Food Law Code of Practice (Scotland)

Presented to Scottish Parliament pursuant to section 40(1) of the Act\textsuperscript{1}, regulation 24(1) of the Food Hygiene (Scotland) Regulations 2006\textsuperscript{2} and regulation 6(1) of the Official Feed and Food Controls (Scotland) Regulations 2009\textsuperscript{3}

\textsuperscript{1} 1990 CHAPTER 16
\textsuperscript{2} SSI 2006 No. 3
\textsuperscript{3} SSI 2009 No. 446
Ministerial Foreword

The role of the Food Law Code of Practice is to ensure an effective, consistent and proportionate approach to delivery of food official controls by local authorities across Scotland in order to protect food safety and the wider interests of consumers. This revision of the Code of Practice has been updated to take account of the recommendations of the Scudamore Expert Advisory Group agreed with Scottish Ministers and the Food Standards Agency in November 2013. The Group’s recommendations highlighted the importance of food authenticity and traceability in regard to the monitoring and enforcement of food law in Scotland.

It is imperative that consumers have confidence in the safety of food and that the composition, labelling or description of food manufactured, sold or otherwise supplied in Scotland meets expectations concerning its nature, substance, quality and provenance.

The 2013 horsemeat incident underlined the need to treat food fraud as a criminal offence that should initiate an immediate enforcement approach. A graduated approach to enforcement continues to be advocated in most cases. However, the revised Code of Practice clarifies that in cases involving deliberate acts to mislead and, or defraud, the default position should be to consider submitting a report to the Procurator Fiscal.

Further review of this Code of Practice is planned to reflect the progress of an ongoing programme of work agreed in response to the recommendations of the Expert Advisory Group.

Michael Matheson MSP
Minister for Public Health

Date: 26 June 2014
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1 Introduction

The statutory basis for the Food Law Code of Practice and overarching duties on local authorities

1. This Code of Practice (the Code) is issued under section 40 of the Food Safety Act (“the Act”), Regulation 24 of the Food Hygiene (Scotland) Regulations 2006⁴ and Regulation 6 of the Official Feed and Food Controls (Scotland) Regulations 2009⁵ which empower the Scottish Ministers to issue Codes of Practice concerning the execution and enforcement of Food Law by Food Authorities. It replaces all Codes previously made under the Act and applies to Scotland only.

2. Food Authorities are required under the foregoing legislation to have regard to this Code when discharging their duties. The Food Standards Agency (FSA) may, after consulting the Scottish Ministers, give a Food Authority a direction requiring it to take any specified steps in order to comply with this Code. Any such direction is enforceable by an order of the Court of Session under Section 45 of the Court of Session Act 1988. This means, in effect, that Food Authorities must follow and implement the provisions of this Code that apply to them.

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

4. All references to legislation in this Code are made on the basis that the legislation may be subject to amendment and or revocation. The user and or reader of this Code, and any relevant corresponding guidance, must always ensure that the current legislation is referred to, in respect to any action taken in regard to official controls⁶ detailed in this Code; and seek their own legal advice as appropriate. Appendix One lists the key items of legislation referred to in this Code. Guidance on Scottish food and feed law is available at:

http://food.gov.uk/scotland/regsscotland/regulations/scotlandfoodlawguide/#TheScottishFoodandFeedLawdocument

5. For the purposes of this Code the terms Food Authority, Enforcement Authority and Local Authority are interchangeable, subject to any definitions in Food Law.

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⁴ SSI 2006 No.3
⁵ SSI 2009 No.446
⁶ http://food.gov.uk/scotland/regsscotland/regulations/scotlandfoodlawguide/#TheScottishFoodandFeedLawdocument
2 General Obligations of Food Authorities under the Food Safety Act

Obligations on central and local government under European Law:

1. All Member States of the European Union have agreed a consistent framework of controls on safety, composition; labelling and description of food sold and traded in any Member State. This framework is designed to protect public health and the interests of consumers but also ensures that businesses can sell food produced in, or imported into, one Member State without requiring additional controls on food as it enters another Member State. Therefore the consistent application of controls by local authorities is essential in terms of the wellbeing of consumers, food businesses and the wider economy. This Code underpins the necessary confidence of consumers and food businesses that all food purchased or traded in Scotland is manufactured, described and handled to consistent standards, irrespective of its origin.

2. European law sets out obligations that apply to all Member States in relation to the delivery of official food controls. These obligations apply to delivery of official controls by local authorities and include ensuring:

   a. The effectiveness and appropriateness of official controls.
   b. That controls are applied at an appropriate risk-based frequency
   c. That they have a sufficient number of suitably qualified and experienced competent staff and adequate facilities and equipment to carry out their duties properly
   d. That staff are free from conflicts of interest
   e. That they have access to an adequate laboratory capacity and capability for testing.

3. The statutory requirements outlined in this part of the Code should be brought to the attention of local authority officials and or elected member bodies responsible for agreeing budgets or other service arrangements relevant to the delivery of official controls.

4. The Commission has powers to apply financial sanctions to the UK where, following infringement proceedings for a breach of EU law, the Court of Justice has found that delivery of Official Controls, are inappropriate or inadequate. Such financial sanctions may comprise of both a daily penalty (of up to circa €700,000 per day so as to induce the remedy of the breach) and a lump sum (based on assessment of the effects of the breach for which the minimum is currently €9,446,000). The Scottish Government would be required to pay a percentage of any UK fine if the infraction related to a devolved matter. Fines are extremely rare and the European Commission works hard with Member States to avoid financial penalties wherever possible. Through its Food and Veterinary Office (FVO), the European Commission audits the performance of every member state on their arrangements for

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7 Regulation (EC) No 882/2004 presently under public consultation
implementing Community law and agreement. The majority of these Missions will involve visits to food establishments where a local authority is the enforcing authority. In such cases, Food Authorities should cooperate with any audits in their areas and should ensure that appropriate local authority officers are available to assist the FVO officials at the establishments selected for audit by the FVO.

5. Within the UK the FSA has statutory responsibilities including policy development in relation to food, advising Ministers on the arrangements necessary to meet EU requirements and on any additional national measures that are appropriate for the protection of public health or other consumer interests. Food Authorities are required under that legislation to have regard to this Code when discharging their duties. This means, in effect, that Food Authorities must follow and implement the provisions of this Code that apply to them. The FSA’s statutory duties include oversight of local authority arrangements for and delivery of official controls. This includes a programme of audit of the local authority arrangements to meet the requirements of this Code. FSA audit reports and associated action plans agreed by local authorities are published online by the FSA.

6. If a Food Authority finds that complying with this Code might compromise public health or safety they should discuss the matter with the FSA at the earliest opportunity.

7. Food Authorities have statutory duties to enforce legislation relating to food. Regulation 5 of the Food Hygiene (Scotland) Regulations 2006 sets out the division of enforcement responsibilities between Food Authorities and the FSA in respect of the Hygiene Regulations.

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

9. 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 and other guidance, understanding what the law actually states and requires, and seeking guidance when either it, or they, are unclear.

10. The FSA may, from time to time, issue Practice Guidance for Food Authorities. Food Authorities should take account of such guidance, as well as any appropriate Guidance issued by the European Commission. Food Authorities must also have regard to the Framework Agreement on

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8 Food Standards Act 1999
Local Authority Food Law Enforcement\textsuperscript{10}, which reflects the requirements of this Code. The Framework Agreement is also consistent with the principles of the Enforcement Concordat\textsuperscript{11}.

11. Food Authorities should be aware that law relating to food is not necessarily made under the Act. Law that applies to food is also contained in and/or made under the Animal Health Act 1981\textsuperscript{12}, the European Communities Act 1972\textsuperscript{13}, the Consumer Protection Act 1987\textsuperscript{14}, the Consumer Protection from Unfair Trading Regulations 2008\textsuperscript{15}, the Weights and Measures Act 1985\textsuperscript{16}, the Medicines Act 1968\textsuperscript{17} and directly under EU Regulations.

12. Food Authorities should be aware that Article 8(5) of Regulation (EC) No 852/2004\textsuperscript{18} stipulates that Guides to Good Practice\textsuperscript{19} drawn up pursuant to Directive 93/43/EEC\textsuperscript{20} (known in the UK as “Industry Guides to Good Hygiene Practice”) shall continue to apply after the entry into force of that Regulation, provided that they are compatible with its objectives.

13. For the purposes of this Code the terms enforcement authority and food authority are interchangeable, subject to the specific enforcement responsibilities. In this Code, references to live bivalve molluscs also include live echinoderms, tunicates and marine gastropods, in line with Annex III, Section VII of Regulation (EC) No 853/2004\textsuperscript{21}, with the exception of the parts of this Code which deal with purification of live bivalve molluscs. Annex 10 of this Code concerns the enforcement of primary production activities. It applies to both food and feed hygiene and is therefore directed at both food and feed authorities. References to sections, sections and annexes are to the relevant parts of this Code unless stated otherwise.

14. Food Authorities in England, Wales and Northern Ireland should refer to the Code relating to their respective areas of the UK and contact the respective offices of the FSA in those areas for further advice where necessary.

\textsuperscript{10} “The Framework Agreement on Local Authority Food Law Enforcement”, published and updated by The Food Standards Agency, Aviation House, 125 Kingsway, London, WC2B 6NH, \url{www.food.gov.uk}

\textsuperscript{11} The Enforcement Concordat”, published by the Cabinet Office, Better Regulation Unit, 22 Whitehall, London, SW1A 2WH (available at: \url{www.cabinetoffice.gov.uk}).

\textsuperscript{12} 1981 c. 22

\textsuperscript{13} 1972 c 68

\textsuperscript{14} 1987 c 43

\textsuperscript{15} SI 2008 No. 1277

\textsuperscript{16} 1985 c 72

\textsuperscript{17} 1968 c 67

\textsuperscript{18} Regulation (EC) 852/2004 on the hygiene of foodstuffs Official Journal L226 25 6 2006 p 3-21

\textsuperscript{19} References to “Guides to Good Practice” in this Code mean Guides developed in accordance with Article 8 of Regulation 852/2004 and recognised as such by the Food Standards Agency


3 Inter-authority matters

1. This Section deals with liaison arrangements between Food Authorities. It requires the adoption, where possible, of the “Home Authority Principle”, and appropriate representation of Food Authorities in liaison groups. It also sets out ground-rules for the exercise of powers of entry by authorised officers in other Food Authorities’ areas.

3.1 Co-ordination of Advice, Enforcement and the Home Authority Principle

1. The FSA endorses the Home Authority Principle\(^{22}\) which is jointly governed by the Trading Standards Institute (TSI), Chartered Institute of Environmental Health (CIEH) and Department for Business, Innovation and Skills (BIS) and Food Authorities should, where possible, adopt and implement its provisions. A Food Authority that is unable to adopt, implement, or adhere to the Home Authority Principle must firstly discuss the issue, with the FSA.

2. The co-ordination of Food Authority advice and enforcement is essential to ensure uniformity of treatment and consistency in dealing with food businesses, especially those that have more than one branch or unit situated in different Food Authority areas.

3. Food Authorities considering giving advice or taking enforcement action in relation to food businesses which have a Home Authority should consider whether they need to contact the Home Authority before doing so. This would normally 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.

4. Food Authorities in England may become the Primary Authority\(^{23}\) for a food business operator that has establishments in more than one Local Authority area. The Primary Authority scheme in relation to food does not extend to Scotland. Scottish Food Authorities should treat a Primary Authority as if they were the ‘Home Authority’.

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\(^{22}\) The Home Authority database is available at [http://www.tradingstandards.gov.uk/products/haregistration.cfm](http://www.tradingstandards.gov.uk/products/haregistration.cfm)

\(^{23}\) The Public register for Primary Authorities is available at [https://primaryauthorityregister.info/par/index.php/publicregister](https://primaryauthorityregister.info/par/index.php/publicregister)
3.2 Operating in other areas

1. Local authorities in Scotland are designated as Food Authorities under Section 5 of the Act. Where Scottish Ministers are satisfied that a Food Authority has failed to discharge any duty imposed by or under the Act, where that failure affects the general interests of consumers of food, they may by order empower another Food Authority or officer of the Ministers to discharge that duty in place of the authority in default, and recover costs from the defaulting authority.

2. A Food Authority should normally deal with matters arising in its area of jurisdiction. However, Regulation 14(1)(b) of the Food Hygiene (Scotland) Regulations 2006 in respect of food hygiene and Section 32(1)(b) of the Act in respect of food standards, permit authorised officers from a Food Authority to exercise their powers of entry in another Food Authority’s area insofar as food business establishments are concerned in order to ascertain whether there is in those establishments any evidence of law breaking within their own Food Authority’s area.

3. When exercising these powers, authorised officers should liaise with the relevant 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 Food Authority in which the business is located, for example in an emergency or out of hours, the Food Authority should be notified as soon as practicable thereafter.

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

5. Authorised officers exercising powers of entry in food businesses outside their own area must not exercise any enforcement powers other than those associated with their powers of entry, which includes taking samples in connection with the investigation of suspected offences within their own area. Other enforcement powers, which include the seizure or detention of food, must only be exercised by authorised officers of the Food Authority in which the business is located24.

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24 *Walkers Snack Foods Ltd v Coventry City Council* (1998) 3 A11 ER 163 refers
3.3 Regional and Local Liaison

1. Food Authorities must be represented at an appropriate level of seniority, 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 Competent Authorities.

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

3. Matters of legal interpretation and consistency should be discussed with colleagues in the appropriate regional or local food liaison group and the Home Authority 25 and or originating Authority, if appropriate. Food Authorities should avoid taking unilateral decisions on interpretations without seeking the views of other Food Authorities, the Scottish Food Enforcement Liaison Committee (SFELC) or in relation to England the Local Government Association (LGA).

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

5. Food Authorities where there are commercial shellfish harvesting activities should refer to Section 36.2 of this Code and the FSA Practice Guidance for liaison arrangements.

3.4 Enforcement liaison arrangements between District and County Council Food Authorities in England and Wales

1. Scottish Food Authorities should be mindful of the following arrangements in England and Wales when liaising with these authorities during investigations into Food Law infringements.

2. **Microbiological quality and contamination:** In some areas of England and Wales there are two tiers of local government, District and County Councils and each tier is a Food Authority. **District Council Food Authorities** investigate and take enforcement action in cases relating to the microbiological quality of food, contamination by micro-organisms and their toxins and contamination by foreign matter.

3. **Chemical contamination and compositional and labelling standards:** In the areas of England and Wales in which there are two tiers of local government and each tier is a Food Authority, **County Council Food Authorities** investigate and take enforcement action in cases relating to chemical contamination (other than when this presents an imminent risk to health - see below)

4. In situations where the presence of chemical contaminants may pose an imminent risk to public health, the District Council Food Authority investigate and take enforcement action, but should also liaise closely with the County Council Food Authority.

5. County Council Food Authorities investigate and take enforcement action in cases that involve the adulteration, composition, advertisement, presentation and labelling of food, apart from the identification marking requirements of food hygiene Regulations which are enforced by District Council Food Authorities.
4 Qualifications and Experience

1. Section 4 covers the qualifications and competency of authorised officers of Food Authorities who carry out interventions (including official controls which ensure compliance with Food Law). It details the implementation of the qualification and training provisions of Regulation (EC) No 882/2004.  

2. This Section does not apply to staff who have only indirect managerial responsibility for the Food Authority’s Food Law enforcement service such as Chief Executive, Director or Chief Officer, or to those employed in a support role such as administrative and legal staff.

3. If a Food Authority needs to engage expertise in an area listed in Chapter 1 of Annex II, to Regulation (EC) No 882/2004, it should ensure that any expert it engages has a recognised qualification and relevant experience and competency in the area for which the expertise is required.

4.1 General Qualification and Experience Requirements

1. Food Authorities must set up, maintain and implement a documented procedure for the authorisation of officers.

2. The Act allows for the authorisation of officers, in writing, either generally or specially to act in matters arising under the Act or Regulations made under the Act. However, Officers performing duties under the Food Hygiene (Scotland) Regulations 2006 and the Official Feed and Food Controls (Scotland) Regulations 2009, need to be separately authorised in writing to deal with matters arising under these implementing Regulations, e.g. issues under the “specified community provisions”. With regard to other specific food Regulations made under the European Communities Act 1972, where appropriate, relevant officers should be specially authorised for each of those Regulations.

3. Food Authorities should ensure that officers they authorise in accordance with their documented procedure to carry out enforcement under the Food Law are:

   a. Suitably qualified; and
   b. Experienced; and
   c. Competent to carry out the range of tasks and duties they are required to perform.

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26 Regulation 882/2004 on official controls performed to ensure the verification of compliance with food law, animal health and animal welfare rules Official Journal L191, 28.5.2004, p1-52
28 Framework Agreement on Local Authority Food Law Enforcement.
29 SSI 2006 No 3
30 SSI 2009 No 446
31 Refer to Food law Enforcement Service matrix at http://www.food.gov.uk/enforcement/enfcomm/sfelc/sfelcguidance/
4. This applies equally to those who are directly employed, to temporary staff, and to those employed by or as contractors.

5. There may be other qualifications that are equivalent to those specifically set out in this Code. The FSA must be approached to consider these cases.

6. 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 employer for an assessment of equivalence.

7. Nationals from countries in the European Economic Area have a right under EU law to the recognition of qualifications and experience and competency gained outside the UK. This situation may arise if an individual seeks employment in the UK as a Public Analyst, Food Examiner or Food Law enforcement officer, having acquired relevant qualifications and work experience in their home country. Food Authorities should accept suitable non-UK qualifications and experience in order to give effect to these EU rights. The equivalence of non-UK qualifications will be determined by organisations recognised by the Department for Business, Innovation and Skills (BIS) for the purposes of Directive 89/48/EEC (The Mutual Recognition of Professional Qualifications). Food Authorities should make enquiries with the relevant professional and awarding bodies if they have any doubts regarding equivalence of qualifications in this area before confirming an appointment.

4.2 New Appointments

1. Food Authorities should not authorise new officers, or extend the duties of currently employed officers, unless they are qualified and competent in accordance with the relevant provisions of this Section and they meet any relevant additional requirements relating to specific duties or enforcement responsibilities.

4.3 Training

1. Food Authorities must ensure that authorised officers receive relevant and structured on-going training. Training should explain new legislation, procedures and technological developments relevant to food businesses subject to their inspection.

2. The minimum on-going training should be 10 hours per year based on the principles of Continuing Professional Development (CPD).

3. Officers must be provided with appropriate training to ensure that their competencies are maintained in relation to new food related technologies and emerging food safety and standards risks as necessary.

4. Officers whose knowledge and or practical experience of Food Law enforcement is out of date shall receive structured revision training and be monitored by the lead officer or another experienced food law enforcement officer during the period of training.

5. Where an assessment of the Officer’s competency identifies training needs appropriate additional training shall be provided or the Officer’s responsibility appropriately restricted.

6. Officers that are newly qualified, authorised and, or are returning to Food Law enforcement duties after an absence of more than 3 years must be supervised by an experienced competent food officer until they are considered to be competent to work unsupervised. Supervision shall be for at least three months or for the duration of their revision training period, whichever is longer.

4.4 Training Records

1. Food Authorities must retain evidence of registration, qualifications and documents required by this Section and record on-going and or revision training undertaken by their authorised officers, including contract and temporary staff.

4.5 Contracted or Temporary Staff

1. Food Authorities must be satisfied that contracted or temporary enforcement staff meets the qualification, experience and competency requirements set out in Section 4.8 below that are relevant to the enforcement duties they are engaged to perform. This includes the training referred to above.

2. Food Authorities must also be satisfied that such staff are competent to undertake the duties required and are familiar with the Food Authority’s enforcement and other policies and procedures.

3. Food Authorities must ensure that persons employed by contractors to undertake inspection or other enforcement activities on behalf of the Food Authority are authorised to do so by the Food Authority in writing.
4.6 Sampling

1. Samples for microbiological examination or chemical analysis should be taken by authorised officers who are properly trained in the appropriate techniques and competent to carry out the duties assigned to them. Sampling in accordance with the provisions of the Food Hygiene (Scotland) Regulations 2006 or the Food Safety (Sampling and Qualifications) (Scotland) Regulations 2013 and this Code should only be undertaken by officers meeting the relevant requirements described in Section 4.8. These requirements do not apply where an adverse report following analysis/examination would not result in formal action.

4.7 Lead Officers

1. The Food Authority must notify the FSA of the name(s) of their lead officer(s) and notify the FSA of any changes of lead officer(s).

4.7.1 Food Hygiene and Safety

1. Food Authorities must appoint a suitably qualified, competent and experienced lead environmental health officer to take lead operational and management responsibility for food hygiene and food safety (“lead officer”). The lead officer appointed must meet the relevant requirements set out in Section 4 and have an up to date technical understanding of the food production processes used in the Food Authority’s area.

2. If a local authority’s structure does not allow for the appointment of a lead officer with the competency requirements described and management responsibility described above, then alternative arrangements may be implemented as follows. The role of lead officer for food safety was originally included in the Food Law Code of Practice in response to the Public Inquiry into the 1996 E Coli outbreak in Scotland. The specific recommendation relating to designation of an environmental health officer to head food safety was accepted by government and local authorities should ensure that any alternative arrangement provides no less a standard of public protection than intended by the Public Inquiry.

3. The lead officer shall meet the competency requirements in section 4 and shall be responsible for ensuring that all local authority procedures relevant to meeting the requirements of the Code and relevant statutory duties are appropriate and adequate. Where the lead officer does not consider that service and or procedures are likely to meet the requirements of food law or the Code, he or she shall notify the relevant senior official of the nature of any significant deficiency or concerns in writing and retain a copy of any related correspondence. The retained record should specify the relevant decision-making arrangement and authority.

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33 SSI 2013 No. 84
36 Refer to Food law Enforcement Service matrix at http://www.food.gov.uk/enforcement/enfcomm/sfelc/sfelcguidance/
4. Assessment of the adequacy of arrangements carried out by the lead officer should include all areas covered by this Code and in particular:

   a. The effectiveness and appropriateness of arrangements for delivering official controls, including arrangements to ensure appropriate quality of interventions.
   b. Arrangements to ensure official food controls are applied at a risk-based frequency in accordance with this Code.
   c. The sufficiency of authorised officers and other officials in terms of numbers, qualifications and experience, having regard to any specific requirements in the Code.
   d. The adequacy of facilities and equipment available to carry out relevant duties properly.
   e. That officers are free from conflicts of interest.
   f. The adequacy of access to appropriate laboratory capacity and capability for examination and analysis of samples.
   g. The adequacy of internal monitoring arrangements designed to ensure the maintenance of satisfactory delivery of official food controls.

5. The lead officer shall be responsible for assessing and reporting on the performance of the local authority in relation to meeting all requirements of this Code. Where he or she is not appointed to monitor performance directly, he or she should have access to all relevant performance information. Where the lead officer considers that performance does not meet the standards required in the Code he or she shall notify the appropriate senior official of any significant finding or concern and should retain a record of all related correspondence.

6. The lead officer should be the principal point of contact for audits by the FSA or the FVO. He or she shall make available to the FSA on request, all assessments and correspondence relating to the responsibilities set out above.

4.7.2 Food Standards

1. Food Authorities must appoint a suitably qualified, competent and experienced lead officer for food standards who meets the relevant requirements set out in section 4 above and has an up to date technical understanding of the food production processes used in the Food Authority’s area, to take lead operational and management responsibility for these matters.

2. If a local authority’s structure does not allow for the appointment of a Lead Officer with the competency requirements described and management responsibility described above, then alternative arrangements may be implemented as outlined below:
3. The lead officer shall be responsible for ensuring that all local authority procedures relevant to meeting the requirements of the Code and relevant statutory duties are appropriate and adequate. Where the lead officer does not consider that service and or procedures are likely to meet the requirements of food law or the Code, he or she shall notify the relevant senior official of the nature of any significant deficiency or concerns in writing and retain a copy of any related correspondence. The retained record should specify the relevant decision-making arrangement and authority.

4. Assessment of the adequacy of arrangements carried out by the lead officer should include all areas covered by this Code and in particular:

   a. The effectiveness and appropriateness of arrangements for delivering official food controls, including arrangements to ensure appropriate quality of interventions.
   b. Arrangements to ensure official food controls are applied at a risk-based frequency in accordance with this Code
   c. The sufficiency of authorised officers and other officials in terms of numbers, qualifications and experience, having regard to any specific requirements in the Code.
   d. The adequacy of facilities and equipment available to carry out relevant duties properly
   e. That staff are free from conflicts of interest
   f. The adequacy of access to appropriate laboratory capacity and capability for examination and analysis of samples.
   g. The adequacy of internal monitoring arrangements designed to ensure the maintenance of satisfactory delivery of official food controls.

5. The lead officer shall be responsible for assessing and reporting on the performance of the local authority in relation to meeting all requirements of this Code. Where he or she is not appointed to monitor performance directly, he or she should have access to all relevant information and facilities. Where the lead officer considers that performance does not meet the standards required in the Code he or she shall notify the appropriate senior official of any significant finding or concern and should retain a record of all related correspondence.

6. The lead officer should be the principal point of contact for audits by the FSA or the FVO. He or she shall make available to the FSA on request, all assessments and correspondence relating to the responsibilities set out above.
4.8 Specific Qualification and Experience Requirements

4.8.1 Officers Appointed to Carry out Food Hygiene Official Controls

1. Officers authorised to undertake food hygiene and safety official controls must hold one of the qualifications, or equivalent qualifications (see section 4.9) and be competent to carry out these functions.

2. Officers authorised to inspect food business operators’ procedures based upon HACCP principles\(^{38}\) should also possess the competencies set out in Annex 2 to this Code.

3. Officers authorised to undertake food hygiene and safety controls of food business establishments should have a detailed, relevant and up to date knowledge of the following:

   a. the nature and types of food businesses in their area and the technology utilised by the businesses that is subject to official control by the officer,
   b. Relevant food hygiene and safety legislation,
   c. Requirements in Regulation (EC) No 882/2004 on official controls for competent authorities with responsibility for enforcement of food law,
   d. This Code
   e. The Practice Guidance accompanying this Code;
   f. The Food Authority’s Enforcement Policy,
   g. UK and EU Guides to Good Practice\(^{39}\),
   h. Relevant guidance issued by the FSA and or SFELC\(^{40}\),
   i. Relevant industry codes of practice\(^{41}\).

4. The following establishments should be inspected only by authorised Environmental Health Officers and or officers holding the Higher Certificate in Food Premises Inspection:

   a. All establishments which attract a minimum intervention frequency of 12 months or less under the intervention rating scheme at Annex 5.
   b. All premises that, under the inspection rating scheme at Annex 5, score 15 points in the Consumers at Risk section A.5.3: C.

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\(^{38}\) Hazard Analysis Critical Control Point principles as set out in Article 5 Regulation (EC) No. 852/2004 on the hygiene of foodstuffs

\(^{39}\) References to “Guides to Good Practice” in this Code mean Guides developed in accordance with Article 8 of Regulation 852/2004 and recognised by UK Government as such.

\(^{40}\) The Scottish Food Enforcement Liaison Committee

\(^{41}\) The Institute of Food Science and Technology (IFST) publishes a comprehensive list of Guides and industry codes of practice issued by a variety of bodies – “Listing of Codes of Practice Applicable to Foods”. Details of Additional Guides and industry codes can be found in the IFST publication ‘Good Manufacturing Practice’.
5. Those who do not hold the required qualifications may assist qualified authorised officers to carry out inspections.

4.8.2 Inspection of Specialist or Complex Processes

1. Authorised Officers undertaking the inspection of specialist or complex manufacturing processes must have received additional training and have demonstrated their competence to undertake such inspections. These will include the following:

   a. The canning, aseptic packing or thermal processing of low-acid foods;
   b. The manufacture of cook-chill, ready-to-eat food which may be consumed without further preparation other than re-heating;
   c. The manufacture of meat, fish, egg or dairy products;
   d. Vacuum packaging (including butchers’ shops that vacuum-pack meat).

4.8.3 Inspection of Establishments Subject to Approval under Regulation (EC) No 853/2004

1. Inspections for the purposes of the approval of establishments subject to approval under Regulation (EC) No 853/2004 should only be undertaken by authorised officers of the Food Authority who have a detailed knowledge of enforcement in approved establishments.

2. An authorised officer who has no previous experience of a particular process that is the subject of an approval application must be accompanied, during the inspection of that process, by an appropriately authorised, qualified, experienced and competent officer, who may be from another Food Authority if necessary.

4.9 Qualifications & Awarding Bodies – Food Hygiene

1. For the purposes of this Code an Environmental Health Officer is a person holding a:

   a. Diploma in Environmental Health (or its antecedents) awarded by the Royal Environmental Health Institute of Scotland (REHIS);
   b. Certificate of Registration of the Environmental Health Registration Board (EHRB) (or its antecedents).
   c. Diploma in Environmental Health (or its antecedents) awarded by EHRB

2. The Higher or Ordinary Certificate in Food Premises Inspection may be awarded by any one of the following:

   a. The Scottish Food Safety Officers’ Registration Board (SFSORB);
   b. Environmental Health Registration Board (EHRB);
   c. The Institute of Food Science and Technology (IFST)

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3. All officers undertaking inspections are required to undertake a period of structured practical training with a food enforcement authority as part of the preparation for the award of these qualifications.

4.9.1 Service of Hygiene Improvement Notices

(See also Section 15)

1. Hygiene Improvement notices under Regulation 6 of the Food Hygiene (Scotland) Regulations 2006 may only be signed by officers who have been authorised to do so by the Food Authority. To maintain a consistent approach, Food Authorities should arrange that these notices are signed only by qualified authorised officers with experience in food law enforcement, who are appropriately trained and competent. These will be one of the following:

   a. Environmental Health Officers enforcing food hygiene or food processing regulations;
   b. Holders of the Higher Certificate in Food Premises Inspection who are authorised to carry out food hygiene inspections;
   c. Holders of the Ordinary Certificate in Food Premises Inspection in relation to the food business establishment/s they are authorised to inspect.

2. The authorised officer who signs the notice must have witnessed the contravention and be satisfied that it constitutes a breach of the relevant Regulations.

4.9.2 Service of Improvement Notices (Food Safety Act Section 10)

1. Improvement Notices served under Section 10 of the Act may only be signed by officers who have been authorised to do so by the Food Authority. To maintain a consistent approach, Food Authorities should arrange that these notices are signed only by qualified authorised officers with experience in food law enforcement, who are properly trained and competent.

2. These will be one of the following:

   a. Environmental Health Officers enforcing food standards regulations.
   b. Holders of the Higher Certificate in Food Premises Inspection and the Higher Certificate in Food Standards Inspection who are authorised to carry out food standards inspections.
   c. Holders of the Ordinary Certificate in Food Hygiene Inspection in relation to the premises they are authorised to inspect.

