EU. For breaches of maximum levels for pesticides, the Food Authorities should notify the FSA's Consumer Protection Unit of the levels found so that it can determine, based on a risk assessment, whether a RASFF notification is required.

In addition, with regard to testing for residues of veterinary medicines under Regulation (EC) No 470/2009, (such as nitrofurans and chloramphenicol) or those not approved for use, details of all adverse results must be sent to the Consumer Protection Unit using the RASFF notification form. Where available, copies of the health certificate and the airway bill or bill of landing should also be forwarded to the Consumer Protection Unit.

Authorities may access the FSA's website, and download copies of the template for the RASFF notification form at: <http://www.food.gov.uk/foodindustry/incidents/report/>. The Food Authority/ Port Health Authority must also notify local customs of the rejection decision and the destination of the consignment if it is to be allowed to be re-exported as soon as possible.

#### **2.4.1.5 Lead Officer Details**

Food Authorities must notify the FSA at [lasupportwales@food.gov.uk](mailto:lasupportwales@food.gov.uk) of the name of their appointed lead officer who ensures that the authority meets its obligations

under Regulation (EC) No 882/2004, this Code and the Framework Agreement on Official Feed and Food Controls, and notify any changes to these details.

#### **2.4.1.6 Nominated Officer for Imported Food**

Every Food Authority with a point of entry<sup>12</sup> must appoint a nominated officer with the necessary competency in imported food control to be a point of contact with the FSA on imported food matters. The details of the nominated officer or changes to the nominated officer must be notified to the FSA at [lasupportwales@food.gov.uk](mailto:lasupportwales@food.gov.uk) within three working days.

#### **2.4.1.7 Out of Hours Service**

Food Authorities must put in place procedures to ensure that responsible officers can be contacted in the case of emergency. The authority must advise the FSA of emergency telephone number or numbers to enable contact to be made outside the Food Authority's normal office hours. Information on out-of-hours contacts must be provided in the manner and at the frequency required by the FSA (normally twice per year). The Food Authority must also proactively advise the FSA at [wales.foodincidents@food.gov.uk](mailto:wales.foodincidents@food.gov.uk) of any changes to these details at the earliest opportunity.

#### **2.4.1.8 Enforcement E-mail Addresses**

Food Authorities must notify the FSA at [lasupportwales@food.gov.uk](mailto:lasupportwales@food.gov.uk) of their electronic mail address and notify any changes to these details.

#### **2.4.1.9 Quality of Bivalve Mollusc Production Areas**

Food Authorities responsible for live bivalve mollusc production or relaying areas must notify the FSA where official control sample results indicate deterioration in hygiene standards/water quality.

Notification should be sent to [food.policy.wales@food.gov.uk](mailto:food.policy.wales@food.gov.uk).

#### **2.4.1.10 Delegation of Official Controls**

Food Authorities responsible for the delegation of specific tasks to independent third parties (control bodies)<sup>13</sup> must provide the FSA with details of the control body and the tasks delegated to it.

### **2.4.2 Liaison with other Member States– Administrative Assistance and Co-operation (AAC)**

The FSA is the designated liaison body for the purposes of Article 35 of Regulation (EC) No 882/2004 and, as such, is responsible for assisting and co-ordinating

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<sup>12</sup> At the time of writing this Code, there are no BIPs/DPEs in Wales but remain in this Code for future reference.

<sup>13</sup> As defined in Article 2(5) of Regulation (EC) No 882/2004

communication between Competent Authorities and the transmission and reception of requests for assistance. However, this does not preclude direct contacts, exchange of information or co-operation between the staff of food control authorities in different Member States.

Trans-border matters that may have policy implications, matters relating to outbreaks of food-borne illness and matters connected with food hazards are dealt with by the FSA. Food Authorities must therefore notify the FSA of all such matters at the earliest opportunity.

Detailed provisions on Administrative Assistance and Co-operation with other Member States are set-out in Articles 34 to 40 of Regulation (EC) No 882/2004.

#### **2.4.2.1 Definitions of Trans-Border Issues**

Trans-border matters fall into three broad categories:

- trans-border matters that need to be referred directly to the FSA;
- trans-border matters reported to the FSA after liaison has taken place; and,
- routine liaison of Food Authorities in the UK with other Member States.

#### **2.4.2.2 A. Trans-border Matters to be referred directly to the FSA**

- the identification of foods which appear to pose a risk to public health or safety;
- enquiries about a particular product which has been examined and the microbiological condition of which gives cause for concern;
- the identification of foods which relate to previously identified food warnings, frauds or hazards;
- cases where malicious tampering of food is suspected;
- circumstances in which food products have been removed from the UK market with or without the agreement of the retailer or supplier;
- cases in which the authorised officer suspects that other significant national or EU policy matters are at issue, including imported food official controls; and,
- where repeated non-compliance has been identified in connection with different batches, lots or consignments from the same source.

#### **2.4.2.3 B. Trans-border Matters reported to the FSA after liaison has taken place**

- any issue when, after investigation, liaison or inquiry, it appears that circumstances set-out in 2.4.2.2 above apply;
- cases involving enforcement authorities in other Member States where there is undue delay, equivocation or a refusal to undertake action which appears to be warranted;
- circumstances in which it appears that elements of the national food law of one Member State conflicts with that of another; and,
- any issue listed for information which, after investigation, liaison or enquiry, appears to have such implications or is of such a serious nature that the FSA must be informed of it.

#### **2.4.2.4 C. Routine liaison between Local Food Authorities of Member States**

Food Authorities must only deal directly with “for Information” matters. Other issues requiring action must be referred without delay to the FSA. Food Authorities must seek advice from the FSA if there is doubt as to the appropriate procedure for dealing with a particular trans-border matter.

Matters of routine liaison between local competent authorities of Member States under Category C include:

- enquiries about a particular product which has been analysed and found to have no food safety implications;
- enquiries about a product label or description which appears to be in breach of requirements;
- enquiries about sampling records, company history or control systems likely to support legal action;
- enquiries to establish the integrity of documents, problem source and to avoid duplicating sampling or inspections;
- enquiries into the particular circumstances surrounding the rejection of, or cause for enforcement action relating to, a specific UK food product; and,
- notification of other faults and infringements unlikely to require UK action, but which are for note or action by the authority in another Member State.

## **2.5 – Enquiries to other UK Countries and Member States**

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### **2.5.1 Enquiries to other Member States**

Food Authorities must address enquiries about food law enforcement issues in other Member States to the appropriate liaison body or authority in the Member State concerned via the FSA. The FSA can provide assistance in identifying the relevant liaison body or authority if necessary.

Regulation (EC) No 882/2004 requires Member States to provide each other with administrative assistance, to cooperate and to exchange information in order to ensure that cross-border instances of food and feed law non-compliance are effectively pursued.

The Commission has the obligation to coordinate the action undertaken by Member States where instances of non-compliance are widespread or recurrent, or where Member States fail to agree on how to address non-compliance. The Administrative Assistance and Cooperation system (AAC) is an IT system which was created to enable the Competent Authorities designated in each Member State and the EEA to fulfil this obligation.

This system, works in a similar way to RASFF but will be for non-safety related non-compliance including food fraud issues.

For non-compliance related issues Food Authorities need to notify the FSA's Consumer Protection Unit.

For food fraud related issues Food Authorities need to notify the WFFCU.

Food Authorities must carry out a full investigation prior to referring a matter to the FSA with full supporting documentation.

### **2.5.2 Enquiries from other Member States**

Food Authorities must comply with any reasonable request for information or administrative assistance from another Food Authority, food control body, another Member State (or the FSA). In doing so they must take the following action:

- acknowledge receipt of the request and advise the originating party that it is being dealt with;
- investigate if necessary;
- take appropriate enforcement action if necessary;
- inform the originating party of the results of any enquiries, inspections, or other enforcement action, either directly or through the FSA;
- ensure that responses to requests are open, helpful and provided without undue delay; and,
- keep the originating party updated on progress when action is ongoing and the outcome will not be known for some time.

Any request for information which, after investigation, liaison or enquiry, appears to be of a serious nature, must be referred to the FSA.



### **2.5.3 Disclosure of Information to Member States**

Article 7 of Regulation (EC) No 882/2004 sets out the general requirements in respect of transparency and confidentiality. Detailed provisions on Administrative Assistance and Co-operation with other Member States are set-out in Articles 34 to 38 of Regulation (EC) No 882/2004.

Article 34 stipulates that Articles 35 to 40 of that Regulation, which deal with Administrative Assistance and Co-operation between Member States and co-ordination by the Commission “shall not prejudice national rules applicable to the release of documents which are the object of, or are related to, court proceedings, or rules aimed at the protection of natural or legal persons’ commercial interests”.

Food Authorities must therefore ensure that any release of information is compatible with national legislation including that relating to Data Protection and Freedom of Information.

### **2.5.4 Communication with Food Standards Scotland (FSS)**

A food body in Scotland, Food Standards Scotland was established on 1st April 2015 and a Memorandum of Understanding is in place to ensure liaison arrangements continue to deliver a coordinated incident handling response across Wales, Scotland, England and Northern Ireland

## **Chapter 3 – Administration**

### **3.1 – Requirements to Deliver Official Controls**

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#### **3.1.1 Conflicts of Interest**

This Chapter deals with issues to be considered in ensuring that Food Authorities and their authorised officers are impartial and free from conflicts of interest.

##### **3.1.1.1 Avoidance of Conflict of Interest**

In accordance with the requirements of Article 4(2)(b) of Regulation (EC) No 882/2004 staff carrying out official controls must be free from any conflict of interest.

Food Authorities must ensure that their officers are aware of the potential conflicts of interest that can sometimes arise in an enforcement situation through the promotion of the Food Authority's services.

Officers must not provide their own services, e.g. delivering training or provision of advice to food business, in their own time within the area of the Food Authority within which they are employed.

Food Authorities must ensure that potential or actual conflicts of interest do not arise as a result of Primary, Home or Originating Authority responsibilities and contracting in services for enforcement purposes.

Food Authorities and their officers must avoid the exclusive promotion of the Food Authority's services if other providers of those services exist in the area or the services are offered by a particular organisation.

Where services such as advice or training are provided, there must be clear and transparent separation between the provision of those services and the Food Authority's enforcement role.

Where a Food Authority delegates enforcement to an independent third party (control body) as per Article 2(5) of Regulation (EC) No 882/2004, the Food Authority must be satisfied that the control body is impartial and free from any conflict of interest as regard the tasks delegated to it.

##### **3.1.1.2 Enforcement within Local Authority-run Establishments**

The Food Authority's food law Enforcement Policy (see Chapter 5.1.1) must detail its arrangements for ensuring compliance with food law in establishments where the Food Authority is itself the food business operator, and that steps must be taken to ensure enforcement decisions are free from any conflict of interest.

Where any serious breach of food law is detected in such an establishment then these must be brought to the attention of the Chief Executive, without delay.

Contract caterers that operate within Food Authority establishments should be assessed in accordance with Chapter 5.2.1 and the intervention frequency determined accordingly.

### **3.1.2 Powers of Entry**

#### **3.1.2.1 Powers of Entry under the Food Hygiene (Wales) Regulations 2006**

The powers of entry under regulation 14 of the Food Hygiene (Wales) Regulations 2006 may be used in relation to Crown premises.

Food Authorities must adopt the same approach to the enforcement of the Food Hygiene (Wales) Regulations 2006 in respect of Crown premises as they do in respect of the Food Safety Act 1990 (see Chapter 3.1.2.2 below).

#### **3.1.2.2 Powers of Entry under Food Safety Act 1990**

Food Authorities should deal with food standards matters under the Food Safety Act 1990. This includes those who handle food for sale or supply which, by virtue of Recital (9) and Article 1(2) of Regulation (EC) No 852/2004, fall outside the scope of that Regulation and remain subject to the provisions of Regulation (EC) No 178/2002.

The powers of entry under section 32 of the Food Safety Act 1990 enable entry by an authorised officer of the Food Authority to investigate alleged contraventions of food standards legislation. This section also allows a Justice of the Peace to warrant entry if satisfied that there are reasonable grounds and normal entry on notice is not viable for one or more of the reasons set-out.

#### **3.1.2.3 Powers of Entry under the Official Feed and Food Control (Wales) Regulations 2009**

The powers of entry under regulation 39 of the Official Feed and Food Control (Wales) Regulations may be used by authorised officers for the purpose of ascertaining whether there has been any contravention of the Import Provisions of these Regulations in relation to food. The 'Import Provisions' is defined by regulation 2(1) of these Regulations.

#### **3.1.2.4 Powers of Entry under the Trade in Animals and Related Products (Wales) Regulations 2011**

The powers of entry under Regulation 33 of the Trade in Animals and Related Products (Wales) Regulations 2011<sup>14</sup> may be used by authorised officers for the purpose of enforcing these Regulations; and in these Regulations "premises" includes any place, vehicle, trailer, container, stall, moveable structure, ship or

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<sup>14</sup> <http://www.legislation.gov.uk/wsi/2011/2379/contents/made>

aircraft.

### **3.1.2.5 Operating in another Competent Authority or Food Authority Area**

A Food Authority must normally deal with matters arising within its area of jurisdiction but can inspect business establishments in other local authority areas to obtain evidence of contraventions in their local authority areas.

When exercising these powers, authorised officers must liaise with the relevant Competent Authority or Food Authority for the area they are visiting, in advance wherever possible. This applies whether or not the business being visited is a food business. If it is not possible to give prior notice to the Competent Authority or Food Authority in which the business is located, for example in an emergency or out of hours, they must be notified as soon as practicable thereafter.

Authorised officers exercising these powers must not give advice or recommend changes to a company's systems or procedures. Such matters must be passed to the Competent Authority or Food Authority for the area for appropriate action.

Officers can be authorised by more than one authority, to conduct inspections or carry out interventions on behalf of adjoining authorities.

A Primary Authority may make visits in another Food Authority area at the request of the business with which they have a Primary Authority Agreement. These visits may be carried out as part of an information gathering exercise without the use of any powers. Should the Primary Authority carry out a visit using powers to obtain evidence of contraventions, the relevant Food Authority must be notified in advance where possible.

### **3.1.2.6 Powers of Search and Seizure under Police and Criminal Evidence Act 1984 (PACE) and Human Rights Act 1998**

The right to privacy and respect for personal property are key principles of the Human Rights Act 1998<sup>15</sup>.

Powers of entry, search and seizure must be fully and clearly justified before use because they may significantly interfere with the occupier's privacy. Officers must consider if the necessary objectives can be met by less intrusive means.

Section 32(4) of the Food Safety Act 1990 and regulation 16(5) of the Food Hygiene (Wales) Regulations 2006 permit an authorised officer to take with them such other persons as they consider necessary. This would include, for example, any suitably qualified or skilled person, or an expert in a particular field whose presence is needed. These provisions do not confer on the accompanying person any of the powers of an authorised officer, but they do give that person the right to be on the premises during the authorised officer's visit without the occupier's permission.

Section 32(6) of the Food Safety Act 1990 says an officer may 'seize and detain any

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<sup>15</sup> <http://www.legislation.gov.uk/ukpga/1998/42/contents>

records which he has reason to believe may be required as evidence in proceedings’.

In all cases authorised officers must:

- exercise their powers courteously and with respect for persons and property; and,
- in circumstances where a warrant has been obtained and is appropriate, only use reasonable force when this is considered necessary and proportionate to the circumstances.

### **3.1.2.7 PACE Code B Notices of Powers and Rights**

There is no obligation on authorised officers to routinely issue a PACE Code B notice when undertaking their statutory duties in food establishments to verify compliance with food law.

A PACE Code B notice should be used in circumstances where authorised officers are entering premises for the purposes of an investigation into alleged contraventions of food law.

Ultimately, a decision to serve a PACE Code B notice will depend on the individual circumstance of the matter under investigation. Officers should seek further guidance from the Food Authority’s own legal advisers if further clarification is needed.

Notices issued under the Protection of Freedoms Act 2012 for matters relating to unfair trading and consumer protection do not apply to food law.

### **3.1.2.8 Powers of Entry and Interventions at Crown Establishments**

At Crown premises Food Authorities must adopt the same approach to enforcing the Food Hygiene (Wales) Regulations 2006 as they do in respect of the Food Safety Act 1990. The powers of entry under section 32 of the Food Safety Act 1990 and the Food Information (Wales) Regulations 2014 may be used in respect of food standards issues (subject to exemptions for certain members of the Royal Family acting in their private capacity).

However, a national security certificate may have been issued by a Secretary of State certifying that powers of entry under the Food Safety Act 1990 cannot be exercised. If an authorised officer seeks entry to Crown premises and is informed that such a certificate has been issued, the officer is entitled to see the certificate or a copy of it.

For the purposes of obtaining entry, Crown premises fall broadly into three categories, although premises may move from one category to another between inspections.

**Group 1** - includes premises situated on Crown land where there are normally no security implications, e.g. restaurants in museums or Royal Parks. These premises must be treated like any other food business and must normally be visited without prior arrangement.

**Group 2** - includes premises with controlled entry but normally minimal security implications. Most government and police premises fall within this category. They are similar to many businesses with security systems and processes that necessitate first visits to be by prior arrangement. Future visits may be unannounced, subject to written agreement following the first inspection.

**Group 3** - includes premises where unannounced entry is not possible because of security implications and/or for the personal safety of the authorised officer, e.g. HM Forces, defence and national security establishments, prisons and remand centres, and parts of Police premises that accommodate prisoners. These premises must always be visited by prior arrangement with the appropriate contact at the establishment concerned. For example, the defence establishment security officer, the commanding officer or nominated representatives of an HM Forces establishment, the Governor of a prison service establishment, or the officer in charge of Police premises. This will enable the authorised officer to obtain entry without undue delay. The contact may be reminded of the power of entry if an authorised officer considers that the suggested appointment is too far in advance.

Authorised officers who have not been security cleared may be subject to visitor control procedures, including baggage inspections and identity checks and escorted at all times. Officers must carry an identity card that incorporates their photograph and bear in mind that there may be times when it will not be possible for an inspection to take place or continue in these premises. Any such reasonable restriction must not be regarded as obstruction.

Authorised officers must be aware of matters of confidentiality when visiting those parts of premises that accommodate prisoners. Such matters may be discussed when the visit is arranged.

An incident such as a food poisoning outbreak may require an authorised officer to visit premises at short notice even though prior notice would normally be required. A telephone notification that the officer is on the way is essential in Group 3 premises, and may save time in gaining entry to Group 2 premises.

Inspections and interventions must be confined to areas used by the food business or where records relating to it are held, unless the visit is connected with the investigation of an outbreak of food-borne illness and it is necessary, as part of the investigation, to inspect other areas.

Military activities must not be impeded or interrupted by a visit.

If the Food Authority is in doubt as to how to classify particular premises to which this Chapter applies, they must be treated as Group 3 premises and reviewed at a later stage, if necessary.

## **3.2 – Registration of Food Business Establishments**

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### **3.2.1 What is a Food Business Establishment?**

Under Article 2(c) of Regulation (EC) No 852/2004, 'establishment' means any unit of a food business. A 'food business' as defined in Regulation (EC) No 178/2002 on general food law means 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. EU rules apply only to such 'undertakings', which involve a certain degree of organisation and a certain continuity of food activities.

### **3.2.2 Who is a Food Business Operator?**

A food business operator as defined by Regulation (EC) No 178/2002 is the natural or legal persons responsible for ensuring that the requirements of food law are met within the food business under their control. See the relevant section of the Food Law Practice Guidance for further guidance.

### **3.2.3 Requirement to Register a Food Business Establishment**

Under Article 6(2) of Regulation (EC) No 852/2004, food business operators must register the establishment(s) under their control with the appropriate Food Authority via the channels described in Chapter 3.2.9.3.

### **3.2.4 Exemptions from Registration**

Establishments which undertake food activities which do not require a certain degree of organisation and a continuity of activities do not meet the definition of a food business establishment and therefore fall outside the scope of Regulation (EC) No 852/2004. Such establishments are exempt from registration requirements but do, however, remain subject to the provisions of the Food Safety Act 1990 and Regulation (EC) No 178/2002.

Article 4(1)(b) of Regulation (EC) No 853/2004 stipulates that food establishments that are subject to approval under regulation (EC) No 853/2004 are not required to also register with the food authority under Regulation (EC) No 852/2004 (see Chapter 3.3 on establishments subject to approval).

Both Recital 9, and Article 1(2), of Regulation (EC) No 852/2004 set-out the circumstances under which the Regulation, and hence the requirement to register under Article 6(2), would not apply, namely:

- primary production for private domestic use;
- the domestic preparation, handling or storage of food for private domestic consumption; and,
- the direct supply, by the producer, of small quantities of primary products to the final consumer or to local retail establishments directly supplying the final consumer.



### **3.2.5 Multisite and Satellite Operations**

#### **3.2.5.1 Multiple Premises Constituting a Single Food Business Establishment**

Establishments exist which supply food to one or more retail units closely linked under the same ownership. There may be circumstances where authorised officers wish to consider the separate sites as part of a wider establishment and therefore a 'single establishment' for the purposes of registration under Regulation (EC) No 852/2004 and for risk rating in accordance with Annex V.

This flexibility may only be applied where the main focus of the establishment's activities is that of a retail business, i.e. when supply of food is direct to the final consumer. Local authorities should consider such businesses on a case by case basis to ensure that all three of the following criteria are satisfied:

1. The operation is under a single 'controlling mind' that is, the natural or legal person(s) responsible for the implementation of food safety management procedures based on HACCP principles for all sites.
2. One set of food safety management procedures based on HACCP principles covering all stages and units within the wider establishment.
3. All the activities undertaken at the various units within the 'wider' establishment are within close enough proximity that it can be reasonably expected that the single 'controlling mind' can effectively manage the food safety management controls at all sites.

Where all three criteria are met, but the main activity of the establishment is the supply of POAO to other businesses, then approval is required (unless it meets the permitted exemptions in Article 1 of Regulation (EC) No 853/2004). Food authorities should refer to and consider the guidance document on the implementation of certain provisions of Regulation (EC) No 853/2004 on the hygiene of food of animal origin.

Where one or more of the criteria laid out above cannot be met, the Food Authority should require a food registration for each individual food establishment identified in the operation (unless the establishment is subject to approval).

### **3.2.6 Moveable Food Establishments**

The following sections refer to food establishments which move between fixed locations and usually via scheduled routes.

Although ocean-going ships, aircraft, trains and long-distance coaches are subject to the provisions of Regulation (EC) No 852/2004, their movable nature generally means that there is little practical value in the registration of individual vehicles with UK Food Authorities, as they are not always present in the same area of jurisdiction.

The following sections outline the arrangements for registration of movable establishments when these are based within a Food Authority's control.



### **3.2.6.1      Ships and vessels**

Food business operators must register vessels under their control which meet the definition of a food business establishment (Chapter 3.2.1) unless they require approval (i.e. freezer and factory vessels). This includes vessels which are permanently moored in the UK (floating restaurants), vessels which are engaged for the purposes of the distribution of food, and passenger vessels which ply their trade on inland waterways and travel the same routes, never leaving territorial waters e.g. ferries and pleasure craft. If the vessel routinely calls at more than one UK port, the 'registering authority' should usually be the port health authority where the vessel has its 'home port' as a registered vessel with the MCA.

### **3.2.6.2      Aircraft**

Airlines and in-flight caterers that are food businesses should register with the most appropriate Food Authority. This is usually the Food Authority within whose area the company policy and management decisions on food safety are made.

### **3.2.6.3      Trains and Coaches**

Train and coach operating companies that are food businesses should register with the most appropriate Food Authority. This is usually the Food Authority within whose area the company policy and management decisions on food safety are made.

### **3.2.6.4      Markets**

In the case of vehicles and stalls (whether or not these facilities are provided by the market controller) used for transporting, preparing or selling of food to consumers within the area of a market, the food business operator should register the establishment with the Food Authority in which their food stocks are ordinarily stored.

## **3.2.7          Mobile Food Businesses**

The following sections refer to food establishments that have the mobility to trade in more than one location, other than those moveable food establishments described in Chapter 3.2.6.

Mobile food establishments should be registered by the food business operator with the Food Authority within which the establishment is ordinarily kept or returns to between trading and is referred to in the following sections as the 'registering Food Authority'.

### **3.2.7.1      Mobile Food Businesses with Multiple Establishments**

Where a food business operates more than one mobile establishment, consideration should be given as to whether it is appropriate to register the business as one single establishment i.e. where there is a single 'controlling mind', or register each individual mobile establishment. In making this decision, Food Authorities should determine whether the food business satisfies the criteria in Chapter 3.2.5.1. Only when all three criteria are met should a single food business registration be accepted.

More information on the registration of other types of establishments can be found in the Food Law Practice Guidance.

### **3.2.7.2 Food Authority Responsibilities**

Food Authorities are responsible for the inspection of mobile establishments which operate in their area.

Where a mobile establishment is trading outside of the registering Food Authority's area, where possible, the inspecting Food Authority should check whether an intervention is due and if so, the type of intervention that may be appropriate. This can be ascertained by contacting the registering Food Authority and/or, by other means such as information on the mobile unit itself or the Food Hygiene Rating website (unless there are evident food safety issues that require immediate intervention).

### **3.2.7.3 Risk Rating of Mobile Establishments**

Food Authorities should carry out the Annex V risk rating for mobile establishments registered with them when due. This should be based on their own inspection and a consideration of information provided by inspecting Food Authorities where an appropriate intervention has taken place. The risk rating should result from an intervention that has included observations of a business in operation where possible.

### **3.2.7.4 Exchange of Information**

If a registering authority, on receipt of information, is aware an establishment ordinarily operates outside its area, they must share this information with the relevant Food Authority.

Inspecting food authorities should also pass on sufficient information to registering Food Authorities to enable them to risk rate the establishment. Such information should be passed on within 14 working days of an intervention or sooner depending on the nature and severity of any contraventions identified.

