Food Law

Practice Guidance (Northern Ireland)

(Issued March 2021)

Food Standards Agency

Contents

Chapter 1 Introduction

The Food Law Practice Guidance (Northern Ireland) (the Practice Guidance) is:

- issued by the Food Standards Agency (FSA)
- directed at district councils (Competent Authorities) responsible for the delivery of official food controls and other official activities
- aimed at assisting Competent Authorities with the discharge of their statutory duty to enforce food law
- aimed at supporting the quality, consistency, effectiveness and appropriateness of official food controls and other official activities

It complements the statutory Food Law Code of Practice (Northern Ireland) (the Code) and provides general advice on approach to enforcement of the law where its intention might be unclear. Competent Authorities must have regard to the relevant Chapters of the Practice Guidance which are specifically referenced to within the Code.

The guidance contained in this document:

- is given in good faith and accords with the FSA's understanding of relevant legal requirements
- takes account of recommendations made by the Directorate-General for Health and Food Safety – Audit and Analysis (DGF) following any audit of the UK food control systems
- provides links to a range of guidance

The United Kingdom (UK) left the European Union on the 31 January 2020 and the Withdrawal Agreement, including the Northern Ireland Protocol (NIP), entered into force. As part of the Withdrawal Agreement, from the 31 January to 31 December 2020 (the Transition Period), EU law continued to apply to, and in, the UK. At the end of the Transition Period, from 1 January 2021, in accordance with the provisions of the European Union (Withdrawal) Act 2018 (the EUWA), certain directly applicable EU law was converted into UK national law, known as Retained EU law. The EUWA provides powers to make changes to Retained EU law to fix any deficiencies caused by the UK's exit from the EU to ensure that Retained EU law operates effectively. This includes fixes such as conferring powers which were vested in EU bodies under EU law to UK bodies under Retained EU law for example conferring certain decision-making powers from the European Commission to the Secretary of State or the Ministers in devolved nations. However, under the NIP, certain specified EU laws continue to apply to, and in, Northern Ireland. This includes EU laws on food, animal health and welfare and the organisation of official controls. EU bodies such as the European Commission or European Food Safety Authority (EFSA) retained certain functions in relation to Northern Ireland and Competent Authorities in Northern Ireland retained certain obligations to the EU. Most food hygiene and safety laws therefore continue to apply in Northern Ireland from 1 January 2021 in much the same way as they did before the UK exited the EU.

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

References to:

- chapters and sections are to the relevant parts of this document unless stated otherwise
- legislation must be considered a reference to that legislation in its current form (unless otherwise indicated)

If you are in any doubt whether a specific legal provision referred to in the Practice Guidance is still in force, you may wish to consult with your legal adviser before taking any action against a food business under that provision.

Any guidance[1] on the law within the Practice Guidance should not be taken as an authoritative statement or interpretation of the law as only the Courts have that power. Any examples given are illustrative and not comprehensive.

Competent Authorities are strongly advised to consult their own legal departments when considering formal enforcement action.

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

[1] Competent Authorities will need to register to gain access to the guidance which is available on the Knowledge Hub

Chapter 2 Administration, liaison, and co-ordination

2.1 Introduction

Chapter 2 deals with:

- the administrative arrangements, including designation of Competent Authorities, registration, and approval of food business establishments
- liaison arrangements[2] to ensure the:
  - efficient and effective co-ordination between Competent Authorities, delegated bodies, and other government departments responsible for official food controls and other official activities
  - consistency and effectiveness of official food controls and other official activities across the UK
- avoidance of conflicts of interests[3]
- monitoring requirements to ensure consistent, appropriate, and effective official food controls and other official activities are being undertaken by Competent Authorities

2.2 Relevant dataset lists

Competent Authorities must provide the FSA with relevant dataset lists, currently the list comprises:

- Food Hygiene (LAEMS)
- Food Standards (LAEMS)
- Imported Food (LAEMS)
- Approved Food Premises
- Imported Food Safeguard Measures
- Food Hygiene Rating Scheme (FHRS)

2.3 Departure from the Code

Circumstances might arise where the FSA advises Competent Authorities to depart from the Competent Authority's interventions programme that is based on the intervention ratings in the Code.

Such situations might include:

- those where there is evidence that:
  - an unsafe practice is occurring or has occurred which represents a significant hazard to public health
  - a particular food handling or food preparation practice is found to entail a previously unsuspected hazard to public health
  - a foodstuff previously thought to be safe is found to be hazardous to public health

[2] Article 4(2) of Regulation (EU) 2017/625
[3] Article 5(1)(c) of Regulation (EU) 2017/625

  - a food with widespread distribution is found to be contaminated and thereby presents a significant hazard to public health
  - a food with widespread distribution is the subject of fraud in labelling or presentation
- in response to a state of emergency such as a pandemic or regional flooding

2.4 Requirements relating to documented procedures

2.4.1 Registration of food business establishments procedure and/or arrangements

Competent Authorities must ensure their registration of food business establishments procedure(s) and/or arrangements that they put in place:

- allows food business operators (FBOs) to submit a registration form that is complete and accurate at least 28 days before the business starts trading or food operations commence
- provides a registration form that is available to FBOs and requires them to give full details of all activities undertaken
- details the actions to be taken on receipt of completed registration forms, including notifying other Competent Authorities where activities fall outside the receiving Competent Authorities enforcement remit or jurisdiction
- includes details on how the Competent Authority will obtain information omitted from a registration form, where applicable, and circumstances where registration forms are returned or rejected to FBOs

2.4.2 Approval of food business establishments procedure

Competent Authorities must ensure their approval of food business establishments procedure(s):