3. The authorised officer who signs the notice must have witnessed the contravention and be satisfied that it constitutes a breach of the relevant legislation.
4.9.3 Service of Hygiene Emergency Prohibition Notices and or Emergency Prohibition Notices

(See also Section 16)

1. Hygiene Emergency Prohibition Notices under Regulation 8 of the Food Hygiene (Scotland) Regulations 2006 or Emergency Prohibition Notices under Section 12 of the Act should be signed only by authorised Environmental Health Officers and or authorised Holders of the Scottish Food Safety Officers’ Registration Board (SFSORB) Higher Certificate in Food Premises Inspection who:

   a. Have two years’ post qualification experience in food safety matters;
   b. Are currently involved in food law enforcement;
   c. Are properly trained, competent and duly authorised

   (see section 4.8).

2. Holders of the Higher Certificate in Food Premises Inspection awarded by the EHRB cannot currently be authorised to serve Hygiene Emergency Prohibition Notices (HEPNs).

4.9.4 Service of Remedial Action Notices and or Detention Notices (Regulation 9 of the Food Hygiene (Scotland) Regulations 2006)

(See also Section 18)

1. Remedial Action Notices or Detention Notices under Regulation 9 of the Food Hygiene (Scotland) Regulations 2006 should be signed only by Environmental Health Officers and or Holders of the SFSORB Higher Certificate in Food Premises Inspection who:

   a. Have two years’ post qualification experience in food safety matters;
   b. Are currently involved in Food Law enforcement;
   c. Are properly trained, competent and duly authorised

4.10 Food Standards: Officers Appointed to Carry out Official Controls

1. Officers authorised to undertake food standards official controls should hold one of the qualifications or equivalent qualifications as set out in Section 4.10.1 and be competent to carry out the duties.

2. Officers authorised to undertake such official controls in food business establishments should have a detailed knowledge of the following:

   a. The nature and types of food industry in their area and the technology utilised in those premises the officer is authorised to inspect;
   b. Relevant food standards and marketing legislation;
   c. Requirements in Regulation (EC) No 882/2004 on official controls for competent authorities with responsibility for enforcement of;
   d. This Code
e. The Practice Guidance accompanying this Code;
f. The Food Authority’s Enforcement Policy;
g. Relevant guidance issued by the FSA, and SFELC etc.
h. Relevant Industry Codes of Practice.

4.10.1 Qualifications & Awarding Bodies – Food Standards

1. Food Standards qualifications and awarding bodies are as follows:
   a. Diploma in Environmental Health (or its antecedents) awarded by REHIS;
   b. The Environmental Health Registration Board (EHRB) Diploma in Environmental Health (or its antecedents), or Certificate of Registration of EHRB;
   c. The Higher Certificate in Food Standards Inspection issued by SFSORB;
   d. The Higher Certificate in Food Premises Inspection issued by Environmental Health Officers Registration Board (EHORB) or the IFST with an endorsement to include Food Standards Enforcement.
   e. Diploma in Trading Standards (DTS) or its antecedents;
   f. Diploma in Consumer Affairs (DCA) provided it includes the Food and Agriculture Paper of Part II, or its antecedents;
   g. a DCA Certificate of Competence in relation to Food and Agriculture (or its antecedents);
   h. One of the following Trading Standards Qualifications Framework Certificates with the Food Standards service delivery module (issued by the Trading Standards Institute (TSI)):
      - Module Certificate;
      - Diploma in Consumer Affairs and Trading Standards (DCATS);
      - Certificate of Competence.
   i. Higher Diploma in Consumer Affairs and Trading Standards (HDCATS) (this certificate must be presented with one of the awards/certificates listed above).

2. All officers undertaking official controls are required to undertake a period of structured practical training as part of the preparation for the award of these qualifications.

4.10.2 Quality Assurance Systems

1. Before being authorised to undertake food standards inspections of establishments risk rated Category A as in Annex 5, A.5.7, and which are engaged in the manufacture and processing of foodstuffs with documented quality assurance systems, an officer should have been appropriately trained and be able to demonstrate that they are competent to assess quality assurance systems.
4.11 Food Hygiene and Food Standards

4.11.1 Inspection, Detention & Seizure of Foodstuffs

(See also Section 19)

1. The inspection of food and any decision to detain or seize food through the application of Section 9 of the Act, and or including as directed by Regulation 27 of the Food Hygiene (Scotland) Regulations 2006 should only be taken by appropriately authorised officers. Such officers will be:

- Authorised Environmental Health Officers;
- Authorised Holders of the Higher Certificate in Food Control – limited to food placed on the market43;
- Authorised Official Veterinarians;

2. Officers other than Environmental Health Officers, Holders of the Higher Certificate in Food Control and Official Veterinarians may be authorised to inspect, detain or seize food if they hold additional qualifications recognised by relevant Professional and Awarding bodies which demonstrate their competence to undertake this work.

3. As regards official controls in relation to the import of food from third countries, Regulation 31 of the Official Feed and Food Controls (Scotland) Regulations 2009 stipulates that, as well as the Competent Authority, relevant Food Authorities also have the power to take action under Articles 18 to 21 and 24(3) of Regulation (EC) No 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.

4.11.2 Non-Official Control Interventions

1. Officers undertaking non-official control interventions are not required to meet the qualification requirements set out in this Section, but they should, however, be appropriately authorised. Any visits by appropriately authorised officers, must be confined to information collection and reporting back and appropriate advice and education. The overall management of non-official control interventions must remain in the hands of an authorised competent food law enforcement officer qualified in accordance with this Section, and decisions to take other enforcement action and or intervene further must also be made by such an authorised officer.


‘placing on the market’ means the holding of food or feed for the purpose of sale, including offering for sale or any other form of transfer, whether free of charge or not, and the sale, distribution, and other forms of transfer themselves;
4.12 Alternative Enforcement Strategies

1. Officers undertaking Alternative Enforcement Strategies (AES) in Category E establishments for food safety or Category C for Food Standards are not required to meet the qualification requirements set out in this Section, but they should, however, be appropriately authorised. Any visits by such unqualified, but appropriately authorised, officers undertaken as part of an alternative enforcement strategy, must be confined to information collection and reporting back. The overall management of Alternative Enforcement Strategies must remain in the hands of an authorised competent food law enforcement officer qualified in accordance with this Section, and decisions to take other enforcement action and or intervene further must also be made by such an authorised officer.

4.13 Qualification Requirements for interventions

1. In assessing who can carry out which type of intervention to undertake at a food establishment, the Food Authority must have regard to the following qualification requirements (please see the Practice Guidance for further details of interventions types).

<table>
<thead>
<tr>
<th>Intervention Type to be carried out by an appropriately authorised officer</th>
<th>Qualification level required to carry out the action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inspections and audits</td>
<td>A appropriately qualified officer with experience in food law enforcement, See section 4.8 of this Code</td>
</tr>
<tr>
<td>Verification, &amp; surveillance</td>
<td>A appropriately qualified officer with experience in food law enforcement, See section 4.8 of this Code</td>
</tr>
<tr>
<td>Sampling visits</td>
<td>An officer appointed under Section 4.6 of the Code of Practice (Scotland)</td>
</tr>
<tr>
<td>Advice and education</td>
<td>An appropriately authorised officer under Section 4.11.2 of this Code</td>
</tr>
<tr>
<td>Information/intelligence gathering</td>
<td>An appropriately authorised officer under Section 4.11.2 of this Code</td>
</tr>
</tbody>
</table>
5 Conflicts of Interest

5.1 Introduction

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

5.2 Avoiding Potential Conflicts of Interest

1. Article 4(2)(b) of Regulation (EC) No 882/2004 requires that staff carrying out official controls are free from any conflict of interest. Food Authorities should ensure that their officers are aware of potential conflicts of interest that may arise in an enforcement situation through promotion of the Food Authority’s services.

2. Officers should not provide their own services, e.g. training, in their own time within their food authority area, unless they have obtained written permission from the relevant senior Official in their Local Authority.

3. Food Authorities should ensure that potential or actual conflicts of interest do not arise as a result of Home or originating Authority responsibilities and contracting in services for enforcement purposes.

4. Food Authorities and their officers should avoid promoting the Food Authority’s services exclusively if other providers of those services exist in the area.

5. Pest control and food hygiene training are examples of local Food Authority services that may be provided in competition with those supplied by other organisations.

6. Where a Food Authority delegates enforcement to an independent third party (“control body”\footnote{See Article 2(5) of Regulation 882/2004}) then the competent authority must obtain proof that the control body is impartial and free from any conflict of interest as regards the tasks delegated to it.

5.3 Enforcement within Local Authority-run Establishments

1. The Food Authority’s Food Law Enforcement Policy (see section 14.4) should detail the Food Authority’s arrangements for ensuring compliance with food law in premises where the Food Authority is itself the proprietor of a food business and the steps taken to ensure enforcement decisions are free from any conflict of interest.

2. Any serious breaches of food law that may be detected in such establishments should be brought to the attention of the Chief Executive of the Food Authority without delay.

3. Contract caterers that operate within local authority establishments should be assessed in accordance with Annex 5 and the intervention frequency determined accordingly.
6 Food Business Establishment Records

6.1 Introduction

1. This Section requires, in line with Article 31 of Regulation (EC) No 882/2004, Food Authorities to maintain up-to-date lists of registered and approved food business establishments in their area, and confirms that this data may be divulged for the purposes of ensuring public health and the effective enforcement of food law.

6.2 Database of Food Business Establishments

1. Food Authorities should maintain an up-to-date database of food businesses and food business establishments which have been registered with them and food business establishments which have been approved or conditionally approved by them. The database should contain a comprehensive record of:

   a. Food business establishments registered with the authority;
   b. Establishments that are the decision-making base of businesses for which the Food Authority acts as Home Authority for food matters; and
   c. Food business establishments which have been approved or conditionally approved by the Food Authority.

2. Each Food Authority should have a documented procedure for ensuring that its database is up to date and protected against corruption and loss of information, including the use of the information supplied on registration or approval application forms to update the database.

6.3 Access to information

1. Food Authorities should provide details of relevant food business establishment records if requested by Health Protection Scotland (HPS), Public Health England (PHE), the CCDC/CPHM (CD/EH), the FSA or other similar enforcement or surveillance body to facilitate the investigation of an outbreak or suspected outbreak of disease, the investigation of a food hazard or other food-related emergency or any criminal investigation. Such requests should be handled with due regard to Freedom of Information and Data Protection legislation.

2. Requests for information other than from the above bodies should be handled with due regard to Freedom of Information and Data Protection legislation (see also the Practice Guidance) and to this section in connection with requests for information on registered food business establishments.
6.4 Registration of Food Business Establishments

6.4.1 Introduction

1. Under Article 6(2) of Regulation (EC) No 852/2004, food business operators must register their establishments (i.e. each separate unit of their food businesses) with the appropriate competent authority, except establishments which:

   a. Are subject to approval under Regulation (EC) No 853/2004 (see Section 29), or;
   b. Fall outside the scope of Regulation (EC) No 852/2004 (see Section 6.4.2).

2. Responsibility rests with Food Authorities for recording and maintaining details of food business establishments which have been registered with them under Regulation 852/2004.

6.4.2 Exemptions

1. In respect of food business establishments subject to Regulation (EC) No 852/2004 only i.e. establishments which are not subject to approval under Regulation (EC) No 853/2004, there are no specific exemptions from the requirement to be registered.

2. In determining whether or not a particular establishment is subject to Regulation (EC) No 852/2004 only (and is hence required to be registered) consideration should be given to whether the business concerned is a ‘food business’ as defined in Regulation (EC) No.178/2002 on general food law and to both Recital (9) and Article 1(2) of Regulation EC No 852/2004 which set out the circumstances under which the Regulation, and hence the requirement to register under Article 6(2) would not apply. (See Section 14.7)

3. It should be noted that Food Brokers are required be registered, even if they never actually receive, handle or supply food.

6.4.3 Registration of New Food Business Establishments

1. Under Article 31(1)(a) of Regulation (EC) No 882/2004 the competent 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 these procedures.

6.4.4 Time Frame for Registration

1. Food business operators should register their food business establishments with the appropriate Food Authority at least 28 days before food operations commence.

45 Regulation (EC) No. 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (as amended)
6.4.5 Registration Form

1. Food business operators must provide the relevant Food Authority with full details of the activities undertaken when registering their establishments. A model registration form as at Annex 8 should be made available to, and completed by, food business operators for each establishment under their control and submitted to the relevant Food Authority.

6.4.6 Sites on which there is more than one Food Business Establishment

1. Establishments under the control of the same food business operator

Sites will exist where there are two or more food business establishments under the control of the same food business operator. For example, in the case of a shopping centre in which there are two or more food business establishments under the control of the same food business operator, such operators must ensure that each establishment under their control is registered separately. Food business operators should therefore complete a registration form for each separate establishment.

2. Establishments under the Control of Different Food Business

Sites will also exist on which there are two or more food business establishments under the control of different food business operators. For example, a supermarket may have a coffee shop on site under the control of a different food business operator such as a coffee shop chain. In such cases, the coffee shop will not be covered by the supermarket’s registration and must be registered in its own right by its operator. Coffee shops, snack bars etc. operated by the supermarket itself would be covered as part of the supermarket’s registration.

6.5 Lists of Food Business Establishments

6.5.1 Requirements of Regulation (EC) No 882/2004

1. 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.

2. The register of food business establishments held by each Food Authority in accordance with the now revoked Food Premises (Registration) Regulations 1991, in the authority’s database will satisfy this requirement and may be carried forward. Food business operators will not, therefore, need to re-register food business establishments under their control which have already been registered with a Food Authority. Food Authorities must maintain their lists in accordance with the requirements of Article 31(1)(b) of Regulation (EC) No 882/2004.
3. Food Authorities should also ensure that a separate, up-to-date, list of food business establishments registered with them is available for inspection by the general public at all reasonable times. The list should contain the following information about each food business and should be consistent with the information held in the Food Authority’s database:

   a. Name of the food business
   b. Address of the food business establishment
   c. Particulars and nature of the food business

4. Food Authorities may give or send a copy of their list or any entry on it to any person who makes a request for such information. However, requests for information on food business establishments which are not included in the list should be handled with due regard to Freedom of Information and Data Protection legislation (see also the Practice Guidance).

### 6.6 Action on Receipt of Completed Registration Form

1. On receipt of a completed registration form, Food Authorities should record the date of receipt on the form. They should ensure that if there are any activities indicated on the form outside of their enforcement remit, a copy of the form is sent without delay to the relevant competent authority.

2. Food Authorities should enter relevant information from the registration form on to the database and lists of registered food business establishments. The registration form should then be placed on a file prepared in respect of that food business establishment.

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

4. If any information is omitted from a registration form submitted by a food business operator, the Food Authority should either make contact with 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.

5. On receipt of a completed application form, Food Authorities should also schedule an inspection of the establishment in accordance with Section 27 of this Code.
6.6.1 Registration Certificates / Confirmation of Receipt

1. Certificates of Registration for food business establishments should not be issued to food business operators because of their potential to mislead consumers into believing that a food business 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 business establishments. 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.

6.7 Changes to Activities after Registration

1. Under Article 6(2) of Regulation (EC) No 852/2004, food business operators must ensure that the appropriate competent authority always has up-to-date information on their food business establishments and must notify the relevant competent authority of any significant changes of activities, or closure.

2. Any changes to the details previously supplied e.g. a change of operator, a change to the activities carried out in relation to food, the closure of an establishment etc. should be notified by the food business operator to the relevant Food Authority. Notification of a change to the operator of a food business establishment should be made by the new food business operator.

3. On receipt of a notification of a change of activities Food Authorities should update the list of registered food business establishments as appropriate, and place or record the details on the file relating to that food business establishment.
6.8 Moveable Establishments

6.8.1 Ships, Aircraft, Trains and Coaches

1. Although ocean-going ships, aircraft, trains and long distance coaches are subject to the provisions of Regulation (EC) No 852/2004, their moveable nature generally means that there is little practical value in the registration of individual ships, aircraft, trains and coaches with the Food Authority in whose area they are based as they are not always present in that authority’s area of jurisdiction. See enforcement approaches set out at Section 27.23 (trains and coaches) and Section 30 (ships and aircraft).

2. However, food business operators must register vessels under their control which are permanently moored such as floating restaurants etc. with the relevant Food Authority. Food business operators must also register vessels under their control which trade on inland waterways e.g. pleasure craft, with the Food Authority in the area in which they are ordinarily kept.

3. Where a food business operator is engaged solely in the operation of a fleet of vehicles for the purposes of the distribution of food to other food business operators, then registration is required.

6.8.2 Vending Machines

1. Vending machines are subject to the relevant provisions of Regulation (EC) No 852/2004. However, there is little practical value in the registration of individual vending machines or the premises on which they are sited if the only food related activity on those premises relates solely to vending machines. However, distribution centres where food for stocking vending machines is stored and/or from which food is transported to vending machines for stocking and businesses hiring out a vending machine service which includes providing food for the vending sale; shall be registered with the relevant Food Authority. The delivery vehicles used for the transport of food for stocking vending machines should be covered in the inspection of such establishments.

6.8.3 Markets

1. In the case of vehicles and stalls (whether or not these stalls are provided by the controller of the market) used for transporting or preparing food or the sale of food to consumers within the area of a market, the food business operator shall register the establishment in which their stocks of food to be sold are ordinarily kept with the relevant Food Authority.

2. If the controller of a market is the provider of permanent units (establishments) (and not simply stalls) within a market, the food business operators operating their food businesses from those establishments should register each such establishment with the relevant Food Authority.
6.8.4 Movable Establishments

1. Moveable establishments other than those which form part of a market or operate within the area of a market e.g. ice cream vans, hot dog vendors etc. should be registered by the food business operator with the Food Authority in the area in which they are ordinarily kept.

6.9 Non-registered Establishments Thought to Be Engaged in Activities Subject to Regulation (EC) No 852/2004

1. In such circumstances the Food Authority should ask the food business operator to complete a registration form as soon as possible and should satisfy itself that the food business establishment is operating in compliance with the other provisions of Regulation (EC) No 852/2004 as appropriate.

2. The purpose of registration is to enable the Competent Authorities to have the business details available, from external sources if necessary, so businesses can subsequently be factored into official controls.

3. Officers are directed to Section 14 for general guidance on enforcement.

4. Officers should be careful to ensure that:

   a. Such establishments are subject to Regulation (EC) No 852/2004;
   b. Such establishments are not subject to approval under Regulation (EC) No 853/2004.
7  Crown and Police Premises

7.1  Introduction

1. This Section concerns the approach to enforcement in Crown premises and in premises that are occupied by the police. It does not apply to premises that are occupied by the National Health Service (NHS) or NHS Trusts since these are not Crown premises. For information on military ships and aircraft and Home Authority contacts for the Army, Royal Navy and Royal Air Force are given in Section 30.4.

2. Although the premises occupied by Police Scotland are owned by the Local Authorities and are not Crown premises, they are to be treated for these purposes in the same way as Crown premises.

7.2  Powers of Entry Food Hygiene (Scotland) Regulations 2006

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

2. The Food Hygiene (Scotland) Regulations 2006 do not contain the specific exemptions for certain members of the Royal Family or certain Royal residences as afforded by the Act, Food Authorities should use discretion when exercising their powers in respect of Crown premises.

3. In practice, Food Authorities should adopt the same approach to the enforcement of the Food Hygiene (Scotland) Regulations 2006 in respect of Crown premises as they do in respect of the Act.

7.3  Powers of Entry (under the Act)

1. The powers of entry under Section 32 of the Act may be used, in respect of food standards issues, in relation to Crown premises (subject to exemptions for certain members of the Royal Family and certain Royal residences). However, a national security certificate may have been issued by a Secretary of State or Scottish Ministers certifying that powers of entry under the Act cannot be exercised. If an authorised officer seeks entry to Crown premises and is informed that such a certificate has been issued, the officer may ask to see the certificate or a copy of it.
7.4 Obtaining Entry to Crown and Police Premises

1. For the purposes of obtaining entry, Crown and police 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 should be treated like any other food business. Group 1 premises should 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 private businesses with security systems. First visits to Group 2 premises should be by prior arrangement. Future visits may be unannounced, but arrangements for subsequent visits should be agreed at the first inspection and confirmed in writing.

**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, remand centres, and parts of police premises that accommodate prisoners.

Group 3 premises should always be visited by prior arrangement with the appropriate contact at the establishment concerned, e.g. the defence establishment security officer, the commanding officer or nominated representative 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.

2. Authorised officers who have not been security cleared will be subject to visitor control procedures and may be escorted at all times. Officers should carry an identity card that incorporates their photograph.

3. Authorised officers should bear in mind that there may be times when it will not be possible for an inspection to take place or continue in Group 3 premises. Any such reasonable restriction should not be regarded as obstruction.

4. The authorised officer’s name, date of birth, card or pass number (if any), and the registration number of the officer’s motor vehicle should be given in advance of a visit to Group 3 premises, if required.

5. If the Food Authority is in doubt as to how to classify particular premises to which this Section applies, they should be treated as Group 3 premises and reviewed at a later stage, if necessary.
6. 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. It should not normally be necessary in such circumstances to give more than the briefest notice of such a visit.

7.5 Conduct

1. Authorised officers should 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.

2. Inspections should 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.

3. Military activities should not be impeded or interrupted by a visit.

4. Authorised officers should conform to the security requirements of the establishment concerned, including baggage inspections and identity checks.

7.6 Photographs

1. The consent of the prison Governor is necessary before bringing a camera into a Scottish prison. In addition no person viewing the prison shall be permitted to take a photograph or sketch unless authorised to do so by the Governor. Therefore before taking any photographs, making sketches or taking measurements on Group 3 premises, the authorised officer should seek the necessary permissions and discuss such matters with the escorting officer taking account of any requirements. Unless absolutely necessary to illustrate a possible contravention of the legislation, photographs on Group 3 premises should not include individuals. It should not be possible to identify any individual from any photograph taken within a prison or remand establishment.

7.7 Liaison with the Home Authority and or FSA

1. Food Authorities should report any difficulties encountered in the enforcement of food law in premises to which this Section applies to the appropriate Home and or Primary Authority or, if there is no Home and or Primary Authority, to the FSA.
8 Food Incidents and Food Fraud

8.1 Introduction

1. This Section deals with food incidents, food hazards and food fraud. A schematic representation of the process to be followed by Food Authorities when dealing with a food incident is shown in section 8.5.

8.2 Definitions

1. A “food incident” is defined as any event where, based on the information available, there are concerns about actual or suspected threats to the safety or quality of food that could require intervention to protect consumers’ interests.

2. Quality should be considered to include food standards, authenticity and composition.

3. Food Incidents are split into 3 separate categories, which may overlap:

   a. **Food Hazards** - a food incident involving (or suspected to involve) a biological, chemical and or physical agent in, or condition of, 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].

   b. **Food Fraud** – the deliberate placing on the market, for financial gain, foods which are falsely described or otherwise intended to deceive the consumer

   c. **Non-Hazardous Incidents** which may impact on the food supply chain, including issues of quality, provenance, authenticity, composition and labelling.

8.3 Documented Procedure

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

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

   a. **A 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; should be dealt with locally by the Food Authority, in conjunction with other relevant agencies and need not to be reported to the Agency.

   b. **A serious localised food hazard** – one in which food is not distributed beyond the boundaries of the Food Authority but which involves *E. coli* O157, other VTEC, *Clostridium botulinum, Salmonella typhii* or *Salmonella paratyphi*, or which the Food Authority considers significant because of, for example, the vulnerability of the population likely to be affected, the numbers involved or any deaths associated with the incident; should be notified by the Food Authority to the FSA and other relevant agencies at the earliest opportunity and by the quickest available means and confirmed in writing on the incident report form (see Annex 4) This form is also available on the Agency’s website and can be submitted directly to the Scottish Food Incidents Team via the website.

   c. **A non-localised food hazard** – one in which food is distributed beyond the boundaries of the Food Authority; should be notified by the Food Authority to the FSA and other relevant agencies at the earliest opportunity and by the quickest available means and confirmed in writing on the incident report form (see Annex 4).

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.

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46 A list giving contact details is issued as a separate document and is available from the Food Standards Agency (Scotland), St Magnus House, 25 Guild Street, Aberdeen.

47 A list giving contact details is issued as a separate document and is available from the Food Standards Agency (Scotland), St Magnus House, 25 Guild Street, Aberdeen.
A Schematic Representation of Incident Reporting

Food Incident

- **Food Incident**
  - **Food Hazard?**
    - **No**
      - **Suspect Fraud?**
        - **No**
          - **Non hazardous food incident**
            - **Report to FSA**
        - **Yes**
          - **Limited to within the LA?**
            - **No**
              - **Report to FSA**
            - **Yes**
              - **Risk Assessment and decision on LA or FSA lead**
    - **Yes**
      - **Limited to within the LA?**
        - **No**
          - **Report to FSA**
        - **Yes**
          - **Significant?**
            - **No**
              - **Report to FSA**
            - **Yes**
              - **LA Responsibility**

- **Serious?**
  - **No**
    - **Non-localised food hazard**
      - **Report to FSA**
  - **Yes**
    - **Localised food hazard**
      - **Serious localised food hazard**
        - **Report to FSA**

- **Suspect Fraud?**
  - **No**
    - **Report to FSA**
  - **Yes**
    - **Limited to within the LA?**
      - **No**
        - **Report to FSA**
      - **Yes**
        - **Significant?**
          - **No**
            - **Report to FSA**
          - **Yes**
            - **LA Responsibility**

*1 - a food incident involving (or suspected to involve) a biological, chemical or physical agent in, or condition of, food with the potential to cause an adverse effect on the health or safety of consumers (including outbreaks of foodborne disease)*

*2 - *E. coli* O157, other VTEC, *C. botulinum*, Salmonella typhi or Salmonella paratyphi or which the Food Authority considers significant because of, for example, the vulnerability of the population likely to be affected, the numbers involved or any deaths associated with the incident;*

*3 - The deliberate placing on the market, for financial gain, foods which are falsely described or otherwise intended to deceive the consumer*

*4 - In determining significance, consideration should be given to: 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 of Scotland (or the UK); public concern; likelihood of media interest*
8.6 Food Fraud

1. Intelligence regarding suspicions of food fraud should be shared with FSA utilising the 5x5x5 forms available at: http://www.food.gov.uk/enforcement/enforcwork/foodfraud/foodfrauddatabase

2. Completed forms should be sent to: scottishincidents@foodstandards.gsi.gov.uk

3. This applies both to issues of food fraud that are believed to be limited to within the Food Authority and those which may impact upon or originate from outside of the Food Authority.

4. Guidance on completing the 5x5x5 is available at: http://www.food.gov.uk/multimedia/pdfs/foodfraudguide.pdf

8.7 Deliberate Contamination and Malicious Tampering

1. 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 this Code, “malicious tampering” means the deliberate contamination of food by terrorist activity, or with a view to blackmail or extortion.

2. Arrangements for dealing with malicious tampering incidents have been established between the FSA and the police forces throughout the UK and, if necessary the Serious Organised Crime Agency will be involved in the investigation.

3. Food Authorities should contact the FSA 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.

4. Food Authorities should co-operate fully with police investigations into incidents of malicious tampering and respect police requests for confidentiality whenever possible, although 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.
8.8 Food Hazards Associated With Outbreaks of Foodborne Illness

1. If a food hazard has resulted in an outbreak of foodborne illness the Food Authority should consider, with their CCDC and or CPHM (CD/EH), the activation of their Outbreak Control Plan.

2. Serious localised outbreaks should immediately be notified to the appropriate contacts\textsuperscript{48} at HPS and the FSA.

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

8.9 Action by the Food Authority – Food Incidents

1. Once a food incident has been identified, the Food Authority should immediately carry out an assessment to determine whether it is a food hazard, is suspected of involving food fraud or is a non-hazardous food incident.

2. Consideration should be given to the likely scale, extent and severity of any risk to public health, involving other agencies as appropriate. These other agencies may include Home and or Primary Authority (England), originating and neighbouring Food Authorities, medical specialists, Food Examiners, Public Analysts and microbiologists etc.

3. Food Authorities should 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 Food Authority if necessary.

4. The assessment should include the following factors:
   a. The nature of the incident;
   b. The toxicity of any contaminant, the allergenicity of an undeclared ingredient/constituent, and or the virulence and pathogenicity of the organism;
   c. The type of injury which might be caused by a physical contaminant;
   d. The population likely to be affected and its vulnerability;
   e. The likely quantity and distribution of the food in the food chain up to the point of consumption;
   f. The ability and willingness of the producer and or distributor to implement an effective withdrawal of the product;
   g. The ability to identify accurately the affected batch(es) or lot(s);
   h. The accuracy and extent of records held by the producer and or distributor;
   i. The likely effectiveness of any trade withdrawal at all stages of the food chain;

\textsuperscript{48} A list giving contact details is issued as a separate document and is available from the Food Standards Agency (Scotland), St Magnus House, 25 Guild Street, Aberdeen.
j. The stage(s) at which the issue is likely to have occurred (for example in processing, packaging, handling, storage or distribution) and its likely significance to the problem;
k. Whether other products produced on the same food establishment may have been contaminated and or affected;
l. Whether any of the food has been imported;
m. Whether any of the food has been exported, or distributed to other Member States;
n. Whether there are wider implications for others in the same industry or for food establishments using similar processes in other food industries;
o. The possibility that the complaint or problem has been caused by a malicious act (see Section 8.7);
p. The level of deception of any fraudulent activity involved

5. When a Food Authority becomes aware of a food incident it should take action to protect public health and safety at the earliest opportunity, including if necessary detaining and or seizing the food concerned if it is located within the Food Authority’s area (see Section 19).

6. Food Authorities should also consider the use of other powers under the Food Hygiene (Scotland) Regulations 2006 or the Act as appropriate, relevant to the circumstances involved.

7. 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 of the food safety requirements of that Regulation, the Food Authority should confirm that the FSA is also aware, (this may be done via the Scottish Food Incidents Team via the FSA website and or by direct contact with the FSA Scotland Office.

8. Responsibility for action at local level remains with the Food Authority unless the FSA notifies the Food Authority otherwise.

8.10 Localised Food Incidents – Media Relations

1. In the event of a localised food incident, the Food Authority may issue a local press statement to alert the public to the issue. The relevant food business operator(s) should be consulted before the identity of a named business and or branded food is discussed with, or released to, the media. Such media releases should be sent to the FSA without delay. The Food Authority should notify the FSA immediately if the food business operator(s) proprietors and or their designated authorised representative of the food establishment raises objections to the release of such information into the public domain.
8.11 Action by the Food Authority – ‘Non Hazardous’ Food Incidents

1. Significant food incidents that are not food hazards should be reported to FSA immediately. In determining significance, consideration should be given to the following factors:
   
a. Breaches of food law;
b. Possible requirement for a co-ordinated response;
c. The disadvantage to consumers;
d. Disproportionate impact on a sector of the population;
e. Distribution beyond the UK;
f. Reputational damage to Scotland (or the UK);
g. Public concern;
h. Likelihood of media interest,

2. Where a Food Authority is in doubt about whether a ‘Non Hazardous’ food incident requires to be reported to FSA, the issue should be discussed with FSA for clarification.
9 Communication

9.1 Disclosure of information
(See also the Practice Guide)

1. There will be circumstances in dealing with communications when confidentiality, data protection and human rights issues arise. In such circumstances, the Food Authority must apply the law and general principles set out in relevant legislation and case law to the specific facts with which they are dealing. This is best done at a local level, and local administrators should consult their own Legal Department.
10 Food Alerts Etc.