### **3.2.8 Non-commercial Establishments**

Food activities undertaken at premises which are not primarily used for commercial purposes, but meet the definition of a 'food business' in section 3.2.1 must be registered as a food business establishment. This may include, for example, a food business operating from premises primarily used as a domestic dwelling.

### **3.2.9 Registration Process**

#### **3.2.9.1 Application**

Under Article 31(1)(a) of Regulation (EC) No 882/2004 the Food Authority is required to establish procedures for food business operators to follow when applying for the registration of their establishments. The following sections set-out the suggested procedures.

### **3.2.9.2 Timeframe for Registration**

Food Authorities should advise food business operators to submit a registration of a food establishment at least 28 days before the business starts trading or the food operations commence.

### **3.2.9.3 Channels of Registration**

Food Authorities should require food business operators to provide them with full details of the activities undertaken at the establishment(s). A registration form should be made available to, and completed by the food business operators for each establishment under their control and submitted to the relevant Food Authority.

Under the Provision of Services Regulations 2009, Food Authorities must also have an electronic means for food business operators to register food business establishments. Registration may be electronically completed and submitted to the relevant Food Authority online using the Gov.uk website<sup>16</sup>. A model form for the registration of a food business establishment can be found at Annex IV.

### **3.2.9.4 Action on Receipt of a Completed Registration**

On receipt of a completed registration, Food Authorities should record the date of receipt on the form. Where any activities indicated on the form fall outside of their enforcement remit, the relevant Food Authority should be notified without delay.

Food Authorities should enter relevant information from the registration form on the database (see Chapter 3.2.9.5) and their lists of registered food establishments. The registration form should then be placed on a file (electronic or otherwise) prepared in respect of that food establishment.

If an establishment is undertaking any activity which could be deemed high risk this should be taken into account when prioritising initial inspections.

Food Authorities should keep application forms relating to establishments in a format that maintains their admissibility as evidence if required.

If any information is omitted from a registration form the Food Authority should either contact the food business operator to obtain the missing information or, if a substantial amount of information is missing, return the form to the food business operator for full completion.

On receipt of a completed application form, food authorities should have regard to Chapter 5.2.2.2 with respect to carrying out any inspection if required.

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<sup>16</sup> [www.gov.uk](http://www.gov.uk)

### **3.2.9.5 Food Authority Records**

Article 31(1) (b) of Regulation (EC) No 882/2004 requires the appropriate competent authority to draw up a list of food establishments that have been registered and permits existing lists to be used for this purpose. Food authorities must maintain their list in accordance with the requirements of Article 31(1) (b).

Food Authorities must keep an up-to-date list of food business establishments registered with them. The list should contain the following information about each food business:

- name of the food establishment;
- address of the food establishment; and,
- nature of the food business.

### **3.2.9.6 Acknowledgement of Registration**

Certificates of registration for food establishments should not be issued to food business operators because of their potential to mislead consumers into believing that a food establishment has “official approval”. Food Authorities may, however, choose to confirm safe receipt of registration forms and the entry of an establishment on to the list of registered food establishments. It would be of particular benefit if the Food Authority acknowledges a registration from a mobile establishment.

Any such confirmation should remind the food business operator to advise the Food Authority of any subsequent changes to the business, in accordance with Article 6(2) of Regulation (EC) No 852/2004.

### **3.2.10 Changes to Food Establishment Operations**

Under Article 6(2) of Regulation (EC) No 852/2004, food business operators must ensure that the appropriate Food Authority always has up-to-date information on their food establishment(s) and must notify their registering Food Authority of any significant changes to their operations. These may include, but are not limited to, changes in or ceasing of food activities, a change of trading name or if the business ceases trading.

On receipt of a notification of changes, the Food Authority should up-date their lists of registered food establishments as appropriate as well as the record on file relating to that establishment. When a Food Authority is notified of a change of a food business operator, this should prompt a new food business registration.

### **3.3 – Submission of Details for Approval by a Food Business Establishment**

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This Chapter relates to the establishments subject to approval under Regulation (EC) No 853/2004, in respect of which Food Authorities are responsible for enforcement.

#### **3.3.1 When is Approval Required?**

Regulation (EC) No 853/2004 requires that food business establishments handling food of animal origin that fall under the categories for which Annex III of those regulations lays down requirements must, with some limited exceptions, be approved by the Competent Authority or Food Authority. Compliance with relevant requirements of Regulation (EC) No 853/2004 is required in addition to full compliance with Regulation (EC) No 852/2004 and other relevant legislation. Registration under Article 6(2) of Regulation (EC) No 852/2004 is not required for establishments that are subject to approval.

#### **3.3.2 Division of Responsibilities between Food Authorities and FSA**

Food Authorities are responsible for the approval and enforcement of establishments subject to the requirements under Regulation (EC) No 853/2004 where control does not fall to an Official Veterinarian. These “product- specific” establishments will be producing any, or a combination of, the following: minced meat; meat preparations; mechanically separated meat; meat products; live bivalve molluscs; fishery products; raw milk (other than raw cows’ milk); dairy products; eggs (not primary production) and egg products; frogs legs and snails; rendered animal fats and greaves; treated stomachs; bladders and intestines; gelatine and collagen; and will include certain re-wrapping/re-packing establishments, cold stores and certain wholesale markets. Food Authorities are also responsible for enforcement in respect of collection centres and tanneries supplying raw material for the production of gelatine or collagen intended for human consumption.

The FSA is responsible for the approval and once approved, enforcement at establishments subject to the requirements under Regulation (EC) No 853/2004 where control falls to an Official Veterinarian in accordance with Article 4(7) of Regulation (EC) No 854/2004. These include slaughterhouses, game handling establishments, wholesale meat markets and cutting plants placing fresh meat on the market. The FSA is also responsible for establishments co-located with these 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.

The FSA may on a case-by- case basis, with the agreement of the Food Authority, take over responsibility for enforcement for food operations at co-located establishments to which either Regulation (EC) No 852/2004 or Regulation (EC) No 853/2004 applies, except where retail activity exists. This includes any other product of animal origin (OPOAO) and non-product of animal origin (non – POAO). Requests by the Food Authority for the FSA to take on enforcement responsibilities need to be referred to the FSA for agreement and decision before a transfer can take place.

The FSA is also responsible for enforcement in relation to the matters regulated by Schedule 6 of the Food Hygiene (Wales) Regulations 2006, in so far as it applies in relation to raw cows' milk intended for direct human consumption.

Where a food business is carrying out any activity that is subject to approval under Regulation (EC) No 853/2004 (including those that require approval by the FSA, but is not yet approved) without the required conditional or full approval, an offence is committed and enforcement action is the responsibility of the relevant Food Authority.

### **3.3.3 Exemptions from Approval**

Article 1 of Regulation (EC) No 853/2004 sets out the scope of that Regulation. The following paragraphs deal specifically with exemptions from the Regulation under Article 1(2) and under Article 1(5) (b) (ii). Additional guidance material is contained within the Food Law Practice Guidance.

On receipt of an application for approval or when providing advice to food business operators, Food Authorities will need to consider whether the activities proposed require approval or whether the food business operator might be exempt from approval. If the activities require approval Food Authorities must make an on-site visit.

The relevant exemptions from the requirements for approval under Regulation (EC) No 853/2004 fall into three categories:

- direct supply of small quantities of primary products; Regulation (EC) No 853/2004, Article 1(3)(c), (d) and (e);
- retail exemption; Regulation (EC) No 853/2004, Article 1(5)(b)(ii);
- food containing both products of plant origin and processed products of animal origin (Composite Products); Regulation (EC) No 853/2004, Article 1(2).

Establishments which are exempt from approval because they assemble, manufacture or handle composite products must demonstrate to the Food Authority that the POAO was produced and handled in accordance with the specific requirements in Regulation (EC) No 852/2004 and Regulation (EC) No 853/2004. This is specified in Article 1(2) of Regulation (EC) No 853/2004.

Further advice is contained in the FSA document: Approval of Establishments - Guidance for Local Authority Authorised Officers.

### **3.3.4 Collection Centres and Tanneries Supplying Raw Material for the Production of Gelatine or Collagen Intended for Human Consumption**

Collection centres and tanneries may supply raw material for the production of gelatine and collagen intended for human consumption. They are not subject to the requirements of Regulation (EC) No 852/2004, nor are they subject to approval under Regulation (EC) No 853/2004. However, they will need to be specifically authorised by the relevant Food Authority in accordance with Annex III, Section XIV,



Chapter I (5) of Regulation (EC) No 853/2004 (gelatine) and Section XV, Chapter I (5) of Regulation (EC) No 853/2004 (collagen), and must also meet the other requirements of Annex III, Section XIV (gelatine) and Annex III, Section XV (collagen) of Regulation (EC) No 853/2004.

### **3.3.5 Application for Approval**

Article 31(2) (a) of Regulation (EC) No 882/2004, as read with regulation 3(3) and (6) of the Official Feed and Food Controls (Wales) Regulations 2009, obliges the FSA<sup>17</sup> and Food Authorities to establish procedures for food business operators to follow when applying for the approval of their establishments in accordance with Regulation (EC) No 853/2004. The FSA and Food Authorities must ensure that they, and food business operators, follow these procedures as appropriate. Any deviations from these procedures must be recorded and where possible, must be agreed with the FSA and Food Authority beforehand. Any application for approval from a food business operator must be dealt with promptly.

### **3.3.6 Model Approval Form**

To ensure consistency, Food Authorities must ask food business operators to submit applications for approval in the appropriate format as set-out in the Food Law Practice Guidance.

A series of template forms are provided in the Food Law Practice Guidance to assist Food Authorities in the administration of approvals. Whilst the content of these documents must be regarded as the minimum required, Food Authorities could adapt them as necessary to meet local circumstances.

### **3.3.7 Channels for Approval**

Under the Provision of Services Regulations 2009, Food Authorities must have an electronic means for food business operators to seek approval for food establishments. Applications for approval may be electronically completed and submitted to the relevant Food Authority online using the Gov.uk website<sup>18</sup>.

### **3.3.8 Action Required Following Receipt of an Application for Approval**

Applications for approval of establishments must only be accepted from food business operators that intend to engage in activities for which approval would be required in accordance with Regulation (EC) No 853/2004.

In considering applications for approval the FSA and Food Authorities must ensure that they fully consider any exemption that may be available to the applicant afforded by Article 1 and 4 of Regulation (EC) No 853/2004.

Following receipt of an application form for an establishment that requires approval, the FSA or Food Authority must make an on-site visit to verify whether the FBO

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<sup>17</sup> In relation to slaughterhouses

<sup>18</sup> [www.gov.uk](http://www.gov.uk)

complies with the relevant legal requirements and whether approval or conditional approval can be granted.

Further advice is contained in the FSA document: Approval of Establishments - Guidance for Local Authority Authorised Officers.

### **3.3.8.1 Supporting Information/Accompanying Information**

The FSA or Food Authority must ensure that the food business operator supplies all relevant information before an application for approval is determined. This information should be supplied with the application or obtained during the subsequent on-site visit to the establishment as required by Article 31(2) (b) of Regulation (EC) No 882/2004 (see Chapter 3.3.4). It is a matter for the FSA or Food Authority to decide at which stage of the application this information must be provided.

### **3.3.8.2 Determination of Approval**

Before reaching a decision on an application for approval, the FSA or Food Authority must ensure that an on-site visit is made in accordance with Article 31(2) (b) of Regulation (EC) No 882/2004.

This must take the form of an inspection of the establishment (see Chapter 5.2.2), to verify that, where necessary, all systems, procedures and documentation meet the relevant requirements of Regulation (EC) No 852/2004 and Regulation (EC) No 853/2004.

The inspection must be conducted in accordance with, and cover, all aspects of the relevant inspection form for the business concerned. It must also consider all issues requiring the FSA or Food Authority consent as identified by Regulation (EC) No 853/2004. All the requirements of food law relevant to that business must be met prior to full approval being granted, as per Article 31(2) of Regulation (EC) No 882/2004.

### **3.3.8.3 More than one Type of Product**

When considering an application for the approval of an establishment, the FSA or Food Authority must take into consideration all activities carried out in the establishment.

There will be establishments where two or more products of animal origin subject to requirements of Regulation (EC) No 853/2004 are applicable, e.g. an establishment producing both meat products and fishery products. In such cases the relevant provisions will apply to areas of the establishment where each type of product is produced. All relevant provisions of the Regulation will apply to those areas of the establishment where facilities are shared.

### **3.3.8.4 Conditional Approval**

If an establishment does not fully meet the requirements of Regulation (EC) No 853/2004 following an on-site visit, the FSA or Food Authority must consider whether



a conditional approval is appropriate.

Article 31(2) (d) of Regulation (EC) No 882/2004 permits the granting of conditional approval to an establishment, which does not fully comply with the requirements of food law, providing the establishment meets all infrastructure and equipment requirements (see relevant section of the Food Law Practice Guidance).

The FSA or Food Authority must bear in mind that a food business operator can only make an application for the approval of establishments under their control. The decision whether to grant conditional approval to an establishment rests with the relevant Competent Authority. Professional judgment must be used in deciding whether it would be appropriate to grant conditional approval, on a case by case basis.

If conditional approval is granted, this will be valid for three months, during which a further visit must be carried out as an inspection (Chapter 5.2.2) in accordance with Article 31(2) (d) of Regulation (EC) No 882/2004. If a visit is not undertaken during this period, the conditional approval expires.

In appropriate circumstances, conditional approval may be extended, but this is restricted to a maximum of six months from the date of the initial granting of conditional approval. Professional judgment must be used in deciding whether it would be appropriate to extend conditional approval on a case by case basis. However, in no circumstances should conditional approval be extended to more than six months as set-out in Article 31(2) (d) of Regulation (EC) No 882/2004.

#### **3.3.8.5 Full Approval**

The FSA or Food Authority may grant full approval within three months or within six months where conditional approval has been extended as described in 3.3.6.4. This must include the establishment being observed in operation and the food business operator demonstrating compliance with all relevant requirements in food law including the product specific requirements in Regulation (EC) No 853/2004. This must be determined at a new official control visit at the establishment as set-out in Article 31(2) (d) of Regulation (EC) No 882/2004. If full approval is not granted within six months of awarding a conditional approval, the conditional approval will expire.

#### **3.3.8.6 Refusal of Approval**

When the FSA or Food Authority has decided to refuse an application for approval, it must notify the applicant in writing of the decision at the earliest opportunity. The FSA or Food Authority must also give the reasons for refusal in writing, the matters necessary to satisfy the requirements of the Regulation, and make it clear that activities requiring approval must not be undertaken unless approval or conditional approval is granted. Such notification must also make the food business operator aware of their right of appeal against the decision, and provide the address of the Magistrates' Court where such an appeal may be made.

The FSA or Food Authority must bear in mind that the food business operator has the right to appeal to a relevant Court against the decision to refuse an approval or conditional approval. Rights of appeal are subject to the Official Feed and Food

Controls (Wales) Regulations 2009. From the date on which the notice of the decision is served on the relevant person the establishment cannot continue operating whilst the appeal is being determined.

#### **3.3.8.7 Approval Number/Identification Mark (See also relevant section of the Food Law Practice Guidance)**

The Food Authority must give an approval number to each food business establishment it approves, or conditionally approves, in accordance with Article 3(3) of Regulation (EC) No 854/2004. This approval number must be unique to that authority. The approval number should form part of an approval code consisting of the Food Authority's two-letter code followed by the approval number.

The approval code must be incorporated into an identification mark which approved establishments are required to apply to their products, as appropriate (see Chapter 3.3.6.8) below). The requirements for the form of the identification mark are set-out in Annex II, Section I A, B and C of Regulation (EC) No 853/2004.

#### **3.3.8.8 Identification Marking of Food to which Regulation (EC) No 853/2004 Does Not Apply**

Food Authorities must bear in mind that Annex II, Section 1, B7 of Regulation (EC) No 853/2004 stipulates that if an establishment manufactures both food to which Regulation (EC) No 853/2004 applies and food to which it does not, the food business operator can apply the identification mark to both types of food.

#### **3.3.8.9 Notification**

Once conditional approval or full approval have been granted, the Food Authority must notify the applicant in writing. Such a notification must include details of the nature and scope of the approval, any conditions or limitations that apply and the approval code. Where full approval has been granted following conditional approval, this notification must include confirmation that the approval code allocated to the establishment can continue to be used.

The Food Authority must retain a copy of the above notifications on the relevant establishment file and ensure that the FSA is notified of the approval in accordance with Chapter 2.4.1.2.

#### **3.3.9 Change of Activities, Ownership or Details**

Food business operators are required to notify the relevant Food Authority of any changes to their business as set-out in Article 6(2) of Regulation (EC) No 852/2004. This ensures the Food Authority always has up-to-date information on establishments including significant changes in activities and closures of establishments. However, where this does not happen and a Food Authority becomes aware of any significant changes in, for example, the ownership, management or activities of approved establishment, they must carry out an inspection and take any necessary action.

The approval of an “establishment” applies to both the premises and the business

operating at the premises. If premises change ownership, a new application for approval must be submitted by the food business operator before it can operate.

### **3.3.10 Enforcement in Approved Establishments**

In addition to the enforcement powers under the legislation detailed in Chapter 7 of this code, authorised officers also have powers under the Official Feed and Food Controls (Wales) Regulations 2009.

Powers to withdraw or suspend the approval or conditional approval of an establishment are provided by Article 31(2) (e) of Regulation (EC) No 882/2004.

Regulation 3 (3) and Schedule 5 of the Official Feed and Food Controls (Wales) Regulations 2009 designates Food Authorities as Competent Authorities for the purposes of Article 31 of Regulation (EC) No 882/2004.

On the discovery of non-compliance in establishments, the Food Authority must, before considering suspension or withdrawal, explore other enforcement options to control the food hazards presented by the establishment without compromising food safety.

Non-compliance should not necessarily be considered sufficient to justify the immediate suspension or withdrawal of an establishment's approval or conditional approval. A reasonable opportunity to achieve compliance should be allowed where this is appropriate, given the immediate effect of the suspension or withdrawal is a cessation of the operations subject to that approval.

#### **3.3.10.1 Suspension of Approval or Conditional Approval**

Food Authorities must only initiate procedures to suspend an establishment's approval or conditional approval if other enforcement options have been considered, and circumstances exist in accordance with Article 31(2) (e) of Regulation (EC) No 882/2004.

If the Food Authority identifies serious deficiencies or has to stop production repeatedly at an establishment then consideration should be given to the suspension of approval. A Food Authority may only suspend an approval if the food business operator can guarantee in writing that it will resolve deficiencies within a reasonable timescale. Food Authorities must be aware that they cannot insist on this as no requirement exists in law to provide such guarantees.

If a food business operator is not able to provide adequate guarantees regarding future production, the Food Authority shall initiate procedures to withdraw the establishment's approval.

#### **3.3.10.2 Withdrawal of Approval or Conditional Approval**

Ordinarily, Food Authorities should only initiate procedures to withdraw an establishment's approval or conditional approval if other enforcement options have been considered, including suspension of the approval (see Chapter 3.3.8.1), and if circumstances exist in accordance with Article 31(2) (e) of Regulation (EC) No

882/2004.

An establishment's approval or conditional approval may be withdrawn in circumstances where the food business operator is unable to guarantee in writing the identified deficiencies will be rectified and an acceptable standard will be maintained in the future. There may be circumstances where immediate withdrawal may be appropriate.

#### **3.3.10.3      Notifications of Suspension or Withdrawal of Approval or Conditional Approval**

Under Article 54(3) (a) of Regulation (EC) No 882/2004, the Food Authority must notify the food business operator in writing of its decision to suspend or withdraw an establishment's approval or conditional approval. The Food Authority must also give the reasons for the suspension or withdrawal in writing, the matters necessary to satisfy the requirements of the Regulation, and make it clear that activities requiring approval cannot be undertaken. Such notification must also make the food business operator aware of their right of appeal against the decision to withdraw the approval and provide the address of the Magistrates' Court where such an appeal can be made.

Copies of notifications must be retained on the Food Authority's files. The Food Authority must also notify the FSA at [lasupportwales@food.gov.uk](mailto:lasupportwales@food.gov.uk) when an establishment's approval or conditional approval has been suspended or withdrawn.

#### **3.3.10.4      Appeals against Suspension or Withdrawal of Approval or Conditional Approval**

The food business operator has the right to appeal to a relevant Court against the decision to withdraw or suspend an approval or conditional approval. Rights of appeal are subject to the Official Feed and Food Controls (Wales) Regulations 2009. The establishment cannot continue operating, from the date on which the notice of the decision is served, whilst the appeal is being determined irrespective of whether it is a suspension or withdraw.

#### **3.3.11          Food Business Approved Establishment Record**

Food Authorities shall maintain up-to-date lists of approved food business establishments in their area. This data could be shared for the purposes of ensuring public health and the effective enforcement of Food law.

#### **3.3.12          Database of Food Business Approved Establishments**

Food Authorities must maintain an up-to-date database of food business establishments which have been approved or conditionally approved by them. Food Authorities must liaise as necessary to ensure that information is made available to all authorities that require it.

## **3.4 – Food Business Information**

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### **3.4.1 Access to Information**

Food Authorities must provide details of relevant food business establishment records if requested by PHW the CCDC/CPHM (CD/EH), the FSA or other similar enforcement or surveillance bodies 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. Such requests must be handled with due regard to Freedom of Information and Data Protection legislation (see also the Food Law Practice Guidance).

Requests for information other than from the above bodies must also be handled with due regard to Freedom of Information and Data Protection in connection with requests for information on registered food business establishments.

### **3.4.2 Information Requirement**

The Food Authority's establishment record files, which could be computer based, must be updated after each intervention and include:

- information on the size and scale of the business and its customer base;
- information on the type of food activities undertaken by the business, including any special equipment, processes or features;
- copies of any correspondence with the business, including documentation associated with approvals or authorisations; and
- copies of food sample analysis/examination results;
- a system of flagging for significant issues, including details of any non-compliance to be reviewed at future interventions;

and in respect of establishments inspected for food hygiene purposes,

- an assessment of the business compliance with procedures based on HACCP principles where appropriate;
- information on hygiene training undertaken by employees; including any training on the implementation and operation of the food safety management system; and,
- information as to whether the business imports food and/or is the first destination inland after import

and, additionally, in respect of premises inspected for food standards purposes:

- the existence and assessment of any documented quality system; and details of other businesses that produce or import for the business.

### **3.4.3 Retention of Establishment Record Files**

Records relating to interventions must be retained in the establishment file for at

least six years<sup>19</sup> as stipulated in the Framework Agreement. However, records may need to be retained for longer because of litigation or a review by the Public Services Ombudsman for Wales, or required by the document management policy of the Food Authority, or following an instruction by the FSA.

#### **3.4.4 Retention of Import Documentation**

Food Authorities with a point of entry for imported food must ensure that, where available, information relating to the number and type of food consignments is maintained together with relevant information on the checks made to determine compliance with legal requirements. Where information is recorded, the level of information about food examinations (including examinations undertaken at External Temporary Storage Facilities or international rail terminals) and deferred examinations must provide consignment traceability and permit effective internal monitoring.

This information must include any identifying reference for the consignment examined, country of origin, information on the nature of the food and the checks carried out and, where any enforcement action or sampling has been undertaken, the details of the agent and/or consignor/consignee. Records of sampling checks and records relating to emergency controls must be held for three years.

Please note: A 'consignment' is a quantity of food or feed of the same type, class or description covered by the same document(s), conveyed by the same means of transport and coming from the same third country.

Copies of the following information should be retained:

- the CVED or CED (after completion and stamping) for a period of three years;
- the original of each third country health certificate or any document required to accompany a consignment and subject to checking e.g. results of analysis, for a period of three years; and,
- all submission forms with which samples are sent to laboratories for examination and a record of the results of all such examinations, for a period of one year).

#### **3.4.5 Intervention Report**

The outcome of an official control must always be reported in writing to the food business operator either immediately after the official control or as soon as practicable thereafter, even if the outcome was satisfactory. It is acceptable to communicate the outcome in an electronic format.

Where the official control was an inspection, partial inspection or audit, the information detailed in the Food Law Practice Guidance must be included in the report. Reports could include other legislation covered during interventions at food establishments, e.g. health and safety at work, weights and measures etc, although

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<sup>19</sup><https://www.food.gov.uk/sites/default/files/multimedia/pdfs/enforcement/frameworkagreementno5.pdf>

matters relating to food law must be clearly differentiated from other law.

Communications between Food Authorities and multi-site food businesses should be, where applicable, in accordance with the Primary or Home Authority Principle.

Direct communications between Food Authorities and multi-site food businesses should normally be with the head office of the business concerned, unless the business has given a different address for communications to be sent.

Documents that are left with on-site personnel and those that are sent by electronic means should also be copied to the relevant head office or other address, unless the business indicates otherwise.



## **3.5 – Internal Monitoring**

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This section deals with the internal monitoring of interventions by the Food Authority for its own service delivery, and the monitoring of each Competent Authority's intervention actions by the FSA. Food Authorities must ensure that interventions are carried out to a consistently high standard, and that the planned intervention programme is being maintained.

### **3.5.1 Documented Procedures**

Food Authorities must maintain documented procedures for monitoring progress of the planned intervention programme and the quality and consistency of interventions undertaken by their officers, or staff supplied under contract, to ensure, so far as practicable, that interventions are carried out competently. The procedures must include how the Authority will amend its programme to allow for in-year changes, such as newly opened establishments, establishments found to be closed, and establishments for which the intervention rating is changed.