- allows FBOs to submit an approval form that is complete and accurate
- provides an approval form that is readily available to FBOs and requires them to provide full details of all activities undertaken
- details the actions to be taken on receipt of completed approval forms, including notifying other Competent Authorities where activities fall outside the receiving Competent Authorities enforcement remit or jurisdiction
- includes details on how the Competent Authority will obtain information omitted from an approval form, where applicable, and circumstances where approval forms are returned or rejected to FBOs
- includes details on how approvals are to be determined (including approval numbers and notification), which take into account the Code, the Practice Guidance and other relevant legislation and/or guidance

2.4.3 Food Business Establishment database procedure

Competent Authorities must ensure their food business establishments database procedure(s) details:

- how their list of food business establishments registered with them or approved by them is maintained so that it is accurate, reliable, and up to date

- the action taken on receipt of notifications of changes to food establishment operations, and how, where appropriate, these changes are made to the database

2.4.4 Control verification procedure

Competent Authorities must ensure their control verification procedure(s), more commonly referred to as internal monitoring procedure[4]:

- provides for the planned intervention programme being maintained and carried out competently
- includes details of the necessary steps to be taken to address any performance which does not meet expected standards
- demonstrates appropriate and consistent application of the food law risk-rating systems, including where changes are made to an establishments risk-rating score
- includes measures to establish:
  - that action taken by officers during and following an official control or other official activities, including at points of entry, is appropriate and consistent with the Competent Authorities procedure(s) and policies and with the FSA, Northern Ireland Local Government Association (NI LGA) or other relevant guidance[5]
  - how the planned intervention programme can be amended to allow for in-year changes, for example new and closed food business establishments and food business establishments which have changed intervention rating
  - that officers are aware of and have access to other published industry codes of practice relevant to the businesses within the area of the Competent Authority
  - that officers have due regard to published Guides to Good Practice
  - compliance with relevant legislation, the Code, the Practice Guidance, the Framework Agreement on Official Feed and Food Controls by Local Authorities (the Framework Agreement), the FSA 'Knowledge and skills for the effective delivery of official food and feed controls and other activities (the Competency Framework)[6], and other relevant FSA or relevant guidance
  - compliance with internal procedure(s) and policies, as required by the Code
  - appropriate use of relevant proforma forms (including enforcement notices)

[4] Article 12 (1) of Regulation (EU) 2017/625
[5] Article 12 (3) (a) of Regulation (EU) 2017/625
[6] Competency is a combination of the knowledge and skills required to effectively deliver official food control activities, other official controls

- includes provisions to appropriately rectify any inaccuracies in the information made available to the public[7]
- provides measures to be taken where officers are found to be issuing false or misleading official certificates or abuse of official certificates[8,] which include:
  - temporary suspension of certifying officer from their duties
  - withdrawal of authorisation to sign official certificates
  - any other measure to prevent these issues re-occurring

Competent Authorities should refer to the Framework Agreement and relevant FSA guidance when developing and reviewing their internal monitoring procedures.

2.4.4.1 Monitoring of service delivery

Competent Authorities must carry out control verification checks to verify their conformance with legal duties, official guidance and their own procedure, policies, plans and programmes across the full range of service activities[9].

Competent Authorities must ensure:

- all relevant activities are subject to proportionate and routine quantitative and qualitative monitoring so that they can demonstrate its conformance with legislation, the Code, Framework Agreement and other relevant official guidance
- appropriate and proportionate records are maintained to verify management oversight of key service activities and actions, and measures are taken to address any identified problems
- that monitoring is flexible, proportionate, varied, targeted, and tailored according to personnel or premises risks, eliminating unnecessary demands on managers

Competent Authorities should consider:

- consistency exercises within and across Competent Authorities for example, a range of business scenarios to enable a comparison of officer assessments, these might include:
  - risk scores
  - enforcement decisions
  - focusing on internal qualitative monitoring and improvements (rather than just quantitative checks on the numbers of activities carried out) for example monitoring trends in business risk profiles and the quality of officer interventions
- a ‘risk-based’ approach to internal qualitative monitoring for example greater emphasis on known problem areas (any issues with particular staff and a

[7] Article 11(2) of Regulation (EU) 2017/625
[8] Article 138(5) of Regulation (EU) 2017/625
[9] Article 5(1)(b) of Regulation (EU) 2017/625

greater proportion of higher risk businesses) rather than an inflexible percentage check of all files approach
- running reports listing the recent risk-ratings so managers can quickly identify and investigate the reasons for any businesses remaining high risk over a series of interventions
- delegation of some routine monitoring activities encourages all staff to participate in self-monitoring and peer checking of each other's work for example letters, notices, file updating
- monitoring activities that may work well for some Competent Authorities, which could include:
- periodic accompanied inspections/audits
- reviews of post-inspection/audit paperwork
- post-inspection/audit visits to establishments by managers
- manager reviews of all enforcement activities, including checks against the relevant guidance and enforcement policy
- routine caseload meetings
- participating in relevant and robust peer review and / or inter-authority audit (IAA) schemes, which can be used:
    - for enforcement consistency purposes
    - to identify good practice that can be adopted
    - to identify any areas for improvement

2.4.4.2 Monitoring of interventions

Intervention programmes must be risk-based; central to this are the assessments of businesses food safety management and control arrangements.