10.1 Introduction

1. The FSA utilises four different communications to raise awareness of food incidents.

a. **Food Alert For Action (FAFA)** - communication from the FSA to a Food Authority concerning a food hazard or other food incident, where specific action is required to be undertaken by the Food Authority. A “Food Alert Update” should be read accordingly.

b. **Recall Information Notice (RIN)** – 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.

c. **Withdrawal Information Notice (WIN)** - advising of a withdrawal of a food, where no specific action is required to be undertaken by the Food Authority. Withdrawal relates to food withdrawal from the food business operator.

d. **Allergy Alert** - to quickly communicate allergen risks directly to the consumer. Food Authorities receive copies of these Allergy Alerts for information purposes only.

2. FAFAs are primarily communications with Food Authorities regarding food incidents. RINs, WINs and Allergy Alerts are all primarily consumer focused and are shared with LAs for information.

10.2 Responding to Food Alerts For Action (FAFA)

1. Food Authorities should ensure that their documented procedure for dealing with food incidents\(^{49}\) includes the effective response to food alerts issued by the FSA.

2. This documented procedure should be developed in consultation with:

   a. Members of the relevant Food Liaison Group;
   b. Health Protection Scotland (HPS);
   c. Public Analyst;
   d. Consultant in Public Health Medicine (EH/CD);
   e. Relevant officers of the Food Authority, e.g. Lead Food Officer, Emergency Planning Officer etc.

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\(^{49}\)Refer to the Framework Agreement on Local Authority Food Law Enforcement.
3. The documented procedure must include, as a minimum, the following:

   a. Details, including contact details, of the Lead Officer for such matters;
   b. Any arrangements for the reception of and response to Alerts received outside office hours;
   c. 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;
   d. Arrangements for the liaison with other relevant bodies, including neighbouring Food Authorities, both within and outside normal office hours;
   e. Arrangements to provide adequate staff resources to allow effective response to alerts; and
   f. Arrangements to provide adequate equipment, including access to Council Offices out of hours, to allow an effective response to be made.

10.3 Facilities for Receiving Food Alerts and Updates etc.

1. Food Authorities should have facilities to receive food alerts from the FSA by an electronic mail system that is acceptable to the FSA. Food Authorities should have in place systems to ensure that food alerts can be responded to outside normal working hours.

2. Food Authorities should advise the FSA of their electronic mail address and of any changes to these details at the earliest opportunity.

10.4 Out of hours Services

1. Food Authorities must advise the FSA of emergency telephone numbers on which responsible officers may be contacted 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.

2. The Food Authority should also proactively advise the FSA of any changes to these details at the earliest opportunity.

3. Where any specific action is required to be undertaken urgently outside of normal working hours, a telephone call will be made to the nominated out of hours contact point of the Food Authority to confirm correspondence distributed by e-mails.
10.5 Action by Food Authorities

1. Food Authorities must ensure that any action specified by the FSA in a Food Alert For Action is undertaken promptly and in accordance with any risk assessment carried out by the FSA.

2. If Food Authorities propose to take alternative actions, they should 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 nominated FSA contact/s immediately.

10.6 Media Relations – Food Alerts

1. Food Authorities wishing to enhance local publicity may where permitted by the FSA use a press release and or 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.

2. If Food Authorities wish to display Food Alerts for Action, RINs, WINs or Allergy Alerts on their websites they should ensure that any material from FSA is edited to specify what local action has been taken in response. It should also include local contact information.
11 FSA Communication and Guidance

11.1 Introduction

1. This Section requires Food Authorities to take appropriate action on FSA guidance on the effective enforcement of food law.

11.2 Guidance Issued to Food Authorities

1. The FSA will, from time to time, need to issue enforcement guidance or communicate with Food Authorities to ask them to take action, to pass on information, or for other reasons connected with the effective enforcement of food law.

2. Such communications may be by letter, fax and or e-mail and will be clearly identified as communications to which this Section applies. They will be sequentially referenced and include details of any action required to be taken by the Food Authority.

3. Food Authorities should have arrangements in place to determine what action is appropriate locally on receipt of such communications and to bring them to the attention of their authorised officers if necessary.

11.3 Enforcement Consistency

1. The consistent application and enforcement of food law by Food Authorities is essential to ensure the protection of consumers and the fair treatment of food businesses.

2. Food Authorities should therefore have due regard to enforcement guidance issued by, jointly with, or on behalf of the FSA.

3. The Food Authority should have regard to any advice issued by the SFELC\(^50\).

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\(^50\) Scottish Food Enforcement Liaison Committee [http://food.gov.uk/enforcement/enfcomm/sfels/](http://food.gov.uk/enforcement/enfcomm/sfels/)
12 Information to be supplied to the FSA

12.1 Information required by the FSA in relation to specific food issues:

1. This section deals with the information required by the Agency in relation to:

   a. Food hazards:
   b. Approvals and other matters under the EU food hygiene Regulations;
   c. Matters relating to European liaison arrangements;
   d. Lead officers;
   e. Electronic mail addresses; and
   f. Emergency telephone numbers.

12.2 Matters Relating to Food Incidents

1. Food Authorities must notify the FSA as soon as they become aware of one of the following:

   a. Serious localised food hazard;
   b. Non-localised food hazard;
   c. Serious localised outbreak of food-borne illness;
   d. Withdrawal or recall of food by a food business operator due to non-compliance with the food safety requirements of Regulation (EC) No 178/2002 (Article 19);
   e. Suspected cases of food fraud;
   f. Significant ‘non-hazardous’ food incidents.

12.3 Concerns about industry Practice

1. Food Authorities must notify the FSA if they have concerns about practices in any approved establishment that appear to be in contravention of food law, where the food business operator contends that the practice adopted is based on an industry or sector-wide practice. Any such notification is intended to assist in any national co-ordination of a solution and is without prejudice to the overriding need to protect consumers and the duty to ensure compliance through the use of appropriate sanctions.

12.4 Matters Relating to Establishments Subject to Approval under Regulation (EC) No 853/2004

1. Food Authorities must notify the FSA:

   a. When an establishment has been approved or conditionally approved;
   b. Where an approved establishment ceases activities that are the subject of the approval or conditional approval;
c. Where an approval or conditional approval has been withdrawn or suspended;
d. Where an approval has been refused;
e. Where a live bivalve mollusc purification centre or modification to existing establishment is proposed (see Section 34.11);
f. Where they have designated a live bivalve mollusc relaying area (see Section 34.12). The notification should include the relevant details of the area and any specified operating conditions;
g. Where consideration is being given to the issue of a Closure Notice to restrict the harvesting of live bivalve molluscs (see section 36.6).

12.5 Quality of Live Bivalve Mollusc Production and Relaying Areas

1. Food Authorities responsible for live bivalve mollusc production or relaying areas must notify the FSA where sample results suggest a significant variation in the quality of such areas (see Section 34.12 and 36.6).

12.6 Matters Relating to the Delegation of Tasks Related to official controls

1. Food Authorities responsible for the delegation of specific tasks to independent third parties (control bodies\(^51\)) must provide the FSA with details of the control body and the tasks delegated to it.

12.7 Matters Relating to Liaison Arrangements With Other Member States

1. Food Authorities must notify the FSA whenever they become aware of a trans-border matter that should be referred directly to the FSA (see Section 13).

12.8 Lead Officers

1. Food Authorities must notify the FSA of the name of their appointed lead officer who has operational and management responsibility for food hygiene and safety matters and/or for food standards matters, and notify any changes to these details and or change to any alternative arrangements which may be in place (see Section 4.7).

12.9 Electronic Mail Addresses

1. Food Authorities must notify the FSA of their electronic mail address and notify any changes to these details.

\(^{51}\) As defined in Article 2(5) of Regulation 882/2004
13 Liaison with Other Member States

13.1 Introduction

1. 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 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 Authorities in different Member States.

2. 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.

3. 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.

13.2 Trans-border Issues

1. Trans-border matters fall into three broad categories:

   A. Trans-border matters that need to be referred directly to the FSA;
   B. Trans-border matters reported to the FSA after liaison has taken place;
   C. Routine liaison between Food Authorities and food control authorities in other Member States.

13.3 A. Trans-border matters to be referred directly to the FSA

1. Trans-border matters (Category A) to be referred directly to the FSA are as follows:

   a. The identification of foods which appear to pose a risk to public health or safety;
   b. Enquiries about a particular product which has been examined and the microbiological condition of which gives cause for concern;
   c. The identification of foods which relate to previously identified food warnings, frauds or hazards;
   d. Cases where malicious tampering of food is suspected;
   e. Circumstances in which food products have been removed from the UK market with or without the agreement of the retailer or supplier;
   f. Cases in which the authorised officer suspects that other significant national or EC policy matters are at issue;
   g. Where repeated non-compliance has been identified in connection with different batches, lots or consignments from the same source.
13.4 B. Trans-border matters reported to the FSA after liaison has taken place

1. Trans-border matters (Category B) reported to the FSA after liaison has taken place are as follows:

   a. Any issue when, after investigation, liaison or enquiry, it appears that circumstances as set out in the preceding Section 13.3 apply;
   b. Cases involving enforcement authorities in other EC Member States where there is undue delay, equivocation or a refusal to undertake action which appears to be warranted;
   c. Circumstances in which it appears that elements of the national food law of one Member State conflicts with that of another;
   d. 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 should be informed of it.

13.5 C. Routine Liaison between Local Food Control Authorities of Member States

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

2. Matters of routine liaison between local food control authorities of Member States under Category C would include:

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

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

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

13.7 Enquiries from Other Member States

1. Food Authorities should 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 should take the following action:
   a. Acknowledge receipt of the request and advise the originating party that it is being dealt with;
   b. Investigate if necessary;
   c. Take appropriate enforcement action, if necessary;
   d. Inform the originating party of the results of any enquiries, inspections, or other enforcement action, either directly or through the FSA;
   e. Ensure that responses to requests are open, helpful and provided without undue delay; and
   f. Keep the originating party updated on progress when action is ongoing and the outcome will not be known for some time;

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

13.8 Disclosure of Information to Other Member States

1. 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 “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”.

2. Food Authorities should therefore ensure that any release of information is compatible with national law including that relating to Data Protection and Freedom of Information (see also the Practice Guidance).
14 General Enforcement: Approach to Enforcement

14.1 Introduction

1. This Section lists reference materials of which Food Authorities should take account. It requires each Food Authority to document its Food Law Enforcement Policy and keep it up to date. It requires that direct communication with multi-site food businesses should normally be with the head office unless the business has agreed other arrangements. A clear distinction between statutory requirements and good practice must be made in all communications with food businesses. Where appropriate, decisions to report matters to the Procurator Fiscal should be taken at the earliest opportunity. Where, on the other hand, it is decided to adopt an informal approach, it should be explained to the food business operator what action is needed to secure compliance.

14.2 Enforcement Information

1. Food Authorities should ensure that authorised officers have up to date information readily available to enable them to carry out their duties competently.

2. This includes; relevant legislation, this Code, UK Guides to Good Practice where appropriate, guidance issued by the FSA, LGA and or SFELC, relevant industry codes of practice, and appropriate technical literature.

14.3 Reasonableness, Proportionality and Consistency

1. Food Authorities should ensure that enforcement action taken by their authorised officers is reasonable, proportionate, risk-based and consistent with good practice.

2. Authorised officers should take account of the full range of enforcement options. This may include educating food business operators, giving advice, informal action, sampling, detaining and seizing food, serving Hygiene Improvement Notices, Improvement Notices, Remedial Action Notices Hygiene Prohibition procedures, prohibition procedures and making a report(s) to the Procurator Fiscal.

3. Except where circumstances indicate 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 and or education and informal action; and only move to more formal action where the informal approach does not achieve the desired effect. This should lessen the likelihood of a legal challenge.
4. However, where the contravention appears to relate to a deliberate act to mislead and or defraud consumers and or other food business operators and is considered to be a criminal offence; the graduated approach should not be applied, and the default position should be to consider submitting a report to the Procurator Fiscal.

5. In considering whether to initiate enforcement action, Food Authorities should take account of the following:

- Reports to the Procurator Fiscal – A Guide For Non-police Reporting Agencies;
- The Enforcement Concordat;
- The Food Authority’s Enforcement Policy

### 14.4 Food Law Enforcement Policies

1. Each Food Authority must have an up to date, documented Food Law Enforcement Policy which is readily available to food business operators and or food business establishments, and consumers.

2. The Policy must 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.

3. Article 54 of Regulation (EC) No 882/2004 provides for appropriate enforcement measures.

4. Food Authorities should have regard to any advice issued by the FSA, and SFELC and LGA when drafting their Food Law Enforcement Policies.

5. 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.

6. Authorised officers should implement their Food Authority’s Food Law Enforcement Policy, which should reflect all the factors set out in Section 14.3.

7. Departures from the Policy should be exceptional and the reasons for any departure should be recorded.

8. 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, in the case of new businesses, an assessment of the food business operator’s willingness to undertake the work identified by the officer and whether it involved a deliberate act to mislead or defraud consumers or other food business operators.

52 See the Framework Agreement on Local Authority Food Law Enforcement.
9. 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 reports made to the Procurator Fiscal etc., are used as an indicator of performance in the carrying out of official controls.

14.5 Communication with Multi-site Food Businesses

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

2. Direct communications between Food Authorities and multi-site food businesses should normally be with the Head Office and or registered office of the food business establishment concerned unless the food business establishment has given a different address for communications to be sent.

3. Documents that are left by the authorised officer with on-site personnel at the food business establishment should also be copied to the relevant Head Office or other address unless the food business establishment indicates otherwise.

14.6 Mandatory Requirements and Advice

1. A clear distinction between action needed to meet statutory requirements, and recommendations about good and or best practice should be made in all communications with food business establishments.

2. All correspondence should identify each contravention and the measures which, in the opinion of the authorised officer, could be taken in order to secure compliance. Correspondence should contain an indication of the time scale suggested for achieving compliance to allow steps to remedy non-compliance to be planned and prioritised. The indication of this timescale for compliance does not require the Food Authority to revisit to monitor compliance. Revisits such as secondary visits, should be conducted in accordance with Section 28.4.

3. Standard documents, circulars, booklets and other publications issued by the Food Authority should be relevant, accurate and reflect current practice. Food Authorities should be prepared and available to discuss letters, circulars etc. with any food business operator and or proprietor to whom they have been sent and or issued.
14.7 Use of Food Safety Act 1990 and Regulations Made Under the Act

1. Food Authorities should deal with food hygiene matters under the Food Hygiene (Scotland) Regulations 2006 and food standards matters under the Act. However, 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 remain subject to the provisions of the Act and Regulation (EC) No 178/2002. Appropriately authorised officers may use enforcement powers under the Act and Regulations made under the Act to enforce in respect of such activities. An example would be enforcement action taken under the General Food Regulations 200453 (made under the Act) in respect of a one-off event, such as a wedding reception that resulted in an outbreak of food poisoning i.e. the sale or supply of unsafe food in contravention of Article 14(1) of Regulation (EC) No 178/2002.


(See also the Practice Guidance)

1. The right to privacy and respect for personal property are key principles of the Human Rights Act 1998. Powers of entry, search and seizure should be fully and clearly justified before use because they may significantly interfere with the occupier’s privacy. Authorised officers should consider if the necessary objectives can be met by less intrusive means.

2. Section 32(4) of Act and Regulation 14(5) of the Food Hygiene (Scotland) 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 to help accurately identify the material sought or to advise where certain evidence is most likely to be found and how it should be dealt with. It does not give an authorised officer any right to force entry to search or seize property but it does give the other person the right to be on the premises during the search without the occupier’s permission.

3. In all cases authorised officers should:
   a. Exercise their powers courteously and with respect for persons and property,
   b. In circumstances where a warrant had been obtained and is appropriate, only use reasonable force when this is considered necessary and proportionate to the circumstances.
   c. Note that if the provisions of the Act, the Food Hygiene (Scotland) Regulations 2006 and this Code are not observed, evidence obtained from a search may be open to question.

53 SI 2004 No. 3279
14.9 Informal Approach

1. An authorised officer who decides to adopt an informal approach in accordance with the Food Authority’s Enforcement Policy to secure compliance with Food Law should, where appropriate, follow the procedures set out in the Home Authority Principle.\(^{54}\)

2. Any subsequent correspondence with the food business operator concerned by the Home, originating or enforcing authority, should contain sufficient information to enable the food business operator to understand exactly what action they are expected to take, and why the action is necessary.

3. Correspondence should be treated as outlined in Section 14.6. Required action should be discussed and, if possible, agreed with the food business operator.

14.10 Reporting to the Procurator Fiscal

1. The decision to submit a report to the Procurator Fiscal (PF) should be taken at the earliest opportunity.

2. Before deciding whether a report should be made to the PF, Food Authorities should consider a number of factors:

   a. The hierarchy of enforcement structure indicates that a report to the PF is appropriate as opposed to use of, say, informal action or an enforcement notice. (Authorised officers should be aware, however, that if a Hygiene Improvement Notice or similar is used, it too is a matter, which can go before the Court, and the authorised officer must be able to justify his actions. The criteria below will be of assistance.);

   b. That the Food Authority’s Enforcement Policy has been adhered to;

   c. The sufficiency of the evidence.

   d. Of particular note are the following factors:

      - The likely cogency of any important witness, and their willingness to co-operate;
      - The alleged person or persons responsible have been identified;
      - Any explanation offered by the suspect;
      - The likelihood of the suspect being able to establish a defence - in particular a due diligence defence;
      - The public interest test has been satisfied.

\(^{54}\) governed by a Joint Statement of Commitment (JSoC) signed by the Better Regulation Delivery Office (BRDO, formerly the Local Better Regulation Office), the Trading Standards Institute (TSI) and the Chartered Institute of Environmental Health (CIEH)
3. Factors favouring submitting a report to the PF include:
   a. The seriousness of the offence; (refer to Section 8)
   b. The suspect’s previous convictions;
   c. The contravention relates to a deliberate act to mislead or defraud consumers or other food business operators.

4. There are various factors against submitting a report to the PF including:
   a. The offence was committed as a result of a genuine mistake or misunderstanding (this must be balanced against the seriousness of the offence);
   b. Whether any other action would be more appropriate.

5. However, it is important that the authorised officers appraise the Procurator Fiscal fully on the public health aspects of the case, including the public health basis for the legal requirements which have been breached, so that they can, in turn, impress upon the Court the seriousness of the charges.

6. Authorised officers must be able to explain the reason(s) for submitting a report to the PF and record that reason(s), which may later be referred to in Court.
15 Hygiene Improvement Notices and Improvement Notices

15.1 Introduction

1. This Section deals with the use of Hygiene Improvement Notices under Regulation 6 of the Food Hygiene (Scotland) Regulations 2006. It then deals with the use of Improvement Notices under Section 10 the Act.

2. A model form for use in connection with Regulation 6 of the Food Hygiene (Scotland) Regulations 2006 can be found at Annex 7. 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 Act.

15.2 When to use Hygiene Improvement Notices (Food Hygiene (Scotland) Regulations 2006 Regulation 6

(See also Section 4.9.1)

1. Hygiene Improvement Notices may be appropriate in any of the following circumstances or a combination thereof:

   a. Formal action is proportionate to the risk to public health;

   b. There is a record of non-compliance with breaches of food hygiene or food processing regulations;

   c. The authorised officer has reason to believe that an informal approach will not be successful.

15.3 When Hygiene Improvement Notices are not appropriate

1. The Hygiene Improvement Notice procedure would not be appropriate in the following circumstances:

   a. Where the contravention might be a continuing one, for example, personal cleanliness of staff and a notice would only secure an improvement at one point in time;

   b. 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 or Remedial Action Notice may be appropriate; and

   c. Where there is a breach of good hygiene practice but no failure to comply with an appropriate regulation.
15.4 When to use Improvement Notices (Section 10 of the Act) (see also Section 4.9.2)

1. Food authorities should deal with breaches of the Food Hygiene (Scotland) Regulations 2006 by using the enforcement powers provided by those Regulations (such as Hygiene Improvement Notices under regulation 6). However, where legislation such as the Animal By-products (Identification) Regulations 1995 is involved, they should issue an improvement notice under Section 10 of the Act.

15.4.1 When Improvement Notices are not appropriate

1. The improvement notice procedure would not be appropriate 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 would be the only formal remedy which would have immediate effect.
16 Prohibition Procedures (See also Section 4.9.3)

16.1 Introduction

1. This Section deals first with
   a. the use of Hygiene Emergency Prohibition Procedures under Regulation 8 of the Food Hygiene (Scotland) Regulations 2006 and the associated Voluntary Closure Procedures
   b. The Prohibition of Persons under Regulation 7.
   c. The use of Emergency Prohibition Procedures under Section 12 of the Act and associated Voluntary Closure Procedures
   d. The prohibition of persons under Section 11 of the Act.

2. Model forms for use in connection with Regulations 7 and 8 of the Food Hygiene (Scotland) Regulations 2006 can be found at Annex 7. Food Authorities must continue to use the prescribed forms set out in the Food Safety (Improvement and Prohibition - Prescribed Forms) Regulations 1991 in connection with Sections 11 and 12 of the Act.

16.2 The Food Hygiene (Scotland) Regulations 2006 (as amended) Procedures

16.2.1 When to Use Hygiene Emergency Prohibition Notices (Regulation 8)

1. Unless the use of voluntary procedures is more appropriate in the circumstances, Hygiene Emergency Prohibition Procedures should be used if an authorised officer has evidence that the health risk condition is fulfilled. 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 Sheriff Court for a Hygiene Emergency Prohibition Order.

16.2.2 Health Risk Conditions Where Use of Hygiene Prohibition Procedures May be Appropriate

1. The following sections provide examples of circumstances that may show that the health risk condition as defined by Regulation 7(2) / Regulation 8(4) is fulfilled i.e. there is an imminent risk of injury to health, and where 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.
16.2.3 Health Risk Conditions Where Prohibition of Premises May be Appropriate

a. Activity by rats, mice, cockroaches, birds or other vermin, serious enough to result in the actual contamination of food or a significant risk of contamination;

b. Very poor structural condition and/or 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 and or a significant risk of food contamination;

c. Drainage defects or flooding of the establishment, serious enough to result in the actual contamination of food or a significant risk of food contamination;

d. Premises or practices which seriously contravene Food Law and have been or are implicated in an outbreak of food poisoning;

e. Any combination of the above, or the cumulative effect of contraventions which, taken together, represent the fulfilment of the health risk condition.

16.2.4 Health Risk Conditions Where the Prohibition of Equipment may be Appropriate

a. Use of defective equipment, e.g. a pasteuriser incapable of achieving the required pasteurisation temperature;

b. Use of equipment for the processing of high-risk foods that has been inadequately cleaned or disinfected or which is grossly contaminated and can no longer be properly cleaned.

c. Dual use of complex equipment, such as vacuum packers, slices and mincers for both raw and ready–to–eat foods.

d. Use of storage facilities or transport vehicles for primary produce where the storage facilities or transport vehicles have been inadequately cleaned or disinfected.

16.2.5 Health Risk Conditions Where Prohibition of a Process May be Appropriate

a. Serious risk of cross contamination;

b. Failure to achieve sufficiently high processing temperatures;

c. Operation outside critical control criteria, for example, incorrect pH of a product which may allow Clostridium botulinum to multiply;

d. The use of a process for a product for which it is inappropriate.
16.3 Health Risk Condition No Longer Exists: Certificate (Regulation 7(6)(a) and Regulation 8(8)) / Health Risk Condition Remains in Existence: Certificate (Regulation 7(7)(b) and Regulation 8(9)(b)

1. In respect of Hygiene Prohibition Orders (excluding Hygiene Prohibition Orders against persons, imposed under Regulation 7(4) by a Court), Hygiene Emergency Prohibition Notices and Hygiene Emergency Prohibition Orders the Food Authority should issue a certificate to the food business operator within three days, if it is satisfied that the health risk condition no longer exists.

2. 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 is satisfied that the health risk condition no longer exists it must issue a notice of that determination to the food business operator and should do so within three 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 and should do so within three days.

16.4 Voluntary Procedures (Food Hygiene)

1. 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) / Regulation 8(4) i.e. an imminent risk of injury to health exists. An authorised officer may suggest this option to the food business operator but only when they are able to use Regulation 8 of the Food Hygiene (Scotland) Regulations 2006. If in doubt, food business operator should be advised to take legal advice.

2. Any voluntary closure agreement should 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 authorised officer's prior approval.

3. If the manager of a food business offers to close voluntarily, the authorised officer should confirm that the manager has the authority of the food business operator to agree to such voluntary action.

4. The authorised officer should ensure that frequent checks are made on the establishment to ensure that it has not re-opened.

5. If the food business operator offers to close voluntarily, the authorised officer should:
   a. Consider whether there is a risk of the establishment being re-opened without the authorised officer's knowledge and or agreement (if this were to cause foodborne disease and or infectious intestinal disease the Food Authority could be criticised for not having used statutory powers);
b. Recognise that there is no separate 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 remain available;

c. Explain to the food business operator that, by making the offer to close, any right to compensation is lost.

d. When the authorised officer considers that conditions have improved to a satisfactory standard which would allow the establishment to re-open, the food business operator should be informed of this in writing.

16.5 **Action when a Hygiene Prohibition Order has been made against a Person (Regulation 7(4))**

1. 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.

2. The Food Authority should notify the Royal Environmental Health Institute of Scotland as soon as possible after a Hygiene 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:
   
   a. Case number
   b. Court details
   c. Date of Hygiene Prohibition Order
   d. Date(s) of offence
   e. Nature of offence(s)
   f. Regulation/Section number under which offence was made
   g. Penalties
   h. Name of food business operator or manager
   i. Name of the business
   j. Food Business establishment address including post code
   k. Business type/main activity (e.g. catering, retail etc.)
   l. Details of assumed names.
16.6 Lifting of Hygiene Prohibition Orders Against Persons (Regulation 7(6)(b) and Regulation 7(8))

1. Hygiene Prohibition Orders against persons imposed under Regulation 7(4) by a Court may 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.

2. The Food Authority should also notify REHIS at the earliest opportunity after they learn that a Hygiene Prohibition Order against a person has been lifted in their area.
17 Food Safety Act 1990 Procedures

17.1 When to Use Emergency Prohibition Procedures (Section 12 of the Act)

1. Unless the use of voluntary procedures is more appropriate in the circumstances, emergency prohibition procedures should 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 may be served on the proprietor, followed by an application to a Sheriff's Court for an Emergency Prohibition Order.

17.2 Imminent Risks of Injury to Health where the use of Emergency Prohibition Procedures may be appropriate

1. The following are examples of circumstances that may 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 not prescriptive or exhaustive and are for illustrative purposes only.

   a. A process or treatment that introduces a teratogenic chemical (one that damages a developing foetus in the womb) into food, which may cause injury to the developing foetus, but the damage, will not be apparent until the baby is born.

   b. A process or treatment that introduces a genotoxic chemical (one that damages genes or chromosomes) into food the effects of which may not manifest themselves until the effected child develops or a malignant tumour occur at some time in the future.

17.3 Voluntary Procedures (Food Standards)

1. Voluntary procedures to remove an imminent risk of injury to health may 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 authorised officer may suggest this option to the proprietor or manager, but only when they are able to use Section 12 of the Act. If in doubt, the proprietor or manager should be advised to take legal advice.

2. Any voluntary closure agreement should 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 authorised officer’s prior approval.

3. If the manager of a food business offers to close voluntarily, the authorised officer should confirm that the manager has the authority of the proprietor to agree to such voluntary action.

4. The authorised officer should ensure that frequent re-visits are made on the establishment to ensure that it has not re-opened.
5. If the proprietor of a food business offers to close voluntarily, the authorised officer should:

a. Consider whether there is a risk of the establishment being re-opened without the authorised officer’s knowledge and/or agreement (if this were to cause illness, the Food Authority could be criticised for not having used statutory powers);

b. Recognise that there is no separate legal sanction against a proprietor and or food business operator who re-opens for business after offering to close, although enforcement action for the actual breaches remains available;

c. Explain to the proprietor and or food business operator that, by making the offer to close, any right to compensation if a Court subsequently declines to make an Emergency Prohibition Order is lost.

17.4 Action When a Prohibition Order has Been Made Against a Person
(Section 11(4) of the Act)

1. A 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 should notify REHIS 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:

a. Case number
b. Court details
c. Date of Prohibition Order
d. Date(s) of offence
e. Nature of offence(s)
f. Regulation/Section number under which offence was made
g. Penalties
h. Name of food business proprietor or manager
i. Name of the business
j. Food business establishment address including post code
k. Business type/main activity (e.g. catering, retail etc.)
l. Details of assumed names.

17.5 Lifting of Prohibition Orders Against Persons (Section 11(6)(b) and (Section 11(8) of the Act)

1. Prohibition Orders against persons, imposed under Section 11 by a Court may 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(6) and (8) of the Act.

2. The Food Authority should also notify REHIS at the earliest opportunity after they learn that a Prohibition Order made against a person has been lifted in their area.
18 Remedial Action Notices (RAN) and Detention Notices (See Section 4.9.4 of this code)

18.1 Introduction

1. Powers to issue Remedial Action Notices (RAN) (and Detention Notices) are provided by Regulation 9 of the Food Hygiene (Scotland) Regulations 2006. A model Remedial Action Notice, a model Detention Notice, a model Notice of withdrawal of a Remedial Action Notice and a model Notice of Withdrawal of a Detention Notice can be found at Annex 7.

2. Remedial Action Notices may be issued in relation to any food establishment.

3. Detention Notices under Regulation 9 of the Food Hygiene (Scotland) Regulations 2006 may be served in establishments subject to approval under Article 4(2) of Regulation (EC) No 853/2004. For the seizure of food in non-approved establishments please see Section 19.

18.2 Remedial Action Notices / Detention Notices

1. Regulation 9 provides for Authorised Officers to serve a Remedial Action Notice if any of the requirements of the “Hygiene Regulations”, as defined by Regulation 2 of the Food Hygiene (Scotland) Regulations 2006, 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.

2. Regulation 9 also includes the provision for the detention of any food in relation to approved establishments, including the taking of samples for the purposes of examination, by the service of a Detention Notice.