### **3.5.2 Monitoring System Requirement**

The monitoring system must include measures to assess:

- Food Authority's planned intervention programme;
- compliance with this Code, the Food Law Practice Guidance and other FSA guidance;
- the consistent assessment of intervention ratings;
- appropriate use of relevant inspection forms;
- compliance with internal procedures, policies and the Food Authority's Enforcement Policy;
- that the interpretation and action taken by officers following an intervention is consistent within that Food Authority and is consistent with FSA and/or Welsh Local Government Association (WLGA) guidance;
- that officers are aware of and have access to other published industry codes of practice relevant to the businesses within the area of the Food Authority;

and in relation to food hygiene interventions:

- that officers have due regard to published UK or EU Guides to Good Practice.

### **3.5.3 Verification Checks by Competent Authorities with Points of Entry for Imported Food**

Article 8 of Regulation (EC) No 882/2004 requires Food Authorities to carry out official controls in accordance with documented procedures. Food authorities shall have procedures in place to verify the effectiveness of official controls that they carry out and ensure that corrective action is taken when needed and that the documented procedures are updated as appropriate (see Chapter 5.4)



#### **3.5.4 Food Authority Management Information Systems (MIS)**

The Food Authority's MIS must also record the details of premises, intervention ratings, interventions, sampling, compliance levels, risk scores and complaint investigations and enforcement actions which are to be sent to the FSA via its established monitoring system. The Food Authority's MIS must be maintained and capable of providing information to the FSA.

## **Chapter 4 – Qualifications and Experience**

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Food Authorities will have until March 2019 to fully implement the requirements in this Chapter. Lead and authorised officers will need to possess the relevant baseline qualification (or equivalent) set-out in section 4.1.3. Food Authorities are to consider the relevant competencies needed for the roles of officers and managers, and build that into their 2018/19 personal development and reporting cycle, which should enable full compliance with section 4.2 as of the 31<sup>st</sup> March 2019.

### **4.1 – Introduction**

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This Chapter concerns the qualifications of authorised officers of Food Authorities who carry out interventions (including official controls which are undertaken to verify compliance with food law).

It implements the qualification and training provisions of Regulation (EC) No 882/2004 on official controls.

This Chapter does not apply to staff who have only indirect managerial responsibility for the Food 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.

If a Food Authority needs to engage expertise in an area listed in Chapter I of Annex II to Regulation (EC) No 882/2004, it should ensure that any expert it engages has a recognised qualification and relevant experience for which the expertise is required.

There are several alternative qualifications that can be considered an equivalent qualification to those set-out at Chapter 4.1.3 and 4.2.6 below.

#### **4.1.1 Authorisations**

Officers must be authorised to undertake enforcement functions. If the functions are contained in regulations made under the European Communities Act 1972, officers must be specifically authorised under the relevant Regulations – this authorisation must be correctly described in the authorisation documents and officers' credentials.

Authorisations should clearly indicate any restrictions placed upon an officer's authorisation, where appropriate.

Such specific authorisations are required for officers performing duties under the Food Hygiene (Wales) Regulations 2006 and the Official Feed and Food Controls (Wales) Regulations 2009.

The Food Safety Act 1990 allows for the authorisation of officers, in writing, either generally or specially to act in matters arising under the Act or Regulations made under it. Officers may therefore be authorised generally to undertake enforcement functions provided for in regulations made under the 1990 Act.

Food Authorities must set up and put in place a documented procedure for the authorisation of officers carrying out official controls. The authorisation procedure should cover:

- delegated powers – who is authorised to do what and what qualifications are required;
- who is authorised to approve legal proceedings;
- the arrangements in place for refresher and induction training;
- the assessment process to ensure and demonstrate that the Authority has assessed the competence of the authorised officer/s in accordance with this Code (Chapter 4)

Therefore, Food Authorities must ensure that officers they authorise in accordance with their documented procedure to carry out enforcement under food law are:

- suitably qualified;
- experienced; and,
- competent to carry out the range of tasks and duties they are required to perform.

The lead food officer must determine, based upon the guidance below, when authorising an officer to undertake the delivery of official controls. The decision by the lead food officer to authorise must be based upon the officer possessing the underpinning knowledge (qualification), practical training and embedded competencies, together coupled with maintenance of their ongoing Continuing Professional Development (CPD) requirements.

The Food Authority must ensure that the authorisation process is documented along with the evidence of qualification, practical training and CPD. This applies equally to those who are directly employed, to temporary staff, and to those employed by or as contractors.

#### **4.1.2 Requirements for those delivering Official Controls**

The Code recognises two defined roles that deliver official controls for hygiene and standards:

- Lead Food Officer
- Authorised Officer

##### **4.1.2.1 Lead Food Officer**

Food Authorities with responsibility for the enforcement of food law must appoint a suitably competent and experienced lead food officer(s) (there may be separate lead officers for food hygiene, food standards and food hygiene at the level of primary production) to take responsibility for operational management of food law matters.

The appointed lead food officer must:

- have a good knowledge and understanding of the nature and type of food establishments that operate in the authority's area;

- understand the common hazards and risks associated with the food processes and technologies in operation at these establishments;
- be able to apply appropriate control measures, including enforcement sanctions;
- apply the requirements of this Code;
- be involved in the assessment of other officer's competency; and,
- comply with the competency requirements for lead food officers in Chapter 4.2 of this Code.

A Food Authority's lead food officer may be an officer employed by another authority provided they meet the necessary competency requirements for the area or areas to which they have been appointed as lead food officer. This will facilitate regional working and sharing of knowledge. This code also recognises that the lead food officer role may be performed by more than one person.

The FSA must be notified of the name(s) and contact details of the person(s) that perform this function on behalf of the local authority. Changes to nominated lead food officers should be sent by e-mail to [lasupportwales@food.gov.uk](mailto:lasupportwales@food.gov.uk). A lead food officer must have a baseline qualification equal to that detailed at Chapter 4.1.3.

#### **4.1.2.2 Authorised Officer**

These are officers who undertake assessment of compliance with food law and enforcement action as appropriate. An authorised officer must:

- have a level of knowledge and understanding that allows them to deliver official control interventions;
- have an understanding of the hazards and risks within the premises they are required to inspect; and,
- recognise when formal measures are not appropriate and be able to give advice appropriately.

This role should be performed by an officer that has the relevant competencies detailed at Chapter 4.2. The level of authorisation should reflect the level of competence assessed by the lead officer.

Before Food Authorities authorise officers to deliver official controls (hygiene and standards), the lead food officer must ensure that the officer:

- holds the baseline qualification listed at Chapter 4.1.3 of the Code OR one of the equivalent qualifications listed in the Food Law Practice Guidance;
- meets the relevant competencies listed in Chapter 4.2.2 of the Code; and,
- demonstrates they have maintained their Continuing Professional Development (CPD) in accordance with Chapter 4.2.7 of the Code.

An authorised officer must have a baseline qualification equal to that detailed at Chapter 4.1.3.

#### **4.1.2.3 Regulatory Support Officers**

This Code also recognises that there are alternative interventions that may be delivered by Regulatory Support Officers. These are officers who may carry out the day-to-day tasks within a food team which support the work of the authorised officers.

Regulatory support officers may be permitted to undertake alternative interventions, which are not official controls, such as:

- information gathering;
- education and advice; and,
- sampling for information gathering purposes.

#### **4.1.3 Baseline Qualification**

The lead food officer must make a determination based on the guidance in this chapter when authorising an officer to undertake the delivery of official controls with the exception of primary production (see section 4.2.5).

The following qualifications incorporate the underpinning knowledge required to undertake the full range of official controls and enforcement sanctions. The qualifications listed below require a practical training period to be undertaken. The lead officer must not authorise officers who cannot demonstrate that they have completed this training:

The baseline qualification for officers undertaking official hygiene controls:

- The Higher Certificate in Food Control

The Higher Certificate in Food Control may be awarded by any one of the following:

- Environmental Health Registration Board (EHRB); or
- The Scottish Food Safety Officers' Registration Board (SFSORB)

The baseline qualification for officers undertaking official food standards controls is either:

- The Higher Certificate in Food Control; or
- Trading Standards Qualification Framework (TSQF) including Diploma in Consumer Affairs and Trading Standards (DCATS) with Food Standards Service Delivery module or Higher Diploma in Consumer Affairs and Trading Standards (HDCATS) with Food Standards Service Delivery module.

For premises where quality assurance systems are to be assessed, officers should possess a Quality Assurance qualification e.g. Lead Auditor or the Higher Diploma in Consumer Affairs and Trading Standards, or equivalent professional experience and competency to enable them to assess quality assurance systems.

#### **4.1.3.1 Equivalency of known Qualifications**

There are other qualifications that can generally be considered equivalent to those specifically set-out in this Code at Chapter 4.1.3. These qualifications are considered to encompass the same underpinning knowledge required as the baseline qualification and require the necessary practical training. A list of these qualifications can be found in the Food Law Practice Guidance.

Lead officers must ensure that an authorised officer possesses either the baseline qualification or one that is equivalent prior to authorising them to undertake official controls.

Where qualifications fail to encompass all the underpinning knowledge areas, lead officers should consider restricting the officer's authorisation. Further details of these restrictions can be found in the Food Law Practice Guidance.

#### **4.1.3.2 Equivalency of other Qualifications**

Existing or prospective Food Authority officers may also have a range of qualifications, additional training and experience that together indicate their competence to undertake specific enforcement activities identified in this Code. In such cases the relevant professional and awarding bodies should be approached directly by either the existing Food Authority employer or prospective officer for an assessment of equivalence, which must then be recognised by the FSA. Nationals from other countries in the EU/European Economic Area have a right under EU law to the recognition of qualifications and experience gained outside the UK. This situation may arise if an individual seeks employment in UK as a Public Analyst, Food Examiner or food law enforcement officer, having acquired relevant qualifications and work experience in their home country. Competent Authorities should accept suitable non-UK qualifications and experience in order to give effect to these EU rights.

The equivalence of non-UK qualifications can be determined by the United Kingdom National Academic Recognition Information Centre (UK NARIC) for the purposes of the Mutual Recognition Directive (EC) No 2005/36 on the recognition of professional qualifications. Food Authorities should make enquiries with the relevant professional and awarding bodies if they have any doubts in this area before confirming an appointment.

## 4.2 – Official Control / Type of Role

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### 4.2.1 Lead Food Officer

The following competencies are required of an officer or officers who fulfil the role of the lead officer for the Food Authority. An officer(s) must be able to demonstrate that they meet the competencies 1 – 3 in addition to those required for an authorised officer.

No.	Statement of Competence
1	Local and specialist knowledge
2	Legislation and centrally Issued guidance
3	Planning and monitoring of an official control programme

#### 4.2.1.1 Local and Specialist Knowledge

No. 1	Statement of Competence – Lead officer
1.1	<ul style="list-style-type: none"><li>Knowledge and understanding of the nature and type of businesses that operate in the authority's area</li></ul>
1.2	<ul style="list-style-type: none"><li>Knowledge and understanding of the hazards that can occur in premises within the authority's area and risk management techniques.</li></ul>
1.3	<ul style="list-style-type: none"><li>Knowledge and understanding of when specialist auditing and quality assurance skills are needed to deliver official controls.</li></ul>

#### 4.2.1.2 Legislation and Centrally Issued Guidance

No. 2	Statement of Competence – Lead officer
2.1	<ul style="list-style-type: none"><li>Understands relevant EU and national food hygiene and/ or standards legal framework and can advise on practical application/implications of this legislation.</li></ul>
2.2	<ul style="list-style-type: none"><li>Understands, interprets and applies the Framework Agreement on Food Law Enforcement with Local Authorities, the Food Law Code of Practice and associated Practice Guidance appropriately.</li></ul>
2.3	<ul style="list-style-type: none"><li>Understands and can advise on the application of the full range of enforcement sanctions available and proportionate application of food law.</li></ul>

#### 4.2.1.3 Planning of an Official Control Programme

No. 3	Statement of Competence – Lead officer
3.1	<ul style="list-style-type: none"><li>Can appropriately apply national and local priorities to the profile of food business establishments and points of entry in the local authority's area when planning a programme of official food controls.</li></ul>
3.2	<ul style="list-style-type: none"><li>Can identify skill or knowledge gaps in officers delivering official food controls.</li></ul>
3.4	<ul style="list-style-type: none"><li>Understands the process of raising and managing food incidents as set-out in the Code of Practice, including responses to infectious disease outbreak</li></ul>

3.5	<ul style="list-style-type: none"> <li>Understands how local contingency arrangements apply to the management of serious food related incidents e.g. infectious disease outbreak.</li> </ul>
3.6	<ul style="list-style-type: none"> <li>Understands the role of Home Authorities and Primary Authority Partnerships in co-ordinating the delivery of official controls and ensures it is applied by the authority.</li> </ul>
3.7	<ul style="list-style-type: none"> <li>Understands how to comply with local and national data gathering and reporting requirements.</li> </ul>
3.8	<ul style="list-style-type: none"> <li>Co-ordinates consistent delivery of official controls within the authority and between other Competent Authorities.</li> </ul>

#### 4.2.2 Authorised Officers

The following competencies are required of an officer who fulfils the role of an authorised officer for the competent authority. An officer must be able to demonstrate that they meet the relevant competencies 4 – 8 before they are authorised to undertake this function.

**With regards to 4.2.2.2 officers may be either authorised generally to use all relevant sanctions or individually for specific sanction depending on the level of competency of individual officers.**

No.	Official Control / Type of Role
4	Inspection of Food Establishments
5	Use of Enforcement Sanctions
6	Sampling
7	Import and Export controls
8	Reactive investigations

#### 4.2.2.1 Inspection of Food Establishments

No. 4	Statement of Competence - Authorised Officer
4.1	<ul style="list-style-type: none"> <li>Has relevant understanding and knowledge of HACCP-based procedures and can identify and determine hazards and risks that occur in establishments and products.</li> </ul>
4.2	<ul style="list-style-type: none"> <li>Has the ability to apply that knowledge taking account of flexibility principles contained within Article 5 of Regulation (EC) No. 852/2004.</li> </ul>
4.3	<ul style="list-style-type: none"> <li>Understands how and why risks posed by different food types, processing methods, and finished products need to be subject to ways of assessing risks posed to consumers.</li> </ul>
4.4	<ul style="list-style-type: none"> <li>Understands relevant National Guidance, EU and National Food Hygiene and/or standards legislation and can advise on their application.</li> </ul>
4.5	<ul style="list-style-type: none"> <li>Understands how to assess compliance with the requirements of EU and National food hygiene and/ or standards legislation with further reference to Annex V of the Code and Practice Guidance.</li> </ul>
4.6	<ul style="list-style-type: none"> <li>Able to determine the appropriate course of action to remedy non-compliance, including when it is appropriate to escalate enforcement action.</li> </ul>



4.7	<ul style="list-style-type: none"> <li>Can make a Food Hygiene/Standards Intervention Rating assessment of risk using Annex V of the Code.</li> </ul>
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#### 4.2.2.2 Use of Enforcement Sanctions

No. 5 Statement of Competence - Authorised Officer	
5.1	<ul style="list-style-type: none"> <li>Understands and demonstrates appropriate and proportionate use of Enforcement Sanctions commensurate to the type of activity they are authorised to enforce and the powers they are authorised to use, including any limitations on such powers conferred.</li> </ul>
5.2	<ul style="list-style-type: none"> <li>Can clearly differentiate between legal requirements and recommendations of good practice by avoiding gold plating and 'regulatory creep'. Can provide advice and enforce based on levels of compliance with regard to consistency and proportionality based on the hierarchy of risk.</li> </ul>
5.3	<ul style="list-style-type: none"> <li>Understands the legal framework with regard to the use of enforcement powers including the role of Home and Primary Authorities.</li> </ul>
5.4	<ul style="list-style-type: none"> <li>Can demonstrate an understanding of how to serve Notices; gather evidence; prepare cases for prosecution and apply knowledge to comply with the requirements of PACE and the Regulation of Investigatory Powers (RIPA) Act 2000<sup>20</sup>, where appropriate.</li> </ul>

#### 4.2.2.3 Sampling

No. 6 Statement of Competence - Authorised Officer	
6.1	<ul style="list-style-type: none"> <li>Understands sampling methodologies and the role of the Public Analyst and Food Examiner.</li> </ul>
6.2	<ul style="list-style-type: none"> <li>Is aware of national and local sampling priorities. Can use UKFSS and searchable database, where appropriate.</li> </ul>
6.3	<ul style="list-style-type: none"> <li>Can interpret sampling results and make a judgement on appropriate action based on risk.</li> </ul>

#### 4.2.2.4 Import / Export Controls

No. 7 Statement of Competence - Authorised Officer	
7.1	<ul style="list-style-type: none"> <li>Understands the legal framework with regard to Imported / Exported food and how to assess compliance.</li> </ul>
7.2	<ul style="list-style-type: none"> <li>Can determine the most appropriate course of action and the range of enforcement sanctions available.</li> </ul>
7.3	<ul style="list-style-type: none"> <li>Can identify food species and comment on fitness at Border Inspection Posts (also see Chapter 4.6)</li> </ul>
7.4	<ul style="list-style-type: none"> <li>Can demonstrate an understanding of controls at points of entry include carrying out systematic documentary checks, random identity checks and sampling for analysis as appropriate.</li> </ul>

<sup>20</sup> <https://www.legislation.gov.uk/ukpga/2000/23/contents>

**NB. See note at 4.2**

#### **4.2.2.5 Reactive Investigations**

<b>No. 8</b>	<b>Statement of Competence - Authorised Officer</b>
8.1	<ul style="list-style-type: none"><li>Understands how to conduct an investigation and gather evidence in accordance with PACE and RIPA. Is then able to analyse information and determine an appropriate course of action.</li></ul>
8.2	<ul style="list-style-type: none"><li>Can identify when it is appropriate to engage with other agencies and stakeholders in particular when investigating food incidents and or infectious disease outbreaks.</li></ul>

#### **4.2.3 Regulatory Support Officer**

The following competencies are required of an officer who fulfils the role of a Regulatory Support Officer for the Food Authority. An officer must be able to demonstrate that they meet the relevant competency number 9 before they begin to undertake this function. **These officers must not be authorised to deliver official controls.**

<b>No.</b>	<b>Type of Role</b>
9	Regulatory Support Officer

##### **4.2.3.1 Information Gathering**

<b>No. 9</b>	<b>Statement of Competence - Regulatory Support Officer</b>
9.1	<ul style="list-style-type: none"><li>Understands sampling methodologies and is able to gather samples according to PHW/FSA protocol.</li></ul>
9.2	<ul style="list-style-type: none"><li>Can demonstrate an understanding of how to identify food hazards and gather accurate information. Can identify when appropriately authorised officers need to intervene.</li></ul>
9.3	<ul style="list-style-type: none"><li>Can demonstrate the communication skills needed to engage with stakeholders and signpost to sources of information and guidance.</li></ul>
9.4	<ul style="list-style-type: none"><li>Is able to locate current sources of guidance for food hygiene and standards.</li></ul>

#### **4.2.4 Import Controls (Requirement to appoint an Environmental Health Officer at a Border Inspection Post)**

If the approval for the Border Inspection Post permits the import of any product (other than snails) for human consumption listed in Chapter 3 of Annex I to Commission Decision 2007/275/EC, Food Authorities may appoint suitably trained Environmental Health Officers to be official fish inspectors for that post in relation to fish and fishery products. The inspector will have all the powers of an official veterinary surgeon in relation to those products<sup>21</sup>.

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<sup>21</sup> The Trade in Animals and Related Products Regulations 2011

#### 4.2.5 Primary Production

Food Authority officers undertaking food hygiene enforcement at the level of primary production, if they do not already hold the qualifications listed above should hold one of the following:

- **Trading Standards Qualification Framework (TSQF) Awards** which includes:

Diploma in Consumer Affairs and Trading Standards (DCATS) or Higher Diploma in Consumer Affairs and Trading Standards (HDCATS) with Food Standards and/or Agriculture and/or Animal Health and Welfare service delivery module; Diploma in Trading Standards (DTS); or Diploma in Consumer Affairs (DCA Part II) provided it includes the Food and Agriculture Paper, or its antecedents.

PLUS

- **Quality Assurance qualification** e.g. Lead Auditor or the Higher Diploma in Consumer Affairs and Trading Standards or, have equivalent professional experience, or undertake to achieve such qualifications, and are authorised to enforce all relevant legislation.

Officers should be able to recognise and respond to food hygiene hazards during the course of a visit to a primary production establishment.

In addition, officers authorised to undertake food hygiene official controls on farms should have a detailed knowledge of the following:

- the nature and types of primary production establishments in their area and the technology utilised by the business subject to official control by the officer; and relevant food hygiene and safety legislation.

#### 4.2.6 Training

Food Authorities should ensure that authorised officers receive relevant structured on-going training. Such training should explain new legislation and procedures and technological developments relevant to food businesses subject to their control. The training programme should address gaps that prevent an officer from effectively delivering official controls.

#### 4.2.7 CPD hours

Food Authorities must review the training needs and CPD requirements of their officers on an annual basis.

Lead food officers and authorised officers must obtain a minimum of 20 hours CPD per year, split into:

- A minimum of 10 CPD hours on relevant core food matters directly related to the delivery of official controls for which the Officer is authorised;

- 10 hours on other professional matters. This could include training needs identified by the Lead Food Officer during competency assessments/ appraisals.

Guidance on training that may be considered as 'other professional matters' is contained in the relevant section.

## **Chapter 5 – Organisation of Official Controls**

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### **5.1 – Food Service Plans**

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#### **5.1.1 Requirement for a Written Service Plan**

Each Food Authority must have an up-to-date, documented Food Service Plan which is readily available to food business operators and consumers. The Plan must be subject to regular reviews and clearly state the period during which the Plan has effect.

The Plan must cover all areas of food law that the Food Authority has a duty to enforce and set-out how the Authority intends to deliver official controls within its area. It must include imported food responsibilities and the control arrangements in place and reference to the Authority's approach to enforcement, as set-out in Chapter 7.1.2. Alternative Enforcement Strategies for dealing with registered premises rated as low risk under the Food Establishment Intervention Rating Scheme set-out at Annex V must also be included.

Food Authorities must have regard to any advice issued by the FSA and WLGA when drafting their Food Service Plan.

## 5.2 – Delivery of Official Controls and Interventions

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This section defines the different types of interventions that Food Authorities may use and the circumstances in which they should be applied.

Interventions are key to improving compliance with food law by food business operators. The range of possible interventions allows authorised officers to use their professional judgment to apply a proportionate level of regulatory and enforcement activities to each food business. Interventions should be applied in a risk-based manner such that more intensive regulation is directed at those food businesses that present the greatest risk to public health.

Interventions are defined as activities that are designed to monitor, support and increase food law compliance within a food establishment. They include, but are not restricted to, “official controls”.

“Official controls” are defined at EU level at Article 2(1) of Regulation (EC) No 882/2004. They are any form of control for the verification of compliance with feed and food law, animal health and animal welfare rules. Such interventions shall be carried out at any of the stages of production, processing and distribution to establish whether the requirements of relevant food law are being met, in compliance with Article 3 (3) of Regulation (EC) No 882/2004.

Methods and techniques for carrying out tasks related to official controls are specified in at Article 10 of Regulation (EC) No 882/2004. These include:

- inspections;
- monitoring;
- surveillance;
- verification;
- audit; and,
- sampling. Where analysis/examination is required these are to be carried out by an Official Laboratory.

Official control interventions must provide sufficient information to Food Authorities to establish that food-related activities carried out at or in connection with food establishments comply with food law.

In addition to official controls, interventions also include other activities that are effective in supporting food businesses to achieve compliance with food law. This includes:

- the provision of targeted education and advice that takes place at food establishments; or,
- information and intelligence gathering (including sampling). In these cases, the samples do not need to be taken by an authorised officer and do not have to be analysed/ examined by an Official Laboratory.

It is recognised that more than one type of intervention could be carried out during a

single visit to a food business establishment. It is also recognised that the intervention approach used could be influenced by the findings during a visit to an establishment. In these cases, Food Authorities must record the basis for the choice of intervention(s) used in the establishment file.

An Interventions Programme is central to a local regulatory and enforcement regime. Food Authorities must ensure that such a programme is adequately resourced.

When planning an intervention programme, Food Authorities should ensure that they put in place mechanisms to ensure that authorised officers have regard to Primary Authorities' assured advice and access to inspection plans that may guide authorised officers delivering official controls.

### **5.2.1 Food Standards Interventions**

Food standards interventions are part of the system for ensuring that food meets the requirements of food standards law, including proper presentation, labelling and advertising so as not to confuse or mislead, compliance with compositional standards, and the absence of non-permitted or excessive levels of additives, contaminants and residues.

Each Food Authority must document, maintain and implement a Food Standards Interventions Programme that includes all the establishments for which the Food Authority has food standards law enforcement responsibility.

The programme must be based on the food standards intervention ratings that have been determined in accordance with Chapter 5.2.7.1 below or in accordance with the authority's Alternative Enforcement Strategy in relation to registered establishments rated as low risk as defined at Chapter 5.2.7.1.3 below.

### **5.2.2 Food Hygiene Interventions**

Regulation (EC) No 853/2004 defines "food hygiene" as:

***"the measures and conditions necessary to control hazards and to ensure fitness for human consumption of a foodstuff, taking into account its intended use."***

Food hygiene interventions are part of the system for ensuring that food meets the requirements of food hygiene law, including microbiological quality; absence of pathogenic micro-organisms; and safety for consumption.

Each Food Authority must document, maintain and implement a Food Hygiene Interventions Programme that includes all the establishments for which the Food Authority has food hygiene law enforcement responsibility.

The programme must be based on the food hygiene intervention ratings that have been determined in accordance with Chapter 5.2.7.1 below or in accordance with the Food Authority's Alternative Enforcement Strategy in relation to registered establishments rated as low risk as defined at Chapter 5.2.7.1.3 below.

The exception to this is for establishments at the level of primary production. Further guidance on the intervention frequencies for this type of establishment is contained in section 5.2.7.1.6 and in the Food Law Practice Guidance.