Sufficiently detailed, accurate and retrievable documentation for key business operations and activities, interventions, and assessment records, particularly in relation to food safety management systems, and any enforcement actions, are essential to:

- demonstrate that food businesses comply with relevant food law
- ensure that subsequent inspecting officers are aware of individual business compliance histories
- inform each step of a graduated enforcement approach
- provide the evidence base for formal enforcement
- permit effective internal qualitative monitoring, for example checking that:
    - lower risk businesses do not receive interventions ahead of known high risk, and/or at the expense of following up and addressing persistent problems with higher risk businesses
    - repeated or lengthy non-compliance is being tackled effectively and adequate monitoring by line managers
    - intervention records (electronic or hard copy) are sufficient to inform subsequent interventions and actions, especially where these fall to a different officer
    - the legibility of handwritten inspection/intervention reports

- legal requirements are clearly distinguished from advice
- any written correspondence specifies, where relevant, the follow-up action and time allowed for remedial works
- appropriate action has been taken in relation to imported food by inland Competent Authorities, including liaison between authorities

2.4.4.3 Monitoring of follow-up action and enforcement

As part of effective internal monitoring in relation to follow-up action and enforcement action, Competent Authorities must ensure that:

- instances of non-compliance are appropriately acted upon
- all significant non-compliance is addressed in a timely and effective manner
- any enforcement action taken, is in accordance with local enforcement policies, national guidance and appropriate to the severity and persistence of the offences
- any decisions to deviate from the approach prescribed in the enforcement policy are duly considered and the reasons documented (proposed officer action, or inaction, that does not conform with a Competent Authorities enforcement policy should normally be referred for higher level agreement)
- the respective due legal process for each of the range of formal enforcement options is strictly observed
- formal notices are followed up in a timely manner (i.e. immediately following the date of expiry), with a presumption that enforcement will ensue in the event of continuing non-compliance
- identified instances of serious non-compliance and repeated poor risk-ratings are addressed
- they identify failure to take a graduated approach to enforcement and/or use the full range of enforcement tools
- they identify any lack of timely follow-up actions that would permit enforcement of the notice requirements for example checks at the time formal notices expire
- they identify where symptoms of non-compliance have been treated (i.e. a short-term fix) rather than addressing the root cause, resulting in repeated and continuing problems

Competent Authorities should consider:

- regular case conferences between managers and staff, for example to discuss the compliance progress of all high-risk businesses in each officer's area
- including an 'enforcement review' section on 'inspection/audit forms/files for officers to provide brief reasons for any action taken/not taken, to inform subsequent inspecting /auditing officers and to facilitate manager checks of consistency against the local enforcement policy
- consulting with legal services early in formal enforcement actions to ensure that cases can meet all evidential and procedural criteria, and to avoid unnecessary technical challenge to well-founded cases

- developing formal enforcement checklists to ensure due process is checked prior to each step of formal actions (for example adapt the relevant Agency audit checklists to include local enforcement policy criteria, and use before a notice is served)
- officers' schedules and diarise follow-up visits/compliance checks against notices/formal actions to ensure they are carried out on time (and where appropriate, that these dates are notified to the business in the relevant inspection/audit report or notice covering letter)

2.4.4.4 Monitoring of management information systems

Complete, up-to-date, accurate and reliable databases of local food businesses are essential to enable managers to know of all the relevant businesses located in their area and to provide the basis for comprehensive risk-based 'inspection/audit and intervention programmes. The databases need to be monitored and maintained to ensure that changes of business use and ownership, closures and new businesses can be tracked.

It is recommended that Competent Authorities:

- have in place processes to monitor routinely both the accuracy of the premises database, and the action/information entries inputted and maintained for each business
- undertake occasional checks to identify any inconsistencies between file records and database entries of intervention details, enforcement activities and actions

Issues might include:

- businesses duplicated on the electronic database
- database records of inspections/interventions inconsistent with data held on hardcopy files (for example dates of actions, risk-ratings)
- no routine monitoring of data entries and/or anomalies and inaccuracies not picked up
- illegible handwritten inspection/audit reports scanned onto the system

Solutions might include:

- use of the database software manager reporting facility, or a simple spreadsheet, to monitor for consistency issues and to routinely check for anomalies and inaccuracies in electronic 'inspection/audit records
- routine cross-referencing checks of businesses held on the premises database against other listings of local businesses for example:
  - advertising on online search engines
  - social media pages
  - other internal Competent Authorities databases for example Planning, Business Rates and Building Control
  - other relevant agencies
  - Red Tractor Assurance
  - other relevant Assurance schemes operated by industry

2.4.5 Authorisation procedure

Competent Authorities must ensure their authorisation procedure(s):

- details how competency will be assessed and recorded to complete the authorisation process
- covers the roles and responsibilities of staff in the authorisation process
- provides who is authorised to approve legal proceedings
- covers the process for authorising new appointments, newly qualified officers and those returning to food law enforcement
- details how the Competent Authority ensures its lead food officer(s) and authorised officers are authorised in compliance with Chapter 3 of the Code

2.4.6 Food incidents and alerts procedure

Competent Authorities must ensure their food incidents and food alerts procedure(s)[10]:

- is developed in consultation with:
  - members of the NI regional Food Liaison Group:
    - Public Health Agency/Consultant for Health Protection
    - Public Analyst; and
    - relevant officers of the Competent Authority, for example Emergency Planning Officer
- details how food incidents and food alerts identified within their area are dealt with
- includes provisions to:
  - call appropriate agencies together at short notice
  - implement urgent control measures whenever they are required
  - identify a lead authority, where necessary
- covers initiation and effective response to Food Alerts issued by the FSA
- includes details on effective response to pre-incident contact by the FSA

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

- details, including contact details, of the lead food officer for such matters
- liaison arrangements between Competent Authority areas
- any arrangements for out of hours reception and response to alerts and emergencies
- arrangements to ensure that food alerts and updates are brought to the attention of an officer with authority to initiate appropriate action without undue delay
- arrangements for the liaison with other relevant bodies, Competent Authorities, both within and outside normal office hours

[10] Article 12(1) of Regulation (EU) 2017/625

- arrangements to provide adequate staff resources to allow effective response to alerts
- arrangements to provide adequate equipment, including access by the Competent Authority out of hours, to allow an effective response to be made

When developing food incidents and food hazards procedures, Competent Authorities should take into consideration the FSA guidance on Food Safety, Traceability, Product Recall and Withdrawal.