3. The following are examples of circumstances that may lead to the issue of a Remedial Action Notice in respect of an establishment. These examples are not prescriptive or exhaustive and are for illustrative purposes only;

   a. 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 (Scotland) Regulations 2006;

   b. 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;

   c. Where the rate of operation of the business is detrimental to its ability to comply with the Regulations.
4. The following are examples of circumstances that may lead to the issue of a Detention Notice in respect of an approved establishment. This example is not prescriptive or exhaustive and is for illustrative purposes only;

*Where there are indications or suspicions that food at an approved establishment is unsafe and therefore examination is necessary, including taking samples.*

5. Such action should be proportionate to the risk to public health and where immediate action is required to ensure food safety. A Remedial Action Notice may 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.

6. As soon as the authorised officer is satisfied that the action specified in a Remedial Action Notice has been taken, the notice must be withdrawn by means 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. If an authorised officer considers it necessary to serve a Remedial Action Notice owing to the conditions or practices found on the inspection of any establishment the authorised officer should also consider whether food at the establishment should be detained or seized.
19 Seizure and Detention (See also Section 4.11.1)

19.1 Introduction

1. This Section describes the circumstances when the use of detention and seizure powers under Section 9 of the Act, is appropriate including after food has been certified in accordance with Regulation 27 of the Food Hygiene (Scotland) Regulations 2006. It also covers the procedures for serving and withdrawal of notices; voluntary surrender; and the destruction or disposal of food.

2. 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 Act, including after food has been certified in accordance with Regulation 27 of the Food Hygiene (Scotland) Regulations 2006.

19.2 The Food Hygiene (Scotland) Regulations 2006 Regulation 27

1. When food has not been produced, processed or distributed in compliance with the “Hygiene Regulations” as defined in Regulation 2 of the Food Hygiene (Scotland) Regulations 2006 an authorised officer may use Regulation 27 (see also Regulation 23 in this regard) of those Regulations to seize and detain the food by the use of Section 9 of the Act. Following the certification required by Regulation 27, the authorised officer should follow the advice set out in this Section in connection with the use of Section 9 of the Act.

2. 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 (Scotland) Regulations 2006 can be found at Annex 7.

19.3 Detention of Food

1. Unless the circumstances require immediate action, a decision to detain food should only normally be taken if it has been discussed with the owner or person in charge of the food and, if appropriate, with the manufacturer.

2. Where the authorised officer has served a detention of food notice, professional judgement should be used to determine whether food should be detained where it is, or moved elsewhere. If the authorised officer has any doubts about the security or physical care of the food, the detention notice should specify a place to which the food is to be moved.

3. If food is to be removed to another Food Authority’s area the authorised officer should notify that Food Authority and make any necessary arrangements for the food to be checked while it is being detained.

55 SI 1990 No. 2614
4. In all cases, but especially with highly perishable food, the authorised officer should act expeditiously at every stage and provide full information to those required to carry out analysis or examination of samples of the food.

5. If food is to be detained where it is found, the authorised officer should be satisfied that adequate arrangements can be made to ensure its security and prevent tampering. The authorised officer should organise periodic monitoring of the food throughout the period of detention. Before making such arrangements regard 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 authorised officer should 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.

**19.4 Seizure of Food**

1. When considering whether to seize food that has been detained, authorised officers should consider whether the food in question can be treated or processed before consumption and if so, whether the food, after treatment or processing, would be sound and wholesome and satisfy food safety requirements.

2. Arrangements for the treatment or processing of food in these circumstances should be agreed by the authorised officer and the owner or the person in control of the food and be subject to a signed, written undertaking.

3. Any arrangement that involves food being moved to the area of another Food Authority for treatment or processing, should be accepted by the receiving Food Authority before the agreement is concluded.

4. Arrangements should 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.

5. If the receiving Food Authority is unable to accept responsibility for ensuring that the food is properly processed or treated, the arrangement should not proceed.

6. Unless the preceding sections of this section apply, or the use of voluntary procedures is more appropriate, food should be seized if an authorised officer has evidence that it does not satisfy food safety requirements.

7. If evidence or information indicates that food that has already been detained should be seized, the authorised officer should serve a Food Condemnation Notification, warning of the intention to take the food before a Sheriff (or Justice of the Peace) and apply for its condemnation.
8. Food that has been seized should be dealt with by a Sheriff (or Justice of the Peace) as soon as is reasonably practicable, normally within two days, but if necessary longer to ensure that parties can attend, be represented or call witnesses should they so choose. Highly perishable food should be dealt with by a Sheriff (or Justice of the Peace) at the earliest opportunity.

9. The person in charge of the food, or the owner, should be given the opportunity of being present and represented should they so choose, when the food is dealt with by the Sheriff (or Justice of the Peace), although action should 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 proper service of notice of the hearing should be documented and retained to show the Court that was the case.

10. The authorised officer should ensure continuity of evidence whether or not there may be a subsequent report to the PF and should make every attempt not to leave the food which has been seized unattended.

19.5 Notices of Detention and Seizure

1. A Detention of Food Notice should be signed by the authorised officer who takes the decision to detain the food.

2. When food is seized, written notification of the seizure should be issued as soon as is reasonably practicable. This notification should include details of the type and quantity of the food seized, including any distinguishing marks, codes, dates etc.

3. A Food Condemnation Notification should be given to the person in charge of the food when the authorised officer intends to have the food dealt with by a Sheriff or Justice of the Peace. The notification may also be given to the owner of the food.

19.6 Withdrawal of Detention of Food Notice

1. The authorised officer should act as quickly as possible when evidence or information indicates that detained food can be released, and in any case within 21 days a Withdrawal of Detention of Food Notice should be served.

2. The decision to issue a Food Detention Withdrawal Notice should be taken either by the authorised officer who originally issued the notice or initiated the action or by another authorised officer with the relevant experience.

3. A Withdrawal of Detention of Food Notice should be served as soon as possible to prevent possible deterioration of the food. The notice need not be served by the authorised officer who made the decision, but may be served by any authorised officer.
19.7 Dealing with Batches, Lots or Consignments of Food

1. Article 14(6) of Regulation (EC) No 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”.

2. If a quantity of food of different types or batches is being detained, the authorised officer should issue a separate Detention of Food Notice in respect of each type or batch.

3. When considering whether to seize or detain a batch, lot or consignment, the authorised officer should take into account the following:
   a. The evidence available;
   b. The nature of the contamination;
   c. The nature and condition of any container holding the food;
   d. The risk to health;
   e. The quantity of food involved in relation to any sampling which has been undertaken.

19.8 Voluntary Procedures

1. Voluntary procedures to remove food that is not suitable for human consumption from the food chain may 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.

2. A receipt should be issued for food that is voluntarily surrendered to the Food Authority for destruction. The receipt should 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.

3. The receipt should include space for recording the time, place and method of destruction of the food, and these details should be recorded on the office copy by the authorised officer in due course and retained by the Food Authority.

4. 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 may have to bear the expenses itself.
19.9 Destruction or Disposal of Food

1. The Food Authority is responsible for ensuring the destruction of food that has been seized or voluntarily surrendered, and arrangements should be made for the food to be supervised until it can be dealt within the appropriate manner. If possible and if there is likely to be some delay before destruction, the food should be disfigured so as to prevent any possibility of it being returned to the food chain.

2. The Food Authority should ensure the total destruction of the food by incineration or some other appropriate method, or if total destruction is not possible, such 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.

3. Evidence of appropriate disposal must be obtained by the Food Authority and kept on file for any food that has been disposed of e.g. a copy of the relevant waste transfer note from a licensed waste disposal contractor under these arrangements.

Temperature Control Requirements

20.1 Introduction

1. This Section concerns the enforcement of Regulation 30 and Schedule 4 of the Food Hygiene (Scotland) Regulations 2006.

20.2 General Approach to Temperature Checks

1. Schedule 4 does not apply to any food business operation on ships and aircraft and those businesses to which Regulation (EC) No 853/2004 applies. Where applicable, the Schedule requires certain types of perishable food to be maintained within specified temperature ranges. The purpose of checking the temperature of such foods for enforcement purposes is to establish whether these requirements are being met, taking account of any exemptions or tolerances that may apply.


3. Authorised officers should normally adopt a staged approach to verifying compliance with the temperature requirements of the Regulations as follows:

**Stage 1** – a check of any temperature monitoring equipment used by the business, including any logs or records derived from it, and verification of the accuracy of temperature monitoring equipment by air temperature measurement if necessary;

**Stage 2** – measuring between-pack temperature of food without disturbing the state of the food or its individual packaging, although cases may be opened (non-destructive temperature checks);

**Stage 3** – measuring the temperature of the product itself (destructive testing).

4. If an authorised officer is satisfied after “Stage 1” or “Stage 2” that the relevant temperature requirements are being met, there is no need to move to the next stage and enforcement action should cease.

5. If there is no temperature monitoring system, or the authorised officer has reasonable doubt about the validity of the information derived from the system where there is one, the authorised officer should carry out a “Stage 2” check.

6. If the temperature measured at “Stage 2” gives the authorised officer reasonable doubt that the relevant temperature requirements are being met, the authorised officer should move on to “Stage 3” and measure the temperature of the food.
7. “Stage 3” product testing (destructive) methods must always be used to produce evidence for a report to the Procurator Fiscal.

8. The food business operator or manager should, if present, be invited to witness temperature measurement. This is especially important when evidence is being gathered with a view to possible legal proceedings.

20.3 Temperature Deviations Resulting in a Breach of Regulation 30 / Schedule 4 of the Food Hygiene (Scotland) Regulations 2006

1. Where the Food Business Operator suggests that specified temperatures have not been complied with for unavoidable reasons, the authorised officer should discuss the reasons with the food business operator and, where possible, seek agreement on action to prevent any recurrence.

2. Authorised Officers should always ensure that any measures taken by the food business operator with respect to food that has been exposed to temperatures in excess of, or below, those permitted by the Regulations are consistent with food safety, and take appropriate action to remove such food from the food chain if necessary.

3. If the food itself is out with prescribed temperature control and the authorised officer is of the opinion that the food has not been produced, processed or distributed in accordance with the Food Hygiene (Scotland) Regulations 2006 the authorised officer should normally deal with the food under Regulation 27 of the Food Hygiene (Scotland) Regulations 2006 (see also Regulation 23 in this regard). Voluntary procedures to remove food from the food chain may, however, be used in appropriate circumstances (see Section 16.4 and 17.3)

4. However the food may still be fit for consumption, even if it has not been kept in accordance with the Food Hygiene (Scotland) Regulations 2006 and the authorised officer should use professional judgement to determine the most appropriate action in the circumstances.

5. Authorised officers should enquire into the history of the food, in particular to ascertain whether it could previously have been exposed to temperatures not in accordance with the Food Hygiene (Scotland) Regulations 2006. Enforcement decisions should take account of the history of the food and whether it is consistent with food safety. Authorised officers may adopt an educative approach as the first step towards securing compliance, and discuss the requirements of the legislation with the food business operator to ensure they understand the controls, why they are needed and how they can be achieved.

6. When considering the requirement for a re-heating temperature of 82°C authorised officers should consider sympathetically any case made by the business where a re-heating temperature of 82°C would materially affect the quality of the food and where a lower temperature and time combination will achieve the same degree of food safety.
20.4 Checking and Calibration of Enforcement Measuring Thermometers etc.
(See also the Practice Guidance)

1. Thermometers and other temperature measuring devices used for inspection and, or enforcement purposes should be periodically tested and calibrated by a suitably accredited tester (e.g. the instrument manufacturer or a UKAS accredited laboratory or testing house) in accordance with any recommendations of the manufacturer and or supplier, to ensure accuracy, integrity and reliability. A certificate of such calibration should be obtained and retained.

2. Food Authorities should also check devices for accuracy at regular intervals between each calibration (e.g. against a reference thermometer used only for that purpose) to ensure they remain within relevant tolerances. Details of such checks should be recorded and these records retained.

3. Food Authorities should ensure that temperature measurements that are to be used in evidence should be taken with a thermometer or other measuring device that has a current certificate of calibration.
21 Food Waste

All relevant material on food waste is contained in the Practice Guidance.

22 Distance Selling and or Mail Order

All relevant material on distance selling and or mail order is contained in the Practice Guidance.

23 Bottled Waters

All relevant material on bottled waters is contained in the Practice Guidance.

24 Microbiological Criteria Regulation

All relevant material on Commission Regulation (EC) 2073/2005 on microbiological criteria for foodstuffs is contained in the Practice Guidance.

25 Import of Food from Third Countries

Significant volumes of food are routinely imported into the UK and it is important that effective arrangements are in place in Food Authorities to check imported food both at points of entry and inland. Food Authorities should have regard to the general guidance on enforcement contained in this Code in relation to their imported food enforcement control arrangements.

Further specific guidance on imported food control is provided in the Practice Guidance.
26.1 Introduction

1. This Section deals with responsibilities in relation to Regulation (EC) No 178/2002 on general Food Law. Food businesses have responsibility for ensuring food safety, quality and presentation under the Act, and for safety, presentation, the keeping of traceability records and withdrawal, recall and notification of unsafe food under Regulation (EC) No 178/2002. The General Food Regulations 2004 create offences for breaches of Regulation (EC) No 178/2002.

2. Food Authorities should make themselves aware of the main provisions, offences and defences of this legislation, all of which are available at: http://www.food.gov.uk/foodindustry/regulation/foodlaw/

3. Food Authorities have responsibility for enforcing these Regulations and taking appropriate action in cases of breach or possible breach; for details on what measures may be appropriate, see the sections in this Code on reporting to the Procurator Fiscal, Improvement Notices, Prohibition Procedures, Emergency Prohibition Procedures, detention of food, seizure of food, informal approaches etc.

4. Regulation 3 of the General Food Regulations 2004 gives Food Authorities specific powers with regard to:

   a. Imposing restrictions on placing food on the market and requiring its withdrawal from the market in certain circumstances;
   b. Require food business operators to make information as to the traceability of food available on demand to competent authorities
   c. Require food business operators to inform and collaborate with the Authority to avoid or reduce risks posed by a food.

27 Interventions

27.1 Introduction

1. This Section deals with interventions. It defines the different types of interventions that food authorities may use and the circumstances in which they should be applied.

2. 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 judgement 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.

3. 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'.

4. '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 Food Law.

5. Methods and techniques for carrying out tasks related to official controls are specified at Article 10 of Regulation (EC) No 882/2004. These include monitoring, surveillance, verification, audit, inspection, sampling and analysis.

6. In addition to official controls, interventions also include other activities that are effective in supporting food businesses to achieve compliance with Food Law such as the provision of targeted education and advice that takes place at food establishments, or information and intelligence gathering.

7. Interventions that are official controls must provide sufficient information to Food Authorities to establish that food related activities carried out at food establishments comply with Food Law. In line with the general obligations set out at Article 3 of Regulation (EC) No 882/2004, they should be carried out at all stages of production, processing and distribution to establish whether the requirements of relevant Food Law are being met.

8. An Interventions Programme is central to a local regulatory and enforcement regime, and Food Authorities must ensure that such a programme is appropriately and adequately resourced (see section 4).
27.2 Interventions

1. Interventions which are official controls include:
   a. Inspections
   b. Monitoring
   c. Surveillance
   d. Verification
   e. Audit
   f. Sampling where the analysis and or examination is to be carried out by an Official Laboratory.

2. Other interventions, i.e. those which do not constitute official controls include:
   a. Education, advice and coaching provided at a food establishment.
   b. Information and intelligence gathering (including sampling where the analysis or examination is not to be carried out by an Official Laboratory).

3. It is recognised that more than one type of intervention may be carried out during a single visit to a food business establishment. It is also recognised that the intervention approach used may be influenced by the findings during a visit to an establishment. In these cases, Food Authorities should record the basis for the choice of intervention(s) used in the establishment file, and for monitoring purposes, should record the most appropriate intervention.

27.3 Unannounced Official Controls

1. In accordance with Article 3(2) of Regulation (EC) No 882/2004, the general principle is that all official control interventions must be unannounced. Regulation (EC) No 882/2004 Article 3(2) states 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”

2. A Food Authority’s Intervention Programme should provide for food establishments to be subject to intervention at times when they are open for business, whether or not that coincides with the Food Authority’s normal hours of work. Food establishments that only operate at night, at weekends or in the early hours of the morning should be subject to interventions at these times. Professional judgement should be applied in respect of establishments subject to 24 hour opening in determining the most appropriate time(s) to carry out an intervention at such establishments.
3. In certain, exceptional, circumstances, there may be occasions when it is advantageous to give advance notice, particularly when the purpose of an intervention is to observe and or evaluate a particular process in operation. Authorised officers should exercise discretion in this area guided by the overriding aim of ensuring compliance with Food Law (see also Section 7 of the Code on obtaining entry to Crown Premises). In such circumstances (with the exception of relevant Crown Premises) it will be necessary to schedule unannounced visits within the intervention programme. Under no circumstances should all interventions at an establishment be pre-announced.

4. A Food Authority’s approach to interventions out of hours should be documented in its Food Service Plan.

5. If a food authority has difficulty complying with this requirement in relation to specific establishments, this must be raised with FSA.

27.4 Records pertaining to Official Control Interventions (see section 33)

1. Sufficiently detailed notes, including the appropriate aide memoire, of official control interventions must be produced and retained. These shall be sufficiently detailed to:

   a. Identify the full scope of the official control intervention
   b. Demonstrate the evidence identified and or examined to demonstrate both compliance and non-compliance with Food Law.

27.5 Food Standards Interventions

1. 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.

2. 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 should be based on the food standards interventions ratings that have been determined in accordance with Annex 5. Inspection has been the traditional method for authorities to ensure food business operators comply with Food Law and some authorities may decide that it is still the most effective intervention to utilise.

27.6 Food Hygiene Interventions

1. Regulation (EC) No 852/2004 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.

2. 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.
3. 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.

4. The programme should be based on the food hygiene interventions ratings that have been determined in accordance with Annex 5. (See Annex 10 for primary production.)

5. Food Authorities may choose to implement an intervention programme according to Annex 5A in regard to premises where sustained compliance is evident. The implementation of an intervention programme based on Annex 5A is optional and does not impact the scoring system detailed in Annex 5.

6. Inspection has been the traditional method for authorities to ensure food business operators comply with food law and some authorities may decide that it is still the most effective intervention to utilise.

27.7 Definitions

1. Article 2 of Regulation (EC) No. 882/2004 provides the following definitions of official controls:

*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.

*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.

*Surveillance* means the careful observation of one or more food businesses, or food business operators or their activities

*Verification* means the checking, by examination and the consideration of objective evidence, whether specified requirements have been fulfilled.

*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.

*Sampling for analysis* 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.
27.8 Inspections and Audits

27.8.1 Carrying out an inspection or audit

1. 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 judgement in selecting which elements of the inspection form to examine in detail. This will be dependent on what approach the inspection takes:

   a. **A Full Inspection**, which is a check on compliance with legal requirements in accordance with elements, set out in Section 28 of the Code. A full inspection will consider all aspects of a food business including structure, food safety management and management arrangements; or

   b. **A Partial Inspection**, which is an inspection that covers only certain elements of the inspection as laid down in the Practice Guidance.

3. It is not necessary to inspect every aspect of a food business at every inspection, however, where the scope of an inspection is limited, 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 (Annex 6 provides a model food business establishment intervention report form) provided to the food business operator.

4. 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 852/2004. Authorised 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:

   a. Audit of a complete food safety management system;

   b. Audit of selected elements of a food safety management system, where the system is complex;

   c. Audit of part of a system in relation to a particular product; or

   d. Audit of certain organisational arrangements, for example, temperature monitoring (see section 20 regarding food temperature checks).

5. Following an inspection, partial inspection, or audit, an authorised officer should consider revising the intervention rating of the establishment in accordance with Annex 5.
27.8.2 Initial Inspections of New Food Establishments

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

2. Food Authorities should 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 Section 27.2) in order to determine when to carry out the initial inspection.

3. New food establishments 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 should be determined.

4. An authorised officer carrying out the initial inspection of a new food establishment must:
   a. Establish the scope of the business and the relevant food law that applies to the operations taking place;
   b. 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;
   c. 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;
   d. Identify any actual or potential breaches of Food Law and, if appropriate, gather and preserve evidence;
   e. Determine relevant enforcement action and communicate to the food business operator an intention to carry out such action/s

27.8.3 Samples

1. All samples which are sent to an Official Laboratory constitute official control samples.57

2. Section 38.1 provides the definition of “formal” samples which is relevant to any possible legal proceedings in the Courts relating to the results of analysis and, or examination of samples.

57 A list of Official Laboratories is available on the Food Standards Agency website at: http://www.food.gov.uk/enforcement/foodsampling/foodcontrollabs
27.9 Frequency of intervention at establishments

1. Intervention ratings determine:
   a. The interval that should elapse between one intervention at a food establishment and the next; and
   b. The priority of the next intervention at that food establishment, relative to the other food establishments in the Food Authority’s planned intervention programme.

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

27.10 Primary Production is dealt with at Annex 10.

27.11 Establishments subject to Annex 5

1. Intervention programmes should be planned so that establishments receive an intervention no later than 28 days after the relevant date as detailed in Annex 5 or, where appropriate, Annex 5A. In circumstances outside the control of the Food Authority such as seasonal business closures, Food Authorities have the discretion to reschedule an intervention.

2. The band revisions, namely reduction in the width of the “C” category and increase the width of the “D” category allows local authorities to redirect resources to food establishments which present higher risks to food safety.

27.12 Establishments subject to Annex 5A

1. Food Authorities may opt to implement the intervention programme specified in Annex 5A; whereby interventions for food establishments with sustained compliance and or poor compliance are subject to a different frequency of intervention. The implementation of Annex 5A is optional; it exists to supplement the existing regime in Annex 5, it does not replace Annex 5.

2. Implementation of the optional Annex 5A intervention programme is intended to make more effective use of Local Authority resources to ensure robust resilient official food controls are in place in Scotland.
27.13 Establishments intervention rated category A or B for food hygiene or category A for food standards

1. The appropriate planned intervention for an establishment that has been given an intervention rating of A or B for food hygiene, or A for food standards, should be an inspection, partial inspection, or audit as defined in Section 27.8.1, which should be carried out at appropriate intervals in accordance with the prescribed frequencies specified in Annex 5.

2. Any other additional intervention, such as sampling or education and training should be recorded against the establishment for the purpose of monitoring enforcement actions but should not be used as the intervention planned by the intervention frequency as given in Annex 5.

27.14 Establishments intervention rated category C for food hygiene or category B for food standards

1. Establishments that have been given an intervention rating of C for food hygiene or B for food standards should receive an intervention at appropriate intervals in accordance with the prescribed frequencies specified in Annex 5. Such interventions should consist of an inspection, partial inspection, or audit until such time as 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 inspections, partial inspections, or audits and other official controls as defined in Section 27.2. This does not preclude Food Authorities from undertaking other additional interventions such as coaching or advisory visits.

2. For the purpose of this section 'broadly compliant', in respect of food hygiene, is defined as an establishment that has an intervention rating score of not more than 10 points under each of the following three parts of Annex 5: Part 2: Level of (Current) Compliance – Hygiene and Level of (Current) Compliance – Structure; and Part 3: Confidence in Management.

3. For the purposes of this section, 'broadly compliant', in respect of food standards, is defined as an establishment that has an intervention rating score of not more than ten points under each of the following parts of Annex 5.3: Part 2: Level of (Current) Compliance; and Part 3, Confidence in Management/Control Systems.

4. A visit to an establishment for the purpose of obtaining 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 authorised officer to determine the level of compliance.
27.15 Establishments intervention rated D for food hygiene.

1. Establishments that have been given an intervention rating of D for food hygiene should receive an intervention at appropriate intervals, in accordance with the prescribed frequencies specified in Annex 5. Such interventions can alternate between an intervention that is an official control and an intervention that is not an official control.

27.16 Establishments intervention rated category E for food hygiene or category C for food standards

1. Establishments that have been given an intervention rating of category E for food hygiene, or category C for food standards may be subject to an Alternative Enforcement Strategy (see Section 4.12 and Annex 5, Sections A5.2. (food hygiene) and A5.5 (food standards).

2. For establishments subject to approval under Regulation (EC) No 853/2004 and dairy farms the use of Alternative Enforcement Strategies is not an appropriate form of intervention. The intervention for such an establishment should be selected from those laid down in Section 27.2.

3. Food Authorities must ensure that these establishments continue to be subject to official controls to investigate complaints. These establishments must, as a minimum, be subject to an intervention by the Food Authority, which may take the form of an Alternative Enforcement Strategy, not less than once every three years for food hygiene and five years for food standards.

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

27.17 Revising the intervention type and intervention rating

1. The intervention rating(s) of a food business may only be revised at the conclusion of an inspection, partial inspection or audit, and in accordance with Annex 5 (or any amendment thereto that may be notified to Food Authorities by the FSA). An authorised officer must have gathered sufficient information to justify revising the intervention rating and the reasons for revision the rating must be recorded on the establishment file.

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

3. An explanation for the choice of intervention should be documented in the food establishment file in every case.
If when conducting a planned intervention, other than an inspection, partial inspection or audit an authorised officer establishes that the nature of a food business has changed substantially, or the level of compliance has deteriorated, the intervention should be changed to an inspection or partial inspection and the intervention rating revised as necessary. Equally, where new information arises, in the case for example of a justified compliant or poor sampling result, the Food Authority should reconsider both the scheduling and appropriateness of the next planned intervention for that establishment.

27.18 Timing of Interventions

1. To determine the appropriate timing of interventions, Food Authorities should have regard to all relevant and available information. This includes:

   a. The hours of operation of the food establishment
   b. Seasonal factors (where applicable)

2. A Food Authority’s Intervention programme must provide for food establishments to be subject to intervention at times when they are open for business, whether or not that coincides with the Food Authority’s normal hours of work. Food establishments that operate at night, at weekends or in the early hours of the morning should be subject to interventions at these times. Professional judgement should be applied in respect of establishments subject to 24 hour opening in determining the most appropriate time(s) to carry out an intervention at such establishments.

3. The Food Authority’s approach to interventions out of hours should be documented in its Food Service Plan.

27.19 Need to Defer Planned Intervention

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

2. Such situations may include those where there is evidence that:

   a. An unsafe practice is occurring or has occurred which represents a significant hazard to public health;
   b. A particular food handling or food preparation practice is found to entail a previously unsuspected hazard to public health;
   c. A foodstuff previously thought to be safe is found to be hazardous to public health;
   d. A food with widespread distribution is found to be contaminated and thereby presents a significant hazard to public health;
   e. A Food Authority requires assistance in delivering official food controls, for example, in relation to: large scale public events (e.g. sporting events, music festivals etc.); adverse weather; emergency situations; significant food incidents
f. As a result of an FSA direction

g. A food with widespread distribution is the subject of fraud in labelling or presentation; and

h. 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.

3. Where such a situation arises the FSA may, by means of a communication issued in accordance with Section 1, Paragraph 2, require Food Authorities to take specific action. Food Authorities are required to have regard to and to act on, any such communication.

4. Discussions will normally take place with SFELC before Food Authorities are asked to defer their interventions. In all cases, the FSA will, before taking action under this section, consider whether urgent action by Food Authorities is necessary to protect public health or the interests of consumers.

5. Food Authorities may be asked to provide information to the FSA about the action that they have taken, in response to requests under this section and any action taken should be documented.

27.20 Combining Interventions

1. Where the same authorised officer is responsible for enforcement of both food hygiene and food standards matters in an establishment the authorised officer should decide whether it is appropriate to cover both matters at a single visit, even though an intervention may not be due under one of the Food Authority’s planned intervention programmes.

27.21 Larger Food Establishments

1. Larger food business establishments may have smaller food business establishments on site under the control of different food business operators e.g. coffee shops. Such establishments are subject to separate registration (see Section 6.4.6) and hence separate interventions are required as appropriate. Food Authorities may, however, wish to co-ordinate their activities in such a way that they may carry out programmed interventions of these smaller establishments whilst they are on site to inspect the main food business establishment (or elements thereof).
27.22 Factory and Fishing Vessels – Hygiene Inspection

1. In addition to the planned intervention programme of land based establishments, coastal Food Authorities will need to consider the inspection of factory, freezer and fishing vessels. Such inspection will normally be carried out whilst vessels are in port.

2. Inspection of factory, freezer or fishing vessels whilst at sea should not normally be undertaken by authorised officers of Food Authorities. In the case of factory vessels, there may be circumstances when inspections can only be carried out when the factory vessels are moored offshore.

3. To assist in carrying out inspections of fishing vessels only, the SFELC Fish Hygiene Group has produced an inspection form to ensure that all hygiene requirements are met. This form should not be used for factory and freezer vessels, which are subject to approval and a different enforcement regime.

4. The frequency of inspections of fishing vessels should be set out in the Food Authority's Food Service Plan or Enforcement Policy.

5. While a vessel may be approved by another Food Authority, there is nothing to prevent any authorised officer of any other Food Authority from inspecting the vessel, as long as they are satisfied that they have the appropriate legal authority to inspect and have contacted the Food Authority that has approved the vessel and that authority considers it necessary. Where, during an inspection, contravention of the Regulations is identified, the authorised officer should notify the Food Authority, where the vessel is normally based of the contravention. The Food Authority receiving details of the contravention should liaise with the notifying Food Authority and take whatever follow-up action is necessary.

27.23 Inspection of Moveable Establishments/Premises: Trains and Long Distance Coaches

1. Before considering the inspection of trains or long distance coaches, relevant information should be obtained from the Home Authority and, or the train operator and, or coach operator, as appropriate. Inspection and visits to, such moveable establishments and or premises should be carried out in liaison with the train and or coach operator and should be duly recorded in accordance with the Framework Agreement on Local Authority Food Law Enforcement.

For information on the inspection of ships and aircraft, see Section 30.
28 How Inspections Should Be Carried Out

28.1 Inspections – General

1. Inspections should be based on the relevant inspection form, where one has been developed, for the establishment concerned.

2. The inspection form is intended to assist authorised officers and businesses by introducing a structured approach to the inspection process consistent with quality assurance practice. It is not necessary to inspect every aspect of a food establishment at every inspection, e.g. an inspection of a supermarket’s in-store bakery or restaurant operated by that supermarket.

3. 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 (See section 27.4)

4. At an appropriate point at the beginning of the inspection, the authorised 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 authorised officer intends to do.

5. 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.

6. Staff of food business establishments 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.

7. An assessment of whether to take samples, and if so what to sample, should be an integral part of every inspection, but particularly in food manufacturing, packing and catering businesses, (see also sections 28 and 29).

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

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

10. At the conclusion of every inspection, the authorised officer should discuss any contravention of Food Law discovered:
    a. any corrective action necessary;
    b. the time-scale for corrective action; and
    c. any further action the authorised officer intends to take and any recommendations of best and or good practice that the authorised officer considers appropriate.
11. In this closing discussion, and in subsequent reports or correspondence, authorised officers should clearly differentiate between action required to comply with legal requirements and recommendations of best and or good practice.