### **5.2.3 Inspections and Audits**

#### **5.2.3.1 Inspections – General**

Inspections should be based on the relevant inspection form<sup>22</sup>, where one has been developed, for the business concerned, although Food Authorities may develop their own as an aid to inspection.

The inspection form is intended to assist officers and businesses by introducing a structured approach to the inspection process consistent with quality assurance practice. It may not be necessary to inspect every aspect of a food business at every inspection, e.g. the display of ambient shelf stable products in a supermarket.

The inspection process should begin with a review of the information held on record by the Food Authority in relation to the food business establishment to be inspected.

At the beginning of the inspection, the officer should discuss with the food business operator or representative the purpose and scope of the inspection, whether there have been any changes in activities since the last visit, and what the officer intends to do.

An inspection should include the identification of all the food related activities undertaken by the business, the areas of the establishment used for the preparation, production and storage of foodstuffs, any processes used and the staff involved.

Where an inspection form has been developed, officers should complete it fully, to ensure that they have a sufficient record to show whether and if so, how the business is complying with food law. Where any areas highlighted on inspection forms were not inspected or assessed, these should be clearly recorded as such on the forms. In addition, officers should record any information on which decisions were based when determining the risk rating.

Staff of food businesses who have been given specific responsibilities for ensuring compliance with relevant legal requirements may be questioned in order to verify that they understand their duties and are carrying them out effectively.

An assessment of whether to take samples, and if so what to sample, should be an integral part of an inspection, particularly in food manufacturing, packing and catering businesses.

Inspections may also be for purposes connected with the Home Authority Principle and the Primary Authority Scheme, for example, advising food business operators on the law and ways in which they can comply with it.

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<sup>22</sup> \*Need to find form.



Officers should offer advice where it is appropriate or is requested, and should encourage food business operators through an educative approach to adopt good practice.

After every inspection, the officer should discuss any contravention of food law discovered and set-out:

- any corrective action necessary;
- the timescale for corrective action; and,
- any further action the officer intends to take and any recommendations of good practice that the officer considers appropriate.

In this closing discussion, and in subsequent reports or correspondence, officers should clearly differentiate between action required to comply with legal requirements and recommendations of good practice.

The officer should, on request, advise and discuss with the food business operator, the intervention and/ or the rating applied to the business.

The officer may wish to consider if further intervention strategies may be appropriate e.g. education or training.

### **5.2.3.2 Food Hygiene Inspections**

The approach to inspection will depend on the legal requirements and the extent to which the business has documented its food safety management system.

In general, an officer conducting a food hygiene inspection should:

- establish whether food is being handled and produced hygienically, and is safe to eat, having regard to any subsequent processing; assess the hazards posed by the activities of the business and the food business operator's understanding of those hazards;
- confirm that the food business operator is carrying out their own controls and checks, based on HACCP principles (other than in the case of primary production) and these are being operated effectively and appropriate corrective action is being taken where necessary;
- assess the efficacy of the controls in place to manage the risk of cross-contamination between ready-to-eat foods and foods requiring further processing;
- assess the risk of the food business failing to meet food hygiene requirements; in respect of primary production, establish that food business operators and their employees understand the hazards posed by the activities of the business, and assess and verify that preventative/corrective actions necessary to protect the safety of food entering the human food chain take place;
- recommend good food hygiene practice in accordance with EU and UK Industry Guides, relevant sector specific codes, and other relevant technical standards, and promote continued improvements in hygiene standards through the adoption of good practice;

- check the source and any health or identification marking of raw materials, and the identification marking and destination of finished products. Where deficiencies in health or identification marking are identified, officers should refer to and implement any relevant provisions of section 2.2 of this Code and the Primary Authority/ Home Authority Principle, and consider using their powers under regulation 9 of the Food Safety Act 1990, regulation 27 of the Food Hygiene (Wales) Regulations 2006 (see also regulation 23 in this regard) and/or regulation 34(e) of the Trade in Animals and Related Products (Wales) Regulations 2011 and/or regulation 31 of the Official Feed and Food Controls (Wales) Regulations 2009 to remove affected products from the food chain; and,
- check compliance with product specific legislation, for example in relation to retail and catering businesses that sell or use live bivalve molluscs, ensure that where parcels of live bivalve molluscs are split before sale to the ultimate consumer, that information on identification marks is retained for at least 60 days.

In addition to the general requirements detailed above, a food hygiene inspection should include if appropriate:

- a discussion with any staff responsible for monitoring and corrective action at critical control points to confirm that control is effective;
- a physical inspection to determine whether critical controls have been identified and whether the controls are in place, and to assess compliance with relevant food law;
- an assessment of compliance with the traceability requirements of Article 18 of Regulation 178/2002;
- a discussion regarding any hazards that have been identified by the officer that have not been covered by the business's systems; and,
- a discussion regarding any failure to implement or monitor any critical controls that have been identified by the business.

Published UK Industry Guides to Good Hygiene Practice (Industry Guides) may be particularly relevant to certain establishments subject to food law as will other published recommended industry codes of practice. Officers may draw these to the attention of food business operators in appropriate circumstances.

The full scope of the food hygiene inspection is detailed in the relevant inspection form, where one has been developed, for the business concerned.

### **5.2.3.3 Food Standards Inspections – Scope**

Particular attention should be paid to relevant key control points, mixing stages when ingredients are added, monitoring and verification procedures, corrective actions and documentation.

An officer conducting a food standards inspection should:

- consider the existence and effectiveness of management systems designed to ensure that food standards requirements are met and, where they exist, test their effectiveness;

- assess compliance with composition, presentation and labelling requirements by examining advertisements, labels, descriptions, menus, claims, recipes and other records;
- assess compliance with the traceability requirements of Article 18 of Regulation (EC) 178/2002 as read with Regulation (EU) 931/2011;
- assess compliance with supplier specifications;
- assess the risk of the food business failing to meet food standards requirements; and
- recommend good practice in accordance with relevant industry codes and other relevant technical standards.

The full scope of the food standards inspection is detailed in the relevant inspection form, where one has been developed, for the business concerned.

#### **5.2.3.4 Carrying out an Inspection or Audit**

An inspection will consider the appropriate elements set-out in the relevant inspection form for the business concerned. Food Authorities or their regional groups may develop and use food inspection forms, providing all the elements of an inspection that are appropriate to the type of business being inspected are included. Authorised officers must use their professional judgment in selecting which elements of the inspection form to examine in detail. This will be dependent on what approach the inspection takes:

- a full inspection, which is a check on compliance with legal requirements, and will consider all aspects of a food business including structure, food safety management and management arrangements; or
- a partial inspection, which is an inspection that covers only certain elements of the inspection.

Where there is a Primary Authority inspection plan in place, authorised officers must have regard to it when deciding on their inspection approach. Officers must provide feedback to the Primary Authority if required.

It is not necessary to inspect every aspect of a food business at every inspection. Where the scope of an inspection is limited, however, the reasons for adopting this approach must be documented on the establishment file, and the scope of the partial inspection must be specified in the inspection report provided to the food business operator.

An audit may be carried out where a food business operator has put in place a documented food safety management system to address the requirements of Article 5 of Regulation (EC) No 853/2004. Officers will require an awareness of the food safety management system operated by the business, in order to plan an appropriate audit.

An audit may include:

- audit of a complete food safety management system;
- audit of selected elements of a food safety management system, where the system is complex;

- audit of part of a system in relation to a particular product; or,
- audit of certain organisational arrangements, for example, temperature monitoring.

Following an inspection, partial inspection, or audit, an officer should consider revising the intervention rating of the establishment in accordance with Annex V.

#### **5.2.3.5 Initial Inspection of a New Establishment**

This section does not apply to establishments at the level of primary production.

Food Authorities must make use of information supplied to them by food business operators in connection with the registration or application for approval of their food business establishments in accordance with Article 31 of Regulation (EC) No 882/2004 (See Chapter 3.2), in order to determine when to carry out an initial inspection.

New food establishments and/or that come to the attention of the Food Authority for the first time must be subject to an initial inspection following which intervention rating(s) for the establishment must be determined.

An officer carrying out an initial inspection of a new food establishment must:

- establish the scope of the business and the relevant food law that applies to the operations taking place;
- thoroughly and systematically gather and record information from the observation of practices, procedures and processes, including procedures based on HACCP principles, and discussion with food handlers, contractors, food business operators and managers;
- determine whether it is necessary to collect samples of raw materials, ingredients, additives, intermediates, finished products, or materials and articles in contact with food for analysis and/or examination;
- identify any actual or potential breaches of food law and, if appropriate, gather and preserve evidence; and,
- determine relevant enforcement action and communicate to the food business operator an intention to carry out such action.

#### **5.2.4 Planning and Notification of Interventions**

The Food Authority Food Service Plan must contain details on how new food establishments are to be included in the Food Authority's planned intervention programme.

Intervention programmes must be planned so that establishments receive an intervention no later than 28 days after the relevant date as detailed in Chapter 5.2.7.1 below. In circumstances outside the control of the Food Authority such as seasonal business closures, Food Authorities have the discretion to defer an intervention.

Where possible, the intervention delivered at a food establishment must be undertaken without prior notification. The general principle about pre-notification of

an intervention is set-out in Regulation (EC) No 882/2004, which states in Article 3(2) that:

“Official controls shall be carried out without prior warning, except in cases such as audits where prior notification of the feed or food business operator is necessary.

Official controls may also be carried out on an ad hoc basis”.

There will, however, be circumstances when it is advantageous to give advance notice, particularly when the purpose of an intervention is to see a particular process in operation. Authorised officers must exercise discretion in this area guided by the overriding aim of ensuring compliance with food legislation (see also Chapter 3.1.2. above on obtaining entry to Crown Premises).

### **5.2.5 Enforcement Actions and Revisits**

Food businesses that fail to comply with significant statutory requirements must be subject to appropriate enforcement action and revisit(s). Revisits must focus on the contraventions identified at the programmed intervention and ensure that they have been remedied before deciding that no further action is required.

The timing of the revisit will be determined by the action taken as a result of the earlier intervention. Such a revisit must, whenever practicable, be undertaken by the officer who undertook the original intervention.

The Food Authority’s approach to revisits and enforcement actions must be part of its documented Food Service Plan or Enforcement Policy (see 5.1.1 above).

#### **5.2.5.1 Requirement to revisit Food Hygiene**

Such businesses will be identified by 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 as set-out in the Intervention Rating Scheme set-out in Annex V.

#### **5.2.5.2 Requirement to revisit Food Standards**

Such businesses will be identified by a level of (current) compliance score of 40 and / or a confidence in management / control systems score of 30 as set-out in the Intervention Rating Scheme set-out in Annex V.

### **5.2.6 Requirements for Suitable Clothing and Equipment**

Food Authorities must provide officers who carry out an intervention at establishments with clean protective clothing including headgear consistent with good industry practice.

Food Authorities must require officers to wear protective clothing, give any relevant information on their health status when requested, and adhere to any reasonable precautions that are required by the business where the intervention is being conducted. Officers must wear appropriate protective clothing etc. if it is provided by the business.

Food Authorities must provide their officers with the equipment and facilities necessary to enable them to carry out their inspections competently, and in accordance with food law and the standards in this Food Law Code of Practice.

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

### **5.2.7.1 Food Establishment Intervention Rating Schemes**

This Section deals with the food hygiene and food standards intervention ratings, and frequencies for interventions at food establishments. The Section does not apply to establishments at the level of primary production. Details of the two intervention rating schemes are found at Annex V.

#### **5.2.7.1.1 Food Hygiene Intervention Rating Scheme**

Food authorities that are responsible for enforcing food hygiene law should determine the planned food hygiene intervention frequencies of all registered and approved food establishments for which they are the food authority using the risk assessment criteria in Annex V.

The scheme incorporates an option for alternative enforcement strategies for “low-risk” registered establishments, in which the inherent hazards are not significant by virtue of their food handling operations or the number of consumers they supply.

The scheme is set-out in the form of an assessment document that can be used by officers in the field. An assessment should be completed at the end of the initial inspection of each new establishment and after each full inspection. An assessment should also be completed following a partial inspection or audit where sufficient evidence has been gathered to complete an assessment.

Officers should use the full range of scores available within the system, as the purpose of the rating system will be frustrated by cautious marking or by a reluctance to recognise effective management/control systems.

Establishments that fall into more than one scoring category for a scoring factor should be allocated the highest score of those that are applicable.

The operation of this intervention rating scheme within the Food Authority should be subject to periodic management review to ensure that staff are using the scheme correctly and consistently.

Food Authorities must ensure that interventions for higher risk businesses or those that are likely to be high risk always take priority over interventions for low risk businesses. Food authorities should ensure that enforcement action and re-visits are undertaken in accordance with 5.2.5 of the Code.

Planned interventions should normally be completed by the due date as determined by the intervention rating and in any case no more than 28 days after that date, apart from circumstances outside the control of the food authority such as seasonal



business closures.

Initial inspections should normally take place within 28 days of registration or from when the authority becomes aware that the establishment is in operation. The requirement to undertake initial inspections within 28 days may in some circumstances present a conflict for resources to complete other higher priority activities. In such circumstances prioritisation of interventions within the authority's programme should be undertaken in a risk based manner.

Food authorities may be asked to bring forward the intervention of an establishment following direction from the FSA in response to an emerging incident or a national programme of work. Food Authorities should contact the FSA if such direction presents a significant disruption to their ability to deliver a risk based intervention programme.

#### **5.2.7.1.2 Food Standards Intervention Rating Scheme**

Food Authorities that are responsible for enforcing food standards legislation should determine the food standards intervention frequencies of food businesses within their areas using the risk assessment criteria in Annex V to determine their planned food standards intervention programmes.

The scheme is set-out in the form of an assessment document that can be used by officers in the field. An assessment should be completed at the end of the initial inspection of each new establishment and after each full inspection. An assessment should also be completed following a partial inspection or audit where sufficient evidence has been gathered to complete an assessment.

The scheme incorporates an option for alternative enforcement strategies other than inspections for “low-risk” registered businesses in which the inherent hazards are not significant by virtue of their trading activities or the number of consumers they supply (see below). Alternatively, where food hygiene and food standards enforcement is carried out by separate departments within the same food authority, e.g. Environmental Health and Trading Standards, the food standards risk assessment may be based on the National Trading Standards Board (NTSB)<sup>23</sup> guidance on risk assessment for trading standards. Where assessments are based on the NTSB scheme, the intervention frequency for food standards purposes should not be less than would have been the case under this scheme.

Food Authorities may opt to base their planned intervention programme on the food hygiene risk assessment scheme under this Code. Food Authorities that exercise this option must ensure that their interventions consider both food hygiene and food standards matters, that interventions of those matters occur no less frequently than would have been the case had both schemes been used, and that the food standards risk assessment is completed and recorded.

Officers should use the full range of scores available within the system, as the purpose of the rating system will be frustrated by cautious marking or by a reluctance

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<sup>23</sup> <http://www.actso.org.uk/ntsb>

to recognise effective management/control systems.

Establishments that fall into more than one scoring category for a scoring factor should be allocated the highest score of those that are applicable.

The operation of this intervention rating scheme within the Food Authority should be subject to periodic management review to ensure that staff are using the scheme correctly and consistently.

Food Authorities must ensure that interventions for higher risk businesses or those that are likely to be high risk always take priority over interventions for low risk businesses. Food Authorities should ensure that enforcement action and re-visits are undertaken in accordance with advice provided in the Food Law Practice Guidance.

Planned interventions should normally be completed by the due date as determined by the intervention rating, but in any case, no more than 28 days after that date, apart from circumstances outside the control of the Food Authority such as seasonal business closures.

Initial inspections should normally take place within 28 days of registration or from when the authority becomes aware that the establishment is in operation. The requirement to undertake initial inspections within 28 days may in some circumstances present a conflict for resources to complete other higher priority activities. In such circumstances prioritisation of interventions within the authority's programme should be undertaken in a risk based manner.

Food Authorities may be asked to bring forward the intervention of an establishment following direction from the FSA in response to an emerging incident or a national programme of work. Food Authorities should contact the FSA if such a direction presents a significant disruption to their ability to deliver a risk based intervention programme.

#### **5.2.7.1.3                      Alternative Enforcement Strategy**

Every Food Authority must devise an Alternative Enforcement Strategy to determine how they will conduct official controls duties at registered businesses rated as low risk (i.e. rated Category E for food hygiene and Category C for food standards) in accordance with the requirements set-out at Annex V.

This must provide a means of surveillance of applicable food businesses to determine/identify whether there are any changes since the last intervention that require the establishment to receive an official control intervention or inspection.

#### **5.2.7.1.4                      Food Hygiene Intervention Frequency**

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 as defined in Chapter 5.2 above, which must be carried out at appropriate intervals in accordance with the prescribed frequencies specified in Annex V.



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 V.

#### **5.2.7.1.4.1 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 V. Such interventions may consist of either an inspection, partial inspection, or audit until the establishment is considered by the Food Authority to be “broadly compliant” with relevant food law. Once broad compliance has been achieved, planned interventions may alternate between either an inspection or a partial inspection, or an audit or other type of official control as defined in Chapter 5.2 above.

#### **5.2.7.1.4.2 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 V. Such interventions can alternate between an intervention that is an official control and an intervention that is not an official control.

Food 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 V. The official control for these establishments must be an inspection, partial inspection, or audit.

#### **5.2.7.1.4.3 Establishments Intervention Rated Category E for Food Hygiene**

“Low-risk” registered establishments should be subject to an Alternative Enforcement Strategy or intervention, at least once during any three-year period.

Food Authorities that decide to subject “low-risk” registered establishments to alternative enforcement strategies must set-out their strategies for maintaining surveillance of such establishments in either their Food Service Plan or Enforcement Policy.

It is not intended to preclude inspection, partial inspection or audit at low- risk establishments where any of these are the Food Authority’s preferred surveillance option, in which case the minimum frequency of intervention is determined by the intervention rating.

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 selected from those laid down in Chapter 5.2 above.

More details about possible Alternative Enforcement Strategies are given in the Food Law Practice Guidance.

#### **5.2.7.1.5 Food Standards Intervention Frequency**

##### **5.2.7.1.5.1 Establishments Intervention Rated Category A for Food Standards**

The appropriate planned intervention for an establishment that has been given an intervention rating of A for food standards, must be an inspection, partial inspection, or audit as defined in Chapter 5.2.7.1.2 above, which must be carried out at appropriate intervals in accordance with the prescribed frequencies specified in Annex V.

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 V.

##### **5.2.7.1.5.2 Establishments Intervention Rated Category B for Food Standards**

Establishments that have been given an intervention rating of B for food standards must receive an intervention at appropriate intervals in accordance with the prescribed frequencies specified in Annex V. Such interventions may consist of either an inspection, partial inspection, or audit until the establishment is considered by the Food Authority to be “broadly compliant” with relevant food law. Once broad compliance has been achieved, planned interventions may alternate between either an inspection, a partial inspection, or an audit or other type of official control as defined in Chapter 5.2 above.

##### **5.2.7.1.5.3 Establishments Intervention Rated Category C for Food Standards**

Registered establishments that have been given an intervention rating of category C for food standards could be subject to an Alternative Enforcement Strategy, at least once during any five-year period.

Food Authorities must ensure that these establishments continue to be subject to official controls, an important reason being so that complaints can be investigated. Food Authorities that decide to subject “low-risk” registered establishments to alternative enforcement strategies must set-out their strategies for maintaining surveillance of such establishments in their Food Service Plan and/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 Food Authority’s preferred surveillance option, in which case the minimum frequency of intervention is determined by the intervention rating.

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 selected from those laid down in Chapter 5.2.

More details about Alternative Enforcement Strategies are in the Food Law Practice Guidance.

#### **5.2.7.1.6 Primary Production Frequency**

In determining interventions at the level of primary production the Food Authority must make best possible use of the evidence available. Examples of local or other intelligence, which the Food 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 and mushrooms;
- membership of a 'recognised' farm assurance scheme;
- 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;
- consumer and customer (industry) problems;
- an inspection plan issued as part of a Primary Authority Partnership;
- surveillance information on problem products and products associated with food-borne illness; and,
- other (to reflect local intelligence).

More information regarding inspections of primary production premises is in the Food Law Practice Guidance. It should be noted that there is not a requirement to make an initial visit to primary production premises prior to premises' inclusion in an Interventions Programme.

A current list of approved assurance schemes is also available in the Food Law Practice Guidance.

#### **5.2.8 Revision of the Frequency**

The intervention rating(s) of a food business must only be revised after an inspection, partial inspection or audit, and in accordance with Annex V (or any amendment thereto that has been notified to Food Authorities by the FSA). An officer must have gathered sufficient information to justify revising the intervention rating and the reasons for revising the rating must be recorded on the establishment file.

Where new information arises, in the case of an incident, a justified complaint or unsatisfactory sampling result, the Food Authority must consider whether it is appropriate to conduct an inspection, partial inspection or audit to investigate the

matter.

An explanation for the choice of intervention must be documented in the establishment file in every case.

If when conducting a planned intervention, other than an inspection, partial inspection or audit, an officer establishes that the nature of a food business has changed substantially, or the level of compliance has deteriorated, the intervention must be changed to an inspection or partial inspection, and the intervention rating revised as necessary.

### **5.2.9 Deferring an intervention**

Circumstances might arise where the FSA requires Food Authorities to defer their programmed interventions in order to take other urgent action over a period of time.

Such situations might include those where there is evidence that:

- an unsafe practice is occurring or has occurred which represents a significant hazard to public health;
- a particular food handling or food preparation practice is found to entail a previously unsuspected hazard to public health;
- a foodstuff previously thought to be safe is found to be hazardous to public health;
- a food with widespread distribution is found to be contaminated and thereby presents a significant hazard to public health;
- a food with widespread distribution is the subject of fraud in labelling or presentation; and,
- in the case of primary production, an occurrence on-farm of a contagious animal disease (such as Blue Tongue) or a natural disaster (such as severe flooding) makes on-farm inspection impractical.

Where such a situation arises, the FSA might (by means of a communication issued in accordance with Chapter 2.2.2) require Food Authorities to take specific action. Food Authorities are required to have had regard to and to act on, any such communication. In all cases, the FSA will, before taking action under this paragraph, consider whether urgent action by Food Authorities is necessary to protect public health or the interests of consumers.

Food Authorities might be asked to provide information to the FSA about the action that they have taken, in response to requests under this paragraph and any action taken must be documented.

### **5.2.10 Information supplied by other Competent Authorities**

Food authorities should consider information supplied by others, including Competent Authorities, trade bodies and third-party audits when determining the intervention rating of an establishment.

### **5.2.11 Import Controls**

Food Authority procedures must ensure that imported food controls form part of food establishments' inspections. To assist enforcement officers, inspection procedures and aides-memoire should provide sufficient prompts on imported food. During routine inspections and other visits to food business premises (e.g. complaint visits, sampling visits) officers must consider the food in possession or offered for sale, and if imported, ensure it also complies with relevant imported food requirements. For example, this may include undertaking product traceability checks or in premises that are the first destination inland after import, confirming the presence of a Common Veterinary Entry Document (CVED) or Common Entry Document (CED).

In addition to assessing fitness for consumption, reasonable steps must be taken to check the legality of the importation of any Product of Animal Origin (POAO) and Food Not of Animal Origin (FNAO) from a third country.

### **5.2.12 PHAs/LAs at Points of Entry**

Food Authorities responsible for imported Food Not of Animal Origin (FNAO) at points of entry must monitor consignments of FNAO entering ports which originate from outside of the EU. Controls at points of entry include carrying out systematic documentary checks, random identity checks and sampling for analysis as appropriate (Articles 15-25, Regulation (EC) No 882/2004).

Official controls must be proportionate and risk-based. Where no frequency of checking is specified in the legislation, priority must be given to identifying consignments of FNAO entering a point of entry and its country of origin. The frequency of other types of official controls must be informed by:

- history of compliance for the country of origin, the exporter and/or the importer;
- any identified risks associated with the product;
- any issues regarding the reliability of any checks that may have already been carried out;
- FSA annual sampling priorities for food; or,
- Previous knowledge of the product; is it new or unusual.

Food Authorities responsible for imported Products of Animal Origin (POAO) at Border Inspection Posts must refer to central guidance produced by Defra, available in the BIP Manual at:

<https://www.gov.uk/government/publications/border-inspection-post-bip-manual>

Food Authorities should put risk-based planned arrangements in place and review and analyse the information gathered from these ports, taking action where necessary. Food Authorities should carry out checks at least quarterly or as necessary at infrequent points of entry. This might include a visit or questionnaire being sent, liaison with port operators and manifest checks.

### **5.2.13 Arrangements for points of entry without permanent Food Authority presence**

Where there is no permanent Food Authority presence at an airport or seaport, and it is not considered to be a point of entry for food, the Food Authority must (at least once every three months) contact the port operator, HMRC and/or other commercial operators to confirm the port's status regarding food activities and/or obtain information about the volumes, types, countries of origin and customs status of food entering the port since the Food Authority's last such enquiry. Food Authorities must keep a record of these exchanges for a period of three years.

The purpose of these arrangements is to provide Food Authorities with updated information on food being imported. This will enable risk-based judgments 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.

Further advice on imported food control at points of entry through which occasional and/or low levels of consignments of FNAO are received can be accessed at:

[http://www.food.gov.uk/business-industry/imports/enforce\\_authorities/smaller-seaports-and-airports/](http://www.food.gov.uk/business-industry/imports/enforce_authorities/smaller-seaports-and-airports/)

### **5.2.14 Enforcement at Points of Entry and Inland**

Where, for the purpose of examination at points of entry, or deferred examination at ETSF, international rail terminals or other place of destination, an authorised officer has doubts about the compliance, identity or stated destination of consignment.