2.4.7 Corporate complaints procedure

Competent Authorities must ensure their complaints procedure(s):

- is readily available to the public and food businesses in its area
- leads to complaints received about the Competent Authority being investigated in accordance with relevant centrally issued guidance
- requires a record to be made of all complaints received and actions taken in response to those complaints by the Competent Authority

2.4.8 Food complaints procedure

Competent Authorities must ensure their food complaints procedure(s):

- covers complaints about food originating from inside and outside of the UK:
- covers complaints about food and food business establishments
- includes procedures for any referral arrangements to inland authorities, or authorities with responsibility for import food controls at the point of entry
- leads to complaints received being investigated in accordance with the Code, centrally issued guidance and the Competent Authority's policies and procedures
- details the mechanism(s)[11] for how complaints about actual or potential non-compliances can be made which include:
  - procedures for receipt of complaints and their follow-up
  - details on how persons reporting complaints will be protected from retaliation, discrimination, or other types of unfair treatment as a result of their complaint (for example, whistle-blowers)
  - details on how personal data of persons reporting complaints will be protected

2.4.9 Sampling procedure

Competent Authorities must ensure their sampling procedure(s)[12]:

- includes measures for the procurement or purchase of samples, including those offered for sale by distance communications
- sets out how continuity of evidence is maintained
- includes action to be taken for unsatisfactory sampling results

[11] Article 140 of Regulation (EU) 2017/625
[12] Article 12(1) of Regulation (EU) 2017/625

- includes measures to prevent the deterioration or damage to samples whilst under control of the Competent Authority[13]

2.4.10 Equipment procedure

Competent Authorities must ensure their equipment procedure(s):

- provides for the identification of equipment
- provides evidence of maintenance and calibration
- includes measures to demonstrate the results of any in service checks and the action taken where results are unsatisfactory

2.4.11 Information procedure and/or arrangements

Competent Authorities must ensure their information procedure(s) that they put in place:

- minimises the risk of corruption loss of information held on databases
- provides for reasonable security measures to prevent access and amendment of data held on databases by unauthorised persons
- leads to good data practices being kept and data quality maintained

2.4.12 Official food controls and other official activities procedure

Competent Authorities must ensure their official food controls and other official activities procedure(s) and/or arrangements[14]:

- includes details on official food controls and other official activities carried out on imported food
- leads to proportionate, consistent, and risk-based controls being undertaken
- provides sufficient prompts to ensure official food controls are effective and appropriate

2.4.13 Enforcement procedure

Competent Authorities must ensure their enforcement procedure(s)[15]:

- leads to enforcement action being taken by their authorised officers which is reasonable, proportionate, risk based and consistent with good practice
- takes into account the following when determining appropriate action to take:
  - the hierarchy of enforcement
  - the Code for Prosecutors
  - the Competent Authorities enforcement policy
  - level of risks to consumer safety resulting from non-compliance
  - consumer sensitivities around the issue, leading to loss of consumer confidence or economic loss to industry
  - potential for non-compliant foods being distributed widely with large numbers of consumers affected

[13] Article 34(5) of Regulation (EU) 2017/625
[14] Article 12(1) of Regulation (EU) 2017/625
[15] Article 12(1) of Regulation (EU) 2017/625

- previous history of compliance
- Primary Authority partnerships
- Home Authority partnerships

2.4.14 Conflicts of interest procedure and/or arrangements

Competent Authorities must ensure their conflicts of interest procedure(s) and/or arrangements[16] they put in place, for example, a conflict-of-interest policy:

- means that authorised officers carrying out official food controls and other official activities:
  - are free from any conflict of interest
  - are aware of the potential conflicts of interest that can arise through the promotion of the Competent Authorities services
- do not provide their own private services, to businesses, in their own time, within the area of the Competent Authority that employs them or within the areas of other Competent Authorities who liaise with the employing authority on enforcement matters
- avoid the exclusive promotion of the Competent Authorities services, if other providers of those services exist in the area, or the services are offered by a different organisation from outside the area
- means that potential or actual conflicts of interest do not arise as a result of home authority responsibilities, chargeable discretionary services[17] or the contracting-out of services
- provides a clear and transparent separation between the provision of any discretionary services, such as advice or training (whether charged for or free) and the Competent Authorities responsibility to perform official food controls and other official activities
- includes processes so that enforcement decisions are free from any conflict of interest
- includes details on the action to take where a conflict of interest is identified, or provide a reference to other documentation where these details can be found

2.4.15 Control and investigation of outbreaks and food related infectious disease procedure

Competent Authorities must ensure their control and investigation of outbreaks and food related infectious disease procedure(s):

- covers the control of outbreaks of food related infectious disease
- covers the investigation of notifications of food related infectious disease
- is developed in association with all relevant organisations
- is developed in accordance with centrally issued guidance

[16] Article 5(1)(c) of Regulation (EU) 2017/625
[17] Section 79(4)(a) of the Local Government Act (Northern Ireland) 2014

- requires all records relating to control and investigation of outbreaks and food related infectious disease are retained for 6 years

2.5 Requirements relating to documented policies

2.5.1 Sampling policy

Competent Authorities must ensure their sampling policy:

- is published and readily available to businesses and consumers
- sets out the Competent Authorities general approach to food sampling, including unsatisfactory samples
- sets out the Competent Authority's approach in specific situations such as:
  - surveillance
  - imported food monitoring
  - businesses with a home authority
  - interventions
  - complaints
  - special investigations
  - national, regional, and local co-ordinated programmes
- covers all samples taken including those not taken in accordance with the Practice Guidance
- details the factors taken into account when formulating their sampling programme, including any national or local consumer issues that will influence the level of sampling to be undertaken
- commits the Competent Authority to providing the resources necessary to carry out their food sampling programme

2.5.2 Enforcement policy

Competent Authorities must ensure their enforcement policy:

- is readily available to Food Business Operators (FBOs) and consumers
- covers all areas of food law that the Competent Authority has a duty to enforce
- details the approach to enforcement, when and in what circumstances enforcement action is likely to be taken by the Competent Authority, in respect of the range of enforcement actions that are available
- details the approach to revisits, except where this is already documented in another policy or procedure required under the Code
- has regard to any advice issued by the FSA and by NILGA
- does not use the number of improvement notices served or legal processes, such as prosecutions or cautions, as an indicator of performance
- is approved by the relevant Competent Authority member forum or, where approval and management of service delivery plans has been delegated to senior officers, by the relevant senior officer
- details arrangements for ensuring compliance with food law in establishments where the Competent Authority is itself the FBO, and that where any serious

breach of food law is detected in such an establishment it is brought to the attention of the Competent Authority's Chief Executive without delay

A Competent Authority's Food Law Enforcement Policy may be part of a generic policy, or combined with other enforcement policies, providing the applicability of the policy to the enforcement of food law is clear.

The FSA may issue communications to Competent Authorities on:

- new and/or revised enforcement policies
- information on food safety matters
- other issues connected with the effective enforcement of food law

Competent Authorities must have arrangements to determine what action is appropriate on receipt of such communications, and to bring them to the attention of their authorised officers as necessary.

2.5.3 Complaints policy

Competent Authorities must ensure their complaints policy:

- sets out the Competent Authority's approach to receiving, handling and investigation of complaints about food and food business establishments
- covers complaints about food originating from inside and outside of the UK
- leads to complaints received being investigated in accordance with the Code, centrally issued guidance and the Competent Authority's policies and procedures

2.6 Requirements relating to documented plans

2.6.1 Service plan

2.6.1.1 Introduction

Service plans are an important part of the process to ensure that national priorities and standards are addressed and delivered locally. Service plans also help Competent Authorities to:

- follow the principles of good regulation
- focus on key delivery issues and outcomes
- provide an essential link with corporate and financial planning
- set objectives for the future, and identify major issues that cross service boundaries
- provide a means of managing performance and making performance comparisons
- provide information on an authority's service delivery to stakeholders, including businesses and consumers

When developing its service plan, a Competent Authority should make it clear what period the plan covers, and what arrangements have been put in place for the regular review and updating of the plan.

2.6.1.2 Format of service plan

Service plans are an expression of a Competent Authority's own commitment to the development of the food service. However, it is also important to consider the use made of the plans by the FSA, which will require information about official food control activities in a common format to enable it to assess a Competent Authority's delivery of the service.

In addition, service plans may be of use to other Competent Authorities who will find analysis and comparison of their relative performance greatly facilitated by a common format. These guidelines are therefore structured in terms of a common format with chapter and subject headings specified, and a general description of the content that should form part of each. However, there is no intention to remove Competent Authority flexibility to include additional items under specific headings.

It is recognised that Competent Authorities have had service plans for many years and may have corporate style or templates that they wish to maintain. It is also recognised that some Competent Authorities undertake the planning and review processes at separate times and issue the results of review as a separate document. Some include their plans for the food service as part of a larger plan of authority services. While there is flexibility for Competent Authorities to continue with a corporate format, they must ensure that the information requirements in the Practice Guidance are included. Where food service plans form part of broader corporate plans, the food details must be separately identifiable in their planning documents.

Where an enforcement service is shared between Competent Authorities, the requirements of the Practice Guidance should be identifiable in the planning documents for each authority.

Competent Authorities must:

- carry out, qualitative and quantitative, performance reviews of delivery against the plan, at least once per year, which must be documented[18]
- submit the plan for approval, whether that is at Member, Member forum or suitably delegated senior officer level. This plan can be tailored to suit their audience (for example a summary report for members) providing a plan also exists that meets the requirements detailed in section 2.13.1.3
- keep records to show that plans have received appropriate approval
- ensure their service plan:
  - sets out how and at what level official food controls will be provided, in accordance with the Code
  - has regard to any advice issued by the FSA and NILGA
  - covers all stages of the food chain and sectors of the food industry, where relevant
  - is readily available to FBOs and consumers
  - clearly states the period of time during which the plan has effect

[18] Chapter 2, Paragraph 3.2 of the Framework Agreement

  - covers the following 6 areas in section 2.13.1.3[19]

- is drafted in accordance with the guidance, detailed at section 2.13.1.3, taking account of and referring to, where relevant, the following:
  - all food law enforcement issues (including import controls) and considers resource demands and availability (including any shortfall) to deliver the planned intervention programme, including out of hours capacity and provision
  - the Competent Authority's approach to enforcement
  - how new food business establishments are identified and how they are to be included in the Competent Authorities planned intervention programme
  - the approach to revisits and enforcement (unless included in the Competent Authority's enforcement policy)
  - how the quality of the Competent Authority's service is assessed and monitored, including identification of database inaccuracies, review of annual targets, and identification of issues with consistency and competency
  - details of any variances in meeting the plan, from previous years, and how this is proposed to be addressed[20]
  - a statement in relation to the Competent Authority's policy, including the basis of the sampling programme
  - details how sampling/intervention programmes and enforcement activities are developed and implemented with due consideration of the NEPs, which must include information on any specific activities undertaken to implement them (this may be a simple bullet point list of planned activities)
  - what local and/or regional intelligence sources have the Competent Authority considered when planning their official food controls
  - details of the Competent Authority's plans for continuous improvement
  - details what arrangements have been put in place for the regular review and updating of the plan
  - what, if any, grant money, available from the FSA the Competent Authority, has been allocated and used

The FSA may require Competent Authorities to review their service plan, for example to accommodate the work of approved feasibility studies, pilots, or pathfinder projects.