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

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

28.2 Food Hygiene Inspections

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

2. In general, an authorised officer conducting a food hygiene inspection should:
   a. Assess the risk of the food business establishment failing to meet food hygiene requirements;
   b. Assess the hazards posed by the activities of the business, the food business operator’s understanding of those hazards, and the application of appropriate controls; having regard to the nature and size of the business;
   c. Establish whether food is being handled and produced hygienically having regard to subsequent processing;
   d. Assess and verify appropriate procedures based on HACCP principles appropriate to the nature and size of the business, confirming that controls are in place and operating effectively and that appropriate corrective action is taken when necessary;
   e. Assess the efficacy of the controls in place to manage the risk of cross contamination between raw and ready-to-eat foods;
   f. Establish whether food is being handled and produced hygienically, is safe to eat, and that relevant temperature controls are being observed;
   g. Recommend good food hygiene practice in accordance with EU and UK Industry Guides, relevant sector specific code/s, and other relevant technical standards, and promote continued improvements in hygiene standards through the adoption of best and or good practice;
   h. Check the source and any health or identification marking of raw materials, and the identification marking and destination of finished food products. Where deficiencies in health or identification marking are identified, authorised officers should refer to and implement any relevant provisions of Sections 10 and 12 of this Code and the Home Authority Principle, and consider using their powers under Regulation 27 of the Food Hygiene (Scotland) Regulations 2006 (see also Regulation 23 in this regard) to remove affected products from the food chain; and
i. In relation to retail and catering businesses that sell and 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.

3. In addition to the general requirements detailed above, a food hygiene inspection should include if appropriate:
   a. A discussion with any staff responsible for monitoring and corrective action at critical control points to confirm that control is effective;
   b. 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;
   c. An assessment of compliance with the traceability requirements of Article 18 of Regulation (EC) No 178/2002;
   d. A discussion regarding any hazards that have been identified by the authorised officer that have not been covered by the food business’s systems; and
   e. A discussion regarding any failure to implement or monitor any critical controls that have been identified by the food business.

4. Published UK Guides to Good Practice may be particularly relevant to certain establishments subject to Food Law as will other published recommended industry codes of practice. Authorised officers may draw these to the attention of food business operators in appropriate circumstances.

5. The full scope of the food hygiene inspection is detailed in the relevant inspection form for the business concerned.

28.3 Food Standards Inspections
1. Particular attention should be paid to relevant key control points, mixing stages when ingredients are added, monitoring and verification procedures, corrective actions and documentation. In particular, an authorised officer conducting a food standards inspection should:
   a. Assess the risk of the food business failing to meet food standards requirements;
   b. Consider the existence and effectiveness of management systems designed to ensure that food standards requirements are met and, where they exist, test their effectiveness;
   c. Assess compliance with composition, presentation and labelling requirements by examining advertisements, labels, descriptions, menus, claims, recipes and other records;
   d. Assess compliance with the traceability requirements of Article 18 of Regulation (EC) No 178/2002;
   e. Assess compliance with supplier specifications; and
   f. 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 for the business concerned.
28.4 Enforcement Action and Revisits—Food Hygiene and Food Standards

1. Food businesses that fail to comply with significant statutory requirements must be subject to appropriate enforcement action and revisit inspection. Authorised officers should have regard to the SFELC guidance\(^{58}\) regarding the use of trigger\(^{59}\) values to initiate revisit inspections and or secondary inspections.

2. Failure to comply with significant statutory requirements includes failure to comply with:
   
   a. A single requirement that compromises food safety, compromises public health, or prejudices consumers;
   
   b. A number of requirements that, taken together, indicate ineffective management;
   
   c. The requirements of a Hygiene Emergency Prohibition Notice or Order (food hygiene);
   
   d. The requirements of an Emergency Prohibition Notice or Order (food standards).

3. Revisit inspections under this section should be based on the relevant inspection form, where one has been developed, for the business concerned, although the inspection may focus on the significant statutory requirements that were found to be contravened at the previous inspection, partial inspection or audit.

4. The timing of the revisit inspection will be determined by the action taken as a result of the earlier inspection, partial inspection or audit.

5. Such an inspection should, whenever practicable, be undertaken by the authorised officer who undertook the original inspection, partial inspection or audit.

6. The Food Authority’s approach to revisits and enforcement action should be part of their documented Food Service Plan or Enforcement Policy (see Section 14.4).

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28.5 Clothing and Equipment

1. Food Authorities should provide authorised officers who carry out inspections, partial inspections or audits with clean protective clothing including headgear consistent with good industry practice.

2. Food Authorities should require authorised 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 being inspected or audited. Authorised officers should wear appropriate protective clothing etc. if it is provided by the food business.

3. Food Authorities should provide their authorised officers with the equipment and facilities necessary to enable them to carry out their inspection, partial inspection or audit competently and in accordance with food law and the standards in this Code. In addition, Food Authorities should provide their authorised officers with appropriate clothing and equipment when they carry out other types of intervention.
29 Interventions at Approved Establishments – Additional Requirements

29.1 Introduction

1. This Section requires Food Authorities to identify food business establishments within their enforcement remit that are subject to approval under Regulation (EC) No 853/2004 and ensure they are approved and subject to interventions as appropriate. It also sets out specific requirements on sampling at each inspection of a live bivalve mollusc dispatch or purification centre and on following-up adverse sample results.

29.2 General Requirements

1. Food Authorities should ensure that product-specific establishments in their area that are subject to approval under Regulation (EC) No 853/2004 are identified and appropriately approved, as required by the relevant legislation and subjected to regular interventions.

29.3 Interventions at Establishments Subject to Approval under Regulation (EC) No 853/2004

1. The minimum number of food hygiene interventions at establishments subject to approval under Regulation (EC) No 853/2004 should be conducted as necessary in accordance with Annex 5. The Food Authority shall keep the approval of establishments under review when carrying out official controls.

2. The use of Alternative Enforcement Strategies is not an appropriate form of intervention for an establishment subject to approval under Regulation (EC) No 853/2004. The intervention for such an establishment should be selected from those laid down in Section 27.2.

29.4 Live Bivalve Molluscs: Examination of Registration Documents

1. Food Authorities should carry out regular examinations of registration documents to determine their accuracy. The examination of the documents and samples should normally be carried out as part of the inspection of dispatch or purification centres and processing establishments. (See Sections 12.5 and 36 of this code and the Practice Guidance)
29.5 Sampling as Part of the Inspection

1. Each inspection of a dispatch or purification centre should include the taking of samples for laboratory tests. The Food Authority must investigate test results that show breaches of the end product standard.

2. 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.

3. 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.

4. 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.
30 Inspection of Ships and Aircraft

30.1 Introduction

1. The Food Hygiene (Scotland) Regulations 2006 includes any ship or aircraft in the definition of premises. However, Schedule 4 of these Regulations, which sets out specific temperature control requirements does not, by virtue of Section 1(b), apply to these means of transport. The relevant temperature requirements in Annex II of Regulation (EC) No 852/2004 do, however, apply.

2. In terms of the Food Safety (Ships and Aircraft) (England and Scotland) Order 2003, only section (a) of Article 2(1) giving the definition of “the principal Hygiene and Temperature Control provisions” and Section 2 (b) of the Schedule have been revoked. Hence, the definitions in this Order remain in Food Law for the application of the Act, where appropriate.

3. The range and variety of vessels, from cruise liners, passenger ferries and merchant ships to training yachts, is an important factor when planning inspection activities on board vessels. 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.

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

30.2 Background and Relationship to Other Inspections

1. Authorised Officers should bear in mind that other parts of this Code and corresponding 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 Section and the corresponding Practice Guidance.

2. A strategy for frequency of inspection should be adopted, based on knowledge about different types of craft, their origin and history (see also Section 6.8.1 and 31.5 in relation to ships). Before considering ship or aircraft inspection, all relevant information should be obtained from the Home Authority (HA), shipping operator or airline, as appropriate. Inspections of, and visits to, ships and aircraft should be duly recorded in accordance with the Framework Agreement on Local Authority Food Law Enforcement.
30.3 Enforcement Issues

1. Authorised officers who require access to secure areas of ports or airports to undertake their duties will need clearance under the Aviation and Maritime Security Act 1990. Food Authorities should therefore 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 (see Section 30.4 regarding UK military craft).

2. Food hygiene standards on ships and aircraft should meet the relevant requirements of Regulation (EC) No 852/2004.

3. A Hygiene Improvement Notice or a Hygiene Emergency Prohibition Notice may be served under the Food Hygiene (Scotland) Regulations 2006 in respect of an aircraft or ship that is registered in the United Kingdom. The conditions that must be met before such a notice can be served are the same as apply in relation to fixed premises.

4. In the case of contraventions that do not warrant service of a notice, an enforcing Food Authority may consider liaising with the Home Authority, and should do so if the Home Authority has specifically requested information on inspections.

5. An authorised officer may also serve a Hygiene Improvement Notice or Hygiene Emergency Prohibition Notice in relation to a foreign registered ship or aircraft. In such cases, the authorised officer should contact the UK office of the Company or Handling Agent. If considered necessary, in respect of ships, the authorised officer should also contact the Maritime and Coastguard Agency (MCA) at the earliest opportunity (see Section 31.4). Where there is no such UK office of the Company or Handling Agent, the competent authority in the country where the ship or aircraft is registered should be made aware of the defects found.

6. If the craft is registered in another Member State, the procedures set out in Section 13 on liaison with other Member States should be followed. Any difficulties should be discussed with the FSA.

7. If the craft is registered in a Third Country, the FSA should be given full details to allow the matter(s) to be raised with the competent authorities in the relevant country.
30.4 UK Military Ships and Aircraft

1. Authorised Officers should refer to Section 7 in relation 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 Service Environmental Health leads and the relevant Home 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.

2. 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 Authority’s websites.

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

4. Authorised Officers should contact Portsmouth City Council, the Royal Navy Home Authority for procedural guidance prior to any proposed visit to a Royal Navy ship or submarine. Wycombe District Council, the Royal Air Force Home Authority, should be contacted for guidance prior to any proposed visit to Royal Air Force aircraft.

Royal Navy

Home Authority: Portsmouth City Council. Tel: (02392) 834253.
Environmental Health Lead: SO2 Environmental Health Policy.
Tel: (02392) 625857

Royal Air Force

Home Authority: Wycombe District Council. Tel: (01494) 421710
Environmental Health Lead: Command Environmental Health Officer
Tel: (01494) 494334

Army

Home Authority: Rushmoor Borough Council. Tel: (01252) 398398
Environmental Health Lead: SO1 Environmental Health Policy
Tel: (01276) 412931
31  Ship Inspections

31.1  Preparation

1. Before commencing an inspection, authorised officers should ascertain when the vessel was last inspected by requesting a copy of the previous inspection report from the Master or from another UK Food Authority.

2. The authorised officer should then be able to decide whether there is a need to carry out an inspection for food safety purposes. If no previous inspection certificate is available, and after taking other factors into account (see Section 6.8.1), the authorised officer should decide whether an inspection is needed.

3. It might be necessary to follow up the findings of a previous inspection which are reflected in the report, and a decision can therefore be made as to the type and extent of the inspection to be undertaken.

4. The authorised officer should ensure that the ship’s master is aware of the purpose of the inspection and also determine the scope of the food business activities taking place on the vessel.

5. 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 is prepared or served.

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

31.2  Inspection of the Vessel

1. When there is an adverse report from a previous inspection, or the vessel has not been inspected for a period in excess of that set out in Section 6.8.1, authorised officers may need to carry out an inspection of the relevant parts of the vessel.

2. Items for consideration include:

   a. Specifications and sourcing of food and water;
   b. Transport to the vessel, loading and subsequent storage;
   c. 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;
d. Adequacy of procedures based on the HACCP principles, which will depend on the type of vessel;


f. Commensurate with their food handling activities, the food handlers’ knowledge of food hygiene and own health status;

g. Food and water sampling;

h. Pest control procedures; and

i. Any known adverse report, cases or outbreaks of foodborne illness and or other incident.

31.3 Action on Conclusion of the Inspection

1. 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 report\(^{60}\) should also be prepared and given to the ship’s Master before leaving the vessel. If it is not possible for a full report to be completed before the vessel’s departure, this should be explained to the Master or his representative and 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\(^{61}\) at the earliest opportunity if serious shortcomings are found, and the Port Health Authority (PHA) at the next intended port of call, if in UK and, if designated, the relevant HA. This should be prior to any possible visit to the vessel at the subsequent port of call.

31.4 Liaison with the Maritime and Coastguard Agency (MCA)

1. Contact should be maintained with the MCA in accordance with the Memorandum of Understanding (MoU) between the Association of Port Health Authorities (APHA) and the MCA dealing with non-military vessels. Exchanges of copies of relevant inspection reports relating to food safety on ships should be undertaken between PHAs and the MCA, in accordance with the MoU.

2. 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) i.e. there is a risk / 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 13).

\(^{60}\)http://www.who.int/ihr/publications/handbook_ships_inspection/en/

\(^{61}\)Maritime and Coastguard Agency
31.5 Frequency of Inspection

1. The frequency of inspection of vessels should be based on the use of the Ship Sanitation Certificates brought into effect by the International Health Regulations 2005 of the World Health Organization and the Public Health (Ships) Regulations 1979, as amended by the Public Health (Ships) (Amendment) (Scotland) Regulations 2007.

2. Regulation 18D (1) of the Public Health (Ships) Regulations 1979 (as amended) provides for a Ship Sanitation Control Exemption Certificate or Ship Sanitation Control Certificate, which conforms to the model in Annex 3 of the International Health Regulations and, are reproduced in Schedule 3 of the Regulations.

3. The decision as to a risk assessment for a ship’s inspection should be on the validity of the Ship Sanitation Certificate for any ship and any previous non-compliance or controls applied. Account should also be taken of the Ships Inspection Management System (SIMS) database with reference to historical evidence of non-compliance. Interventions should then be carried out accordingly and the outcome transmitted without delay to other ports via SIMS.

4. It might also be appropriate to take into consideration the following:

   a. Name and type of vessel, e.g. general cargo/passenger vessel, passenger ferries, cruise vessels;
   b. port of registration;
   c. age/condition/history of vessel;
   d. crew and passenger numbers/profile/"turnover";
   e. vessel’s trading pattern/schedule/previous port(s) of call;
   f. confidence in food and water safety management systems;
   g. available documentation;
   h. recent significant reports of food related problems on the vessel; and
   i. certificates from previous inspections - level of compliance (these could include inspection certificates issued by competent authorities in the EU or third countries.

5. 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.

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32 Aircraft Inspections

32.1 Preparation

1. 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.

2. 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 below in Section 32.2) 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.

3. It is, however, essential to verify on-board conditions and practices at regular intervals by inspection. At least annual checks should be made either on information provided by the airline concerning food hygiene issues, either by the Home Authority (HA), or in the absence of a Home Authority, 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.

4. Where arrangements are in place, HAs should ensure that airlines are aware of their responsibilities in relation to providing information. HAs 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.

32.2 Information to be Obtained to Assist Inspection Procedures

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

2. 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 making a decision whether to undertake an inspection:

   a. Named contact and contact details for an airline to deal with enquiries (this might be a food safety advisor employed by the airline);

   b. Number of aircraft, their type and registration numbers, where appropriate;
c. Routes flown – long haul, short haul and countries of destination;
d. Airline food safety policy/procedure documents or manual;
e. Type of catering menus and the service of high risk foods;
f. 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 (EC) No 852/2004), if appropriate, and monitoring; own health status and exclusion from work policy;
g. Training records, standard of training, including retraining, when appropriate;
h. 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;
i. Specifications in place with the caterer for the supply of food to aircraft and the accepted temperature for delivery, including for high-risk foods;
j. Details of food and water safety arrangements when supplied to an aircraft in a foreign location;
k. Potable water supply – source, use of bowsers, cleaning/disinfection of storage tanks – frequency/effectiveness. To be checked prior to or after the inspection;
l. Flights or routes with return catering including multiple sector catering, and from which airports;
m. Pest control contract and monitoring;
n. Cleaning contractor, with details of contracts, e.g. cleaning schedules, and monitoring of the effectiveness of the cleaning regime;
o. 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;
p. Whether the airline undertakes self-audits and whether any reports are available.

3. The above information should assist an authorised officer to assess the need to actually board a particular aircraft to carry out an inspection. In practice, taking account of Annex 5, and with the appropriate information obtained from the airline company and or the relevant Home 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.
32.3 Inspection of the Aircraft

1. 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 judgement 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 (and or Home Authority) should be contacted for clarification.

32.4 Items for Consideration in Relation to Food Safety on Aircraft

1. Following a documentary check, the following matters should be considered/confirmed, as listed in Section 30.4, when appropriate:

   a. Flight caterers – confirmation of the information obtained, regarding source of meals, etc.;
   b. Transport and loading of aircraft, including the means of temperature control of the food in the delivery vehicle;
   c. 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;
   d. 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;
   e. Return flight meals taking account of the shelf-life of the food;
   f. Temperature control (as required by Annex II, of Regulation (EC) No 852/2004) and monitoring during flights;
   g. Reheating/cooking;
   h. Pest control;
   i. Water supply – source, potability and cleanliness of tanks;
   j. Procedures for cleaning food handling areas, trolleys and or carts;
   k. Food and water sampling.
32.5 Action on Conclusion of the Inspection/Contact with Home Authority

1. A report should be sent to the airline following an inspection, with copies to the relevant Home 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. See also Section 30.3 concerning reporting deficiencies to the country of registration of the aircraft, when appropriate.
33 Action Following an Intervention: Minimum Standards of Report Writing and Record Keeping

33.1 Reports following an Official Control

1. The outcome of an official control must always be reported in writing to the food business operator either at the conclusion of the official control or as soon as practicable thereafter, even if the outcome was satisfactory.

2. Where the official control was an inspection, partial inspection and or audit, the information detailed in Annex 6 should be included in the report.

3. Reports may include other legislation covered during interventions at food establishments, e.g. health and safety at work etc., although matters relating to Food Law should be clearly differentiated from other law.

33.2 Establishment Record Files (see section 27.4 also)

1. The Food Authority’s establishment record files, which may be computer based, should be updated after each intervention and include:

   a. Information on the size and scale of the business and its customer base;
   b. Information on the type of food activities undertaken by the business, including any special equipment, processes or features;
   c. Copies of any correspondence with the establishment /business, including documentation associated with approvals or licensing;
   d. Copies of food sample analysis and, or examination results;
   e. A system of flagging for significant issues, including details of any non-compliance to be reviewed at future interventions;
   f. Information about the food handling practices and processes observed by the authorised officer during the intervention visit in particular with regard to cross contamination.

2. In respect of establishments inspected for food hygiene purposes:

   a. Information describing the outcome of the authorised officer’s assessment of the business’ compliance with procedures based on HACCP principles where appropriate;
   b. Information on hygiene training undertaken by employees, including any training on the implementation and operation of the food safety management system.

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63 The Framework Agreement on Local Authority Food Law Enforcement.
3. In respect of establishments inspected for food standards purposes:
   a. The existence and assessment of any documented quality system;
   b. Details of other businesses that produce or import for the business.

4. Food Authorities must maintain up to date records of the outcomes of the interventions carried out detailing the observations noted by authorised officers. In particular information to support the scoring allocated under Annex 5 and the optional Annex 5A by the authorised food officer must be retained by the Food Authority; and retained as per Sections 27.4 and 33.3.

33.3 Retention of Records Relating to Interventions.

1. Records relating to interventions should be retained in the establishment file for at least six years, unless required for longer retention because of litigation, Local Government Ombudsman review, the document management policy of the Food Authority, or instruction by the FSA.
Approved Establishments Subject to Approval under Regulation (EC) No 853/2004 in Respect of Local Authorities Are Responsible for Enforcement

1. Authorised Officers must have regard to the FSA guidance for local authority authorised officers on the approval of establishments: http://www.food.gov.uk/enforcement/sectorrules/approvalsguidance (Approvals Guidance hereafter)

34.1 Division of Enforcement Responsibilities

1. Responsibility rests with Food Authorities for the approval of, and enforcement in relation to, establishments subject to approval under Regulation (EC) No 853/2004 in respect of which control does not fall to an authorised Official Veterinarian. These “product-specific” establishments will be producing any, or any 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 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.

2. The FSA is responsible for the approval of establishments subject to approval 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, and for enforcement in such establishments once approved. Such establishments are slaughterhouses, game handling establishments, and cutting plants placing fresh meat on the market. The FSA is also responsible for the approval of and enforcement in 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.
34.2 Collection Centres and Tanneries Supplying Raw Material for the Production of Gelatine or Collagen Intended for Human Consumption

1. 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. They will, however, need to be specifically authorised by the relevant Food Authority in accordance with Annex III, Section XIV, Section I(5) of Regulation (EC) No 853/2004 (Gelatine) and Section XV, Section 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.

34.3 Exemption of Establishments from the Requirements of Regulation (EC) No 853/2004

1. Article 1 of Regulation (EC) No 853/2004 sets out the scope of that Regulation. The following sections deal specifically with exemptions from the Regulation under Article 1(2) and under Article 1(5)(b)(ii).

34.4 Article 1(2) of Regulation (EC) No 853/2004: Food containing both products of plant origin and processed products of animal origin

1. Article 1(2) of Regulation (EC) No 853/2004 stipulates that “unless expressly indicated to the contrary, this Regulation does not apply to food containing both products of plant origin and processed products of animal origin”.

2. Establishments engaged solely in the production of such food by assembling products of plant origin with processed products of animal origin which enter the establishment in that processed state, will not therefore be subject to Regulation (EC) No 853/2004 and, as such, will not require approval. Food Authorities will need to consider the definitions of “processed products”, “unprocessed products” and “processing” in Article 2 of Regulation (EC) No 852/2004 in this regard. Food Authorities should be aware that establishments benefiting from this exemption would, in addition to compliance with Regulation (EC) No 852/2004, need to comply with Article 1(2) of Regulation (EC) No 853/2004 which requires such establishments to obtain the processed products of animal use in compliance with Regulation (EC) No 853/2004.
34.5 Article 1(5)(b)(ii) of Regulation (EC) No 853/2004: Retail Exemption

1. Article 1(5)(a) of Regulation (EC) No 853/2004 stipulates that "Unless expressly indicated to the contrary, this Regulation shall not apply to retail". Article 1(5)(b) stipulates that "this Regulation shall apply to retail when operations are carried out with a view to the supply of food of animal origin to another establishment", but goes on, in sub-sections (i) and (ii) to exclude certain activities from this requirement.

2. Retailers otherwise exempt from the requirements of Regulation (EC) No 853/2004 may, by virtue of Article 5(b)(ii) of Regulation (EC) No 853/2004, supply food of animal origin from the retail establishment to other retail establishments, but only if this is a marginal and localised and restricted activity. Guidance on such activity can be found in the Practice Guidance.

34.6 Applications for Approval: Procedures and Forms


2. Food Authorities should ensure that they, and food business operators, follow these procedures as appropriate. Any deviations to these procedures should be recorded and retained by the Food Authority and should, where possible, be agreed with the Food Authority beforehand.

34.7 Applications for Approval: Handling

1. Any application for approval from a food business operator should be dealt with promptly. In order to ensure consistency, Food Authorities should ask food business operators to submit applications for approval in the appropriate format as set out in the Approvals Guidance.

2. Applications for approval of establishments should 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. Under no circumstances should approval be granted to an establishment which is not subject to approval under Regulation (EC) No 853/2004.

3. Food Authorities should ensure that the food business operator supplies all relevant information before an application for approval is determined. This information may be obtained from the food business operator in documentation supplied with the application or during the subsequent on-site visit to the establishment as required by Article 31(2)(b) of Regulation (EC) No 882/2004 (see Section 34.8). It is a matter for the Food Authority to decide at which stage of the application this information should be provided.

4. In considering applications for approval, Food Authorities should ensure that they fully consider any exemption that may be available to the applicant afforded by Article 1 of Regulation (EC) No 853/2004.
34.8 Determination of Applications for Approval

1. Before reaching a decision on an application for approval, the Food Authority should ensure that an on-site visit is made in accordance with Article 31(2)(b) of Regulation (EC) No 882/2004. This should take the form of an initial inspection of the establishment (see Section 27.8.2), to verify that, where necessary, all systems, procedures and documentation meet the requirements of Regulation (EC) No 852/2004 and Regulation (EC) No 853/2004. The inspection should be conducted in accordance with and cover all aspects of the relevant inspection form for the business concerned, and consider all issues identified by Regulation (EC) No 853/2004 as requiring Food Authority consent. As per Article 31(2) of Regulation (EC) No 882/2004 all the requirements of Food Law relevant to that business must be met.

34.9 Conditional Approval

1. Article 31(2)(d) of Regulation (EC) No 882/2004 permits the granting of conditional approval to an establishment, following an on-site visit, which has not demonstrated full compliance with the requirements of food law, but only if the establishment meets all the infrastructure and equipment requirements (see also the Practice Guidance).

2. Food Authorities should bear in mind that a food business operator can only make an application for the approval of establishments under their control; the decision whether or not to grant conditional approval to an establishment which does not fully comply rests with the Food Authority. Professional judgement should be used in deciding whether it would be appropriate to grant conditional approval, on a case by case basis.

3. If conditional approval is granted, a further visit must be carried out within three months of the conditional approval being granted in accordance with Article 31(2)(d) of Regulation (EC) No 882/2004. This visit should be an inspection (see Section 28). In appropriate circumstances as set out in Article 31(2)(d) of Regulation (EC) No 882/2004, 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 judgement should be used in deciding whether it would be appropriate to extend conditional approval, on a case by case basis.
34.10 Establishments Producing More Than One Type of Product

1. When considering an application for the approval of an establishment, Food Authorities should take into consideration all activities carried out in the establishment.

2. 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.

34.11 Live Bivalve Mollusc Purification Centres

1. Where an application for a proposed purification centre, or modification to an existing centre, is received, a copy of the application must be sent to the FSA for consultation with Marine Scotland.

2. Food Authorities must not determine such an application until they have received a response from the FSA and must include any operating conditions set by Marine Scotland in the approval document.

34.12 Approval of Live Bivalve Mollusc Relaying Areas

1. It is the responsibility of the FSA to classify bivalve mollusc beds. A food business can apply to the Food Authority to have any suitable area classified as a relaying area. This area must fulfil the criteria necessary of the classification of bivalve mollusc beds. The procedure and criteria for the approval and classification of bivalve mollusc beds and relaying areas is set down in Annex II, Section II of Regulation (EC) No 854/2004. Food Authorities should only designate relaying areas after consultation with the FSA. It should be noted that the live bivalve molluscs should, after relaying, be treated in accordance with the (A, B, or C) classification of the area in respect of placing on the market.
34.13 Approval Number and Identification Mark
(See also the Practice Guidance)

1. A Food Authority must give and agree an approval number to each food business establishment it approves or conditionally approves and then subsequently approves in accordance with Articles 3(1) and 3(3) of Regulation (EC) No 854/2004.

2. The approval number should form part of an approval code which consists of the Food Authority’s two-letter identifier followed by the allocated three digits unique to that establishment. Further codes may be added after the number to indicate the types of products of animal origin manufactured.

3. The Food Authority are to inform the Food business operator that they must apply an identification mark which contains the approval code to products of animal origin in accordance with Regulation (EC) No 853/2004 Annex II, Section I, and in particular part B, (also see section 34:14).

34.14 Identification Marking of Food to which Regulation (EC) No 853/2004 does not apply

1. Food Authorities should bear in mind that Annex II, Section I, B 7 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 may apply the same identification mark to both types of food.

34.15 Refusal of Approval and Appeals – General

1. If an establishment does not fully meet the requirements of Regulation (EC) No 853/2004, the Food Authority should consider whether conditional approval is appropriate in the circumstances (see Section 34.9).

2. When a Food Authority has decided to refuse an application for approval it should notify the applicant in writing of the decision at the earliest opportunity. The Food Authority should also give the reasons for refusal in writing, detailing the matters necessary to satisfy the requirements of the Regulation, and make it clear that activities requiring approval may not be undertaken unless approval or conditional approval is granted. Such notification should also make the food business operator aware of their right of appeal against the decision and provide the address of the Sheriff’s Court where such an appeal may be made. Rights of appeal are subject to the Official Feed and Food Controls (Scotland) Regulations 2009.

A template form is provided at Annex 11 of the Practice Guidance

3. Food Authorities should bear in mind that the food business operator has the right to appeal to a Sheriff 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 (Scotland) 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.

34.16 Notification of Approval - General

1. Once approval, or conditional approval, has been granted, the Food Authority should notify the applicant, in writing, of the nature and scope of the approval and any conditions or limitations that apply and the approval code \(^{66}\) (see Section 34.13).

2. When full approval is granted following conditional approval, the Food Authority should notify the food business operator in writing. Such a notification should also include details of the nature and scope of the approval, any conditions and or limitations that apply and confirmation that the identification mark (incorporating the approval code as per section 34.13 paragraph 2) allocated to the food establishment may continue to be used.

3. The Food Authority should 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 Section 11.

34.17 Change of Details or Activities

1. Article 6(2) of Regulation (EC) No 852/2004 requires food business operators to ensure that the relevant Competent 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 should carry out an inspection and take any necessary action.

2. Change of food business operator: The approval of an “establishment” applies to both the premises and the business operating at the premises. If an approved establishment changes ownership, the new establishment will have to be assessed and granted a new approval before it can operate.

\(^{66}\) Refer to the Practice Guidance
34.18 Non-approved Establishments Thought to be Engaged in Activities Requiring Approval

1. Where Food Authorities become aware of businesses engaged in activities that require approval, but that are not approved, they should inform the food business operator, in writing, of the need for approval and consider appropriate enforcement action.

2. Where necessary formal enforcement action should be taken to ensure that the establishment ceases undertaking approvable activity. Enforcement activity may include the service of Remedial Action Notices, the seizure of food using Regulation 27 of the Food Hygiene (Scotland) Regulations 2006, Section 9 of the Act, and initiating a withdrawal or recall of products already placed on the market.

3. Authorised officers are directed to Section 14 for general guidance on enforcement.

4. Advice should be sought from the FSA where appropriate.
35 Enforcement Options in Establishments Subject to Approval under Regulation (EC) No 853/2004

35.1 Introduction

1. In addition to the enforcement powers detailed in Section 14, authorised officers have other powers available to them under the Official Feed and Food Controls (Scotland) Regulations 2009 in respect of establishments subject to approval under Regulation (EC) No 853/2004.

2. Powers to withdraw, or suspend, the approval or conditional approval of an establishment subject to approval under Regulation (EC) No 853/2004 are provided by Article 31(2)(e) of Regulation (EC) No 882/2004. Regulation 4(3) / Schedule 5 of the Official Feed and Food Controls (Scotland) Regulations 2009 have designated Food Authorities as competent authorities for the purposes of Article 31 of Regulation (EC) No 882/2004.