Article 18 of Regulation (EC) No 882/2004 and regulation 31 of the Official Feed and Food Controls (Wales) Regulations (EC) No 2009 allow the product to be detained pending the results of any examination associated with the official controls.

Where an authorised officer has detained a food consignment pending any results of examination, they must notify in writing the person/importer responsible for it, serving a notice under regulation 32 of the Official Feed and Food Controls (Wales) Regulations 2009. The notice must specify that the food must not be removed from the place stated, until the officer has properly considered the results of the examination.

Article 18 of Regulation 882/2004 and regulation 31 of the Official Feed and Food Controls (Wales) Regulations 2009 do not specify a time limit for examination and investigation of consignments. However, such examinations, and/or detention periods, must be expedited as quickly as practicable to avoid unreasonable disruption to the trade.

Where samples are submitted for analysis or examination, and the consignment is detained pending the results, Food Authorities must inform the analyst or examiner of that fact and ensure that the consignment is stored appropriately and securely. The importer or the importer's agent must be informed of the analysis/examination results as soon as possible and should be given a copy of the certificate of analysis/examination.



If it appears to an authorised officer upon inspection or examination of food, that a batch, lot or consignment of food fails to comply with food law, including food safety requirements (Article 14 of Regulation 178/2002), then regulation 3 of the Official Feed and Food Controls (Wales) Regulations 2009 allows, Food Authorities to order:

- destruction of the relevant batch, lot or consignment;
- the food be subjected to special treatment;
- re-dispatch of the food outside the EU; and,
- another use of the food for purposes other than those for which they were originally intended.

Regulation 32 of the Official Feed and Food Controls (Wales) Regulations 2009 requires the Food Authority, having heard from the food business operator, to serve a notice on that operator before taking these actions.

In practice, the options specified in the notice must be drawn up after appropriate consultation with the person importing the food or their representative. The person on whom any notice is served must be informed in writing by the authorised officer of any relevant appeal provisions at the time that the notice is served. If the option for re-dispatch is considered but doesn't take place within the 60-day period the consignment must be destroyed, unless delay is justified.

Regulation 36 of the Official Feed and Food Controls (Wales) Regulations 2009 allows for costs associated with such action to be recovered from the person responsible for the consignment.

Special treatment might include such treatment or processing to ensure the food complies with EU requirements, or the requirements of the third country to where it is to be re-dispatched. Special treatment can also include processing for purposes other than human or animal consumption. Where special treatment is permitted, liaison must take place with any other relevant enforcement authority or organisation to ensure the necessary processing has been carried out. This process can also be used where a non-conforming product is being imported specifically for the purpose of undergoing treatment to comply with EU law.

A consignment must only be re-dispatched outside the EU where the importer has agreed to the proposed destination and has informed the competent authority for the third country why it has been rejected for import into the EU. Where the consignment is being re-dispatched to a country other than that of origin, the competent authority for the country of destination must provide notification to the competent authority controlling the product that it is willing to accept the consignment. The consignment must be officially detained pending re-dispatch.

Any decision on the approval of alternative usage of rejected goods should be informed by any relevant guidance issued by the EU or the FSA on the appropriateness of alternative use or re-exportation.

Where official controls indicate that a consignment is injurious to health or unsafe, the consignment must be detained until it is either destroyed or undergoes appropriate measures to protect health.

Imported food failing food safety requirements can also be subjected to Food Safety Act 1990 provisions to ensure appropriate action is taken. Such provisions include detention and seizure powers, applied in accordance with this Code.

Officers must have regard to the Official Feed and Food Controls (Wales) Regulations 2009, the Contaminants in Food (Wales) Regulations 2013 and any relevant Emergency Control Regulations, which might provide for specific detention powers and notice provisions in relation to certain foods. Any designated port must have adequate facilities to ensure products can be sampled effectively, hygienically and under appropriate conditions.

Arrangements must be in place to ensure that detained or seized FNAO is stored appropriately, particularly to avoid cross contamination of other goods. Food which is to be destroyed or disposed of must be dealt with to ensure that there is no possibility of it re-entering the food chain e.g. deep burial at an approved waste disposal site. Copies of waste disposal notes must be kept on file.

#### **5.2.15          Deferred examination of FNAO – inland controls**

Regulation 27 of the Official Feed and Food Controls (Wales) Regulations 2009 allows for (in exceptional circumstances and where the PHA/LA have valid reasons) import controls for the examination of consignments of FNAO to be deferred and undertaken by the inland Food Authority covering the ETSF or international rail terminal or at any other place of destination in the UK.

#### **5.2.16          Onward Transportation**

Article 8 of Regulation (EC) 669/2009 permits onward transportation of a consignment(s) of food products of non-animal origin, which have undergone a documentary, identity and physical examination (including sampling) at a Designated Point of Entry (DPE), pending the results of the test/analysis.

#### **5.2.17          Inspection of Ships and Aircraft**

##### **5.2.17.1        Introduction**

The Food Hygiene (Wales) Regulations 2006 includes any ship or aircraft in the definition of premises. However, Schedule 4 to these Regulations which sets out specific temperature control requirements does not, by virtue of paragraph 1(b) of that Schedule, apply to these means of transport. The relevant temperature requirements in Annex II of Regulation 852/2004 do, however, apply.

Food Authorities should also have regard to the Food Safety (Ships and Aircraft) (Wales) Order 2003, which specifies the circumstances in which particular ships and aircraft constitute “premises” for the purposes of the Food Safety Act 1990 and regulations made under it. Authorised officers will have powers of entry into those premises where the prescribed conditions are met.

The range and variety of vessels is an important factor when planning ship inspection activities. In respect of aircraft, primary consideration should be given to



the origin of the food on board, including water and other drinks, and the transport to, and loading of, the aircraft.

The aim of the legislation will best be achieved by adopting a balanced approach of inspection and professional judgment.

#### **5.2.17.2 Background and Relationship to Inspections**

Authorised officers should bear in mind that other parts of this Code and corresponding Food Law Practice Guidance are primarily designed for the inspection of fixed premises, and that there are significant differences between these and ships and aircraft. When conducting inspections of ships and aircraft, authorised officers should therefore take account of, and give precedence to, the content of this Chapter and the corresponding Chapter of the Food Law Practice Guidance.

A strategy for frequency of inspection should be adopted, based on knowledge about different types of craft, their origin and history. Before considering ship or aircraft inspection, all relevant information should be obtained from the other relevant authorities, the shipping operator, airline, or shipping agent as appropriate.

Inspections of, and visits to, ships and aircraft should be undertaken in accordance with the relevant chapters of the Framework Agreement.

#### **5.2.17.3 Enforcement issues**

Food Authorities should make arrangements to obtain appropriate security clearance for their staff so that they have unrestricted access, subject to compliance with the normal security procedures of the facility concerned.

Food hygiene standards on ships and aircraft should meet the relevant requirements of Regulation (EC) No 853/2004 including those in Chapters II to X and Annex II of that Regulation. Article 5 of this Regulation also requires the development and implementation of food safety procedures based on HACCP principles. However, such procedures must be commensurate with the size and type of the vessel and the nature of activities undertaken on board.

An authorised officer may employ a variety of enforcement strategies to ensure compliance. Enforcement action must be carried out in accordance with a written enforcement policy. An officer may serve a Hygiene Improvement Notice, Remedial Action Notice or Hygiene Emergency Prohibition Notice in relation to any ship or aircraft if the subject is subject to approval. The conditions that must be met before such a notice can be served are the same as those that apply in relation to fixed premises. Having served notice, the authorised officer should contact the Management Company or the Handling/Shipping Agent. If considered necessary, in respect of ships, the officer should also contact the MCA at the earliest opportunity.

If the craft is registered in another Member State, the procedures set-out on liaison with other Member States should be followed. Any difficulties should be discussed with the FSA.

If the ship or aircraft is registered in a third country, the FSA should be given full

details to allow the matter(s) to be raised with the Food Authorities in the relevant country.

#### **5.2.17.4 UK Military Ships and Aircraft**

Authorised officers should have regard to security considerations when visiting UK military ships and aircraft, which must be regarded as Group 3 premises. This requires prior notification before a proposed visit. Any food safety issues found on inspection, which concern UK military ships and aircraft should be brought to the attention of single Service Environmental Health leads and the relevant home port health authority or primary authority for the particular Service (see below for details).

Authorised officers must bear in mind the ultimate purpose of military ships and aircraft, and that galley design may have been constrained for operational reasons. Military policy, procedures and practices should therefore be given due consideration.

Authorised officers should also take account of the relevant parts of “JSP 456 – Defence Catering Manual Vol. 3”, which is available on the individual Home or Primary Authority’s website.

Only military aircraft used for “Air Trooping” should be included in inspection programmes. No food business activities take place on armed forces’ yachts.

Authorised officers should contact Portsmouth City Council, the Royal Navy Primary Authority for procedural guidance prior to any proposed visit to an RN ship or submarine. Wycombe District Council, the Royal Air Force Home Authority, should be contacted for guidance prior to any proposed visit to RAF aircraft. Similarly, Rushmoor Borough Council, the Army Home Authority should be contacted prior to any proposed visit to an army base.

	Primary Authority	Environmental Health Lead
Royal Navy	Portsmouth City Council ☎: (02392) 834253	SO2 Environmental Health Policy ☎: (02392) 623548
RAF	Wycombe District Council ☎: (01494) 421710	Command Environmental Health Officer ☎: (01494 494334)
Army	Rushmoor Borough Council ☎: (01252) 398398	SO1 Environmental Health Policy ☎: (01276) 412931

##### **5.2.17.4.1 Food Hygiene Inspections of Ships**

##### **5.2.17.4.2 Preparation**

As with inland premises, ships or other vessels comprise a wide number of different

types with a consequent wide variety of food operations on board. Some vessels serve members of the public (e.g. Ferries and Cruise Ships) whereas others operate with a permanent or semi-permanent crew on board and the food operation is purely for their own consumption. Vessels engaged on international voyages require a Ship Sanitation Certificate under the International Health Regulations 2005, issued by the World Health Organization. Inspection for these certificates includes inspection of the food operations against a set of technical standards that are intended to apply globally (The “WHO Technical Handbook”<sup>24</sup>), but the primary purpose of these certificates is protection against diseases and conditions of public health concern. It is thus possible that vessels may be inspected for dual purposes.

For clarity, in this Code, the inspections referred to are for food safety purposes rather than ship sanitation purposes. However, where there is a potential crossover between the two, reference is made to accord with best practice under both types of inspection.

Before commencing an inspection for food safety purposes, authorised officers should ascertain whether it is appropriate to inspect the vessel based upon the suggested criteria in Chapter 5.2.17.4.3.

The officer should ensure that the ship’s Master (or appropriate officer in control) is aware of the purpose of the inspection and also determine the scope of the food business activities taking place on the vessel.

Initial discussions with the ship’s Master or representative should include consideration of any documentation that is available and identification of all food and drink related activities undertaken on the vessel, including drinking water, water used in galleys, and any other areas on board where food and drink are prepared or served.

Where arrangements are in place, the relevant Port Health Authority should ensure that shipping operators are aware of their responsibilities in relation to providing information and provide relevant information to other Food Authorities when requested to do so. Where this relates to the general operating policy and procedures of the shipping operator, this information should be afforded appropriate confidentiality.

#### **5.2.17.4.3                      Decision to Inspect and Frequency of Inspection**

The decision to inspect vessels for food hygiene purposes should be based upon the following criteria:

1.        Whether the food operation serves members of the public (whether paying or not)
2.        Whether the vessel has its home port in the UK

If the answer to both questions is yes, the vessel should be inspected in a manner

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<sup>24</sup> [http://whqlibdoc.who.int/publications/2011/9789241548199\\_eng.pdf](http://whqlibdoc.who.int/publications/2011/9789241548199_eng.pdf)

commensurate with inland food premises. The frequency of inspection should be based on the Annex V risk rating. The ship food safety inspection should be recorded on the port health authority management information system and form part of a LAEMS return.

If the answer to either one of these questions is no, it will be the decision of each individual port health authority as to whether they deem a food safety inspection appropriate at any particular time based upon the criteria in Annex V. Inspections may be recorded via LAEMS in this scenario.

If the answer to both questions is no, it will not normally be appropriate to carry out food safety inspections. Inspections can and should still be carried out in accordance with the 3 scenarios set-out in the WHO Technical Handbook. This will be an inspection for Ship Sanitation purposes and should not be recorded under LAEMS.

It is quite possible that inspections for both food safety purposes and ship sanitation purposes could take place concurrently. In this scenario, the authorised officer must be clear upon where separate requirements begin and end and must clearly differentiate to the master of the vessel the differing findings from each inspection.

Interventions necessary for food safety purposes should then be carried out accordingly and the outcome transmitted without delay to other UK Port Health Authorities via any appropriate method. If communication is necessary to European port health authorities, the SHIPSAN ACT SIS system may facilitate this.

#### **5.2.17.4.4 Inspection of the Vessel**

When there is evidence or suspicion of non-compliance, officers may need to carry out an inspection of the relevant parts of the vessel.

Items for consideration include:

- specifications and sourcing of food and water;
- transport to the vessel, loading and subsequent storage;
- subject to the type of vessel, the facilities, including equipment, for food preparation/production/storage and the storage, distribution and quality of water used in the food areas or available for drinking purposes;
- adequacy of procedures based on the HACCP (hazard analysis critical control point) principles, which will depend on the type of vessel;
- food temperature requirements in Annex II of Regulation 852/2004;
- commensurate with their food handling activities, the food handlers' knowledge of food hygiene/own health status;
- food and water sampling;
- arrangements for international catering waste disposal;
- pest control procedures; and,
- any known adverse report or cases/outbreaks of gastric illness, etc.

Visits to other vessels, such as training yachts, based at specific ports should be decided on a basis of number of vessels, local conditions and knowledge gained through previous inspections.

#### **5.2.17.4.5 Action on Conclusion of the Inspection**

Following completion of the inspection, the findings should be discussed with the ship's Master or delegated representative, giving an indication of the expected timescale of any corrective actions found to be necessary.

An inspection certificate<sup>25</sup> should also be prepared and given to the ship's Master before leaving the vessel. If it is not possible for a full certificate to be completed before the vessel's departure, the documents should be forwarded to the Master at the first available opportunity. The ship's owner should also receive a copy. A further copy should be sent to the MCA at the earliest opportunity if serious shortcomings are found, and the Port Health Authority at the next intended port of call, if in UK and, if designated, the relevant home Port Health Authority. This should be prior to any possible visit to the vessel at the subsequent port of call.

#### **5.2.17.4.6 Liaison with the Maritime and Coastguard Agency (MCA)**

Contact should be maintained with the MCA in accordance with the Memorandum of Understanding (MoU) between the Association of Port Health Authorities (APHA) Local Government Review and the MCA dealing with non-military vessels (the MoU is to be updated as LGR is no longer in existence and the Local Government Association has taken over its functions). Exchanges of copies of relevant inspection reports relating to food safety on ships should be undertaken between local authorities/Port Health Authorities and the MCA, in accordance with the MoU.

Should there be difficulties with serious shortcomings relating to the existence of a health risk condition (as defined by regulation 7(2)/regulation 8(4) of the Food Hygiene (Wales) Regulations 2006 i.e. there is an imminent risk of injury to health) concerning food and water safety whilst a vessel is in port, consideration should be given to liaising with the MCA for the instigation of action to detain the vessel in accordance with procedures in the MoU. Such deficiencies should also be reported to the competent authority of the state of registration of the vessel (see Section 3.2.6.1).

Vessels registered in Wales as a food business will fall under the requirements of the Food Hygiene Rating (Wales) Act 2013 and related regulations.

#### **5.2.17.4.7 Other Risk Criteria**

It might also be appropriate to take into consideration the following criteria when determining whether to inspect a vessel for food safety purposes:

- type of vessel, e.g. general cargo/passenger vessel, passenger ferries, cruise vessels;
- port of registration;

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<sup>25</sup> The Ship Sanitation Control Certificate and the Ship Sanitation Control Exemption Certificate are available on the LACORS website ([www.lacors.gov.uk](http://www.lacors.gov.uk)). LGG website (<https://knowledgehub.local.gov.uk/>)

- age/condition/history of vessel;
- crew and passenger numbers/profile/ “turnover”;
- vessels trading pattern/schedule/previous port(s) of call;
- confidence in food and water safety management systems;
- available documentation;
- recent significant reports of food related problems on the vessel; and
- certificates from previous inspections - level of compliance (these could include inspection certificates issued by competent authorities in the EU or third countries).

#### **5.2.17.4.8                      Application of the International Health Regulations 2005 (IHR)**

Nothing in this Code overrides or compromises the duties of Port Health Authorities to inspect and ensure compliance by vessels with their duties under the International Health Regulations 2005, their related technical standards and the Public Health (Ships) Regulations 1979.

#### **5.2.17.4.9                      Aircraft inspections**

##### **5.2.17.4.10                      Preparation**

Authorised officers should initially satisfy themselves that any information provided by the airline regarding its food and water suppliers and supplies is satisfactory. It is the responsibility of the airline to provide to the authorised officer any evidence of reputable food suppliers.

The decision to board an aircraft should be based largely on any information provided by the airline; confirmation of the authenticity of the information, and the receipt of any food or food hygiene related complaints from passengers or crew. If such information (as outlined in Chapter 5.2.17.4.11) is satisfactory, there might be no need to board an aircraft, particularly if the information shows that specific types of aircraft and food safety practices meet requirements.

It is, however, essential to verify on-board conditions and practices at regular intervals by inspection. At least annual checks should be made on the information provided by the airline concerning food hygiene issues, either by the Home or Primary Authority, whichever is relevant, or in the absence of either, by an authorised officer of the relevant enforcing Food Authority. Such checks should confirm, for example, that no changes have taken place to in-flight caterers, source of water supply, etc. Such checks should also verify that the in-flight caterer's HACCP plan is being implemented on board and that systems are in place after food and drink has left the flight catering establishment to establish if risks of contamination (includes microbiological, physical, chemical and allergenic contamination) are controlled up to the point of service to the passenger.

Where arrangements are in place, Home Authorities should ensure that airlines are aware of their responsibilities in relation to providing information. Home Authorities should provide relevant information to other Food Authorities, when requested to do so and, where this relates to general airline policy and procedures, be afforded appropriate confidentiality.



#### **5.2.17.4.11 Information to be obtained to assist Inspection Procedures**

If there is no Home Authority or Primary Authority arrangement, liaison with an airline is essential to gain an understanding of how they operate food safety controls on board their aircraft, and to allow authorised officers to verify food safety systems.

The large number of airlines and, in some cases, the size of their fleets, requires the following information to be obtained and made available prior to deciding whether to undertake an inspection:

- named contact and contact details for an airline to deal with enquiries (this might be a food safety advisor employed by the airline);
- number of aircraft, their type and registration numbers, where appropriate;
- routes flown – long haul, short haul and countries of destination;
- airline food safety policy/procedure documents or manual; type of catering menus and the service of high-risk foods;
- food handler (cabin staff) knowledge – up-to-date guidance notes/explanatory sheets and/or training commensurate with the food handling activity covering personal hygiene; handling of food; cross contamination issues arising from other duties; pest awareness; food temperature control (as required by Annex II of Regulation 852/2004), if appropriate, and monitoring; own health status and exclusion from work policy;
- training records, standard of training, including retraining, when appropriate;
- flight caterers, and/or nominated companies assembling and/or transporting meals to the aircraft, used by each airline. In-flight menus should assist in the assessment of whether high-risk foods are handled and/or prepared on board. The onus is on the airline to provide evidence that the food originates from a reputable source;
- specifications in place with the caterer for the supply of food to aircraft and the accepted temperature for delivery, including for high-risk foods;
- details of food and water safety arrangements when supplied to an aircraft in a foreign location;
- potable water supply – source, use of bowsers, cleaning/disinfection of storage tanks – frequency/effectiveness. To be checked prior to or after the inspection;
- flights or routes with return catering including multiple sector catering, and from which airports;
- pest control contract and monitoring;
- cleaning contractor, with details of contracts, e.g. cleaning schedules, and monitoring of the effectiveness of the cleaning regime;
- reports of analysis/examination of food and potable water on aircraft by the airline, which should relate to the Food Authority's own sampling regime; and,
- whether the airline undertakes self-audits and whether any reports are available.

The above information should assist an officer to assess the need to board a particular aircraft to carry out an inspection. In practice, taking account of Annex V, and with the appropriate information obtained from the airline company and/or the relevant Home/Primary Authority, this might result in a visit to particular types of

aircraft, providing high-risk meals once every eighteen months to two years, unless there are compelling reasons to undertake such visits in an intervening period.

#### **5.2.17.4.12            Inspection of the Aircraft**

Cabin crew do occasionally prepare food on board an aircraft and should therefore be made aware in their training of possible cross contamination issues related to their other duties on board, such as handling sick bags and cleaning lavatories in flight. Inspections should normally be undertaken before passengers board the aircraft, ideally after the aircraft has been cleaned, when food is on board, and when airline staff are able to provide assistance and information. Professional judgment should be applied and inspections might be undertaken at other times as necessary. Should there be any uncertainty as to the information provided by cabin staff, the relevant head office (or home authority) should be contacted for clarification.

#### **5.2.17.4.13            Items for Consideration in relation to Food Safety on Aircraft**

Following a documentary check, the following matters should be considered/confirmed, as listed in Chapter 5.2.17.4.11 when appropriate:

- flight caterers – confirmation of the information obtained, regarding source of meals, etc;
- transport and loading of aircraft, including the means of temperature control of the food in the delivery vehicle;
- food storage facilities on the aircraft, including the provision of insulated containers and/or ice-packs and the maximum stated time period until serving and/or re-heating, taking account of the type of aircraft, e.g. long or short haul, and the food served;
- whether food is prepared on the aircraft and the facilities available for such operations, e.g. personal hygiene; avoidance of cross-contamination; provision of disposable gloves for certain duties and disinfectant wipes;
- return flight meals taking account of the shelf-life of the food;
- temperature control (as required by Annex II of Regulation 852/2004) and monitoring during flights;
- reheating/cooking;
- pest control;
- water supply – source and potability of water /cleanliness of tanks;
- procedures for cleaning food handling areas, trolleys/carts; and,
- food and water sampling.

#### **5.2.17.4.14            Action on Conclusion of the Inspection**

A report should be sent to the airline following an inspection, with copies to the relevant Home or Primary Authority where such an arrangement exists, in respect of UK registered aircraft. Where aircraft from a particular airline are checked and found to be in contravention of the applicable law, full details should be provided to allow adequate follow up, e.g. the type of aircraft; flight number; insufficient knowledge of food hygiene issues amongst the cabin crew, etc.



## Chapter 6 – Sampling and Analysis

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### 6.1 – Introduction

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Effective routine sampling is an essential part of a well-balanced enforcement service. It should, therefore, feature in the Sampling Policy of all Food Authorities. Guidance to help ensure sampling by Food Authorities is undertaken effectively and consistently is set-out in the Practice Guidance and guidance on microbiological sampling set-out in WLGA advice.

The Food Safety Act 1990, the Food Safety (Sampling and Qualifications) (Wales) Regulations 2013 and the Food Hygiene (Wales) Regulations 2006 provide a framework for Food Authority sampling which is carried out specifically with a view to pursuing legal action. If the results show an offence has been committed, it is important to recognise that samples may also be taken for the purposes of surveillance, monitoring and providing advice to food business operators. A Food Authority's Sampling Policy and Programme should cover all types of sampling work undertaken.

#### 6.1.1 Sampling Policy and Sampling Programme

Food Authorities must prepare and publish a food Sampling Policy and make it available to businesses and consumers. The Policy must set-out the Food Authority's general approach to food sampling and its approach in specific situations such as process monitoring, imported food monitoring, Home Authority Principle, inspections, complaints, special investigations and national, regional and local co-ordinated programmes. This Sampling Policy must cover all samples taken, including those not provided for in this Code.

Food Authorities must also prepare a Sampling Programme which details their intended food sampling priorities. The Programme must take account of the number, type and intervention ratings of the food businesses, the type of food produced in the area, imported foods, the Food Authority's Originating or Home Authority responsibilities and the need to ensure that the provisions of food law are enforced. The Sampling Programme does not normally have to be published. The Sampling Policy must commit the Food Authority to providing the resources necessary to carry out its food Sampling Programme.

The Sampling Policy and the Sampling Programme must be prepared in consultation with the Food Examiner and the Public Analyst, which may take place on a local or regional basis.

A visit to an establishment to obtain a sample does not constitute a planned intervention unless the sampling activity forms a component part of a wider-reaching official control that overall provides sufficient information to allow the officer to determine the level of compliance.

Further advice on sampling can be found in the Food Law Practice Guidance.

## **6.1.2 Requests for Information from Manufacturers or Importers**

Food Authorities should meet all reasonable requests to provide information on the selection of the sample, sampling method and method of microbiological examination or chemical analysis, to enable the manufacturer or importer of the food to assess the result or repeat the examination or analysis.

## **6.1.3 Sampling – General**

The sampling provisions of the remainder of this section do not apply to:

- Samples of food that are the subject of complaint and are brought to the Food Authority by consumers or other agencies;
- Samples of food that are submitted to the Public Analyst for monitoring or surveillance purposes alone, i.e. there is no intention at the time of sampling that any formal enforcement action will ensue from the result;
- Samples of food procured in accordance with food law which are not taken for analysis or examination, e.g. samples submitted for the opinion of other experts e.g. pest identification etc.; and,
- Samples of food that are taken as evidence in their own right e.g. use-by dates.

### **6.1.3.1 Samples for Analysis (Food Safety Act 1990, section 29)**

All samples for analysis, taken under section 29 of the Food Safety Act 1990 in accordance with the Food Safety (Sampling and Qualifications) (Wales) Regulations 2013 and with the requirements of this Code, should be submitted to the appointed Public Analyst at a laboratory accredited for the purposes of analysis, and which appears on the list of official food control laboratories. Samples procured under section 29 of the Food Safety Act 1990 can be subject to examination if considered appropriate.