The FSA will communicate any relevant work that may impact on service plans to Competent Authorities so that they can be reviewed.

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[19] However, each Competent Authority may choose its own way of formulating these plans – such as placing some aspects in management plans, and some in operational plans.

[20] Chapter 2, Paragraph 3.3 of the Framework Agreement

2.6.1.3 Template service plan

1. Service Aims and objectives	Information required
1.1 Aims and objectives	A statement of the service's aims and objectives
1.2 Links to corporate objectives and plans	This section should identify how the service plan(s) fit into the Competent Authority's corporate planning process and how it plays its part in meeting the Competent Authority's objectives. This should include meeting any relevant national indicator. It should also identify any cross linkage with other plans that have been adopted by the Competent Authority.

2. Background	Information required
2.1 Profile of the Competent Authority	This section should include details of the population, size, and nature of the Competent Authority.
2.2 Organisational structure	A simple chart showing the council services and committee structure which shows where the food service fits in. The structure should identify the manager/s responsible for the delivery of official food controls and the officer/s with specialist responsibility for food hygiene and/or food standards if different, and the provision made for specialist services provided, for example, by public analysts and food examiners.
2.3 Scope of the food service	A brief statement that sets out the scope of the responsibilities and service provided. This should identify where areas of the food service are provided by another organisation for example contractors. Any other services that are delivered alongside the food service, for example health and safety inspections, can be described here.

2. Background	Information required
2.4 Demands on the food service	This section should include a brief outline of: • the establishments profile • the number of approved or registered establishments in the Competent Authority's area • any specific local requirements associated with specialist or complex processes • the service delivery points used by the Authority • the times at which the service is available from these points This section also enables the Competent Authority to describe any external factors that may impact on their service, for example: • the percentage of business owners whose first language is not English • the percentage of food establishments that are manufacturing foods • imported food responsibilities • seasonal activities
2.5 Regulation policy	A brief reference statement to the Competent Authority's documented enforcement policy

3. Service delivery	Information required
3.1 Interventions at food establishments	A statement in relation to the Competent Authority's policy on interventions and how they will be selected in individual cases, including details of the programme of interventions at food establishments to be undertaken. This should include: • the establishments profile • the numbers of interventions programmed • an estimation of the number of revisits that will be made • an estimation of resources required for example staffing. The plan should also detail any targeted intervention activity that the Competent Authority intends to carry out including any extra resources this may require; this could include specific project work. The Competent Authority should identify any priorities relating to nationally or locally driven outcomes, such as compliance with new legislation or improved compliance with existing legislation and other central government initiatives. The section should include, where appropriate, the arrangements the Competent Authority has made to ensure they have access to adequate appropriate expertise to enable competent inspection of any specialised processes identified in Section 2.
3.2 Food complaints	A statement in relation to the Competent Authority's policy, regarding the investigation of food complaints, including an estimation based on previous years' trends of the likely demand on the service and an estimation of the resources required.
3.3 Home Authority and Primary Authority	A statement in relation to the Competent Authority's policy on the Home Authority principle, including an estimation of the resources required in relation to meeting and advising those businesses for whom it acts, and responding to notifications and enquiries from other enforcing authorities. The statement should also include details of how delivery will be resourced.
3.4 Advice to	A statement in relation to the Competent Authority's policy regarding advice to business (as part of the

3. Service delivery	Information required
business	overall policy of interventions) including an estimation of the number of contacts from business and the resources necessary to provide the service. This section should include, where appropriate, any input the Authority has to business partnerships or forums.
3.5 Food sampling	A statement in relation to the Competent Authority's sampling policy, including the basis of the sampling programme and an estimate of the numbers of samples that will be taken from establishments, or submitted in relation to complaints, and any relevant resource allocation including staffing. It should also detail the arrangements that the Authority has made for the analysis and/or examination of the samples.
3.6 Food safety incidents	A statement in relation to the Competent Authority's policy on handling food alerts to confirm that it complies with the relevant Code of Practice; an estimation of the likely demand on the service and an estimation of the resources required.
3.7 Liaison with other organisations	The Authority should set out the arrangements it has made to ensure that enforcement action taken in its area is consistent with those of neighbouring Competent Authorities. This section should include: • any liaison the Competent Authority has with other Competent Authorities • any liaison, where appropriate, with BEIS • any arrangements with other official control bodies or government inspectorates to co-ordinate food controls • any representation on Government working groups or committees • liaison with professional body working groups • liaison and involvement/participation with relevant food liaison advisory groups and similar or related bodies • any formal liaison with voluntary groups and other public sector bodies any formalised liaison with other services within the Authority • any commitment to local/regional groups • an estimation of the resource allocation

3. Service delivery	Information required
3.8 Food safety and standards promotional work	A statement of any food safety/standards promotional work, or information/intelligence gathering work, which the Competent Authority intends to carry out in the year and the measures it will use to evaluate its effectiveness, with an estimate of the resource allocation including staffing to undertake this work.
3.9 Control and investigation of outbreaks and food related infectious disease	A statement in relation to the Competent Authority's policy on the investigation of food poisoning notifications and outbreak control including an estimation based on previous years' trends of likely demand on the service and an estimation of the resources required.