35.2 Suspension / Withdrawal of Approval or Conditional Approval - General

1. Article 31(2)(e) of Regulation (EC) No. 882/2004 requires the competent authority to keep the approval of establishments under review. It states that:

“the competent authority shall keep the approval of establishment under review when carrying out official controls. If the competent authority identifies serious deficiencies or has to stop production at an establishment repeatedly and the feed and or food business operator is not able to provide adequate guarantees regarding future production, the competent authority shall initiate procedures to withdraw the establishment’s approval. However, the competent authority may suspend an establishment’s approval if the feed and or food business operator can guarantee that it will resolve deficiencies within a reasonable time.”

2. Therefore, where serious deficiencies are identified, the competent authority must initiate procedures for withdrawal. Local Authorities must have regard to the FSA guidance for Local Authority authorised officers on the approval of establishments in relation to this matter; available at . http://www.food.gov.uk/enforcement/sectorrules/approvalsguidance

3. Food Authorities should bear in mind that the immediate effect of the suspension or withdrawal of an establishment’s approval is such that the establishment may not be used for any activities which would render it subject to approval under Regulation (EC) No 853/2004.

4. On the discovery of non-compliance in establishments subject to approval under Regulation (EC) No 853/2004, the Food Authority should, before considering suspension or withdrawal, explore other enforcement options to control the food hazards presented by the establishment.
5. Non-compliance should not necessarily be considered sufficient to justify the immediate suspension or withdrawal of an establishment’s approval or conditional approval; and a reasonable opportunity to achieve compliance must be allowed where this is appropriate.

35.3 Suspension of Approval or Conditional Approval

1. Food Authorities should 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. Food Authorities should request that any guarantee regarding future production made by a food business operator in accordance with this Article is made in writing, although Food Authorities should be aware that they cannot insist on this as no requirement exists in law to provide such guarantees in writing.

35.4 Withdrawal of Approval or Conditional Approval

1. 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 Section 35.3), and if circumstances exist in accordance with Article 31(2)(e) of Regulation (EC) No 882/2004.

2. An establishment’s approval or conditional approval should only be withdrawn in circumstances where the food business operator is unable to satisfy the Food Authority to the extent that it has a reasonable expectation that the identified deficiencies will be rectified and acceptable standards will be maintained in the future.

35.5 Notifications of Suspension or Withdrawal of Approval or Conditional Approval

1. 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 should 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 may not be undertaken unless approval or conditional approval is granted. Such notification should also make the food business operator aware of their right of appeal against the decision and provide the address of the Sheriff’s Court where such an appeal may be made\textsuperscript{67}. Rights of appeal are subject to Regulation 12 of the Official Feed and Food Controls (Scotland) Regulations 2009.

2. Copies of notifications should be retained on the Food Authority’s files. The Food Authority should also immediately notify the FSA when an establishment’s approval or conditional approval has been suspended or withdrawn.

\textsuperscript{67} A template form is provided at Annex 11, A.11.3 of the Practice Guidance
35.6 Appeals against Suspension or Withdrawal of Approval or Conditional Approval

1. Food Authorities should bear in mind that 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 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.
36.1 Introduction

1. 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.

36.2 Liaison Arrangements

(See also the Practice Guidance).

1. All Food Authorities where there are commercial shellfish activities should establish and maintain a shellfish liaison group comprising of those people who will enable the group to be fully effective. The functions of the group are likely to vary depending on the local shellfish industry.

2. The FSA will provide all food authorities with details relating to current conditions of harvesting areas including the most recent sampling results. In addition the FSA will publish and provide to Food Authorities details of the classification of shellfish harvesting areas in Scotland.

36.3 Registration Documents – Live Bivalve Molluscs

1. Under Regulation (EC) No 853/2004, a gatherer of live bivalve molluscs (including wild pectinidae) to be placed on the market requires a registration document (unless issued with a permanent transport authorisation) to identify each batch gathered for its movement from the harvesting site. The movement could be either from the harvesting site (a classified bed or area in the case of wild pectinidae described in as much detail as possible e.g. ordinance survey co-ordinates, latitude and longitude, ICES reference) to the dispatch centre or relaying area, purification centre or processing centre.

2. Food Authorities should issue such registration documents to gatherers, including fishing vessels that harvest live bivalve molluscs. (A model registration form can be found at Annex 6 of the Practice Guidance). This should contain a unique code number and be given to the harvester or gatherer before they carry out harvesting. Food Authorities should provide registration documents on demand. Food Authorities may not make any charge for the issue of registration documents, nor may they unreasonably refuse to issue the documents to a gatherer. The Food Authorities should make appropriate checks on registration documents when inspecting live bivalve molluscs activity.

3. Any Food Authority which issues registration documents should keep a record indicating the names and details of the persons to whom they were issued and the respective unique number(s), for at least 12 months.

4. Registration documents should be issued to gatherers who are harvesting within the area of another Food Authority only with the agreement of that other Food Authority.
5. To enable the system of documentation to be monitored the number of registration documents issued to a gatherer should be recorded.

6. Details of the requirements for Food Authorities to take microbiological samples can be found in Sections 12.5 and 38.

7. Food business operators must keep copies of registration documents for each batch sent and received for at least twelve months after its dispatch or receipt, or such longer period as the competent authority may specify.

**36.4 Permanent Transport Authorisations**

1. A Food Authority may 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.

2. In deciding whether to issue a PTA a Food Authority should consider the requirements of Regulation (EC) No 853/2004, Annex III, Section VII, Section 1, section 7. In addition to these the history of a food business operator’s compliance with relevant food safety legislation and the application of management control procedures should be an influencing factor in any decision.

3. Where a Food Authority is not satisfied with the food business operators’ compliance with hygiene legislation, after authorisation is given, the authority is at liberty to withdraw the PTA. A PTA should be issued for each individual shellfish harvesting bed.

**36.5 Checks on Relaying Areas**

1. Authorised officers should 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 Section II of Annex II to Regulation (EC) No 854/2004.

2. Authorised officers should ensure that there is a thorough examination of records retained by food business operators in respect of relaying areas whenever an inspection is carried out.

3. The FSA arrange through their contracted experts for initial inspections of depuration tanks to ensure the necessary parameters for purification are being met. Inspecting authorised officers of the Local Authority should wherever possible attend these initial inspections so they are familiar with the operating conditions of the tank. Such visits will provide valuable supplementary training for authorised officers for future inspections.
36.6 Temporary Closure Notices (Temporarily closing harvesting areas)

1. Annex II, Section II, Section C.1 of Regulation (EC) No 854/2004 requires that, where sampling results show that health standards for molluscs are exceeded, 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, reclassify the area in accordance with the Regulation.

2. Annex II, Section 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 at Annex 9.

3. The Food Authority should liaise with the FSA over the issue of a Closure Notice. Liaison with the FSA may include consideration of whether any action should be taken to withdraw any live bivalve molluscs from sale that may already have been distributed locally or nationally.

4. The Food Authority should 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 permanent transport authorisation (issued by the Food Authority in accordance with Annex III, Section VII Section 1.7 of Regulation (EC) No 853/2004), are notified of the Closure Notice and its effect. This may best be achieved by sending a copy of the Notice to all known interests. Additionally, the Food Authority should prominently display Closure Notices where food businesses harvesting shellfish might reasonably be expected to see them.

5. Other Food Authorities with an interest should also be advised, who should, in turn, fulfil their responsibility by informing, as appropriate, operators within their own area affected by the closure.

6. A Closure Notice may not be time limited. The Food Authority should liaise with the FSA as soon as possible in relation to the undertaking of additional sampling of harvesting waters or live bivalve molluscs as may be necessary to determine when the closed area may reopen. The Food Authority should remove a Closure Notice immediately it is satisfied that harvesting in accordance with the Regulation may resume.

7. Under the terms of Regulation 17(1) of the Food Hygiene (Scotland) Regulations 2006 it is an offence to contravene a specified Community provision.
37 Matters Relating to Fresh Meat

37.1 Division of Enforcement Responsibilities

1. As stated in Section 34.1, the FSA is responsible for enforcement in relation to establishments approved 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. Such establishments are slaughterhouses, game handling establishments and cutting plants placing fresh meat on the market. The FSA is also responsible for meat related establishments co-located with these establishments.

37.2 Food Authorities are responsible for enforcement in relation to:

1. Establishments newly subject to approval under Regulation (EC) No 853/2004 until conditional or full approval is granted, or if approval is refused, by FSA.

2. 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 produced and that are not co-located with slaughterhouses, game handling establishments and cutting plants;

   a. The direct supply, by the producer, of small quantities of primary products to the final consumer or to local retail establishments supplying the final consumer (Article 1(3)(c) of Regulation (EC) No 853/2004);

   b. On farm slaughter and cutting of small quantities of poultry and lagomorphs (Article 1(3)(d) of Regulation (EC) No 853/2004);

   c. Hunters supplying small quantities of wild game or wild game meat directly to the final consumer or to local retail establishments directly supplying the final consumer (Article 1(3)(e) of Regulation (EC) No 853/2004).

Further relevant material on matters relating to meat is contained in the Practice Guidance.
38. **Sampling and Analysis**

38.1 **Introduction**

1. Effective routine sampling is an essential part of a well-balanced enforcement service and should therefore feature in the enforcement service of all Food Authorities. Guidance to help ensure sampling by Food Authorities is undertaken effectively and consistently is set out in the Practice Guidance.

2. Whilst the Act, the Food Safety (Sampling and Qualifications) Regulations 2013 and the Food Hygiene (Scotland) 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 (commonly referred to as “formal” samples), 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.

3. With the exception of complaint samples submitted by members of the public, the Food Authority shall ensure that appropriate arrangements are made for the custody and handling of all samples are taken for official food control purposes that are sufficient to ensure that sufficient details about the sample are collected and retained to ensure that appropriate follow-up action can be taken. This is without prejudice to evidential requirements when formal enforcement action may be required.

38.2 **Sampling Policy and Sampling Programme**

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

2. The sampling policy should detail the factors that will be taken into account in formulating the sampling programme, including any national or local consumer issues that will influence the level of sampling to be undertaken.

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See Section 2 of the Framework Agreement on Local Authority Food Law Enforcement
3. Food Authorities should also prepare a sampling programme that details their intended food sampling priorities. The programme should take account of the number, type and risk ratings of the food businesses and the type of food produced in the area, the Food Authority’s Home or originating authority responsibilities and the need to ensure that the provisions of Food Law are enforced. The sampling programme should not normally be published.

4. The sampling policy should commit the Food Authority to providing the resources necessary to carry out its food sampling programme.

5. The sampling policy and the sampling programme should be prepared in consultation with the Food Examiner and the Public Analyst, which may take place on a local or regional basis.

38.3 Requests for Information from Manufacturers or Importers

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

38.4 Sampling – General

1. The sampling provisions of the remainder of this Section do not apply to:

   a. Samples of food that are the subject of complaint and are brought to the Food Authority by consumers or other agencies;

   b. 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;

   c. 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;

   d. Samples of food that are taken as evidence in their own right e.g. use-by dates;

   e. Samples that are taken under the provisions of regulations still in force that have their own detailed sampling provisions and are listed in Schedule 1 to the Food Safety (Sampling and Qualifications) Regulations 2013. Food Authorities should be aware that SI 1983 No. 1508, SI 1983 No. 1509, SI 1987 No 1523, SI 1988 No. 2206 and SI 1989 No. 2383 have been revoked.
38.5 Samples for Analysis (Section 29 of the Act)

1. All samples for analysis, taken under Section 29 of the Act in accordance with the Food Safety (Sampling and Qualifications) 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.

38.6 Division of Samples for Analysis

1. Unless the sample meets the criteria for submission for analysis without division into three parts (see the Practice Guidance), the formal sample should, as soon as possible, be divided into 3 representative parts (see Regulation 7 of the Food Safety (Sampling and Qualifications) Regulations 2013). 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 food 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.

2. The sampling of imported foods at the port of entry may pose particular difficulties. In the special circumstances found by Local 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.

38.7 Notification of Formal Sampling Activity (Analysis)

1. 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.

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

38.8 Certificates of Analysis

1. In accordance with Regulation 10 of the Food Safety (Sampling and Qualifications) Regulations 2013, certificates of analysis must be in the format set out in Schedule 3 to those regulations.

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69 A list of UK official food control laboratories has been submitted to the European Commission and is published on the Agency’s website [www.food.gov.uk](http://www.food.gov.uk)
38.9 Notification of Results (Analysis)

1. 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 Sections 8 and 12 and the Home Authority Principle (see Section 3.1).

2. In accordance with Regulation 10 of the Food Safety (Sampling and Qualifications) 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. fax or telephone, subsequently confirmed in writing) along with the relevant Food Authority. The packer or, in the case of imported food, the importer, and or their agent, may also be notified.

3. 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.

38.10 Samples for Examination (Food Hygiene (Scotland) Regulations 2006 Regulation 12)

1. All samples for examination, taken in accordance with Regulation 12 of the Food Hygiene (Scotland) 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.

2. In accordance with Regulation 13(10) of the Food Hygiene (Scotland) Regulations 2006, the Food Safety (Sampling and Qualifications) Regulations 2013 apply in relation to a sample procured by an authorised officer of a food authority under Regulation 12 of the Food Hygiene (Scotland) Regulations 2006 as if it were a sample procured by an authorised officer under Section 29 of the Act.

38.11 Notification of Formal Sampling Activity (Examination)

1. 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.

2. 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 authorised officer for examination is available on the food packaging and the address is in the United Kingdom, the authorised officer should notify that person of the procurement, in writing.
38.12 Certificates of Examination

1. In accordance with Regulation 13(11) of the Food Hygiene (Scotland) Regulations 2006 certificates of examination must be in the format set out in Schedule 3 to the Food Safety (Sampling and Qualifications) Regulations 2013.

38.13 Notification of Results (Examination)

1. 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 Sections 8 and 11 and the Home Authority Principle (see Section 3.1).

2. In accordance with Regulation 10 of the Food Safety (Sampling and Qualifications) 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. fax or 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.

3. 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.
Internal and FSA Monitoring of Interventions

39.1 Introduction

1. This Section deals with the internal monitoring of interventions by the Food Authority of its own service delivery; and the monitoring of each Food Authority’s intervention actions by the FSA.

39.2 Internal monitoring

1. Food Authorities must ensure that interventions are carried out to a consistently high standard, and that the planned intervention programme is being maintained.

39.3 Documented procedures

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

39.4 Monitoring system

1. A monitoring system must include measures to assess:
   a. Adherence to the Food Authority’s planned intervention programme;
   b. Compliance with this Code and the Practice Guidance and other relevant FSA guidance;
   c. The consistent assessment of intervention ratings;
   d. Appropriate use of relevant inspection documentation;
   e. Compliance with internal procedures, policies and the Food Authority’s enforcement policy;
   f. That the interpretation and action taken by authorised officers following an intervention is consistent within that Food Authority and is consistent with FSA and, or SFELC guidance;
   g. That authorised 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:
   h. That authorised officers have due regard to published UK or EU Guides to Good Practice.
39.5 Food Standards Agency monitoring of Food Authorities

1. The Food Authority’s database must also record the details of premises, intervention ratings, interventions, sampling and enforcement actions which are to be sent to the FSA under the Local Authority Enforcement Monitoring System (LAEMS).

2. Food Authorities using the Food Surveillance System database to record food sampling activity can use this information to update LAEMS.

3. The Food Standards Agency will be responsible for reporting Food and Feed Authority activity at primary production establishments, which is recorded via the Scottish Primary Production Official Controls System (SPPOCS).
## ANNEX 1: Glossary of Terms

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>AH</td>
<td>Animal Health</td>
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<td>APHA</td>
<td>Association of Port Health Authorities</td>
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<tr>
<td>BIS</td>
<td>Department for Business, Innovation and Skills</td>
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<td>CCDC</td>
<td>Consultant in Communicable Disease Control</td>
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<td>CCP</td>
<td>Critical Control Point</td>
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<tr>
<td>CEFAS</td>
<td>Centre for Environment, Fisheries and Aquaculture Science</td>
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<tr>
<td>CEN</td>
<td>The European Committee for Standardisation</td>
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<tr>
<td>CIEH</td>
<td>Chartered Institute of Environmental Health</td>
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<tr>
<td>CPHM (CD/EH)</td>
<td>Consultant in Public Health Medicine (Communicable Disease/Environmental Health)</td>
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<tr>
<td>DCA</td>
<td>Diploma in Consumer Affairs</td>
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<tr>
<td>DCATS</td>
<td>Diploma in Consumer Affairs and Trading Standards</td>
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<tr>
<td>DEFRA</td>
<td>Department of the Environment, Food and Rural Affairs</td>
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<tr>
<td>DH</td>
<td>Department of Health</td>
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<tr>
<td>DHSSPS</td>
<td>Department of Health and Social Services and Public Safety (Northern Ireland)</td>
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<tr>
<td>DTS</td>
<td>Diploma in Trading Standards</td>
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<tr>
<td>E. coli O157</td>
<td>Escherichia coli O157</td>
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<tr>
<td>EEA</td>
<td>European Economic Area</td>
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<tr>
<td>EHO</td>
<td>Environmental Health Officer</td>
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<td>EHP</td>
<td>Environmental Health Practitioner</td>
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<td>EHRB</td>
<td>Environmental Health Registration Board</td>
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<td>EU</td>
<td>European Union</td>
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<tr>
<td>FAO</td>
<td>Food and Agricultural Organisation of the United Nations</td>
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<tr>
<td>FBO</td>
<td>Food business operator - 'food business operator' means the natural or legal persons responsible for ensuring that the requirements of food law are met within the food business under their control; Food business - food business 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;</td>
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<tr>
<td>FCATS</td>
<td>Foundation Certificate in Consumer Affairs and Trading Standards</td>
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<td>FSA</td>
<td>Food Standards Agency</td>
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<tr>
<td>Framework Agreement</td>
<td>Framework Agreement on Local Authority Food Law Enforcement</td>
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<td>FRS</td>
<td>Fisheries Research Services Marine Laboratory</td>
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<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>FVO</td>
<td>Food and Veterinary Office (of the European Commission)</td>
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<td>HA</td>
<td>Home Authority</td>
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<tr>
<td>HACCP</td>
<td>Hazard Analysis Critical Control Points</td>
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<tr>
<td>HDCATS</td>
<td>Higher Diploma in Consumer Affairs and Trading Standards</td>
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<tr>
<td>HPS</td>
<td>Health Protection Scotland (formerly SCIEH)</td>
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<tr>
<td>IFST</td>
<td>Institute of Food Science and Technology</td>
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<tr>
<td>LAEMS</td>
<td>Local Authority Enforcement Monitoring System</td>
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<td>LGA</td>
<td>Local Government Association</td>
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<tr>
<td>MCA</td>
<td>Maritime and Coastguard Agency</td>
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<tr>
<td>MOD</td>
<td>Ministry of Defence</td>
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<tr>
<td>MoU</td>
<td>Memorandum of Understanding</td>
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<tr>
<td>NHS</td>
<td>National Health Service</td>
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<td>OFT</td>
<td>Office of Fair Trading</td>
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<tr>
<td>PARNUTS</td>
<td>Foodstuffs intended for particular nutritional uses</td>
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<td>PHA</td>
<td>Port Health Authority</td>
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<td>PHE</td>
<td>Public Health England</td>
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<td>PTA</td>
<td>Permanent Transport Authorisation</td>
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<td>RAF</td>
<td>Royal Air Force</td>
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<tr>
<td>RPA</td>
<td>Rural Payments Agency</td>
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<tr>
<td>REHIS</td>
<td>Royal Environmental Health Institute of Scotland</td>
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<td>RN</td>
<td>Royal Navy</td>
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<tr>
<td>SFELC</td>
<td>Scottish Food Enforcement Liaison Committee</td>
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<tr>
<td>SFSORB</td>
<td>Scottish Food Safety Officers’ Registration Board</td>
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<tr>
<td>SGRPID</td>
<td>Scottish Government Rural Payments and Inspections Directorate</td>
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<td>SGRD</td>
<td>Scottish Government Rural Directorate</td>
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<tr>
<td>SIMS</td>
<td>Ships Inspection Management System</td>
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<tr>
<td>TSI</td>
<td>Trading Standards Institute</td>
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<tr>
<td>TSO</td>
<td>Trading Standards Officer</td>
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<tr>
<td>UKAS</td>
<td>United Kingdom Accreditation Service</td>
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<tr>
<td>VTEC</td>
<td>Vero-cytotoxin-producing <em>Escherichia coli</em> O157</td>
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ANNEX 2: Hazard Analysis Critical Control Point (HACCP) Evaluation Competencies

Standards of Competence for Food Authority Authorised Officers in relation to procedures based on HACCP principles

1. Food Authorities must satisfy themselves that staff engaged in the food hygiene inspection of food business establishments, involving the audit of procedures based on HACCP principles, in addition to holding the relevant qualification prescribed in Section 4.8 for the category of business to be inspected, are able to demonstrate the following competencies.

2. To identify, through the conduct of an audit, the need for improved food safety control in establishments having regard to the nature and size of the business.
   a. Assess the quality of food safety hazard identification in a food business.
   b. Assess the quality of critical control point (CCP) identification in a food business.
   c. Assess the suitability of controls in place and their monitoring at CCPs.
   d. Assess the verification and review by business operators of procedures based on HACCP principles.

3. To promote and support the implementation of procedures based on HACCP principles appropriate to the nature and size of the business.
   a. Explain the principles of hazard analysis to food business operators or managers in terms appropriate to the nature and size of the business.
   b. Specify targets for improved control of food safety hazards.
   c. Provide advice on carrying out hazard analysis and implementing controls in terms appropriate to the nature and size of the business.
   d. Explain where appropriate, the relationship between HACCP systems (based on Codex Alimentarius\textsuperscript{72}) and other procedures based on HACCP principles.

\textsuperscript{72}http://www.codexalimentarius.org/
4. To secure compliance with procedures based upon HACCP principles as required in legislation, appropriate to the nature and size of the business.

   a. Explain the legal requirements in relation to procedures based on HACCP principles.

   b. Secure progress towards compliance by discussion and persuasion.

5. Secure compliance by the issue of notices. Secure compliance through the courts (and gather and preserve evidence in a form usable in court).
ANNEX 3: Schematic Representation for Food Incidents Reporting (see also 8.5)

**Decision Tree – Food Incidents**

1. **Food Incident**
   - **Food Hazard?** *1* 
     - Yes 
     - **Report to FSA**
     - No 
     - **Limited to within the LA?**
       - Yes 
       - **Report to FSA**
       - No 
       - **Suspect Fraud?** *3* 
         - Yes 
         - **Report to FSA**
         - No 
         - **Non hazardous food incident**
     - **Serious?** *2* 
       - Yes 
       - **Report to FSA**
       - No 
       - **Risk Assessment and decision on LA or FSA lead**
   - **Report to FSA**

**LA Responsibility**

*1 - a food incident involving (or suspected to involve) a biological, chemical or physical agent in, or condition of, food with the potential to cause an adverse effect on the health or safety of consumers (including outbreaks of foodborne disease)

*2 - E. coli O157, other VTEC, C. botulinum, Salmonella typhi or Salmonella paratyphi or which the Food Authority considers significant because of, for example, the vulnerability of the population likely to be affected, the numbers involved or any deaths associated with the incident;

*3 - The deliberate placing on the market, for financial gain, foods which are falsely described or otherwise intended to deceive the consumer

*4 - In determining significance, consideration should be given to: 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 of Scotland (or the UK); public concern; likelihood of media interest
ANNEX 4: Food Incident Report Form (Food Authorities)

HAZARDOUS FOOD INCIDENT REPORT FORM

To be completed by investigating officer and or representative and scanned and e-mailed to Scottishincidents@foodstandards.gsi.gov.uk (or faxed to FSA Scotland on 01224 285110 or completed on-line at https://incidents.foodapps.co.uk/Incidentreportform/login.aspx

1. Reporting Food Authority’s name and address:

2. Name of Reporting Officer including telephone, fax and e-mail details:

3. Date and time initial information received by Food Authority:

4. Initial information received by:

5. Received from (include Food Authority, HPS etc., address, telephone number and contact name where possible):


7. Brief description of incident:

8. Type of contamination: e.g. microbiological, chemical, physical;

9. Description of product
   a. Type of Product:
   b. Product Name:
   c. Brand Name:
   d. Batch Code/s:
   e. Description of Packaging:
   f. Pack Size:
   g. Durability Date/s or Code/s:
   h. Country of Origin:
i. UK Importer/Distributor (including contact details):

j. Manufacturer (including contact details):

k. Packer (including contact details):

10. Has clinical illness occurred? Details (type of illness, symptoms, numbers of consumers affected, stool samples submitted? etc.):

11. Full details of distribution (including EU and Third Countries) e.g. quantities and areas, and when the particular product and or 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 tick):

<table>
<thead>
<tr>
<th></th>
<th>Tick as appropriate</th>
<th>Tick as appropriate</th>
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</thead>
<tbody>
<tr>
<td>Local</td>
<td>Retail</td>
<td></td>
</tr>
<tr>
<td>Regional</td>
<td>Catering</td>
<td></td>
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<tr>
<td>Manufacture</td>
<td>National</td>
<td></td>
</tr>
<tr>
<td>International</td>
<td>Import/Export</td>
<td></td>
</tr>
</tbody>
</table>

14. Other relevant contact details (e.g. home and or originating authority/CPHM/HPS/other)

   Name:

   Address, telephone and fax numbers, e-mail 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 fax 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 forward and or fax this to the FSA with this form.

17. Any additional information: Please attach additional pages if necessary.

Signed: Date: Job Title:
A.5.1: Introduction

1. This Annex deals with the food hygiene and food standards intervention ratings and frequencies for interventions at food businesses. The terms food business

2. The Annex does not apply to primary production establishments – or animal feed establishments, that are otherwise covered by Annex 10 of this Code.

3. Local authorities may implement amended inspection frequencies for individual establishments (other than approved establishments) provided that this follows the protocol set out in Annex 5A. Implementation of Annex 5A does not involve changes to Annex 5 scoring, which should be carried out in all cases.

4. The band revisions, namely reduction in the width of the “C” category and increase the width of the “D” category allows local authorities to redirect resources to food establishments which present higher risks to food safety

A.5.2: Food Hygiene Intervention Rating Scheme

A.5.2.1: Basic Principles

1. 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 this Annex.

2. The scheme incorporates an option for Alternative Enforcement Strategies for “low-risk” establishments, in which the inherent hazards are not significant by virtue of their trading activities or the number of consumers they supply (see A5.3 part1 C).

3. The scheme is set out in the form of an assessment document that can be used by authorised officers in the field. An assessment should be completed at the end of the initial inspection of each newly registered 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.

4. Authorised 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.

5. Establishments that fall into more than one scoring category for a scoring factor should be allocated the highest score of those that are applicable.
6. 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.

7. 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 section 28.4 of the Code.

8. 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.

9. 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.

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

11. Low-risk activities (category E establishments)

   a. “Low-risk” establishments should be subject to an alternative enforcement strategy or intervention, at least once during any three year period.

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

   c. 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.
A5.3 Food hygiene scoring system

Part 1: The potential hazard

Three factors determine the potential hazard:

A. Type of food and method of handling

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

Score: ___
### 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.

<table>
<thead>
<tr>
<th>Score</th>
<th>Guidance on the scoring system</th>
</tr>
</thead>
<tbody>
<tr>
<td>20</td>
<td>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.</td>
</tr>
<tr>
<td></td>
<td>a. Canning or other aseptic packing of low-acid foods;</td>
</tr>
<tr>
<td></td>
<td>b. Vacuum and sous-vide packing;</td>
</tr>
<tr>
<td></td>
<td>c. 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.);</td>
</tr>
<tr>
<td></td>
<td>d. Fermentation of meats e.g. to produce salamis and other fermented sausages;</td>
</tr>
<tr>
<td></td>
<td>e. Air drying e.g. dried hams, biltong, jerky;</td>
</tr>
<tr>
<td></td>
<td>f. Freeze drying;</td>
</tr>
<tr>
<td></td>
<td>g. Addition of salt and or other preserving agents;</td>
</tr>
<tr>
<td></td>
<td>h. The cooking and cooling of meat products prior to service e.g. production of hams by retailers, including butchers;</td>
</tr>
<tr>
<td></td>
<td>i. 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 intended to be eaten rare or undercooked through controlled procedures.</td>
</tr>
<tr>
<td>0</td>
<td>Any other case not included above.</td>
</tr>
</tbody>
</table>

Score: [ ]
C. Consumers at risk

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

<table>
<thead>
<tr>
<th>Score</th>
<th>Guidance on the scoring system</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>Food businesses involved in either the manufacture, distribution, packing or wrapping operations of food which is supplied nationally or internationally.</td>
</tr>
<tr>
<td>10</td>
<td>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.</td>
</tr>
<tr>
<td>5</td>
<td>Businesses, most of whose customers are likely to be living, staying or working in the local area, e.g. high street or corner shop, high street supermarket, or high street restaurant.</td>
</tr>
<tr>
<td>0</td>
<td>Businesses typically supplying less than 20 consumers each day.</td>
</tr>
</tbody>
</table>

Score: __________

PLUS

1. An additional score of 22 (in addition to the score above) should be included for food 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.

2. 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 and or pregnant women.

<table>
<thead>
<tr>
<th>Score</th>
<th>Guidance on the scoring system</th>
</tr>
</thead>
<tbody>
<tr>
<td>22</td>
<td>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.</td>
</tr>
<tr>
<td>0</td>
<td>Any other case not included above.</td>
</tr>
</tbody>
</table>

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

1. 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.

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

3. 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.

<table>
<thead>
<tr>
<th>Score</th>
<th>Guidance on the scoring system</th>
</tr>
</thead>
<tbody>
<tr>
<td>25</td>
<td>Almost total non-compliance with statutory obligations.</td>
</tr>
<tr>
<td>20</td>
<td>General failure to satisfy statutory obligations – standards generally low.</td>
</tr>
<tr>
<td>15</td>
<td>Some major non-compliance with statutory obligations – more work required to prevent fall in standards.</td>
</tr>
<tr>
<td>10</td>
<td>Some non-compliance with statutory obligations and industry codes of recommended practice. Standards are being maintained or improved.</td>
</tr>
<tr>
<td>5</td>
<td>High standard of compliance with statutory obligations, industry codes of recommended practice and minor contraventions of food hygiene regulations.</td>
</tr>
<tr>
<td>0</td>
<td>High standard of compliance with statutory obligations and industry codes of recommended practice; conforms to accepted good practices in the trade.</td>
</tr>
</tbody>
</table>

Score - hygiene: 

Score - hygiene: 

Part 3: Confidence in management/control procedures

1. 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.

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.