### **6.1.3.2 Division of Samples for Analysis**

Unless the sample meets the criteria for submission for analysis without division into three parts (see Chapter on Sampling and Analysis in the Food Law Practice Guidance), the sample should, as soon as possible, be divided into 3 representative parts. Subject to regulation 7(4), regulation 7(1) of the Food Safety (Sampling and Qualifications) (Wales) Regulations 2013, requires that the sample should be divided into 3 representative parts. The resultant parts of the sample are referred to in this Code as final parts. Where practicable, the division should be carried out in the establishment of the food business operator, who, if present, should be given the opportunity to observe the sampling and division before being invited to choose one of the parts for retention.

The sampling of imported foods at the port of entry may pose particular difficulties. In

the special circumstances<sup>26</sup> found by Port Health Authorities, a sample need not be divided on the premises or in the presence of any representative of the seller/owner or importer, unless the legislation under which the sample is taken specifically requires otherwise.

The sampling of foods procured through distance sales such as online or mail order need not be divided in the presence of the food business operator or any representative of the food business operator, unless the legislation under which the sample is taken specifically requires otherwise.

#### **6.1.3.3 Notification of Formal Sampling Activity (Analysis)**

The owner of the food should be notified of any formal sampling activity. The notice should be given as soon as practicable after sampling has taken place and should include the name of the food.

If the identity of other interested parties such as the manufacturer, packer or importer, or his or her agent etc., of food that has been procured by an officer for analysis is available on the food packaging, and the address is in the UK, the officer should notify that person of the procurement, in writing.

#### **6.1.3.4 Certificates of Analysis**

In accordance with regulation 10 of the Food Safety (Sampling and Qualifications) (Wales) Regulations 2013, certificates of analysis must be in the format set-out in Schedule 3 to those Regulations, though may be subject to such adaptation as circumstances reasonably require.

#### **6.1.3.5 Notification of Results (Analysis)**

Where a certificate of analysis indicating that the foodstuff does not comply with legal requirements has been received, the Food Authority should refer to and implement any relevant provisions of Chapter 2.2 and the Home Authority Principle.

In accordance with regulation 10 of the Food Safety (Sampling and Qualifications) (Wales) Regulations 2013, a copy of the certificate of analysis must be supplied, on request, to the owner of the food which has been analysed. If the alleged offence is thought to be related to the manufacturer, they should be informed at the earliest opportunity by the fastest possible means (e.g. telephone, subsequently confirmed in writing) along with the relevant Food Authority. The packer or, in the case of imported food, the importer, or their agent, may also be notified.

However, where the Food Authority is undertaking an investigation the release of the certificate may be delayed if its early release might compromise the investigation.

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<sup>26</sup> Examples of circumstances include where the volume, packaging and/or the nature of product makes it difficult to obtain three representative samples.

#### **6.1.3.6                      Samples for Examination (Food Hygiene (Wales) Regulations 2006, regulation 14)**

All samples for examination, taken in accordance with regulation 12 of the Food Hygiene (Wales) Regulations 2006 and the requirements of this Code, should be submitted to the Food Examiner at a laboratory accredited for the purposes of examination, and which appears on the list of official food control laboratories.

In accordance with regulation 13(10) of the Food Hygiene (Wales) Regulations 2006, the Food Safety (Sampling and Qualifications) (Wales) Regulations 2013 apply in relation to a sample procured by an authorised officer of a Food Authority under regulation 12 of the Food Hygiene (Wales) Regulations 2006, as if it were a sample procured by an authorised officer under section 29 of the Food Safety Act 1990.

#### **6.1.3.7                      Notification of Formal Sampling Activity (Examination)**

The owner of the food should be notified of any formal sampling activity. The notice should be given as soon as practicable after sampling has taken place and should include the name of the food.

If the identity of other interested parties such as the manufacturer, packer or importer, or his or her agent etc. of food that has been procured by an officer for examination is available on the food packaging, and the address is in the UK, the officer should notify that person of the procurement, in writing.

#### **6.1.3.8                      Certificates of Examination**

In accordance with regulation 13(11) of the Food Hygiene (Wales) Regulations 2006 certificates of examination must be in the format set-out in Schedule 3 to the Food Safety (Sampling and Qualifications) (Wales) Regulations 2013.

#### **6.1.3.9                      Notification of Results (Examination)**

Where a certificate of examination indicating that the foodstuff does not comply with legal requirements has been received, the Food Authority should refer to, and implement any relevant provisions of Chapter 2.2 and the Home Authority Principle.

In accordance with regulation 10 of the Food Safety (Sampling and Qualifications) (Wales) Regulations 2013, a copy of the certificate of examination must be supplied, on request, to the owner of the food which has been examined. If the alleged offence is thought to be related to the manufacturer, they should be informed at the earliest opportunity by the fastest possible means (e.g. telephone, subsequently confirmed in writing), along with the relevant Food Authority. The packer or, in the case of imported food, the importer, or their agent, may also be notified.

However, where the Food Authority is undertaking an investigation the release of the certificate may be delayed if its early release might compromise the investigation.

## Chapter 7 – Enforcement Sanctions and Penalties

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### 7.1 – Dealing with Non-Compliance

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#### 7.1.1 Proportionality and Consistency

Food Authorities should ensure that enforcement action taken by their authorised officers is reasonable, proportionate, risk-based and consistent with good practice.

Authorised officers should take account of the full range of enforcement options. This includes:

- educating food business operators;
- giving advice;
- informal action;
- sampling;
- detaining and seizing food;
- serving Hygiene Improvement Notices/Improvement Notices;
- serving Hygiene Prohibition Procedures/Prohibition Procedures; and,
- prosecution procedures.

Where a Primary Authority Partnership exists, Food Authorities should attempt to resolve non-compliance by liaising with the Primary Authority where appropriate.

Except where circumstances indicate a serious contravention or a significant risk, officers should operate a graduated and educative approach (the hierarchy of enforcement) starting at the bottom of the pyramid i.e. advice/education and informal action, and, ordinarily, only move to more formal action where the informal action does not achieve the desired effect.

In considering whether to initiate enforcement action, Food Authorities should take account of the following:

- the Code for Crown Prosecutors - [https://www.cps.gov.uk/publications/docs/code\\_2013\\_accessible\\_english.pdf](https://www.cps.gov.uk/publications/docs/code_2013_accessible_english.pdf); and,
- the Food Authority's Enforcement Policy.

#### 7.1.2 Requirement for a Written Policy

Each Food Authority should have an up-to-date, documented Food Law Enforcement Policy which is readily available to food business operators and consumers.

The Policy should cover all areas of food law that the Food Authority has a duty to enforce and include criteria for the use of all the enforcement options that are available.

Food Authorities should have regard to any advice issued by the FSA and by WLGA when drafting their Food Law Enforcement Policies.

A Food Authority's Food Law Enforcement Policy may be part of a generic policy, or combined with other enforcement policies, e.g. feeding stuffs, providing the applicability of the policy to the enforcement of food law is clear.

Authorised officers should implement their Food Authority's Food Law Enforcement Policy. Departures from the Policy should be exceptional and the reasons for any departure should be recorded.

In deciding the type of enforcement action to take, an authorised officer should have regard to:

- the nature of the breach and the history of compliance of the food business operator; or,
- an assessment of the food business operator's willingness to undertake the work identified by the officer.

It is important that the full range of enforcement options remains open to an authorised officer. A Food Authority should not adopt policies where the number of (hygiene) improvement notices served or the number of other legal processes, such as prosecution or formal caution, is an indicator of performance.

If a Primary Authority Partnership is in place Food Authorities must liaise with the Primary Authority when considering formal action except in circumstances where an imminent risk exists.

### **7.1.3 Use of the Food Hygiene (Wales) Regulations 2006 for those who sell or supply food but are not 'undertakings'**

Food Authorities must at times take safety enforcement action under the Food Hygiene (Wales) Regulations 2006 against those who handle food for sale or supply and, by virtue of Recital (9) and Article 1(2) of Regulation (EC) No 853/2004, fall outside the scope of that Regulation because they would not be considered 'undertakings' and do not require registration under Article 6 of Regulation (EC) No 853/2004, but remain subject to the provisions of Regulation (EC) No 178/2002.

An example would be enforcement action in respect of a one-off event, such as food served at a wedding reception that resulted in an outbreak of food poisoning and which breached the sale or supply of unsafe food provisions in Article 14(1) of Regulation (EC) No 178/2002. Further advice as to which food suppliers or sellers might not count as undertakings can be found in the FSA guidance document Guidance on the application of EU food hygiene law to community and charity food provision, at <https://www.food.gov.uk/sites/default/files/hall-provision-guidance.pdf>.

## **7.2 – Informal Approach**

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Where it is decided to adopt an informal approach, it must be explained to the food business operator what action is needed to secure compliance.

All correspondence must identify each contravention and the measures which, in the opinion of the officer, may be taken to secure compliance. Correspondence must contain an indication of the time scale suggested for achieving compliance.

Standard documents, circulars, booklets, and other publications issued by the Food Authority must be accurate and reflect current practice. Food Authorities must be prepared to discuss letters, circulars, etc. with any food business operator to whom they have been sent.



## **7.3 – Formal Sanctions**

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### **7.3.1 Hygiene Improvement Notices**

This section deals with the use of Hygiene Improvement Notices under regulation 6 of the Food Hygiene (Wales) Regulations 2006.

- Hygiene Improvement Notices served under regulation 6 of the Food Hygiene (Wales) Regulations 2006 must only be signed by officers who have been authorised to do so by the Food Authority and meet the competency requirements set-out in Chapter 4.

The officer who signs the notice must be satisfied that the FBO is failing to comply with food hygiene regulations.

#### **7.3.1.1 When to use Hygiene Improvement Notices**

Hygiene Improvement Notices may be appropriate in any of the following circumstances or a combination thereof:

- formal action is proportionate to the risk to public health;
- there is a record of non-compliance with hygiene regulations; and,
- the authorised officer has reason to believe that an informal approach will not be successful.

#### **7.3.1.2 When not to use a Hygiene Improvement Notice**

The Hygiene Improvement Notice procedure would be inappropriate in the following circumstances:

- where the contravention could be continuing, for example, personal cleanliness of staff, and a notice would only secure an improvement at one point in time;
- in transient situations, and it is considered that swift enforcement action is needed, for example, a one day festival or sporting event (a Hygiene Emergency Prohibition Notice would be the only formal remedy which would have immediate effect); and,
- where there is a breach of good hygiene practice but no failure to comply with an appropriate regulation.

### **7.3.2 Improvement Notices**

This section deals with the use of Improvement Notices under section 10 the Food Safety Act 1990.

Improvement Notices served under section 10 of the Food Safety Act 1990 must only be signed by officers who have been authorised to do so by the Food Authority and meet the competency requirements set-out in Chapter 4.

The officer who signs the notice must be satisfied that the proprietor is failing to



comply with the relevant legislation made under the Food Safety Act 1990.

Food Authorities must continue to use the prescribed forms set-out in the Food Safety (Improvement and Prohibition - Prescribed Forms) Regulations 1991 when using powers under section 10 of the Food Safety Act 1990.

#### **7.3.2.1 When to use an Improvement Notice**

Food Authorities should deal with breaches of the Food Hygiene (Wales) Regulations 2006 by using the enforcement powers provided by those Regulations (such as Hygiene Improvement Notices under regulation 6). However, where the legislation concerned is made under the Food Safety Act 1990, such as the Fish Labelling (Wales) Regulations 2013, authorised officers should issue an Improvement Notice under section 10 of the Food Safety Act 1990. To this end, in most cases, regulations made under the Food Safety Act 1990 expressly apply and modify section 10 of the 1990 Act.

#### **7.3.2.2 When not to use an Improvement Notice**

The improvement notice procedure would be inappropriate where breaches exist in respect of food safety which poses a potential and imminent risk of injury to health and it is considered that swift enforcement action is needed. An Emergency Prohibition Notice would be the only formal remedy which would have immediate effect.

### **7.3.3 Food Information Regulations Improvement Notices**

Regulation 12 of the Food Information (Wales) Regulations 2014 (FIR 2014) applies the provisions in section 10 of the Food Safety Act 1990 to enable Improvement Notices to be served for a contravention of certain provisions of Regulation (EU) No 1169/2011 on the provision of food information to consumers (EU FIC) and other provisions of FIR 2014. For these purposes, section 10 of the Food Safety Act 1990 has been modified by FIR 2014. See Part 1 of Schedule 4 of FIR 2014 for details of the modifications.

#### **7.3.3.1 When to use Food Information Regulations Improvement Notice**

Food Authorities should deal with breaches of the Food Information (Wales) Regulations 2014 by using the enforcement powers provided by those Regulations (such as Improvement Notices). Improvement notices should be used in line with the enforcement policy of a Food Authority and must be considered as part of the escalation of enforcement action in accordance with the hierarchy of enforcement.

An Improvement Notice may be served on a person requiring the person to comply with the provisions listed in subsection (1A) of the modified version of section 10 of the Food Safety Act 1990 set-out in Part 1 of Schedule 4 to FIR 2014. These are:

- the EU FIC provisions listed in Schedule 5 to FIR 2014, (the main provisions of 1169/2011), except insofar as they relate to net quantity (section 10(1A)(a) to (c)); and,

- the provisions in FIR 2014 listed in section 10(1A)(d). These relate to, the national requirements for non-prepacked foods requiring meat QUID labelling for foods containing meat (regulation 7(1), (4) and (5)); and, food irradiation labelling (the provisions of regulation 8(1) and (3));
- the national requirements under regulation 6 of FIR 2014 to provide name of food for non-prepacked foods. (Section 10(1A)(d)(ii)).

### **7.3.3.2 When not to use a Food Information Regulations Improvement Notice**

A Food Information Regulations Improvement Notice would be inappropriate where breaches exist in respect of food hygiene, or where breaches exist in respect of food standards which pose a potential and imminent risk of injury to health and it is considered that swift enforcement action is needed. An Emergency Prohibition Notice under food safety legislation would be the only formal remedy which would have immediate effect.

FIR 2014 includes criminal sanctions for failure to comply with certain allergen labelling and information requirements (these are listed in regulation 10 of the Regulations) but, where there is a failure to comply with those provisions, enforcement officers will need to choose, based on the circumstances, between taking a criminal prosecution in relation to the contravention or serving an Improvement Notice. It will be possible, in some cases, for a Food Authority to take a criminal prosecution for the contravention itself and after the case has been determined, to issue an Improvement Notice if sufficient measures have not been taken by the food business operator to achieve compliance. Failure to comply with an Improvement Notice is an offence. Note that in the case of use-by dates an Improvement Notice can be served for failure to display one, but not for selling food after the expiry of its use-by date; that constitutes a breach of Article 14 of Regulation (EC) No 178/2002.

### **7.3.4 Remedial Action Notices (RANs)**

Powers to issue Remedial Action Notices and Detention Notices are provided by regulation 9 of the Food Hygiene (Wales) Regulations 2006.

A model Remedial Action Notice, a model Detention Notice and a model Notice of withdrawal of a Remedial Action Notice/Detention Notice can be found in the Food Law Practice Guidance.

Remedial Action Notices may be issued in relation to any food establishments Detention Notices under Regulation 9 of the Food Hygiene (Wales) Regulations 2006 may only be served in establishments subject to approval. For the detention and seizure of food in non-approved establishments see Chapter 7.3.7.

Authorised officers must seek to remedy non-compliance in establishments by a graduated approach to enforcement. When necessary, the Hygiene Improvement Notice provisions in regulation 6 must be considered. Authorised officers must consider these options before commencing any other enforcement action. However, Remedial Action Notices and/or Detention Notices as provided for by regulation 9 of these Regulations can be used, when appropriate.

### **7.3.4.1 When to use a Remedial Action Notice**

Regulation 9 of the Food Hygiene (Wales) Regulations 2006 provides for authorised officers to serve a Remedial Action Notice where it appears to them that the requirements of the “Hygiene Regulations”, as defined by regulation 2 of the 2006 Regulations, are being breached or an inspection under the “Hygiene Regulations” is being hampered. More specifically, this provision provides, through the service of a Remedial Action Notice, for the prohibition of the use of any equipment or any part of the establishment, the imposition of conditions upon, or prohibiting, any process and also allows for the rate of an operation to be reduced or, stopped completely. Regulation 9 also includes the provision for the detention of any food, including the taking of samples for the purposes of examination, by the service of a Detention Notice in an establishment subject to approval under Regulation 853/2004.

Circumstances which may lead to the issue of a Remedial Action Notice in respect of an establishment include:

- the failure of any equipment or part of an establishment to comply with the requirements of the “Hygiene Regulations” as defined by regulation 2 of the Food Hygiene (Wales) Regulations 2006;
- the need to impose conditions upon or the prohibition of the carrying on of any process breaching the requirements of the Regulations or hampering adequate health inspection in accordance with the Regulations; and,
- where the rate of operation of the business is detrimental to its ability to comply with the Regulations.

Circumstances which could lead to the issue of a Detention Notice include where there are indications or suspicions that food at an establishment is unsafe and therefore examination is necessary, including the taking of samples.

Such action must be proportionate to the risk to public health and where immediate action is required to ensure food safety. A Remedial Action Notice can be used if a continuing offence requires urgent action owing to a risk to food safety or when corrective measures have been ignored by the food business operator and there is a risk to public health.

As soon as the authorised officer who served the Remedial Action Notice is satisfied that the action specified in a Remedial Action Notice has been taken, the notice must be withdrawn by means of a further notice in writing. Similarly, in respect of a Food Detention Notice, if the authorised officer is satisfied that the food need no longer be detained, the relevant notice must also be withdrawn by means of a further notice in writing.

### **7.3.5 Hygiene Emergency Prohibition Notices (HEPNs) and Related Matters**

This section deals with the use of Hygiene Emergency Prohibition Procedures under regulation 8 of the Food Hygiene (Wales) Regulations 2006, including:

- the associated Voluntary Closure Procedures;
- the Prohibition of Persons under regulation 7(4);

- the use of Emergency Prohibition Procedures under section 12 of the Food Safety Act 1990 and associated Voluntary Closure Procedures; and,
- the Prohibition of Persons under section 11(4) of the Act.

Food Authorities must continue to use the prescribed forms set-out in the Food Safety (Improvement and Prohibition - Prescribed Forms) Regulations 1991<sup>27</sup> when using powers under sections 11 and 12 of the Food Safety Act 1990.

Hygiene Emergency Prohibition Notices served under regulation 8 of the Food Hygiene (Wales) Regulations 2006 or Emergency Prohibition Notices served under section 12 of the Food Safety Act 1990 should be signed only by officers who are specifically authorised to serve these notices and meet the competency requirements set-out in Chapter 4.

### **7.3.5.1 When to use HEPNs**

Unless the use of voluntary procedures is more appropriate in the circumstances, Hygiene Emergency Prohibition Notice procedures must be used if an authorised officer has evidence that the health risk condition is fulfilled. For example, very poor structural condition and poor equipment and/or poor maintenance or routine cleaning and/or serious accumulations of refuse, filth or other extraneous matter, resulting in the actual contamination of food or a significant risk of food contamination. This example is not prescriptive and is for illustrative purposes only.

The health risk condition is defined by regulation 7(2) as read with regulation 8(4) of the Food Hygiene (Wales) Regulations 2006 i.e. there is an imminent risk of injury to health, and where an authorised officer must therefore consider the use of such prohibition powers.

The Food Law Practice Guidance provides additional examples of circumstances that could show that the health risk condition exists.

If the appropriate evidence is found, a Hygiene Emergency Prohibition Notice may be served on the food business operator, followed by an application to a Magistrates' Court for a Hygiene Emergency Prohibition Order.

#### **7.3.5.1.1 Health Risk Conditions**

Health risk conditions where prohibition of a process may be appropriate include:

- Serious risk of cross contamination;
- Failure to achieve sufficiently high processing temperatures;
- Operation outside critical control criteria, for example, incorrect pH of a product which may allow *Clostridium botulinum* to multiply;
- The use of a process for a product for which it is inappropriate.

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<sup>27</sup> <http://www.legislation.gov.uk/ukxi/1991/100/contents/made>

### **7.3.5.1.2 Health Risk Condition No Longer Exists**

In respect of Hygiene Emergency Prohibition Notices and Hygiene Emergency Prohibition Orders, the Food Authority must issue a certificate to the food business operator within three days, if it is satisfied that the health risk condition no longer exists.

If the food business operator applies for such a certificate, the Food Authority must determine the position as soon as is reasonably practicable and within a period of no longer than fourteen days. If the Food Authority determines that the health risk condition remains in existence, it must issue a notice of that determination to the food business operator, giving reasons for the determination.

### **7.3.5.2 Voluntary Procedures (Food Hygiene)**

Voluntary Procedures to remove a health risk condition may be used, at the instigation of the food business operator, when the food business operator agrees that a health risk condition exists as defined by regulation 7(2) read with regulation 8(4) i.e. there is an imminent risk of injury to health. An officer could suggest this option to the food business operator, but only when they would otherwise be able to issue a HEPN under regulation 8. In these circumstances, the food business operator must be advised to take independent legal advice.

Any voluntary closure agreement must be confirmed in writing by the food business operator or manager and the authorised officer, with an undertaking by the food business operator or manager not to re-open without the officer's prior approval.

#### **7.3.5.2.1 When to use Voluntary Closure Procedures (Food Hygiene)**

If the manager of a food business offers to close voluntarily, the officer must confirm that the manager has the authority of the food business operator to agree to such voluntary action.

The officer must ensure that frequent checks are made on the establishment to ensure that it has not re-opened.

#### **7.3.5.2.2 When not to use Voluntary Closure Procedures (Food Hygiene)**

If the food business operator offers to close voluntarily, the officer must consider whether there is a risk of the establishment being re-opened without the officer's knowledge and/or agreement (if this were to cause food poisoning, the Food Authority might be criticised for not having used statutory powers). The officer should:

- recognise that there is no statutory legal sanction against a food business operator who re-opens for business after offering to close, although enforcement action for the actual breaches e.g. unsafe food, similar processing as before, etc, remains available; and,
- explain to the food business operator that, by closing voluntarily, any right to compensation is lost.

### **7.3.5.3 When to use Hygiene Prohibition Procedures against a Person**

At the time when the food business operator/food business proprietor is convicted of a relevant offence, the authorised officer may feel that it is appropriate to ask the Court to consider making an order preventing that person from operating a food business. Circumstances where such action may be appropriate include repeated offences such as failure to clean, failure to maintain equipment, blatant disregard for health risks, or putting health at risk by knowingly using unsafe food.

#### **7.3.5.3.1 Action when a Hygiene Prohibition Order has been made against a Person**

A Hygiene Prohibition Order issued by a Court can only be fully effective if other Food Authorities are notified, as the individual concerned may try to start a business in another area.

The Food Authority must notify the CIEH after a hygiene prohibition order is made against a person prohibiting that person from running a food business, provided the Order is not the subject of an appeal, and the period allowed for appeal has expired, supplying the following information:

- case number;
- court details;
- date of prohibition order;
- date(s) of offence;
- nature of offence(s);
- regulation/section number under which offence was made;
- penalties;
- name of food business operator or manager;
- name of the business;
- food business establishment address including post code;
- business type/main activity (e.g. catering, retail etc.); and
- details of assumed names.

#### **7.3.5.3.2 Lifting of Hygiene Prohibition Orders against persons**

Hygiene Prohibition Orders against persons imposed by a Court under regulation 7(4) can only cease to have effect if, on an application by the food business operator, the Court gives such a direction, in accordance with the provisions at regulation 7(8). Note should be made that no application will be entertained within six months of the date of the order being made.

The Food Authority must also notify CIEH by the next working day after they learn that a Hygiene Prohibition Order against a person has been lifted in their area.

### **7.3.6 Food Safety Act 1990 Procedures**

Unless the use of Voluntary Procedures is more appropriate in the circumstances, Emergency Prohibition Notice Procedures must be used if an authorised officer has



evidence of an imminent risk of injury to health. If the appropriate evidence is found, an Emergency Prohibition Notice under section 12 of the Act may be served on the proprietor. The effect of the notice is to immediately close the premises, or prevent the use of the equipment or process. This should be followed by an application to a Magistrates' Court for an Emergency Prohibition Order.

#### **7.3.6.1                      When to use Emergency Prohibition Notice Procedures (section 12)**

The following are examples of circumstances that could involve an imminent risk of injury to health and in which an authorised officer may therefore consider the use of prohibition powers. These examples are in no way prescriptive or exhaustive and are for illustrative purposes only.

- A process or treatment that introduces a teratogenic chemical (one that damages a developing foetus in the womb) into food, which might cause injury to the developing foetus, but the damage, will not be apparent until the baby is born;
- A process or treatment that introduces a genotoxic chemical (one that damages genes or chromosomes) into food the effects of which, might not manifest themselves until an affected unborn child of a mother who has consumed the food, develops, or a malignant tumour occurs in the future.

#### **7.3.6.2                      Voluntary Procedures (Food Standards)**

Voluntary Procedures to remove an imminent risk of injury to health can be used, at the instigation of either the proprietor or the manager of the business, when the proprietor or manager of the business agrees that an imminent risk of injury to health exists. An officer could suggest this option to the proprietor or manager, but only when they would otherwise be able to issue an Emergency Prohibition Notice under section 12 of the Food Safety Act 1990. If in doubt, the proprietor or manager must be advised to take independent legal advice.

Any voluntary closure agreement must be confirmed in writing by the proprietor or manager and the authorised officer, with an undertaking by the proprietor or manager not to re-open without the officer's prior approval.