4. Resources	Information required
4.1 Financial allocation	This section should set out the overall level of expenditure involved in providing the service and examine the trend of growth or reduction in real terms. Detail shall be provided in terms of the non-fixed costs including staffing, travel and subsistence, equipment including investment in IT, sampling budgets and the financial provision made by the Competent Authority for any legal action necessary as part of their enforcement function.
4.2 Staffing allocation	A statement of the number of posts required to deliver the service, and of the number of staff working on food law enforcement and related matters (in terms of full-time equivalents); this should distinguish qualified staff from support staff. These figures should be expressed in terms of levels of competency with reference to the Code, including support staff.
4.3 Staff development plan	A statement in relation to any relevant ongoing training, including that to be provided in-house and externally for authorised and trainee officers in the year ahead.

5. Quality Assessment	Information required
5.1 Quality assessment and internal monitoring	A statement specifying the measures to be taken to assess the quality of the Competent Authority's service including any relevant monitoring arrangements developed by the Authority to assess performance against the Standard. This should include any agreed inter-authority audit or peer review arrangements. The Authority will also wish to include details of any externally accredited or self-assessment models used.

6. Review	Information required
6.1 Review against the service plan	The Competent Authority should set out the process for reviewing and reporting delivery of the service plan. This should include information on the previous year's performance against the service plan and any specified performance targets and performance standards and targeted outcomes.
6.2 Identification of any variation from the service plan	The review should identify where the Competent Authority was at variance from their service plan and, where appropriate, the reasons for that variance. The Competent Authority may determine that additional work it has carried out in other areas of the enforcement mix has achieved the same objective. This should be clearly identified in this part of the plan.
6.3 Areas of improvement	The Competent Authority should set out plans for any relevant improvement or service development identified as necessary by the review or the quality assessment.

2.6.2 Contingency plans

Competent Authorities must ensure their contingency plan:

- provides details of Competent Authorities and other agencies to be involved
- sets out the powers and responsibilities of those Competent Authorities and agencies
- details the channels and procedures for sharing information between the Competent Authorities and agencies involved
- covers arrangements for occasions where authorised officers are absent, for example, if only one officer authorised to undertake particular controls, these arrangements could include officers in other Competent Authorities being authorised temporarily to undertake these functions

2.7 Requirements relating to documented programmes and strategies

2.7.1 Intervention programme

Competent Authorities must ensure their intervention programme:

- delivers an appropriate and effective[21], risk-based programme of interventions[22] in line with the Code
- includes all registered and approved food business establishments
- is based on the relevant intervention rating scheme (food hygiene and food standards) determined in accordance with Chapter 4 of the Code
- applies official food controls to exports with the same care as to the placing on the market within the United Kingdom
- provides mechanisms requiring authorised officers to:
  - have regard to primary authorities assured advice and advice of home authorities
  - follow inspection plans
- makes use of information supplied to them by FBOs in connection with the registration or application for approval of their food business establishments in order to determine when to carry out interventions
- is planned so that establishments receive an intervention no later than 28 days after the relevant date detailed in Chapter 4 of the Code
- is adequately resourced

The FSA may:

- advise Competent Authorities to depart from their intervention programme, for example:
- to accommodate the work of approved feasibility studies, pilots, or pathfinder projects
- in response to an emerging incident or national programme of work

The FSA will communicate any relevant work that may impact on intervention programmes to Competent Authorities so that intervention programmes can be reviewed. Competent Authorities should contact the FSA if such advice presents a significant disruption to their ability to deliver a risk-based intervention programme.

2.7.2 Sampling programme

Competent Authorities must ensure their sampling programme[23]:

- details the intended food sampling priorities

[21] Article 5(1)(a) of Regulation (EU) 2017/625
[22] Article 9(1) of Regulation (EU) 2017/625
[23] Article 34 of Regulation (EU) 2017/625

- is risk based[24] and take account of:
    - the number, type, size and intervention ratings of food business establishments in their area
    - the type of food produced in the area
    - the procedures adopted by the food business to ensure compliance
    - imported foods
    - the Competent Authorities home authority responsibilities
    - the need to ensure that the provisions of food law are enforced
- is planned to avoid foods that are already being looked at on a wider basis
- considers the main objectives of food sampling:
    - protecting health
    - detecting deceptive and fraudulent activities
    - compliance with labelling requirements
    - providing advice to FBOs
    - promoting fair trade and deterring bad practice
- consider the following to ensure it is effective:
    - whether the Competent Authority is the home authority or originating authority for any food premises that deal in unusual food
    - whether there are food manufacturers in the area
    - whether there are any distribution centres that deliver food to a wide area
    - the type of food additives FBOs (for example food manufacturers, and importers) use in the area
    - whether national Sampling Programmes highlight any food types which relate to specific premises in the area
    - national or regional imported food priorities/surveys and the UK's National Control Plan

With regards to imported food, the sampling programme should take account of:

- any statutory requirements for sampling laid down in EU Law, European Commission Decisions or Emergency Control Regulations (usually this will occur at a point of entry)
- any agreed LGA/ FSA sampling programmes
- any sampling required following a Food Alert, Early Warning System (EWS) or IMSOC notification
- information from any EU, NILGA, regional liaison group, local or other sampling survey
- any imported food where there is no known history or information on the product
- local priorities, including consumer complaints relating to imported food

Consideration must also be given to the following risk-related issues for all samples taken:

[24] Article 9(1) of Regulation (EU) 2017/625

- the severity of the effect of any given fault with the food
- the likelihood of the occurrence of the fault
- the consumption pattern applicable to the food
- the degree and distribution
- the degree of control and monitoring exercised by the manufacturer for all potential faults
- the stage in the production and distribution chain at which the problem can occur or could be more easily detected
- the compliance history of a food business
- emerging national and international concerns
- local consumer and business concerns