3. 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.

4. 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).

5. The confidence in management / control procedures score is not solely about documented procedures and their implementation. Factors that will influence the authorised officer’s judgement include:
   
   a. the "track record" of the company, its willingness to act on previous advice and enforcement, and the complaint history;
   b. the attitude of the present management towards hygiene and food safety; and
   c. hygiene and food safety knowledge, including hazard analysis/HACCP and the control of critical points;
   d. satisfactory food safety management based procedures;
   e. Participation in relevant assurance schemes which address applicable legislation.

6. In determining ‘satisfactory’ in respect of HACCP based procedures, authorised 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.
<table>
<thead>
<tr>
<th>Score</th>
<th>Guidance on the scoring system</th>
</tr>
</thead>
</table>
| 30    | Poor track record of compliance.  
      | Little or no technical knowledge.  
      | Little or no appreciation of hazards, risk or quality control.  
      | No food safety management procedures.  
      | Manager does not recognise or accept the need for food safety and hygiene controls. |
| 20    | Significantly varying record of compliance.  
      | Poor appreciation of hazards and control measures.  
      | No food safety management procedures.  
      | Some reluctance in recognising or accepting the need for food safety and hygiene control procedures. |
| 10    | Satisfactory record of compliance.  
      | Access to relevant technical advice source and/or guides to good practice or assurance scheme.  
      | Understanding of significant hazards and control measures in place.  
      | Making satisfactory progress towards documented food safety management procedures commensurate with type of business.  
      | Note: “Making progress” can only be considered appropriate once. If at the next intervention the food safety management procedures are not satisfactory the score of 10 is not appropriate. |
| 5     | Good record of compliance.  
      | Technical advice available in-house or access to, and use of, technical advice from a Home and or Primary Authority, trade associations and or from Guides to Good Practice or assurance scheme.  
      | 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. |
| 0     | Excellent record of compliance.  
      | Access to technical advice, or manager knowledgeable and competent.  
      | Proactive and ability of self-regulation.  
      | Has satisfactory documented food safety management procedures commensurate with type of business, which may be subject to external audit process.  
      | Audit by Food Authority confirms compliance with documented procedures with few/minor non-conformities not identified as critical control points. |

Score: □
1. An additional score of 20 (in addition to the score above) should be included where there is a significant risk:
   
a. of food being contaminated with *Clostridium botulinum* and the micro-organism surviving any processing and multiplying; or
b. 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*.

2. 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:
   
a. the potential for contamination or cross-contamination by the specified micro-organisms;
b. the likelihood of survival and growth of the specified micro-organisms;
c. the existence of procedures based on HACCP principles and confidence in their implementation, including documentation and records of monitoring of controls;
d. the extent and relevance of training undertaken by managers, supervisors and food handlers; and
e. whether intervention by the Food Authority is necessary to reduce the probability of an incident occurring.

3. 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.

4. 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.

<table>
<thead>
<tr>
<th>Score</th>
<th>Guidance on the scoring system</th>
</tr>
</thead>
<tbody>
<tr>
<td>20</td>
<td>Significant risk of food being contaminated with <em>Clostridium botulinum</em>, 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.</td>
</tr>
<tr>
<td>0</td>
<td>Any other case not included above.</td>
</tr>
</tbody>
</table>

**Score:**

**Inspection Rating:**

**Total:**

**A5.4 Food hygiene minimum intervention frequencies**
<table>
<thead>
<tr>
<th>Category</th>
<th>Score</th>
<th>Minimum intervention frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>92 or higher</td>
<td>At least every six months</td>
</tr>
<tr>
<td>B</td>
<td>72 to 91</td>
<td>At least every 12 months</td>
</tr>
<tr>
<td>C</td>
<td>52 to 71</td>
<td>At least every 18 months</td>
</tr>
<tr>
<td>D</td>
<td>31 to 51</td>
<td>At least every 24 months</td>
</tr>
<tr>
<td>E</td>
<td>0 to 30</td>
<td>A programme of alternative enforcement strategies or interventions every three years</td>
</tr>
</tbody>
</table>

1. 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.
A5.5 Food standards intervention rating scheme

Basic principles

1. Food authorities should determine the food standards intervention frequencies of food businesses within their areas using the risk assessment criteria in this Annex, in order to determine their planned food standards intervention programmes.

2. The scheme is set out in the form of an assessment document that can be used by authorised officers in the field. An assessment should be completed at the end of the initial inspection of each newly registered 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.

3. The scheme incorporates an option for alternative enforcement strategies other than inspections for “low-risk” businesses in which the inherent hazards are not significant by virtue of their trading activities or the number of consumers they supply (see below).

4. Authorised 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.

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

6. 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.

7. 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 Section 28.4 of the Code.

8. 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.

9. 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.
10. Food authorities may be asked to bring forward the intervention of an establishment following direction from the Agency in response to an emerging incident or a national programme of work. Food authorities should contact the Agency if such a direction presents a significant disruption to their ability to deliver a risk based intervention programme.

Low-risk activities (category C establishments)

1. “Low-risk” establishments should be subject to an alternative enforcement strategy or intervention, at least once during any five year period.

2. Food authorities that decide to subject “low-risk” 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.

3. 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.
A5.6 Food standards scoring system

Part 1: The potential hazard

A. Risk to consumers and or other businesses

1. 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.

<table>
<thead>
<tr>
<th>Score</th>
<th>Guidance on the scoring system</th>
</tr>
</thead>
<tbody>
<tr>
<td>30</td>
<td>Manufacturers of PARNUTS foods; Manufacturers 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.</td>
</tr>
<tr>
<td>20</td>
<td>Manufacturers or packers of foods that are subject to statutory compositional standards.</td>
</tr>
<tr>
<td>10</td>
<td>Local businesses that use in-store produced labels, window displays, chalk boards, menus etc., e.g. butchers, bakers, health food shops, restaurants, takeaways, caterers supplying more than 10 meals per day, and businesses using claims for marketing advantage.</td>
</tr>
<tr>
<td>0</td>
<td>Caterers supplying not more than 10 meals per day, e.g. bed and breakfast; Any business not included in the categories above.</td>
</tr>
</tbody>
</table>

Score: [Blank]
B. Extent to which the activities of the business affect any hazard

1. 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.

2. The scores below provide examples of food businesses to which a particular score could apply.

<table>
<thead>
<tr>
<th>Score</th>
<th>Guidance on the scoring system</th>
</tr>
</thead>
<tbody>
<tr>
<td>30</td>
<td>Food manufacturers, processors, importers handling a wide range of goods.</td>
</tr>
<tr>
<td>20</td>
<td>Local businesses that label loose goods on display, and/or undertake pre-packing for direct sale.</td>
</tr>
<tr>
<td>10</td>
<td>Non-manufacturing retail/catering selling only from their own establishment.</td>
</tr>
<tr>
<td>0</td>
<td>Any business not included in the categories above.</td>
</tr>
</tbody>
</table>

C. Ease of compliance

1. 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.

<table>
<thead>
<tr>
<th>Score</th>
<th>Guidance on the scoring system</th>
</tr>
</thead>
<tbody>
<tr>
<td>30</td>
<td>Manufacturer, packer or importer of a wide range of products.</td>
</tr>
<tr>
<td>20</td>
<td>Manufacturer, packer or importer of a limited range of products.</td>
</tr>
<tr>
<td>10</td>
<td>Retailers who apply descriptions to food such as butchers, bakers and delicatessens; Caterers with complex menus.</td>
</tr>
<tr>
<td>0</td>
<td>Any business not included in the categories above.</td>
</tr>
</tbody>
</table>

Score: [ ]
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.

<table>
<thead>
<tr>
<th>Score</th>
<th>Guidance on the scoring system</th>
</tr>
</thead>
<tbody>
<tr>
<td>20</td>
<td>Manufacturers, producers and packers of food that is distributed nationally or internationally.</td>
</tr>
<tr>
<td>10</td>
<td>Businesses whose trade extends beyond the local area, e.g. regional supermarket/hypermarket; small-scale local manufacturer.</td>
</tr>
<tr>
<td>5</td>
<td>Businesses supplying the local area, e.g. high street or corner shop; local supermarket, local restaurant.</td>
</tr>
<tr>
<td>0</td>
<td>Businesses supplying less than 30 consumers each day. Any other business not included in the categories above.</td>
</tr>
</tbody>
</table>

Score: [ ]

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, LGA etc. should be considered.

<table>
<thead>
<tr>
<th>Score</th>
<th>Guidance on the scoring system</th>
</tr>
</thead>
<tbody>
<tr>
<td>40</td>
<td>General failure to satisfy statutory obligations. Standards generally low.</td>
</tr>
<tr>
<td>10</td>
<td>A typical business with some minor non-compliance with statutory obligations.</td>
</tr>
<tr>
<td>0</td>
<td>High standard of compliance with statutory obligations and industry codes of recommended practice, conforms to relevant trade good practice.</td>
</tr>
</tbody>
</table>

Score: [ ]

Part 3: Confidence in management/control systems

1. 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
2. Part 2, and consequently a low score for that factor.
3. 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.
4. Factors that will influence the authorised officer’s judgement include:

   a. The "track record" of the company, its willingness to act on previous advice and enforcement, and the complaint history;
   b. 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;
   c. 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 food business.

<table>
<thead>
<tr>
<th>Score</th>
<th>Guidance on the scoring system</th>
</tr>
</thead>
<tbody>
<tr>
<td>30</td>
<td>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.</td>
</tr>
<tr>
<td>20</td>
<td>Staff have a basic understanding of relevant food law. May not have a food standards management system. At least one justifiable complaint since the last inspection.</td>
</tr>
<tr>
<td>10</td>
<td>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. At least one justifiable complaint since the last inspection.</td>
</tr>
<tr>
<td>0</td>
<td>Technical advice available. Subject to internal audit/checks. Good food standards management system, documented records of critical checks and supplier checks, which may be subject to third party audit. Evidence of compliance with documented management system with few/minor non-conformities. No justifiable complaints since the last inspection.</td>
</tr>
</tbody>
</table>

Score: 

**A5.7 Food standards inspection frequencies**

<table>
<thead>
<tr>
<th>Category</th>
<th>Score</th>
<th>Minimum intervention frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>101 to 180</td>
<td>At least every 12 months</td>
</tr>
<tr>
<td>B</td>
<td>46 to 100</td>
<td>At least every 24 months</td>
</tr>
<tr>
<td>C</td>
<td>0 to 45</td>
<td>Alternative enforcement strategy or intervention every five years</td>
</tr>
</tbody>
</table>

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.
ANNEX 5A: Adjustments to minimum intervention frequencies

1. Scope and intention
   a. This Annex does not apply to approved establishments. It is based on the following principles:
      i. Establishments that demonstrate sustained compliance may be inspected at less frequent intervals than would otherwise have been required by Annex 5 risk ratings.
      ii. Enforcement resources released as a result of reduced inspection frequencies based on sustained compliance should be used to increase inspection frequencies at establishments with a track record of non-compliance.

   b. Implementation of a regime based on Annex 5A is voluntary for all local authorities. A methodology for the application of the above principles is set out below, but it is also open to local authorities to propose modifications to apply such a regime selectively to particular classes of establishment or to individual establishments based on local criteria. However, local authorities should obtain written approval from the FSA before implementing any arrangement based on annex 5A.

   c. The FSA will approve proposals that follow the methodology set out and will consider alternative proposals for approval. Local authorities with approval to implement a regime under Annex 5A should be prepared to contribute data to the FSA on the outcomes of interventions at adjusted frequencies, in terms of recorded compliance, adjusted ratings applied and comparable risk rating using Annex 5. The FSA would use any such data to inform the development of a standardised regime based on the local authority experience.

   d. Where risk categories are allocated to a business that are lower than the Annex 5 category, inspections should be prioritised against lower risk categories on the basis of the substantive Annex 5 risk category rather than the reduced category allocated under this methodology.

   e. Implementation of the optional Annex 5A intervention programme is intended to make more effective use of Local Authority resources to ensure robust resilient official food controls are in place in Scotland.

2. Scope of discretion
   a. This scheme sets out a methodology which allows for reduced or increased inspection frequencies. Local authorities are given discretion to apply any risk rating category that lies between the current Annex 5 rating and the current rating calculated under this Annex. The objective of this flexibility is that local authorities will maintain resources at the levels necessary to meet the requirements of Annex 5 and be able to focus these resources more towards non-compliant businesses. Annex 5 risk rating should continue to be undertaken and adjusted ratings under Annex 5A should be recorded separately.
3. Permissible reduction in inspection frequency through re-categorisation

a. Where an establishment in risk categories A-C determined under Annex 5, demonstrates stable compliance over the relevant periods set out below, the intervention frequency for the next lowest category may be applied. This reduction can be applied successively so that any such establishment can progress to any category below its substantive category through a track record of sustained compliance.

b. Establishments with a compliance-adjusted rating of D can be further down-rated to a new sustained compliance category ‘SC’. The SC category is not handled identically to category E. Establishments with a risk category E in terms of Annex 5 should remain in category E rather than being categorised at any point as SC.

c. On entry to the SC category, the next inspection should take place within 3 years and may continue at a 3 year frequency as long as compliance is consistently demonstrated. Local authorities may propose further promotion to frequencies of up to 5 years provided additional random inspections or other safeguards are implemented to provide additional assurance.

d. Local authorities should be particularly sensitive to any intelligence that may indicate a compliance issue (including consumer complaints) at any establishment with a reduced inspection frequency under Annex 5A.

e. One of two compliance outcomes is applied following each inspection:

“Pass”

Pass represents a standard of compliance that the inspecting officer considers sufficient for contribution to support a case for ‘sustained compliance’. It should be no less than the Food Hygiene Information Scheme (FHIS) Pass standard [Satisfactory compliance with the food hygiene regulations, with any non-compliance being minor, not directly affecting consumer safety and not recurring] existing guidance on interpretation of terms should be in line with FHIS guidance, whether or not the establishment is in scope for FHIS. In addition to hygiene legislation, authorised officers should take into account any potential deficiencies associated with other aspects of food safety law (particularly Regulation (EC) No 178/2002). A Pass status should only be applied following an intervention where an Annex 5 risk rating can also be applied.
**“Improvement Required (IR)”**

Improvement Required is allocated where a business demonstrates inadequate compliance. The standard is analogous to the FHIS Improvement Required category (whether or not the establishment is within the scope of FHIS) but may include elements of compliance beyond hygiene, such Regulation (EC) No 178/2002.

f. The criteria for eligibility for each downward categorisation (‘promotion’ hereafter) are:

i. No less than three satisfactory inspections before the first promotion; and:

ii. A further satisfactory inspection before each successive promotion.

g. Once promoted to a given Annex 5A category, that category is unaffected by a change to Annex 5 risk rating. An Improvement Required outcome triggers loss of promoted status (reverting to the Annex 5 Category). Although the decision chart below indicates that a demoted establishment would only be promoted incrementally an option to revert to the Annex 5 from any adjusted rating is always open to the local authority.

h. The Annex 5A categories of establishments can be changed in accordance with this Annex on the basis of historical records, provided that those records are sufficient and auditable. All decisions over re-categorisation should be recorded and approved in the same way as any approval required for change of category under Annex 5.

4. **Failing Businesses**

a. Where an establishment in any risk category determined under Annex 5, is assessed as Improvement Required following three successive inspections, the intervention frequency for the next highest category may be applied (e.g. B becomes A). This escalation (‘demotion’ hereafter) should be applied successively at each subsequent Improvement Required outcome. Establishments with an Annex 5A rating of A can be further demoted to a new failed compliance category ‘FC’ with a 3-month inspection frequency.

5. **Application to food standards**

a. The foregoing protocol can be applied, with appropriate changes, to food standards. In this case, the ‘FC’ category for food standards would represent a 6 month intervention frequency and progression from B would be to SC. Food standards risk category C would be unaffected.
Figure 1 Annex 5A Decision Chart (Food Hygiene)
ANNEX 6: Food Establishment Intervention Report

A report containing the following information must be provided to the food business operator following each intervention. The information may be provided as a separate report or may be included as part of a letter from the Food Authority.

1. Trading name and address of the business, and registered address if different:

2. Name of the food business operator/food business proprietor:

3. Type of business:

4. Name(s) of person(s) seen and/or interviewed:

5. Date and time of intervention:

6. Type of intervention

7. Specific Food Law under which intervention conducted:

8. Areas inspected/audited (to be specified):

9. Documents and/or other records examined (to be specified):

10. Samples taken (to be specified):

11. Key points discussed during the visit (to be specified):

12. Action to be taken by the Food Authority (to be specified):

13. Signed by:

14. Name in capitals:

15. Designation of authorised officer:

16. Contact details of authorised officer:

17. Contact details of senior officer in case of dispute:

18. Date:

19. Food Authority name and address:
ANNEX 7: Model Forms of Notice

Model forms which may be used by authorised officers in connection with the Food Hygiene (Scotland) Regulations 2006 are provided from A7.1 to A7.20 as summarised in the following table.

<table>
<thead>
<tr>
<th>Location</th>
<th>Model Form</th>
<th>For Use In Connection With</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.7.1 / A7.2</td>
<td>Hygiene Improvement Notice</td>
<td>Regulation 6</td>
</tr>
<tr>
<td>A.7.3 / A7.4</td>
<td>Hygiene Emergency Prohibition Notice</td>
<td>Regulation 8</td>
</tr>
<tr>
<td>A.7.5 / A7.6</td>
<td>Notice Of Intention To Apply For A Hygiene Emergency Prohibition Order</td>
<td>Regulation 8</td>
</tr>
<tr>
<td>A.7.7 / A7.8</td>
<td>Remedial Action Notice</td>
<td>Regulation 9</td>
</tr>
<tr>
<td>A.7.9 / A7.10</td>
<td>Detention Notice</td>
<td>Regulation 9</td>
</tr>
<tr>
<td>A.7.11 / A7.12</td>
<td>Notice of Withdrawal of Remedial Action Notice</td>
<td>Regulation 9</td>
</tr>
<tr>
<td>A.7.13 / A7.14</td>
<td>Notice of Withdrawal of Detention Notice</td>
<td>Regulation 9</td>
</tr>
<tr>
<td>A.7.15 / A7.16</td>
<td>Certificate That Health Risk Condition No Longer Exists</td>
<td>Regulation 7 and Regulation 8</td>
</tr>
<tr>
<td>A.7.17 / A7.18</td>
<td>Notice of Determination That Health Risk Condition Remains in Existence</td>
<td>Regulation 7 and Regulation 8</td>
</tr>
<tr>
<td>A.7.19 / A7.20</td>
<td>Certificate That Food Has Not Been Produced, Processed or Distributed In Compliance With The Hygiene Regulations</td>
<td>Regulation 27</td>
</tr>
</tbody>
</table>
A.7.1: Model Form 1 - HYGIENE IMPROVEMENT NOTICE

Authority:

The Food Hygiene (Scotland) Regulations 2006 (as amended) ("the Regulations") (Regulation 6)

HYGIENE IMPROVEMENT NOTICE   Reference Number:

To:..............................................................................................................................(Food Business Operator)

At:..........................................................................................................................

(Address of Food Business Operator)

1. In my opinion the you have at your food business known as [NAME OF BUSINESS] at [ADDRESS] failed to comply with the hygiene regulations (as defined in regulation 2(1) of the Regulations) in that [EXPLAIN REASONS mention what is wrong with the premises or the behaviour of the food business operator and specify the legal provision breached by reference to the hygiene regulations]:

2. You must take the following measures, in order to comply with the Hygiene Regulations described at section 1:

...........................................................................................................................
...........................................................................................................................
...........................................................................................................................

3. The measure or measures referred to in section 2 of this notice (or measures at least equivalent to those specified) must be taken by .........................(date). It is an offence not to comply with this notice by the specified date.

Signed:...............................................................................................(Authorised Officer)

Name in capitals: .................. Date: ..................  
Address: 

...........................................................................................................................
...........................................................................................................................

Tel: ............................ E-mail: ..........................

Please read the notes overleaf carefully. If you are not sure of your rights or the implications of this notice, you should seek legal advice.
A.7.2: Model Form 1 - HYGIENE IMPROVEMENT NOTICE (REVERSE)

NOTES

1. In the opinion of the authorised officer you are not complying with the Food Hygiene (Scotland) Regulations 2006 (as amended) as described in section 2 of the notice. In the authorised officer’s opinion, to put matters right you must undertake the work described and it must be finished by the date stated in section 3.

2. You are responsible for ensuring that the work is carried out within the period specified in the notice.

   You may carry out work that will achieve the same effect as that required by the notice. If you think that there is another equally effective way of complying with the provisions mentioned in this notice, other than that specified you should first discuss it with the authorised officer

YOUR RIGHT OF APPEAL

4. In accordance with Regulation 20 of the Food Hygiene (Scotland) Regulations 2006 (as amended), if you disagree with all or part of this notice, you can appeal to the Sheriff. You must appeal within one calendar month of the date of the notice or the period ending with the date stated in section 3 of the notice, whichever ends earlier. You may wish to seek independent legal advice in connection with any appeal.

5. If you decide to appeal, the time set out in the notice is suspended and you do not have to carry out the work described until the appeal is heard. When the appeal is heard, the sheriff may confirm, cancel or vary the notice.

WARNING

FAILURE TO COMPLY WITH THIS NOTICE IS AN OFFENCE

Offenders are liable to be fined and or imprisoned for up to 2 years.
A.7.3: Model Form 2 - HYGIENE EMERGENCY PROHIBITION NOTICE

Authority: ..............................................................................................................

The Food Hygiene (Scotland) Regulations 2006 (as amended) – Regulation 8

HYGIENE EMERGENCY PROHIBITION NOTICE

Reference Number: .................

1. To: .................................................................................................(Food Business Operator)
At: ...........................................................................................................

2. I am satisfied that the health risk condition is fulfilled with respect to:
......................................................................................................................(Name of Food Business)
At: ...........................................................................................................

Because:
......................................................................................................................
......................................................................................................................
......................................................................................................................
......................................................................................................................
......................................................................................................................
......................................................................................................................
......................................................................................................................

(*See Note 1 overleaf)

3. YOU MUST NOT USE IT FOR THE PURPOSES OF (THIS) (ANY) (THIS OR ANY SIMILAR)† FOOD BUSINESS(delete as appropriate)

[†authorised officer to delete as appropriate]

Signed: .........................................................................................(Authorised Officer)

Name in capitals: ..........................................................................................

Date: ............................................................................................................

Address: ....................................................................................................

Tel: .............................................................................................................

E-mail: ....................................................................................................... 

Please read the notes overleaf carefully. If you are not sure of your rights or the implications of this notice, you may want to seek legal advice.
NOTES

1. When you receive this notice you must IMMEDIATELY stop using the premises, process, treatment or equipment described by the authorised officer in section 2 of the notice and located at the address stated.

2. Within 5 days of service of this notice, the authority must apply to the Sheriff for an order confirming the prohibition. You will receive a copy of the application and be told the date and place of the hearing which you are entitled to attend and at which you may call witnesses if you wish.

3. If you believe that you have acted to remove the health risk condition, you may apply in writing to the authority for a certificate of satisfaction which, if granted, would allow you to use the premises, process, treatment or equipment again. You can do this even if the Court hearing has not taken place.

4. You are not allowed to use the premises, process, treatment or equipment for the purpose specified in section 2 of the notice (see Regulation 7(3) of the Food Hygiene (Scotland) Regulations 2006 (as amended) as applied by Regulation 8(4) until

(a) a Court decides you may do so; or
(b) the authority issues you with a certificate as in section 3 above; or
(c) 5 days have passed since the service of the notice and the authority has not applied to the court as in section 2 above; or
(d) the authority abandons the application.

5. A copy of this notice must, by law, be fixed on the premises or equipment which is not to be used. It is an offence under Section 52 of the Criminal Law (Consolidation)(Scotland) Act 1995 to deface it.

6. COMPENSATION: If the authority does not apply to the Sheriff, for an order within 5 days of the date of service of this notice, you will be entitled to compensation for any losses you have suffered because you could not use the premises, process, treatment or equipment because you were complying with this notice. You will also be entitled to such compensation if the sheriff decides that the health risk condition was not fulfilled with respect to the food business at the time when the notice was served.

WARNING

ANYONE WHO KNOWINGLY CONTRAVENES THIS NOTICE IS GUILTY OF AN OFFENCE

Offenders are liable to be fined and or imprisoned for up to 2 years.
A.7.5: Model Form 3 - NOTICE OF INTENTION TO APPLY FOR A HYGIENE EMERGENCY PROHIBITION ORDER

Authority: .................................................................

The Food Hygiene (Scotland) Regulations 2006 (as amended) Regulation 8
NOTICE OF INTENTION TO APPLY FOR HYGIENE EMERGENCY PROHIBITION ORDER

Reference Number:..............To: ..................................(Food Business Operator)

At:.................................................................(Address of Food Business Operator)

You are the food business operator of the food business at:

........................................................................................................................................

I give notice that I shall be applying to .........................Sheriff Court at (date and time) ...............for a Hygiene Emergency Prohibition Order because:

........................................................................................................................................

........................................................................................................................................

[Authorised officer to state reason why the Order is being sought in respect of the premises, process, treatment or equipment]

If an Order is made you will not be able to use the [premises] [process] [treatment] [equipment] described: †

........................................................................................................................................

........................................................................................................................................

........................................................................................................................................

........................................................................................................................................

for the purpose of [this] [any] [this or any similar]† food business. [†authorised officer to delete as appropriate]

Signed: .................................................................(Authorised Officer)

Name in capitals: ........................................................................................................

Date:.............................. Tel:..............................................................

Address.........................................................................................................................

........................................................................................................................................

E-mail: .......................................................................................................................

Please read the notes overleaf carefully. If you are not sure of your rights or the implications of this notice, you may want to seek legal advice.
NOTES

1. This notice tells you that the authority intends to apply to the Sheriff for a Hygiene Emergency Prohibition Order which, if granted, would mean that you could not use the premises, process, treatment or equipment described for the purposes specified in section 3 of the notice (see Regulation 7(3) of the Food Hygiene (Scotland) Regulations 2006 (as amended) as applied by Regulation 8(4)).

2. The Sheriff will consider the evidence from the authority as to why they believe the health risk condition is fulfilled from the operation of your food business or part of it. You may bring your own evidence and witnesses to put before the court and you may choose to be represented by a lawyer.

3. If the court is satisfied by the authority's evidence that the health risk condition is fulfilled, then an order will be made stating what you may not do. The order will be served on you by the authority. A copy of it must be fixed by the authority in a conspicuous position on your premises. It is an offence under Section 52 of the Criminal Law (Consolidation)(Scotland) Act 1995 to deface it.

4. In accordance with Regulation 21 of the Food Hygiene (Scotland) Regulations 2006 (as amended), you have the right of appeal to the Court of Session against the decision of the sheriff.

5. The making of an order does not mean you are guilty of an offence. However, the authority may seek to prosecute you for offences under the Food Hygiene (Scotland) Regulations 2006 (as amended) or associated Regulations.

6. If you have been issued with a Hygiene Emergency Prohibition Notice from the authority, you will know what steps should be taken to remove the health risk condition.

7. If the Sheriff does not accept the authority's evidence and an order is not issued, then you will be entitled to continue your business. If the authority has already issued you with a Hygiene Emergency Prohibition Notice and you have suffered loss because you have complied with it, then you will also be entitled to compensation from the authority.
A.7.7: Model Form 4 - REMEDIAL ACTION NOTICE

Authority: ..............................................

The Food Hygiene (Scotland) Regulations 2006 (as amended) –
Regulation 9 REMEDIAL ACTION NOTICE

1. To: ..............................................................................................................................
   (Food Business Operator or a Duly Authorised Representative)

   At: ..............................................................................................................................
   (Address of Food Business Operator or a Duly Authorised Representative)

   Name of food business: ............................................................................................
   Address of food business: ..........................................................................................

2. In my opinion: The Hygiene Regulations are being breached*  
   Inspection under the Hygiene Regulations is being hampered* 
   because: ..................................................................................................................
   ...............................................................................................................................
   [authorised officer to insert which provision(s) of the Hygiene Regulations is/are being 
   breached and why] [*authorised officer to delete as appropriate]

3. This notice requires you to: 
   Cease use of the following rooms/areas/items of equipment*  
   Observe the conditions imposed on the following process* 
   Cease the following process* 
   Reduce the rate of operation to the rate stated* 
   Stop the operation completely* 
   [*authorised officer to delete as appropriate]

   The action required to remedy the situation is as follows: 
   .............................................................................................................................
   .............................................................................................................................
   .............................................................................................................................
   .............................................................................................................................

Signed: .......................................................................................................................(Authorised Officer)

Name in capitals: ..........................................................

Date: .......................................................... Tel: ............................................................

Address: ..........................................................................................................................

E-mail: ..........................................................................................................................

It is an offence under Regulation 9(7) not to comply with this notice.

Please read the notes overleaf carefully. If you are not sure of your rights or 
the implications of this notice, you may want to seek legal advice.
A.7.8: Model Form 4 - REMEDIAL ACTION NOTICE (REVERSE)

NOTES

1. The authorised officer is satisfied that the requirements of the Hygiene Regulations are not being met and/or that an inspection under the Hygiene Regulations being hampered for the reasons given.

2. When an authorised officer is satisfied that relevant action has been taken or any inspection by an authorised officer will not be hampered this notice will be withdrawn by means of a further notice in writing.

YOUR RIGHT OF APPEAL

3. In accordance with Regulation 20 of the Food Hygiene (Scotland) Regulations 2006 (as amended), you are entitled to appeal against this notice. If you want to do so, you should apply to the Sheriff, within one calendar month of the date on which this notice is served on you.

4. This notice remains in effect even if you are appealing against the terms of this notice.

WARNING

FAILURE TO COMPLY WITH THIS NOTICE IS AN OFFENCE

Offenders are liable to be fined and/or imprisonment for up to 2 years.
A.7.9: Model Form 5 - DETENTION NOTICE

Authority: ........................................................................................................

The Food Hygiene (Scotland) Regulations 2006 (as amended) Regulation 9
DETENTION NOTICE (Establishments subject to approval under Article 4(2) of Regulation (EC) No. 853/2004)

1. To: ..............................................................................................................
   (Food Business Operator or Duly Authorised Representative)
   At: ..............................................................................................................
   (Address of Food Business Operator or Duly Authorised Representative)
   Name of food business: .................................................................
   Address of food business: ............................................................
   .............................................................................................................

2. The following food is being detained for the purposes of examination:
   Description:
   .............................................................................................................
   .............................................................................................................
   .............................................................................................................
   .............................................................................................................
   Quantity:
   .............................................................................................................
   .............................................................................................................
   Identification Marks / Health Marks:
   .............................................................................................................
   .............................................................................................................