##### **7.3.6.2.1                      When to use Voluntary Closure Procedures (Food Standards)**

If the manager of a food business offers to close voluntarily, the officer must confirm that the manager has the authority of the proprietor to agree to such voluntary action.

The officer must ensure that frequent checks are made on the establishment to ensure that it has not re-opened.

##### **7.3.6.2.2                      When not to use Voluntary Closure Procedures (Food Standards)**

If the proprietor of a food business offers to close voluntarily, the officer must consider whether there is a risk of the establishment being re-opened without the



officer's knowledge and/or agreement (if this were to cause food poisoning, the Food Authority might be criticised for not having used statutory powers); recognise that there is no statutory legal sanction against a proprietor who re-opens for business after offering to close, although enforcement action for the actual breaches e.g. unfit food, unclean establishment etc., remains available; and explain to the proprietor that, by closing voluntarily, any right to compensation if a Court subsequently declines to make an Emergency Prohibition Order is lost.

### **7.3.6.3 Action when a Prohibition Order has been made against a Person**

A Prohibition Order issued by a Court can only be fully effective if other Food Authorities are notified, as the individual concerned might try to start a business in another area.

The Food Authority must notify the CIEH as soon as possible after a Prohibition Order is made against a person prohibited from running a food business, provided the order is not the subject of an appeal and the period allowed for appeal has expired, supplying the following information:

- case number;
- court details;
- date of prohibition order;
- date(s) of offence;
- nature of offence(s);
- regulation/section number under which offence was made;
- penalties;
- name of food business proprietor or manager;
- name of the business;
- food business establishment address including post code;
- business type/main activity (e.g. catering, retail etc.); and,
- details of assumed names.

### **7.3.6.3.1 Lifting of Prohibition Orders against Persons**

Prohibition Orders against persons, imposed under section 11(4) by a Court can only cease to have effect if, on an application by the proprietor, the Court gives such a direction, in accordance with the provisions at section 11(8).

The Food Authority must also notify CIEH by the next working day after they learn that a Prohibition Order made against a person has been lifted in their area.

### **7.3.7 Seizure and Detention**

This section describes the circumstances when the use of detention and seizure powers under section 9 of the Food Safety Act 1990, is appropriate including after food has been certified in accordance with regulation 27 of the Food Hygiene (Wales) Regulations 2006. It also covers the procedures for serving and withdrawal of notices, voluntary surrender, and the destruction or disposal of food.

Food Authorities must continue to use the forms set-out in the Detention of Food (Prescribed Forms) Regulations 1990 when using powers under section 9 of the Food Safety Act 1990, including after food has been certified in accordance with regulation 27 of the Food Hygiene (Wales) Regulations 2006.

The inspection of food and any decision to detain or seize food through the application of section 9 of the Food Safety Act 1990 (including as directed by regulation 27 of the Food Hygiene (Wales) Regulations 2006) must only be taken by officers who are specifically authorised to seize and detain food and serve the appropriate notices and meet the competency requirements set-out in Chapter 4.

As regards official controls in relation to the import of food from third countries, regulation 31 of the Official Feed and Food Controls (Wales) Regulations 2009 provides the power to Competent Authorities to take action under Articles 18 to 21 and 24(3) of Regulation 882/2004 if the conditions set-out in those Articles are fulfilled. These Articles relate to the detention, destruction, special treatment, re-dispatch and other appropriate measures in respect of food imported from third countries.

#### **7.3.7.1 The Food Hygiene (Wales) Regulations 2006 (regulation 27)**

When food has not been produced, processed or distributed in compliance with the “Hygiene Regulations” as defined in regulation 2 of the Food Hygiene (Wales) Regulations 2006, an authorised officer may use regulation 27 (see also regulation 23 in this regard) of those Regulations to seize the food by the use of section 9 of the Food Safety Act 1990. Following the certification required by regulation 27, the authorised officer should follow the advice set-out in this Chapter in connection with the use of section 9 of the Food Safety Act 1990.

A model certificate to certify, where appropriate, that food has not been produced, processed or distributed in compliance with the “Hygiene Regulations” for use in connection with regulation 27 of the Food Hygiene (Wales) Regulations 2006 can be found in the Food Law Practice Guidance.

#### **7.3.7.2 Specific Powers of Seizure and Detention for Food Authorities**

Food Authorities have been given powers of seizure and detention under certain regulations. These regulations are listed in the Food Law Practice Guidance.

In addition, officers appropriately authorised under the Food Safety Act 1990 can seize and detain food when directed by the FSA by means of a Food Alert, or when a risk to health is identified through analysis and notified to the Food Authority by a Public Analyst, provided they are satisfied that the statutory thresholds set-out in section 9, as appropriate, are met e.g. that in the case of detention it appears to them that the food fails to comply with food safety requirements.

#### **7.3.7.3 Detention of Food**

Unless the circumstances require immediate action, a decision to detain food must only be taken if it has been discussed with the owner or person in charge of the food

and, if appropriate, with the manufacturer.

Where the authorised officer has served a Detention of Food Notice, professional judgment must be used to determine whether food must be detained where it is, or moved elsewhere. If the officer has any doubts about the security or physical care of the food, the detention notice must specify a place to which the food is to be moved.

If food is to be removed to another Food Authority's area the officer must notify that Food Authority and make any necessary arrangements for the food to be checked while it is being detained.

In all cases, but especially with highly perishable food, the officer must act expeditiously at every stage and provide full information to those required to carry out analysis or examination of samples of the food.

If food is to be detained where it is found, the authorised officer must be satisfied that adequate arrangements can be made to ensure its security and prevent tampering.

The officer must organise periodic monitoring of the food throughout the period of detention. Before making such arrangements, regard should be had to the nature of the food, the quantity, any health hazard that it represents, and the ownership of the establishment where it is located. The officer must generally avoid leaving it in the charge of, or in an establishment owned by, any person who may be prosecuted for an offence under food law.

#### **7.3.7.4 Seizure of Food**

When considering whether to seize food that has been detained, authorised officers must consider whether the food in question can be treated or processed before consumption and if so, whether the food, after treatment or processing, would satisfy food safety requirements.

Arrangements for the treatment or processing of food in these circumstances must be agreed by the authorised officer, and the owner or the person in control of the food and the subject of a signed, written undertaking.

Any arrangement that involves food being moved to the area of another Food Authority for treatment or processing must be accepted by the receiving Food Authority before the agreement is concluded.

Arrangements must be made for that Food Authority to take steps to ensure the processing or treatment is carried out, including the service of a Detention of Food Notice if appropriate.

If the receiving Food Authority is unable to accept responsibility for ensuring that the food is properly processed or treated, the arrangement must not proceed.

Unless the preceding paragraphs of this section apply, or the use of Voluntary Procedures is more appropriate, food must be seized if an authorised officer has evidence that it does not satisfy food safety requirements.

If evidence indicates that food that has already been detained must be seized, the officer should serve a Food Condemnation Notification, warning of the intention to take the food before a Justice of the Peace and apply for its condemnation.

Food that has been seized must be dealt with by a Justice of the Peace as soon as is reasonably practicable, normally within two days, but if necessary longer to ensure that parties can attend and be represented should they choose to do so. Highly perishable food must be dealt with by a Justice of the Peace at the earliest opportunity.

The person in charge of the food or the owner must be given the opportunity of being present and represented should they choose to do so when the food is dealt with by the Justice of the Peace, although action must not be delayed if the owner cannot be traced or contacted. It is important the owner or the person who is in charge of the food has the opportunity of attending, and good service of notice of the hearing must be documented and retained to show the Court that was the case.

The authorised officer must ensure continuity of evidence whether or not there may be a subsequent prosecution and must make every attempt not to leave the food unsecured once it has been seized.

#### **7.3.7.5 Notices of Detention and Seizure**

A Detention or Seizure of Food Notice must be signed by the officer who takes the decision to detain or seize the food.

When food is seized, written notification of the seizure must be issued as soon as is reasonably practicable. This notification must include details of the type and quantity of the food seized, including any distinguishing marks, codes, dates etc.

A Food Condemnation Notification must be given to the person in charge of the food when the officer intends to have the food dealt with by a Justice of the Peace. The notification must, where possible also be given to the owner of the food if different from the person in charge.

#### **7.3.7.6 Withdrawal of Detention of Food Notice**

The authorised officer must act as quickly as possible when evidence or information indicates that detained food can be released, and in any case within 21 days of the detention or seizure. A Withdrawal of Detention of Food Notice must be served.

The decision to issue a Withdrawal of Detention of Food Notice must be taken either by the officer who originally issued the notice or initiated the action or by another officer with the relevant experience and competence.

A Withdrawal of Detention of Food Notice must be served as soon as possible to prevent possible deterioration of the food. The notice need not be served by the officer who made the decision, but can be served by any authorised officer.

### **7.3.7.7 Dealing with Batches, Lots or Consignments of Food**

Article 14(6) of Regulation 178/2002 stipulates that where “any food which is unsafe forms part of a batch, lot, or consignment of food of the same class or description, it shall be presumed that all the food in that batch, lot or consignment is also unsafe, unless following a detailed assessment there is no evidence that the rest of the batch, lot or consignment is unsafe”.

If a quantity of food of different types or batches is being detained, the authorised officer must issue a separate Detention of Food Notice in respect of each type or batch.

When considering whether to seize or detain a batch, lot or consignment, the authorised officer must consider the following:

- the evidence available;
- the nature of the contamination;
- the nature and condition of any container holding the food;
- the risk to health; and,
- the quantity of food involved in relation to any sampling which has been undertaken.

### **7.3.7.8 Voluntary Procedures**

Voluntary Procedures to remove food that is not suitable for human consumption from the food chain can be used, either at the instigation of the owner of the food or at the suggestion of the authorised officer when the owner of the food agrees the food is not suitable for human consumption.

A receipt must be issued for food that is voluntarily surrendered to the Food Authority for destruction. The receipt must indicate that the food has been voluntarily surrendered to the Food Authority for destruction and be signed and counter- signed by the authorised officer and the person surrendering the food respectively.

The receipt must include space for recording the time, place and method of destruction of the food, and these details must be recorded on the office copy by the authorised officer in due course and retained by the Food Authority.

If the Food Authority does not secure, as part of the voluntary surrender, an agreement by the owner to pay the reasonable expenses of destruction or disposal, then it would have to bear the expenses itself.

### **7.3.7.9 Destruction or Disposal of Food**

The Food Authority is responsible for ensuring the destruction of food or appropriate disposal that has been condemned under section 9(6) of the Food Safety Act 1990 or voluntarily surrendered, and arrangements must be made for the food to be supervised until it can be dealt with in the appropriate manner. If possible and if there is likely to be some delay before destruction or disposal, the food must be disfigured to prevent any possibility of it being returned to the food chain.

In the case of destruction, the Food Authority must ensure the total destruction of the food by incineration or some other appropriate method. If total destruction is not possible, the Food Authority must ensure a degree of disfigurement that the food could never re-enter the food chain, e.g. by flattening tin cans for disposal in a suitably licensed landfill site, having regard to the requirements of relevant waste disposal legislation.

A copy of the waste transfer note must be obtained and kept on file for any food that has been disposed of by a licensed waste disposal contractor under these arrangements.

#### **7.3.7.10 Enforcement Powers for Imported Food**

The Official Feed and Food Controls (Wales) Regulations 2009, regulation 31 provides Food Authorities with the power to take action under Articles 18 to 21 and 24(3) of Regulation 882/2004 if the conditions set-out in those articles are fulfilled. These Articles relate to the detention, destruction, special treatment, re-dispatch and other appropriate measures in respect of food imported from third countries. The Official Feed and Food Controls (Wales) Regulations 2009 provides the enforcement powers for Food Authorities in carrying out official controls on FNAO from third countries, either at the point of entry or inland.

#### **7.3.7.11 Notices under Official Feed and Food Control Regulations (Wales) 2009**

Regulation 32 of these Regulations requires authorised officers to serve a notice on the FBO:

- where they propose to place a consignment under official detention under Article 18 or 19(1) of Regulation 882/2004;
- where they propose to take any of the measures in Article 19(1)(a) or(b) of Regulation 882/2004, after hearing from the FBO responsible for the consignment as provided for in Article 19; and,
- where they propose to take any action referred to in Article 19(2).

#### **7.3.7.12 Detention/Seizure of illegal imports of POAO found inland at premises outside Customs control.**

Where illegal imports of POAO are found inland in an area/premises outside Customs control, the local Competent Authorities for that area has responsibility for the enforcement action.

Where an authorised officer wishes to detain any POAO found inland in order to investigate further to establish its safety or compliance, voluntary co-operation might be sought in the first instance. In situations where this is not possible or is inappropriate due to risk, there is a provision under Article 18 of Regulation (EC) No 882/2004 for an authorised officer to detain the product until such a time as the investigation is complete.

Where the officer is satisfied that a POAO has been illegally introduced (checks at a Border Inspection Post have been evaded), they must take appropriate action as

outlined in Regulation 19 and Regulation 20(3) of the Trade in Animals and Related Products (Wales) Regulations 2011. The officer must seize the consignment of products and either:

- have it dispatched for rendering or incineration as category 1 material in accordance with relevant animal by-products legislation.

or

- have it re-dispatched, by the mode of transport by which it was first introduced into the EU, to a destination in a third country within sixty days.

Although the final decision rests with the enforcing Food Authority, in most circumstances it is unlikely to be appropriate or practical to re-dispatch the products. Further guidance is available in the FSA's Resource Pack for Inland Enforcement of Imported Feed and Food Controls, which can be found at:

[http://www.food.gov.uk/business-industry/imports/enforce\\_authorities/resourcepack](http://www.food.gov.uk/business-industry/imports/enforce_authorities/resourcepack).



## **Chapter 8 – Matters Relating to Live Bivalve Molluscs**

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### **8.1 – Introduction**

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This section deals with the establishment and maintenance of local shellfish liaison groups. It also deals with the need for registration documents or permanent transport authorisations, monthly checks on relaying areas, and the publication of information about prohibited areas.

#### **8.1.1 Liaison Arrangements**

Food Authorities must establish and maintain a shellfish liaison group in areas where there are commercial shellfish activities. The group should comprise representatives from relevant bodies to ensure a timely exchange of information, contributing data which will be used to help inform decisions on appropriate health protection measures. This can include fishermen or shellfish gatherers at the discretion of the relevant Food Authority. The function of the group is likely to vary depending on the local shellfish industry (see relevant section of the Food Law Practice Guidance).

#### **8.1.2 Registration Documents: Live Bivalve Molluscs**

Under Regulation (EC) No 853/2004, each gatherer of live bivalve molluscs (including Pectinidae) to be placed on the market, requires a registration document (unless issued with a permanent transport authorisation) to identify 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 from the area of sea it is harvested) and between establishments, up to and including the arrival of the batch at a relay area, dispatch centre or processing establishment.

Food Authorities must issue such registration documents to registered gatherers, including fishing vessels that harvest live bivalve molluscs (a model registration form can be found in the Food Law Practice Guidance). To enable the system of documentation to be monitored a unique number must be used on the document issued and the unique code number must be given to the harvester or gatherer before they carry out harvesting.

Food Authorities must provide registration documents on demand and cannot make any charge for the issue of such documents, nor can they unreasonably refuse to issue the documents to a gatherer.

Food Authorities are required to check the details recorded on a registration document when live bivalve molluscs come ashore.

Food Authorities issuing registration documents must 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 which the harvester requires the registration documents for.

Registration documents issued to gatherers who are harvesting within the area of another Food Authority must only be issued with the agreement of that other Food Authority.

Likewise, Food Authorities responsible for establishments receiving batches of LBMs from outside their local area are encouraged to contact the issuing Food Authority when inspecting registration documents.

Details of the requirements for Food Authorities to take microbiological samples can be found in the Food Law Practice Guidance.

Food business operators 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 Food Authority.

#### **8.1.2.2 Examination of Registration Documents**

Food 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 (see relevant section of the Food Law Practice Guidance) but can be carried out at any stage during the supply process.

#### **8.1.3 Permanent Transport Authorisations**

A Food Authority can issue, to gatherers, a Permanent Transport Authorisation (PTA) as an alternative to separate movement documents when the gatherer also operates the purification 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 Food Authority.

In deciding whether to issue a PTA a Food Authority must consider the requirements of Regulation (EC) No 853/2004, Annex III, Section VII, Chapter 1, paragraph 7. In addition to these 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 Food Authority is not satisfied with the operators' compliance with hygiene legislation after authorisation is given, the authority can withdraw the PTA. A PTA should be issued for each individual shellfish harvesting bed.

#### **8.1.4 Purification Centres**

Approval forms for new purification centres, or for modifications to existing centres must be handled in accordance with Section 3.3.6 of this Code.

#### **8.1.5 Sampling as part of the Inspection**

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

of the end-product standard.

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 needed.

Where necessary, Food Authorities should communicate test results which do not comply with the end-product standard to neighbouring Food Authorities responsible for the relevant harvesting area, relaying area, or purification centre.

Food Authorities should also communicate the results of any samples of live bivalve molluscs to the operator of the centre from where the samples were procured. The Food Authority should also notify the FSA of the results of any samples that may indicate a significant variation in the quality of production areas or relaying areas.

### **8.1.6 Relaying Areas**

It is the responsibility of the FSA to classify bivalve mollusc beds and this also applies to the classification of an area for the relaying of live bivalve molluscs. This area must fulfil the criteria necessary of the classification of bivalve mollusc beds. The procedure and criteria for the approval and classification can be found at the following link:

<https://www.cefas.co.uk/media/52553/classification-protocol-revised-version-07-june-2017-fsa-final.pdf>

#### **8.1.6.1 Checks on Relaying Areas**

Authorised officers must carry out checks at least every month in relaying areas to ensure that the relaying conditions specified by the FSA are being complied with. The conditions that must be observed when live bivalve molluscs are relayed in approved relaying areas are specified in Chapter II of Annex II to Regulation (EC) No 854/2004.

Imported live bivalve molluscs for human consumption or processing require post import notification and control. This is to ensure that they are not relayed in EU waters.

Consignments of live bivalve molluscs for human consumption or processing must be imported with a Common Veterinary Entry Document (CVED) and have been subject to veterinary checks at an EU border inspection post (BIP). Boxes 33 (acceptable if channelled) and 37 (details of controlled destinations) of the CVED must be completed.

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

Annex II, Chapter II, Section C.1 of Regulation (EC) No 854/2004 requires that, where sampling results show that health standards for molluscs have not been met or that there may otherwise be a risk to human health, the Food Authority must close the production area concerned to prevent the harvesting of live bivalve molluscs or, if appropriate, to reclassify the area in accordance with the Regulation.

Annex II, Chapter II, Section E(b) and (c) of Regulation (EC) No 854/2004 respectively, require the Food Authority to inform interested parties, such as producers, gatherers, and operators of purification centres or dispatch centres, immediately of the closure of any area, and to act promptly to close, reclassify, or re-open production areas. When the closure of a production area is required, the FSA recommends that a Closure Notice should be used as the means to inform interested parties; a model Closure Notice can be found in the Food Law Practice Guidance.

The Food Authority must also 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 has already been distributed locally or nationally (for contact details see Food Law Practice Guidance).

The Food Authority must ensure that Closure Notices, when used, are made quickly, and that all known food business operators in their district, who either have registration documents already issued, or have a PTA (issued by the Competent Authority in accordance with Annex III, Section VII Chapter 1.7 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. Additionally, the Food Authority must prominently display Closure Notices where food businesses and casual gatherers harvesting shellfish might reasonably be expected to see them.

Other Food Authorities with a shared jurisdiction should also be advised, who must, in turn, fulfil their responsibility by informing, as appropriate, operators within their own area affected by the closure.

A Closure Notice cannot be time limited. The Food Authority must liaise with the FSA as soon as possible in relation to the undertaking of additional sampling of harvesting waters or live bivalve molluscs, as it might be necessary to determine when the closed area can reopen. The Food Authority must remove a Closure Notice immediately it is satisfied that harvesting in accordance with the Regulation can resume.

In the event a Food Authority decides not to use 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.

The Food Authority must ensure that all known interested parties are aware that they are not to harvest during a closure period. Any person who contravenes or fails to comply with the closure is in breach of the terms of regulation 17(1) of the Food Hygiene (Wales) Regulations 2006 and is committing an offence.

**ANNEXES****Annex 1 – Glossary**

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APHA	Association of Port Health Authorities
Approved Establishment	Means premises approved under Regulation (EC) No. 853/2004 for handling, preparing or producing products of animal origin
Audit	Means a systematic and independent examination to determine whether activities and related results comply with planned arrangements and whether these arrangements are implemented effectively and are suitable to achieve objectives.
Authorised Officers	Has the meaning set-out in Section 5(6) Food Safety Act 1990
Awarding bodies	In relation to the Code, the awarding bodies are: The Chartered Institute of Environmental Health (CIEH); Trading Standards Institute (TSI) and; The Institute of Food Science and Technology (IFST)
BIS	Department for Business, Innovation and Skills
BRDO	Better Regulation Delivery Office (formerly LBRO)
Broadly Compliant (Hygiene)	An establishment that has an intervention rating score of not more than ten points under each of the following three parts of Chapter 5, Part 2: Level of (Current) Compliance - Hygiene and Level of (Current) Compliance – Structure; and Part 3: Confidence in Management.
Broadly Compliant (Standards)	An establishment that has an intervention rating score of not more than ten points under each of the following parts of Chapter 5, Part 2: Level of (Current) Compliance; and Part 3, Confidence in Management/Control Systems
CCDC	Consultant in Communicable Disease Control
CCP	Critical Control Point
Cefas	Centre for Environment, Fisheries and Aquaculture Science
CEN	The European Committee for Standardisation

Central Competent Authority	Has the meaning set-out in Regulation 882/2004 and is the Food Standards Agency
Certificate	(Wales) Regulations 2006 that food has not been produced, processed or distributed in compliance with the hygiene regulations.
CIEH	Chartered Institute of Environmental Health
CIM	Confidence in Management
Competent Authority	Has the meaning set-out in the Official Feed and Food Controls (Wales) Regulations 2009
Compliance Risk Elements	These are defined within the Hygiene Risk Rating System as Structural Compliance, Hygiene Compliance, Confidence in Management and Significant Risk
Compliant	Conformity with the requirements of the law
Conditional Approval	Has the meaning set-out in Article 31(2)(d) of Regulation (EC) No. 882/2004
Could	Is used to indicate those provisions which are for guidance only.
CPD	Continuing Professional Development
CPHM /EH)	Consultant in Public Health Medicine (Communicable Disease/Environmental Health)
DCA	Diploma in Consumer Affairs
DCATS	Diploma in Consumer Affairs and Trading Standards
Designated Regulator	Has the meaning set-out in section 37(1) as read with Schedule 5 Regulatory Enforcement and Sanctions Act 2008. The FSA is the Designated Regulator for food.
Detention Notice	Has the meaning set-out in the Food Hygiene (Wales) Regulations 2006
Domestic Premises	Means a dwelling house or other building used principally, but not exclusively, as a dwelling, and its curtilage;
DTS	Diploma in Trading Standards
E. coli O157	Escherichia coli O157

Earned recognition	A framework for reducing wherever possible the frequency and type of official controls on businesses that demonstrate sustainable compliance
EEA	European Economic Area
EHRB	Environmental Health Registration Board
Electronic communication	Has the meaning set-out in section 15(1) Electronic Communications Act 2000
Electronic Records	Means information captured through electronic means, and which may or may not have a paper record to back it up. Also called machine readable record.
Electronic Signature	Has the meaning set-out section 7(2) Electronic Communications Act 2000
Email	Means the method of exchanging digital messages from an author to one or more recipients
Emergency Control Order	Has the meaning set-out in section 13 Food Safety Act 1990
Emergency Prohibition Order	Has the meaning set-out in section 12 Food Safety Act 1990
Enforcement Authority	Has the meaning set-out in the Food Hygiene (Wales) Regulations 2006
Establishment	“Establishment” does not simply mean “premises”, but is directly linked to the business occupying the establishment (“establishment denotes both premises and the manner in which those premises are being used by the food business operator”)
EU	European Union
Evidence	Means data presented to a court or jury in proof of the facts in issue and which may include the testimony of witnesses, records, documents, or objects. – This is not just for prosecution cases
Export	Means the action of sending or transporting a commodity abroad, especially for trade or sale outside the EU



Fax	Means the telephonic transmission of scanned printed material (both text and images), normally to a telephone number connected to a printer or other output device
Faxed	Means a printed page or image transmitted or received by a fax machine
FBO	Food Business Operator
FCATS	Foundation Certificate in Consumer Affairs and Trading Standards
FHIS	Food Hygiene Information Scheme
FHRS	Food Hygiene Rating Scheme
Food Alert	Has the meaning set-out in Chapter 2.2.2 of this Code
Food Authority	Has the meaning set-out in section 5(1A) Food Safety Act 1990
Food Business	Has the meaning set-out in Regulation (EC) 178/2002 – Article 3.2
Food Business Operator	Has the meaning set-out in Regulation (EC) 178/2002 – Article 3.3
Food Examiner	Has the meaning set-out in section 30(9) Food Safety Act 1990 and regulation 5 Food Safety (Sampling and Qualifications) (Wales) Regulations 2013
Food Hazard	Has the meaning set-out in Chapter 2.3.1 of this Code
Food Incident	Has the meaning set-out in Chapter 2.2.1 of this Code
Formal Action	Means 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.
Formal Notice	Means a notice as defined in the various Acts of Parliament or statutory instruments relating to food law

Framework	Framework Agreement on Local Authority Food Law Enforcement
FSA	Food Standards Agency
Full Approval	Has the meaning set-out in Article 31(2)(d) of Regulation (EC) No. 882/2004
HACCP	Hazard Analysis and Critical Control Point
Hazard	Anything that has the potential to cause harm
HCATS	Higher Diploma in Consumer Affairs and Trading Standards
Home Authority	Means the authority where the relevant decision-making base of an enterprise is located
HPA	Health Protection Agency
HPA CDSC	HPA Communicable Disease Surveillance Centre
Hygiene	Means the measures and conditions necessary to control hazards and to ensure fitness for human consumption of a foodstuff taking into account its intended use.
Hygiene Emergency Prohibition Notice	Has the meaning set-out in the Food Hygiene (Wales) Regulations 2006
Hygiene Improvement notice	Has the meaning set-out in the Food Hygiene (Wales) Regulations 2006
Hygiene Prohibition Order	Has the meaning set-out in the Food Hygiene (Wales) Regulations 2006
IFST	Institute of Food Science and Technology
Import	Means the action of bringing in goods and/or services from another country outside the EU
Improvement Notice	Has the meaning set-out in section 10 Food Safety Act 1990
IMS	Information Management Scheme
Informal Action	Means 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.