3. This food is not to be used.
4. The food is being detained for the purposes of examination.
5. The food must not be removed from:
   .............................................................................................................
   .............................................................................................................
   .............................................................................................................
   (Name / address of food business where food is to remain)
6. You will be informed in writing as soon as the Authorised Officer is satisfied as to the
   result of the examination. The notice will then either be withdrawn and the food
   released, or the food will be seized to be dealt with by a Justice of the Peace, who
   may condemn the food and order its destruction. You may choose to destroy the food
   at any time.

Signed: .................................................................(Authorised Officer)
Name in capitals: ..............................................................................
Date: .................................................................................................
Address: ............................................................................................
.............................................................................................................
Tel: ......................................................................................................
E-mail: ...............................................................................................
A.7.10: Model Form 5 - DETENTION NOTICE (REVERSE)

NOTES

1. The authorised officer has, by means of this notice, required the detention of the food specified for the purposes of examination.

2. The food must remain where it is. If it is moved it may only be moved to the place stated in section 5 of this notice.

3. If an authorised officer is satisfied that the food need no longer be detained this notice will be withdrawn by means of a further notice in writing.

4. If, for some reason, you need to move the food after receiving this notice, you should contact the authorised officer at the address given.

WARNING

FAILURE TO COMPLY WITH THIS NOTICE IS AN OFFENCE

Offenders are liable to be fined and/or imprisonment for up to 2 years.
A.7.11: Model Form 6 – NOTICE OF WITHDRAWAL OF REMEDIAL ACTION NOTICE

Authority: ........................................................................................................

The Food Hygiene (Scotland) Regulations 2006 (As amended)-
Regulation 9

NOTICE OF WITHDRAWAL OF A REMEDIAL ACTION NOTICE

1. To: ........................................................................................................
   (Food Business Operator or Duly Authorised Representative)
   At: ........................................................................................................
   (Address of Food Business Operator or Duly Authorised Representative)
   Name of food business: ...........................................................................
   Address of food business:
   ...........................................................................................................
   ...........................................................................................................

2. I being an authorised officer am satisfied that the action specified in the
   Remedial Action Notice reference number
   .............................................................................................................. served on you on
   .............................................................................................................. (date) has
   been taken. That Remedial Action Notice is hereby withdrawn.*

Signed: ................................................................. (Authorised Officer)
Name in capitals: .................................................................
Date: .................................................................
Address: ........................................................................................................
...........................................................................................................
...........................................................................................................
Tel: .................................................................
E-mail: ........................................................................................................

Please read the notes overleaf carefully. If you are not sure of your rights or
the implications of this notice, you may want to seek legal advice.
NOTES

1. The authorised officer is now satisfied that the action specified in the Remedial Action Notice has been taken.

2. The relevant notice/notices is/are now withdrawn.
A.7.13: Model Form 7 – NOTICE OF WITHDRAWAL OF DETENTION NOTICE

Authority: ………………………………………………………………………………………………………

The Food Hygiene (Scotland) Regulations 2006 (as amended)-
Regulation 9

NOTICE OF WITHDRAWAL OF A DETENTION NOTICE*
( Establishments subject to approval under Article 4(2) of Regulation (EC) No. 853/2004)

1. To: ………………………………………………………………………………………………………
   (Food Business Operator or Duly Authorised Representative)

At:………………………………………………………………………………………………………………
   (Address of Food Business Operator or Duly Authorised Representative)

Name of food business: ………………………………………………………

Address of food business:
………………………………………………………………………………………………………………

2. I being an authorised officer am satisfied that the food specified in the
   Detention Notice reference number
   …………………………………………………………………………………… served on you on
   …………………………………………………………………………………… (date) need
   no longer be detained. That Detention Notice is hereby withdrawn.*
   [*authorised Officer to delete as appropriate]

Signed: ………………………………………………………………………….(Authorised Officer)

Name in capitals: …………………………………………………………………………………

Date:…………………………………. Tel: …………………………………………………

Address:……………………………………………………………………………………………………
   ………………………………………………………………………………………………………

E-mail: …………………………………………………………………………………………………

Please read the notes overleaf carefully. If you are not sure of your rights or
the implications of this notice, you may want to seek legal advice.
NOTES

1. The authorised officer is now satisfied that the food specified in the Detention Notice need no longer be detained.

2. The relevant notice/notices is/are now withdrawn.
A.7.15: Model Form 8 - CERTIFICATE THAT HEALTH RISK CONDITION NO LONGER EXISTS

Authority: ……………………………………………………………………………………………

The Food Hygiene (Scotland) Regulations 2006 (as amended)
Regulations 7 and 8
Certificate That Health Risk Condition No Longer Exists

1. To: ……………………………………………………………………………………………….. (Food Business Operator)
   At: ………………………………………………………………………………………………..
   ………………………………………………………………………………………………..
   ………………………………………………………………………………………………..
   (Address of Food Business Operator)

   Name of food business ………………………………………………………………………

   Address of food business
   ………………………………………………………………………………………………..
   ………………………………………………………………………………………………..
   ………………………………………………………………………………………………..

2. The enforcement authority certifies that it is satisfied that you have taken sufficient measures to secure that the health risk condition described in the:
   - Hygiene Emergency Prohibition Notice*
   - Hygiene Emergency Prohibition Order*
   - Hygiene Prohibition order* [*authorised officer to delete as appropriate]

   served on you on ………………………………………………………………………….. (date) is no longer fulfilled with respect to the food business.

   Signed: …………………………………………………………………………………………… (Authorised Officer)

   Name in capitals: …………………………………………………………………………………

   Date: …………………………………………… Tel: ………………………………………..

   Address: ……………………………………………………………………………………………
   ………………………………………………………………………………………………………
   E-mail: ……………………………………………………………………………………………

   THIS CERTIFICATE MEANS THAT YOU MAY NOW USE THE PREMISES, PROCESS, TREATMENT OR EQUIPMENT AGAIN.

   Please read the notes overleaf carefully. If you are not sure of your rights or the implications of this certificate, you should seek legal advice.
NOTES

1. The enforcement authority is now satisfied that the health risk condition no longer exists in respect of the circumstances that caused the authority to issue you with a Hygiene Emergency Prohibition Notice or the court to impose a Hygiene Prohibition Order or Hygiene Emergency Prohibition Order.

2. The relevant notice or order is now lifted and you may use the premises, process, treatment or equipment again.
A.7.17: Model Form 9: NOTICE OF DETERMINATION THAT HEALTH RISK CONDITION REMAINS IN EXISTENCE

Authority: ………………………………………………………………………………………………………

The Food Hygiene (Scotland) Regulations 2006 (as amended) – Regulations 7 and 8 NOTICE OF DETERMINATION THAT THE HEALTH RISK CONDITION REMAINS IN EXISTENCE

1. To: ………………………………………………………………………………..(Food Business Operator)
   At:……………………………………………………………………………………………………
   (Address of Food Business Operator)
   Name of food business ……………………………………………………………………………
   Address of food business……………………………………………………………………….
   ……………………………………………………………………………………………………

2. The enforcement authority has determined that it is NOT satisfied that you have taken sufficient measures to secure that the health risk condition described in the:

   - Hygiene Prohibition Order*
   - Hygiene Emergency Prohibition Notice*
   - Hygiene Emergency Prohibition Order* [authorised officer delete as appropriate]

   served on you on ……………………………… (date) and is satisfied that the health risk condition remains fulfilled with respect to the food business.

3. The enforcement authority is not satisfied because:

   ………………………………………………………………………………………………………
   ………………………………………………………………………………………………………
   ………………………………………………………………………………………………………
   ………………………………………………………………………………………………………

   Signed: ……………………………………………….(Authorised Officer)

   Name in capitals: …………………………………………………………………………………

   Date: ………………………………………. Tel: …………………………………………. ……
   Address:…………………………………………………………………………………………
   ………………………………………………………………………………………………………
   E-mail: ……………………………………………………………………………………………

   THIS NOTICE MEANS THAT YOU MAY NOT USE THE PREMISES, PROCESS, TREATMENT OR EQUIPMENT UNTIL THE ENFORCEMENT AUTHORITY NOTIFIES THAT YOU MAY DO SO.

   Please read the notes overleaf carefully. If you are not sure of your rights or the implications of this notice, you may want to seek legal advice.
NOTES

1. The enforcement authority is not satisfied that the health risk condition no longer exists in respect of the circumstances that caused the enforcement authority to issue you with a Hygiene Emergency Prohibition Notice or the court to impose a Hygiene Prohibition Order or Hygiene Emergency Prohibition Order.

2. You still cannot use the premises, process, treatment or equipment in question for the purposes described in the Hygiene Emergency Prohibition Notice, Hygiene Prohibition Order or Hygiene Emergency Prohibition Order even if you are appealing against the terms of this notice.

3. In accordance with Regulation 20 of the Food Hygiene (Scotland) Regulations 2006 (as amended), you are entitled to appeal against the decision of the authority to refuse to issue a certificate of satisfaction under Regulation 7(6) or Regulation 8(8). If you want to do so, you should apply to the Sheriff Court, within one calendar month of the date on which this notice is served on you.

4. As soon as you think that the health risk condition has been removed because of actions you have taken, you may apply in writing to the authority for a certificate of satisfaction which, if granted, would allow you to use the premises, process, treatment or equipment again. If a Hygiene Emergency Prohibition Notice has been issued, you can do this even if the court hearing has not taken place.

WARNING

FAILURE TO COMPLY WITH THE ORIGINAL NOTICE OR ORDER IS AN OFFENCE

Offenders are liable to be fined and/or imprisonment for up to 2 years.
A.7.19: Model Form 10 – CERTIFICATE THAT FOOD HAS NOT BEEN PRODUCED, PROCESSED OR DISTRIBUTED IN COMPLIANCE WITH THE HYGIENE REGULATIONS

Authority: …………………………………………………………………………..

The Food Hygiene (Scotland) Regulations 2006 (as amended)
Regulation 27 CERTIFICATE THAT FOOD HAS NOT BEEN PRODUCED, PROCESSED OR DISTRIBUTED IN COMPLIANCE WITH THE HYGIENE REGULATIONS

1. To:………………………………………………………………………..(Food Business Operator)
   At:…………………………………………………………………………………………..
   ………………………………………………………………………………………………..(Address of Food Business Operator)
   Name of food business: …………………………………………………………………
   Address of food business:……………………………………………………………

2. Following an inspection, the authorised officer certifies that the following food:
   ……………………………………………………………………………………………..
   ……………………………………………………………………………………………..
   ……………………………………………………………………………………………..
   ……………………………………………………………………………………………..
   has not been produced, processed or distributed in compliance with the Hygiene Regulations, as outlined below:
   ……………………………………………………………………………………………..
   ……………………………………………………………………………………………..
   ……………………………………………………………………………………………..
   ……………………………………………………………………………………………..
   ………………………………………………………………………………………………..

The above food shall therefore be treated for the purposes of Section 9 of the Act as failing to comply with food safety requirements.

Signed: …………………………………………………………………………..(Authorised Officer)
Name in capitals: ………………………………………………………………………..
Date: …………………………… Tel: ………………………………………..
Address:…………………………………………………………………………………
E-mail: …………………………………………………………………………………..

Please read the notes overleaf carefully. If you are not sure of your rights or the implications of this certificate, you may want to seek legal advice.
NOTES

1. The authorised officer has certified that the food detailed has not been produced, processed or distributed in compliance with the Hygiene Regulations for the reasons given.

2. The food shall therefore be treated for the purposes of Section 9 of the Food Safety Act as failing to comply with food safety requirements.
ANNEX 8: 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 submitted to 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 [the Food Authority] for guidance.

1. Address of establishment (or address at which moveable establishment is kept)

_____________________________________________________________________________________________________

__________________________________________________________________________

Post Code ____________

2. Name of Food Business (Trading Name) __________________________ Telephone no. ______________

3. Full Name of Food Business Operator ____________________________

4. Address of Food Business Operator

_____________________________________________________________________________________________________

__________________________________________________________________________

Telephone No. _______________ E-mail ____________________________

5. Type of Food Business (Please tick ALL the boxes that apply):

- Farm Shop
- Food manufacturing/processing
- Packer
- Importer
- Wholesale/cash and carry
- Distribution/warehousing
- Retailer
- Restaurant/café/snack bar
- Market
- Seasonal Slaughterer

6. Type of Business:

- Staff restaurant/canteen/kitchen
- Hospital/residential home/school
- Hotel/pub/guest house
- Private house used for a food business
- Moveable establishment e.g. ice cream van
- Market stall
- Food Broker
- Takeaway
- Other (please give details):

7. Limited Company Name ____________________________ Company No. ______________

Registered Office Address

_____________________________________________________________________________________________________

__________________________________________________________________________

Post Code ____________

8. If this is a New Business __________________________

Date you intend to open __________________________

9. If this is a Seasonal Business __________________________

Period during which you intend to be open each year __________________________

Signature of Food Business Operator __________________________

Date __________________________

Name __________________________ (BLOCK CAPITALS)

AFTER THIS FORM HAS BEEN SUBMITTED, FOOD BUSINESS OPERATORS MUST NOTIFY ANY CHANGES TO THE ACTIVITIES STATED ABOVE TO [THE FOOD AUTHORITY] AND SHOULD DO SO WITHIN 28 DAYS OF THE CHANGE(S) HAPPENING.
ANNEX 9: Model Notice of Temporary Closure of Production Area(s) (Live Bivalve Molluscs / Shellfish)

NOTICE OF TEMPORARY CLOSURE OF PRODUCTION AREA(S)


Food Hygiene (Scotland) Regulations 2006 (as amended) S.S.I. 2006/3

Pursuant to the power conferred on it by Article 6 of, and paragraph C of Chapter II of Annex II to the above EC Regulation, being satisfied that [the results of sampling show that the health standards for molluscs are exceeded] [there may be a risk to human health] 74 –

As Competent Authority for the purposes of the above EC provision by virtue of Regulation 4 of the Food Hygiene (Scotland) Regulations 2006 S.S.I. 2006/3 –

[Insert authority] has temporarily closed the production area identified in the Schedule to this notice for the production of [insert list of all affected species] by food business operators until further notice. 75

Signed:

Dated this [ ] day of [ ] 20 [ ]

________________________________________
[Insert Official position of signatory]
On behalf of the [insert authority]

74 Recent analysis of samples taken by [insert authority] from the affected area has shown that [insert animals] are affected by [insert problem].

75 [insert authority] will continue to take samples for analysis and keep its decision to close the area under review. To check the current status of the area you may contact [insert authority] by [insert preferred method of contact, e.g. telephone no.]
SCHEDULE

Area[s] in which the production of [insert list of all species affected] by food business operators is prohibited by reason of this order:-

(a) [Insert area]
(b) [Insert area]

Food business operators must not collect the affected animals from this area by any method, it is unsuitable for their production for health reasons and has been temporarily closed. For a food business operator to collect affected animals from the area that is temporarily closed amounts to the commission of a criminal offence under Regulation 17 of the Food Hygiene (Scotland) Regulations 2006 (as amended) S.S.I. 2006/3. On conviction a fine or imprisonment for a term of up to two years or both may be imposed.

[PRIVATE INDIVIDUALS ARE STRONGLY ADVISED NOT TO GATHER [insert description of affected animals] FOR THEIR OWN CONSUMPTION FROM THE AFFECTED PRODUCTION AREA. THERE MAY BE A RISK TO HUMAN HEALTH IN DOING SO.]
ANNEX 10: Primary Production

A.10.1 Introduction

1 Scottish Ministers aim to reduce the number of on farm visits by different regulatory bodies. This Code meets these needs by providing a single delivery service, directing Local Authorities to inspect primary production within the scope of the respective requirements of Annex I of Regulation (EC) No. 852/2004 and Annex 1 of Regulation (EC) No. 183/2005 within a single regime of integrated food and feed hygiene inspections. In effect, this means a single risk rating scheme is used for both primary production regimes (see A.10.5).

A.10.2 Scope

1 This Annex concerns the enforcement of primary production activities.
2 It applies to both food and feed and is directed at both Food and Feed authorities.
3 In so far as it relates to food, this primary production enforcement regime applies only to land based agricultural activities: arable, horticulture and livestock, including farmed game. It does not include dairy, egg, fish or shellfish primary production, as there are already well established regimes for these primary production sectors. In so far as it relates to feed, this primary production enforcement regime applies to all primary production feed activities. Therefore, for dairy and egg production, the inspection frequency of a primary production feed hygiene inspection may be different to that of a primary production food hygiene inspection. However, depending on resources, it may be possible to carry out food and feed inspections together by bringing forward the inspection date of one.
4 With regards to feed law enforcement, this Annex is issued under The Official Feed and Food Controls (Scotland) Regulations 2009.
5 It replaces the Feed Law Code of Practice (Great Britain), only in so far as it concerns the overarching requirements for primary production feed hygiene inspections.
6 It does, however, contain cross references to the Feed Law Code of Practice, as necessary. This Annex is directed at Local Authorities in Scotland specified in Section 67 of the Agriculture Act 1970.
7 Food and Feed Authorities are required under The Official Feed and Food Controls (Scotland) Regulations 2009 to have regard to this Annex when discharging their duties. This means, in effect, that Food and Feed Authorities must follow and implement the provisions of this Code that apply to them.
8 Food and Feed Authorities that do not have regard to relevant provisions of this Code may find their decisions or actions successfully challenged and evidence gathered during a criminal investigation being ruled inadmissible by a court.
9 In addition, the Food Standards Agency Scotland (the FSA) may, after consulting the Scottish Ministers, give a Food or Feed authority a direction requiring them to take any specified steps in order to comply with this Code.
10 If a Food or Feed Authority finds that complying with this Code might compromise public health or safety they should discuss the matter with the FSA at the earliest opportunity.
11 Food and Feed Authorities have statutory duties to enforce legislation relating to food and feed respectively. Regulation 5 of the Food Hygiene (Scotland) Regulations 2006 sets out the division of enforcement responsibilities between Food Authorities and the FSA in respect of the Hygiene Regulations, including the primary production of food. Regulation 16 of the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005 sets out the division of enforcement responsibilities between Authorities and the FSA for the purposes of those Regulations and the European Feed Hygiene Regulations (Regulation (EC) No 183/2005\textsuperscript{76} of the European Parliament and of the Council laying down requirements for feed hygiene).

12 At the level of primary production, feed authorities are also responsible for the enforcement of legislation on the composition and marketing of animal feeds. This includes provisions relating to the control of undesirable substances and materials prohibited from use in feeds. The Agriculture Act 1970 is the primary legislation dealing with deleterious, unwholesome and dangerous feeds.

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

14 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 and other guidance, understanding what the law actually states and requires, and seeking guidance when either it, or they, are unclear.

15 The FSA may, from time to time, issue Practice Guidance for Food and Feed Authorities. Food and Feed Authorities should take account of such guidance, as well as any appropriate Guidance issued by the European Commission.

16 Food and Feed Authorities must also have regard to the Framework Agreement on Local Authority Food Law Enforcement, which reflects the requirements of this Code. The Framework Agreement on Local Authority Food Law Enforcement is also consistent with the principles of the Enforcement Concordat.

17 Food Authorities should be aware that law relating to food is not necessarily made under the Act. Law that applies to food is also contained in and, or made under the Animal Health Act 1981, the European Communities Act 1972, the Consumer Protection Act 1987, the Consumer Protection from Unfair Trading Regulations 2008 (SI 1277/2008), the Weights and Measures Act 1985, the Medicines Act 1968 and directly under EC Regulations.

18 Similarly, Feed Authorities should be aware that the law relating to feed is not necessarily made under the Agriculture Act 1970. Laws applicable to feeding stuffs are made under the Animal Health Act 1981, the Consumer Protection from Unfair Trading Regulations 2008 (SI 1277/2008), directly under EC Regulations and also the European Communities Act 1972.

19 References to sections and annexes are provided for the Food and Feed Law Codes of Practice, as appropriate.

A.10.3 Authorisation of Local Authority Officers [See also Section 4.8]

1 Food and feed hygiene primary production enforcement is to be carried out at the same time, as far as is practical, in relation to the availability of authorised officers. This may be undertaken jointly by an authorised food officer and an authorised feed officer or an officer who is authorised and competent to carry out both functions. This function may be carried out by officers from Environmental Health, and/or Trading Standards, subject to their authorisation and competency.

2 The Lead Officers with responsibility for the enforcement of food and feed hygiene will have joint managerial responsibility for assessing the competency of authorised officers to undertake integrated food and feed hygiene inspections within their Local Authority.

3 Where an individual officer is authorised to undertake feed and, or food inspections at primary production level, they must meet the qualification requirements for either feed and, or food inspections (Feed Law Code of Practice, and, or Food Law Code of Practice,) respectively; and must have satisfied the appropriate Lead officer(s) of their competence to undertake the inspection taking into account the intrinsic risks associated with the establishment.

4 Any formal enforcement action (e.g. service of Notices) may only be undertaken by authorised officers meeting the specific requirements outlined in the Codes i.e. formal enforcement action in relation to feed must only be taken by officers meeting the qualification and experience requirements detailed in the Feed Code. Formal enforcement action in relation to food must only be taken by officers meeting the qualification and experience requirements detailed in the Food Code. However, a feed officer qualified in accordance with the Feed Law Code of Practice may also take formal action in relation to food if he or she possesses adequate experience and competency in food hygiene enforcement. Similarly, a food officer qualified in accordance with the Food Law Code of Practice may also take formal action in relation to feed if he or she possesses adequate experience and competency in feed hygiene enforcement. The experience and competency requirements for formal enforcement action should be determined by the food Lead officer for food hygiene and the feed Lead officer for feed hygiene.

5 Food and Feed Authorities who contract officers from another authority or FSA to conduct inspections on their behalf must ensure they are duly authorised [See Section 4.8].

6 For authorised officers carrying out enforcement at primary production, on-going training shall include an element of primary production, the amount of which shall be determined taking account of their hygiene enforcement experience. This may include appropriate refresher and or update training.
A.10.4 Registration of Establishments (See also Section 6.4)

1 EC food and feed hygiene legislation requires primary producers to notify the Competent Authority of establishments under their control with a view to those establishments being registered. The details of the registration process for food and feed business operators are detailed in Regulation (EC) No. 852/2004 and Regulation (EC) No. 183/2005 while the Official Feed and Food Control (OFFC) (Scotland) Regulations 2009 implementing Regulation (EC) No. 882/2004, provides requirements for Competent Authorities, defined as the central authority of a member state competent for the organisation of official controls, to register and list those businesses.

2 Regulation (EC) No. 882/2004 Article 31 (1)(b) states that

“where such a list already exists for other purposes, it may also be used for the purposes of this Regulation”.

3 The option to use existing lists is also detailed in the Commission’s guidance document on the implementation of Regulation (EC) No. 852/2004 where specific examples of suitable alternative registration information sources are made e.g. environmental or animal health data. Scottish Government’s Agriculture, Food and Rural Communities - Rural Payments and Inspections Division (RPID) maintain a database of farms registered to receive the single farm payment, as well as census data. Although this does not cover all primary producers in Scotland, it does cover the majority and may be used as a register of food businesses at the level of primary production. If, however, an enforcing authority is aware of primary producers who do not appear on the RPID list, in their area, they should take steps to register them, unless they appear on another existing list, as provided for under Regulation (EC) No. 882/2004. The RPID list does not currently fulfil the registration requirements for feed hygiene (although steps are being taken to address this) and so feed hygiene registration must take place pro-actively.
A.10.5. Frequency of Inspection at Primary Production Establishments

1. Annex 5 of both the Food Law Code of Practice and the Feed Law Code of Practice does not apply to primary production, other than for those food primary production activities referred to in A.10.2.

2. RPID Agricultural Officers carry out inspections (at a level of 1%) on primary producers in receipt of CAP payments for the purposes of ensuring cross compliance (against Statutory Management Requirements (SMR)). Whilst on farm, the Agriculture Officers will carry out inspections for the purposes of food hygiene at the level of primary production. The remainder of food inspections and all feed inspections will be carried out by Local Authorities (at a risk based frequency).

3. The inspection schedule shall be developed according to the following table:-

<table>
<thead>
<tr>
<th>What goes on the list?</th>
<th>2% list</th>
<th>25% list</th>
</tr>
</thead>
<tbody>
<tr>
<td>All unrated establishments shall default to a 2% risk rating (regardless of assurance scheme membership) AND Previously inspected establishments that were given a 2% rating</td>
<td>Previously inspected establishments that were given a 25% rating</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Developing the inspection schedule</th>
<th>Randomly select 2% from this list for inspection. Priority should be given to those where:</th>
<th>All establishments on this list must be inspected every 4 years.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• local knowledge exists to suggest there may be issues</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• they are readily identified as not being members of assurance schemes</td>
<td></td>
</tr>
</tbody>
</table>

4. Examples of local or other intelligence, gathered during inspections, include:

   a. Change of activity;
   b. Track record of compliance;
   c. Intelligence generated by other statutory inspections;
   d. Consumer and customer (industry) problems;
   e. Surveillance information on problem products and products associated with foodborne illness
   f. Other (to reflect local intelligence).

5. Where primary producers fall into both risk rating categories, the highest inspection rating will determine the frequency. For example, there may be different inspection frequencies achieved for food and feed, or livestock and arable production. In these circumstances, it will be left to the discretion and planning of the enforcement authority to determine the need to inspect other aspects.
6. Following an inspection, the risk rating that shall be applied for primary producers shall be 2% or 25%, in accordance with the table below.

<table>
<thead>
<tr>
<th>LOCAL KNOWLEDGE</th>
<th>Local knowledge (or &quot;other intelligence&quot;)</th>
<th>Assurance schemes</th>
<th>Risk rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pass”/ “Substantially meets requirements”</td>
<td>Positive</td>
<td>None</td>
<td>2%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Not known</td>
<td>2%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Partial</td>
<td>2%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Complete</td>
<td>2%</td>
</tr>
<tr>
<td></td>
<td>Negative</td>
<td>None</td>
<td>Discretionary</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Not known</td>
<td>Discretionary</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Partial</td>
<td>Discretionary</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Complete</td>
<td>Discretionary</td>
</tr>
<tr>
<td></td>
<td>Neutral or nil</td>
<td>None</td>
<td>2%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Not known</td>
<td>2%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Partial</td>
<td>2%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Complete</td>
<td>2%</td>
</tr>
<tr>
<td>“Fail”/ “Serious failure in compliance”</td>
<td>Positive</td>
<td>None</td>
<td>25%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Not known</td>
<td>25%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Partial</td>
<td>25%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Complete</td>
<td>25%</td>
</tr>
<tr>
<td>“Fail”/ “Serious failure in compliance”</td>
<td>Negative</td>
<td>None</td>
<td>25%</td>
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<tr>
<td></td>
<td></td>
<td>Not known</td>
<td>25%</td>
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<td></td>
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<td>Partial</td>
<td>25%</td>
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<tr>
<td></td>
<td></td>
<td>Complete</td>
<td>25%</td>
</tr>
<tr>
<td>“Fail”/ “Serious failure in compliance”</td>
<td>Neutral or nil</td>
<td>None</td>
<td>25%</td>
</tr>
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<td></td>
<td>Not known</td>
<td>25%</td>
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<td></td>
<td>Partial</td>
<td>25%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Complete</td>
<td>25%</td>
</tr>
<tr>
<td>“Not yet determined”</td>
<td>Positive</td>
<td>None</td>
<td>2%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Not known</td>
<td>2%</td>
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<td>Partial</td>
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<td>Complete</td>
<td>2%</td>
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<tr>
<td>“Not yet determined”</td>
<td>Negative</td>
<td>None</td>
<td>25%</td>
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<td>Not known</td>
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<td></td>
<td>Complete</td>
<td>25%</td>
</tr>
<tr>
<td>“Not yet determined”</td>
<td>Neutral or nil</td>
<td>None</td>
<td>25%</td>
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<td></td>
<td></td>
<td>Not known</td>
<td>25%</td>
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<tr>
<td></td>
<td></td>
<td>Partial</td>
<td>Discretionary</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Complete</td>
<td>2%</td>
</tr>
</tbody>
</table>

7. These frequencies are a minimum and should the enforcing authority be aware of an imminent risk to health, for example, the date of the next inspection should be brought forward.

8. Additional guidance has been issued by the FSA for carrying out food and feed primary production inspections. This has been made available to all Local Authority and Agricultural officers carrying out this work.
A.10.6. Inspections

1 The only official control that is appropriate for primary production is inspection and other interventions such as advice, sampling etc. are outcomes of inspection.

A.10.7 Enforcement Action

1 When considering the appropriate level of enforcement action refer to Section 14 General Enforcement of this Code for food non-compliance and Section 3 of the Feed Law Code of Practice (Great Britain) for feed non-compliance.
### Appendix One Legislation referred to in this Code

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Reference and or Statutory Instrument Number No</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. Consumer Protection Act 1987</td>
<td>1987 c. 43</td>
</tr>
<tr>
<td>7. European Communities Act 1972</td>
<td></td>
</tr>
<tr>
<td>10. Regulation (EC) No 183/2005</td>
<td>Requires feed business operators to notify the relevant enforcement authority of any establishment that is under their control and active in any stage of production, processing, storage, transport or distribution of feed. This notification should be given in the form required by the enforcement authority, with a view to applying for approval or registration.</td>
</tr>
<tr>
<td></td>
<td>Title</td>
</tr>
<tr>
<td>---</td>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>15.</td>
<td>European Communities Act 1972</td>
</tr>
<tr>
<td>16.</td>
<td>Food Premises (Registration) Regulations 1991</td>
</tr>
<tr>
<td>17.</td>
<td>Food Safety (Sampling and Qualifications) (Scotland) Regulations 2013</td>
</tr>
<tr>
<td>18.</td>
<td>Food Safety Act 1990</td>
</tr>
<tr>
<td>19.</td>
<td>Food Standards Act 1999</td>
</tr>
<tr>
<td>20.</td>
<td>General Food Regulations 2004</td>
</tr>
<tr>
<td>23.</td>
<td>Medicines Act 1968</td>
</tr>
<tr>
<td>24.</td>
<td>Public Health (Ships) Regulations 1979</td>
</tr>
<tr>
<td>25.</td>
<td>The Food Hygiene (Scotland) Regulations 2006</td>
</tr>
<tr>
<td>26.</td>
<td>The Official Feed and Food Controls (Scotland) Regulations 2009</td>
</tr>
<tr>
<td>27.</td>
<td>The Public Health (Ships) (Amendment) (Scotland) Regulations 2007</td>
</tr>
<tr>
<td>29.</td>
<td>Weights and Measures Act 1985</td>
</tr>
</tbody>
</table>

**Further guidance is available at**
[http://food.gov.uk/scotland/regsscotland/regulations/scotlandfoodlawguide/#TheScottishFoodandFeedLawdocument](http://food.gov.uk/scotland/regsscotland/regulations/scotlandfoodlawguide/#TheScottishFoodandFeedLawdocument)

**Note:** this guidance is not intended to be a substitute for legal advice.