Inherent Risk Elements	These are defined within the Hygiene Risk Rating System as Potential Hazard, Method of Processing, Consumers at Risk and Vulnerable Groups
Inspecting authority	Means the food authority that carries out the official control intervention in respect of any establishment
Inspection	Means 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.
Intervention	Means 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
Investigation	Means the actions taken by the competent authority to gather evidence where it believes an offence has been committed
LAEMS	Local Authority Enforcement Monitoring System
LBRO	Local Better Regulation Office (Now BRDO)
LGA	Local Government Group Association – WLGA?
Local Authority	Has the meaning set-out in section 270 Local Government Act 1972 but does not include a Community Council
MCA	Maritime and Coastguard Agency
Mobile Establishment	Means premises other than permanent premises, and “relevant moveable premises” means moveable premises, used for the transport or preparation of food or the retail sale of food on five or more days, whether consecutive or not, in any period of five consecutive weeks, other than - (a) motor vehicles which are constructed solely for the purpose of carrying no more than 8 passengers (including the driver) and their personal effects, (b) tents, or (c) moveable premises which are ordinarily kept outside Great Britain

Monitoring	Means conducting a planned sequence of observations or measurements with a view to obtaining an overview of the state of compliance with feed or food law, animal health and animal welfare rules.
MoU	Memorandum of Understanding
Must	Is used to indicate those provisions which are mandatory for the purposes of complying with this Code
NHS	National Health Service
Non – Compliant	Means a failure to comply with the one or more requirements of a food law.
Official Control Laboratory	Means a laboratory accredited for the purposes of analysis, and which appears on the list of official food control laboratories
Official Controls	Has the meaning set-out in Article 2(1) of Regulation (EC) No. 882/2004
Official Controls Interventions	Means inspections, monitoring, surveillance, verification, auditing and sampling (where the analysis/examination is to be carried out by an Official Laboratory)
OFT	Office of Fair Trading
Originating authority	Means the authority in whose area final food production takes place
Other Interventions	Means 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)
PARNUTS	Foodstuffs intended for particular nutritional uses
Penalty	The punishment imposed by a court on conviction for an offence under food legislation.
Port Health Authority	Has the meaning set-out in section 2 Public Health (Control of Diseases) Act 1984
Primary Authority	Has the meaning set-out in Part 2 Regulatory Enforcement and Sanctions Act 2008

Primary Production (Food)	Means 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 Regulation (EC) No. 852/2004
Prohibition Order	Has the meaning set-out in section 11 Food Safety Act 1990
PTA	Permanent transport authorisation
Public Analyst	Has the meaning set-out in section 27 Food Safety Act 1990 and regulation 4 Food Safety (Sampling and Qualifications) (Wales) Regulations 2013
RAF	Royal Air Force
Records Paper Records	Means information preserved in writing or the like. Means information preserved on paper
Regulated Person	Has the meaning set-out in section 22A Regulatory Enforcement and Sanctions Act 2008
Regulation 27	Means a Certificate issued under regulation 27 Food Hygiene
REHIS	Royal Environmental Health Institute of Scotland
Remedial Action Notice	Has the meaning set-out in the Food Hygiene (Wales) Regulations 2006
Risk	The chance or probability that a person will be harmed or experience an adverse health effect if exposed to a hazard
Risk Analysis	Means a process consisting of three interconnected components: risk assessment, risk management and risk communication
Risk Rating Category	The Risk Category attributed to a premise following an inspection and scoring of the premises in accordance with the Intervention Rating Scheme and used to determine the frequency of inspection of the premises
Risk Rating Element	One of the three elements i.e. Potential Risk, Level of Current Compliance and Confidence in Management that make up the Risk Rating Scheme set-out at Annex V of the Code
RN	Royal Navy

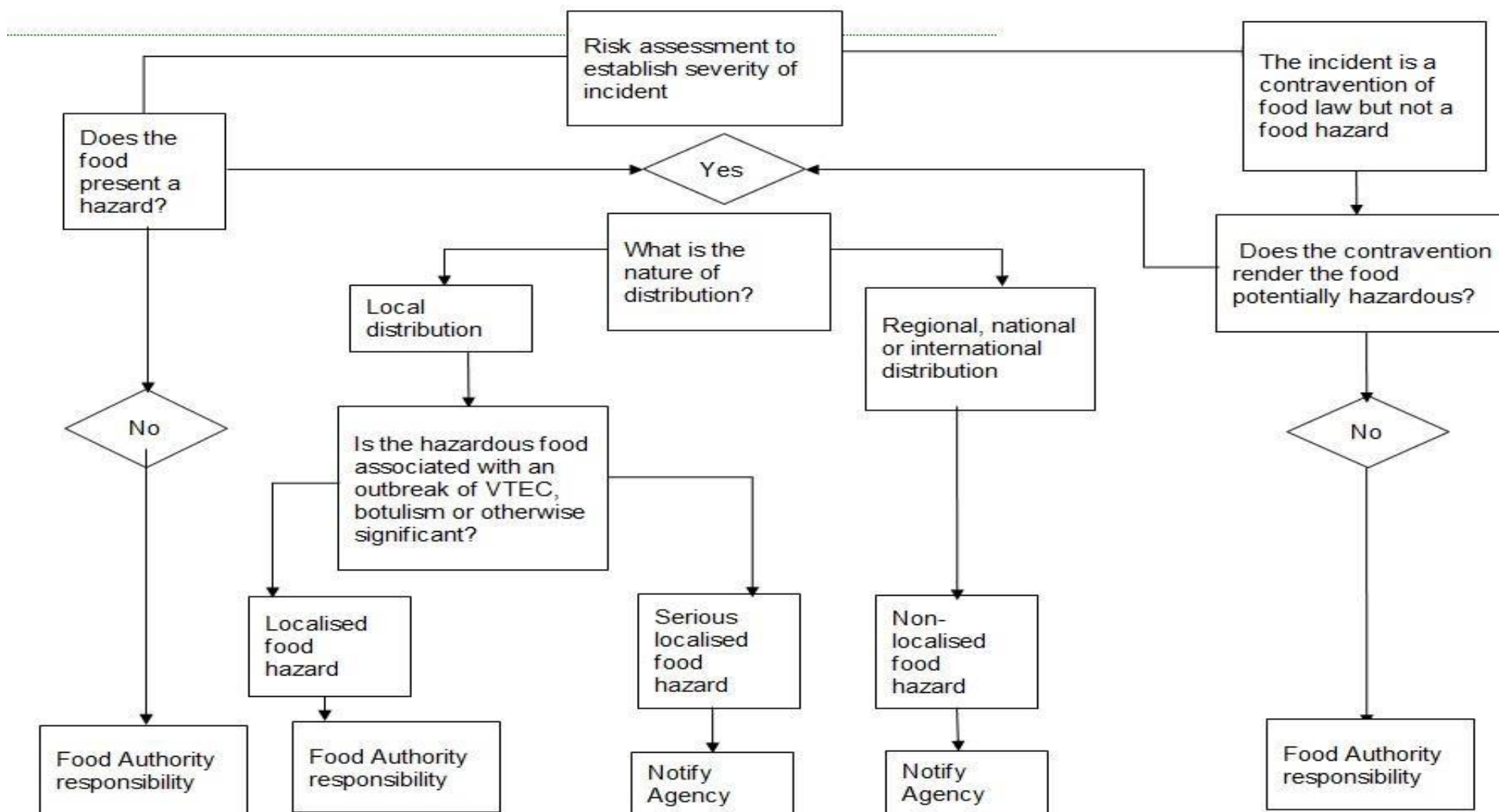
RPA	Rural Payments Agency
Safety	Means the quality of averting or not causing injury, danger, or loss
Sampling	Means taking feed or food or any other substance (including from the environment) relevant to the production, processing and distribution of feed or food or to the health of animals, in order to verify through analysis compliance with feed or food law or animal health rules.
Sanction	The provision within legislation to take punitive action for failure to comply with the provisions of the legislation
SFBB	Safer Food Better Business
SFSORB	Scottish Food Safety Officers' Registration Board
Signed	Means having a signature affixed either in writing or by electronic means
Simple Caution	Has the meaning set-out in Ministry of Justice guidance note: "Simple Cautions for Adult Offenders"
SIMS	Ships Inspection Management System
Standards	Means rules or principles defined in food safety law that are used as the basis for judgment against
Surveillance	Means a careful observation of one or more food businesses, or food business operators or their activities.
Third Country	Has the meaning set-out in Chapter V of Regulation (EC) No 882/2004
Third Party Assurance	Independent verification of business compliance against a predetermined standard which has been endorsed by the FSA as being equivalent to /complying with the requirements for food law
TSI	Trading Standards Institute
UK	United Kingdom
UKAS	United Kingdom Accreditation Service
UKFSS	United Kingdom Food Surveillance Scheme

Validation	Means confirmation that requirements have been complied with
Verification	Means the checking, by examination and the consideration of objective evidence, whether specified requirements have been fulfilled.
Verification	Means checking, by examination and the consideration of objective evidence, whether specified requirements have been fulfilled
VTEC	Verocytotoxin-producing <i>Escherichia coli</i>



## Annex 2 – Food Incident Flow Diagram

(see section 2.2 and <https://www.food.gov.uk/enforcement/enforcework/report>)



Annex 3 – Food/Feed Incident Report Form (Food Authorities)

FOOD/FEED INCIDENT REPORT FORM

FOOD AND FEED INCIDENTS SHOULD BE REPORTED TO THE FSA USING THE ONLINE TOOL AT <http://incidents.foodapps.co.uk/IncidentReportForm/login.aspx>

WHERE THE ONLINE FUNCTION CANNOT BE ACCESSED, THIS FORM SHOULD BE COMPLETED BY THE INVESTIGATING OFFICER/REPRESENTATIVE AND SUBMITTED TO THE APPROPRIATE FSA CONTACT:

In England:	<a href="mailto:foodincidents@food.gov.uk">foodincidents@food.gov.uk</a>  Tel: 020 7276 8448  Fax: 020 7276 8788 (only use when unable to email or submit via the online reporting tool <u>and</u> by prior agreement with FSA)
In Wales	<a href="mailto:wales.foodincidents@food.gov.uk">wales.foodincidents@food.gov.uk</a>  Tel: 029 2067 8961 or out of hours 07889 926 573  Fax: 029 2067 8918 (only use when unable to email or submit via the online reporting tool <u>and</u> by prior agreement with FSA)
In Northern Ireland	<a href="mailto:incidents.ni@food.gov.uk">incidents.ni@food.gov.uk</a>  Tel: 028 9041 7700 or out of hours 07884 473 022  Fax: 028 9041 7728 (only use when unable to email or submit via the online reporting tool <u>and</u> by prior agreement with FSA)

1. Reporting Competent Authority’s name and address:

2. Name of reporting officer including telephone, fax and e-mail details:

Name of reporting officer	
Contact details (business hours)	Telephone:  Email:  Fax:
Contact details (out-with business hours)	Telephone:  Email:

**3. Date and time initial information received by Competent Authority:**

**4. Initial information received by:**

**5. Received from (include Local Authority, health protection authority etc, address, telephone number and contact name where possible):**

**6. Method (telephone/fax/letter/other):**

**7. Brief description of incident:**

8. Type of contamination:

9. Description of product

Type of Product:

Product Name:

Brand Name:

Batch Code/s:

Description of Packaging:

Pack Size:

**Durability Date/s or Code/s:**

**Country of Origin:**

**UK Importer/Distributor (including contact details):**

**Manufacturer (including contact details):**

**10. Has clinical illness occurred? If yes, include details (type of illness, symptoms, numbers of consumers affected etc):**

**11. Full details of distribution (including EU and Third Countries) e.g. quantities/areas, and when the particular product/batch in question was first placed on the market:**

**12. Is the manufacturer/retailer/supplier aware of the incident, if so what are their proposals for dealing with it?**

**13. Assessment of hazard (please highlight):**

<b>Local</b>	<b>Retail</b>
<b>Regional</b>	<b>Catering</b>
<b>Manufacture</b>	<b>National</b>
<b>International</b>	<b>Import/Export</b>

**14. Other relevant contact details (e.g. home and/or originating authority/other). Include Name, address, telephone and fax number, email address:**

**15. Has any enforcement action already been taken? For example, have samples been taken for examination or analysis, or detention notices served, or food seized? Please email any laboratory reports or detention notices etc to the FSA with this form, or as soon as possible thereafter.**

**16. Has there been media interest? Yes/No**

**If there has been a press release please email to the FSA with this form.**

17. Any additional information: Please attach additional pages if necessary.

Signed:	
Date:	
Job Title:	



## Annex 4 – Model Application Form for the Registration of a Food Business Establishment

### APPLICATION FOR THE REGISTRATION OF A FOOD BUSINESS ESTABLISHMENT

(Regulation (EC) No. 852/2004 on the hygiene of foodstuffs, Article 6(2))

This form should be completed by food business operators in respect of new food business establishments and received by the relevant Food Authority 28 days before commencing food operations. On the basis of the activities carried out, certain food business establishments are required to be **approved** rather than **registered**. If you are unsure whether any aspect of your food operations would require your establishment to be approved, please contact [insert name of Food Authority] for guidance.

**1. Address of establishment** \_\_\_\_\_  
(or address at which moveable establishment is kept)

**Post code** \_\_\_\_\_

**2. Trading name of food business** \_\_\_\_\_ **Telephone no.** \_\_\_\_\_

**3. Full Name of food business operator(s)** \_\_\_\_\_  
(or Limited company where relevant)

**4. Head Office address of food business operator** \_\_\_\_\_  
(where different from address of establishment)

**Post code** \_\_\_\_\_

**Telephone no.** \_\_\_\_\_ **E-mail** \_\_\_\_\_

**5. Type of food activity** (Please tick ALL the boxes that apply):

Staff restaurant/canteen/kitchen	<input type="checkbox"/>	Hospital/residential home/school	<input type="checkbox"/>
Retailer (including farm shop)	<input type="checkbox"/>	Distribution/warehousing	<input type="checkbox"/>
Restaurant/café/snack bar	<input type="checkbox"/>	Food manufacturing/processing	<input type="checkbox"/>
Market/ Market stall	<input type="checkbox"/>	Importer	<input type="checkbox"/>
Takeaway	<input type="checkbox"/>	Catering	<input type="checkbox"/>
Hotel/pub/guest house	<input type="checkbox"/>	Packer	<input type="checkbox"/>
Private house used for a food business	<input type="checkbox"/>	Moveable establishment e.g. ice cream van	<input type="checkbox"/>
Wholesale/cash and carry	<input type="checkbox"/>	Primary producer - livestock	<input type="checkbox"/>
Food Broker	<input type="checkbox"/>	Primary producer - arable	<input type="checkbox"/>

Other (please give details):

**6. If this is a new business, the date you intend to open** \_\_\_\_\_

**Signature of food business operator** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Name:** \_\_\_\_\_  
(BLOCK CAPITALS)

**AFTER THIS FORM HAS BEEN SUBMITTED, FOOD BUSINESS OPERATORS MUST NOTIFY ANY SIGNIFICANT CHANGE IN ACTIVITIES TO THE ACTIVITIES STATED ABOVE (INCLUDING CLOSURE) TO THE FOOD AUTHORITY AND SHOULD DO SO WITHIN 28 DAYS OF THE CHANGE(S)**

## Annex 5 – Food Establishment Intervention Rating Schemes

### A5.1 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 (including those subject to approval under Regulation (EC) No 853/2004), 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/or are intended for consumption without further treatment that could destroy pathogenic micro-organisms or their toxins.
30	Preparation, cooking or handling of <u>open</u> high-risk foods by caterers and retailers, except caterers that prepare less than 20 meals on a single 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 or cold smoking of fish for retail sale to final consumer.
5	Retail handling of foods other than high-risk, such as fruit, vegetables, canned and other ambient shelf stable products. Any other businesses not included in the categories above.

Score:	
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**B. 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
<b>20</b>	<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 e.g. to produce salamis and other fermented sausages;</li> <li>• Air drying e.g. 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 e.g. production of hams by retailers, including butchers;</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>
<b>0</b>	Any other case not included above.

**Score:**

## C. Consumers at Risk

The number of consumers likely to be at risk 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 supplied nationally or internationally.
10	Businesses serving a substantial number of customers, including a significant proportion from outside the local area, e.g. superstore, hypermarket, 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, e.g. supermarket or shop, or local convenience store or high street or local restaurant.
0	Businesses typically supplying less than 20 consumers each day.

Score:

### **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 illness that arise from poor food hygiene such as those who are under 5 or over 65 years of age, 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 includes a vulnerable risk group of more than 20 persons.
0	Any other case not included above.

Score:

## 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
<b>25</b>	Almost total non-compliance with statutory obligations.
<b>20</b>	General failure to satisfy statutory obligations – standards generally low.
<b>15</b>	Some major non-compliance with statutory obligations – more work required to prevent fall in standards.
<b>10</b>	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.
<b>5</b>	Good standard of compliance with statutory obligations, and industry codes of recommended practice, with only minor contraventions.
<b>0</b>	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 to assist with scoring for Confidence in Management based on corporate management systems being properly implemented. 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. They should also note that a Food Business Operator's track record and staff training should be taken into consideration as well as implementation of HACCP based procedures, which is what the Primary Authority would be considering.

Officers may 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 inspector'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; and
- hygiene and food safety knowledge, including hazard analysis/HACCP and the control of critical points;
- satisfactory food safety management procedures
- participation in relevant assurance schemes which address applicable legislation

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) 853/2004. Officers should consider guidance in relation to the application of Article 5 in order to make a judgment 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.

	Guidance on the scoring system
30	Poor track record of compliance. Little or no food safety knowledge and understanding. Little or no appreciation of hazards, risks or quality control. No food safety management procedures. Does not recognise or accept the need for food safety and hygiene controls.
20	Significantly varying record of compliance. Insufficient food safety knowledge and understanding. Poor appreciation of hazards and control measures. No food safety management procedures or unsatisfactory progress in terms of developing, documenting and implementing food safety management procedures, commensurate with type of business, since the last intervention rating. Some reluctance in recognising or accepting the need for food safety and hygiene control procedures.



10	<p>Satisfactory record of compliance. Access to relevant food safety advice source and/or guides to good practice or assurance scheme commensurate with type of business. 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. Making satisfactory progress towards documented food safety management procedures commensurate with type of business.</p> <p>A score of 10 can be awarded for more than one intervention cycle if:</p> <ul style="list-style-type: none"> <li>the previous non-compliances have been addressed but different non-compliances have arisen; and,</li> <li>the overall risk has not increased.</li> </ul>
5	<p>Good record of compliance. 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. Effective management control of Hazards. Having effective self-checks with satisfactory documented food safety management procedures commensurate with type of business. Audit by Food Authority confirms general compliance with procedures with minor non-conformities not identified as critical to food safety.</p>
0	<p>Excellent record of compliance. Technical 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 Access to Food Business Operator/ Manager knowledgeable and competent. Has effective self-checks with satisfactory documented food safety management procedures commensurate with type of business, and may have external audit processes in place. Audit by Competent Authority confirms good compliance with food safety procedures.</p>

Score:	
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**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

- of ready-to-eat food being or becoming contaminated with micro-organisms or their toxins that are pathogenic to humans, e.g. *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; and
- whether intervention by the Food 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 minimum intervention frequencies**

Category	Score	Minimum intervention frequency
<b>A</b>	92 or higher	At least every 6 months
<b>B</b>	72 to 91	At least every 12 months
<b>C</b>	42 to 71	At least every 18 months
<b>D</b>	31 to 41	At least every 24 months
<b>E</b>	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, if not included, they must be subject to an alternative enforcement strategy at least once in every 3 years*

## A5.2 Food Standards Scoring System

### Part 1: The potential risk

#### A. Risk to consumers and/or other businesses

This factor considers the potential adverse effect on consumers, and the consequences for other businesses, should the business not comply with food standards legislation. Adverse effects on consumers include safety and economic prejudice. Consequences for other businesses include the economic effects of unfair trading.

Score	Guidance on the scoring system
<b>30</b>	Manufacturers of foods for specific groups; Manufacturers, importers or packers of high value foods, or high-volume foods where there is an incentive for fraudulent adulteration; Manufacturers of foods that contain a wide range of additives; Businesses that make nutrition, nutrient content, or health claims on pre-packed food labels or in advertising. Food businesses including manufacturers and importers which handle imported foods or food ingredients which may be subject to increased risk of chemical contamination
<b>20</b>	Manufacturers or packers of foods that are subject to statutory compositional standards.
<b>10</b>	Local businesses that use in-store produced labels, window displays, chalk boards, menus etc, e.g. butchers, bakers, health food shops, restaurants, take aways, caterers supplying more than 10 meals per day, and businesses using claims for marketing advantage.
<b>0</b>	Caterers supplying not more than 10 meals per day, e.g. bed and breakfast; Any business not included in the categories above.

**Score:**

**B. Extent to which the activities of the business affect any hazard**

This factor considers the type of activities that the food business undertakes, the need for those activities to be closely monitored and controlled, and their potential effectiveness in maintaining compliance with food standards legislation. Consider whether the business produces, labels, or advertises products to which food standards law applies. If the business produces its own products, consider the monitoring and control of recipes and ingredients.

The scores below provide examples of food businesses to which a particular score could apply.

Score	Guidance on the scoring system
30	Food manufacturers, processors, importers handling a wide range of goods.
20	Local businesses that label loose goods on display, and/or undertake pre-packing for direct sale.
10	Non-manufacturing retail/catering selling only from their own establishment.
0	Any business not included in the categories above.

Score:	
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**C. Ease of compliance**

This factor considers the volume and complexity of food standards law that applies to the business, and with which it has a responsibility to ensure compliance. Consider the range and complexity of products, processes and services including the consistency of raw materials. Consider the difficulty of the task for the food business operator including how easy it is to recognise a hazard.

Score	Guidance on the scoring system
30	Manufacturer, packer or importer of a wide range of products.
20	Manufacturer, packer or importer of a limited range of products.
10	Retailers who apply descriptions to food such as butchers, bakers and delicatessens; Caterers with complex menus.
0	Any business not included in the categories above.

Score:	
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## D. Consumers at Risk

This factor considers the number of consumers likely to be at risk if the business fails to comply with food standards legislation.

Score	Guidance on the scoring system
20	Manufacturers, producers and packers of food that is distributed nationally or internationally.
10	Businesses whose trade extends beyond the local area, e.g. regional supermarket/hypermarket; small-scale local manufacturer.
5	Businesses supplying the local area, e.g. high street or corner shop; local supermarket, local restaurant.
0	Businesses supplying less than 30 consumers each day. Any other business not included in the categories above.

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

This factor considers the level of compliance observed during the inspection. Adherence to relevant UK or EU Industry Guides to Good Practice and other similar guidance e.g. FSA, Food Advisory Committee and LGA should be considered.

Score	Guidance on the scoring system
40	General failure to satisfy statutory obligations. Standards generally low.
10	A typical business with some minor non-compliance with statutory obligations.
0	High standard of compliance with statutory obligations and industry codes of recommended practice, conforms to relevant trade good practice.

Score:	
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**Part 3: Confidence in management/control systems**

The actual performance of management is scored in Part 2 on the basis of the results achieved and observed. A management that achieves good food standards performance, well understood by the workforce, should achieve a good standard in Part 2, and consequently a low score for that 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.

Factors that will influence the inspector'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 food standards legislation, and the existence or otherwise of relevant home or originating authority arrangements;
- internal or external technical knowledge on food standards matters available to the company;
- the presence of quality systems, including supplier assessments and performance monitoring, appropriate to the size of the business and the risks involved, with clearly defined responsibilities for managing risk; and
- for small businesses, consider the checks appropriate to that business.

Score	Guidance on the scoring system
<b>30</b>	Little or no technical knowledge. Little or no appreciation of hazards or quality control. No food standards management system. Disproportionate number of justifiable complaints since the last inspection. Poor track record of compliance.
<b>20</b>	Staff have a basic understanding of relevant food law. May not have a food standards management system. Significant varying record of compliance.
<b>10</b>	Score of 10 or better in Part 2. Staff demonstrate awareness of relevant food law and necessary controls. Appropriate food standards management system. Smaller businesses may have minimal documented system. Satisfactory record of compliance.



<b>0</b>	<p>Technical advice available.</p> <p>Subject to internal audit/checks.</p> <p>Good food standards management system, documented records of critical checks and supplier checks, which may be subject to third party audit.</p> <p>Evidence of compliance with documented management system with few non-conformities.</p> <p>No justifiable complaints since the last inspection.</p> <p>Excellent record of compliance.</p>
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**Score:**

**A5.3 Food standards intervention frequencies**

Category	Score	Minimum intervention frequency
<b>A</b>	101 to 180	At least every 12 months
<b>B</b>	46 to 100	At least every 24 months
<b>C</b>	0 to 45	Alternative enforcement strategy or intervention every five years

Establishments rated as low-risk (45 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 5 years.