2.7.3 Training programme

Competent Authorities must ensure their training programme[25]:

- sets out how authorised officers undertaking official food controls and other official activities will receive appropriate training and on-going continual professional development (CPD) to allow them to carry out their duties competently and which is appropriate to their level of authorisation
- sets out the process for reviewing CPD and training needs, so that authorised officers keep their areas of competence up to date
- includes the process for identifying additional training needs
- includes training on subject matters set out in Chapter 1 of Annex II of Regulation (EU) 2017/625
- includes, where appropriate, training for staff carrying out physical checks on products of animal origin (POAO) at Border Controls Posts (BCPs) on the subject matters as set out in Chapter 3
- provides how records of qualifications, training and on-going CPD are maintained

This training programme may be included within the authorisation procedure.

2.7.4 Alternative enforcement strategy

Competent Authorities that decide to subject food business establishments to alternative enforcement strategies must ensure their alternative enforcement strategy:

- sets out their strategies for maintaining surveillance of these establishments in either their service plan or enforcement policy, which could include making use of:
  - questionnaires
  - surveys
  - project based inspections (which would normally be combined with another type of intervention)

[25] Article 5(4) of Regulation (EU) 2017/625

  - intelligence gathering visits

- does not permit alternative enforcement strategies to be used for food business establishments subject to approval under Regulation (EC) No 853/2004
- does not preclude full inspection, partial inspection, or audit of these establishments, where these are the Competent Authorities preferred intervention option
- includes measures to establish that food business establishments are subject to initial inspection and risk rated in accordance with Chapter 4 of the Code, before determining that alternative enforcement strategies are appropriate
- allows interventions to be carried out at establishments subject to alternative enforcement strategies where there has been:
  - a consumer complaint
  - planning or building regulation applications
  - an infectious disease notification
  - changes in activities or management
  - a non-return of a questionnaire
- includes measures to establish that a random percentage of these businesses are subject to inspection

2.8 Local, regional, and national liaison

2.8.1 Liaison

Chapter 2 of the Code provides that Competent Authorities must respond to any reasonable communication from other Competent Authorities requesting information or assistance. Examples of when Competent Authorities may request information or assistance may include:

- referrals of cross boundary enforcement issues or concerns
- referrals of food complaints reported to a Competent Authority
- information to help coordinate enforcement/infectious disease control activities

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

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

2.8.2 Liaison points of entry

Chapter 2 of the Code requires Competent Authorities with points of entry or External Temporary Storage Facilities (ETSF) to liaise with relevant local organisations. These organisations include, where appropriate:

- neighbouring Competent Authorities
- Her Majesty's Revenue and Customs (HMRC)
- Border Force
- Convention on International Trade in Endangered Species (CITES) teams
- Public Health Agency (PHA)
- port operator
- import agents
- Internal Temporary Storage Facilities operators
- External Temporary Storage Facilities operators
- Maritime and Coastguard Agency (MCA)
- Medicines Regulatory Group (MRG)
- Department of Agriculture, Environment and Rural Affairs (DAERA)

2.9 Primary Authority

2.9.1 Primary Authority Scheme

The Primary Authority Scheme in relation to the devolved function of food safety does not extend to Northern Ireland on a statutory basis. In April 2009 Competent Authorities in Northern Ireland agreed a statement of intent between the Chief Environmental Health Officers Group and the Department of Enterprise, Trade and Investment's[26] (DETI) Trading Standards Service to apply the principles of the scheme when discharging their food law functions. Therefore, if Competent Authorities are dealing with a FBO who has a Primary Authority in Great Britain, they will need to be mindful of the need to liaise with the Primary Authority.

Competent Authorities should report any difficulties encountered in the enforcement of food law in establishments to which this chapter applies to the appropriate Home Authority or Primary Authority, or, if there is no Home Authority or Primary Authority to FSA.

2.9.2 Inspection plans

Primary authorities can produce an inspection plan for the business(es) in their partnership. An inspection plan helps guide enforcing authorities through their inspection process and other checks, such as sampling visits and test purchases, focusing activity to where it is most needed.

An inspection plan must be approved by the Secretary of State before being published in the secure area of the Primary Authority Register for regulators to view.

[26]The Department for the Economy (DfE) encompasses the functions of the former Department of Enterprise, Trade and Investment (DETI)

Authorised Officers should check the Primary Authority Register to identify whether an inspection plan exists for a business before they carry out an official control.

Where there is an inspection plan issued by the Primary Authority, Authorised Officers must follow it and provide feedback to the primary authority if required, except in circumstances where:

- a request to follow an alternative approach has been made to the primary authority, and the primary authority has either agreed or has failed to respond within the required period of 5 working days
- a possible non - compliance is identified during a proactive intervention that need to be addressed.

2.9.3 Compliance issues and enforcement action

Where a Competent Authority is considering its response to possible non-compliance by a business that has a primary authority, it should take account of any Primary Authority Advice issued and consider appropriate communication with the primary authority at an early stage.

If enforcement action[27] is envisaged the Competent Authority must notify the primary authority, in accordance with the Primary Authority statutory requirements. Notification should be made via the Primary Authority Register.

In most cases this should be undertaken before action is taken, except where there is an urgent need to avoid significant risk of harm to human health, the environment, or financial interests of consumers, where the enforcement action must be notified retrospectively.

Notification allows the primary authority to review the proposed enforcement action and to decide whether it is inconsistent with the Primary Authority Advice issued. A primary authority can direct against any enforcement action if the action is considered inconsistent with advice that has been issued.

Where there is disagreement between any of the three parties – the primary authority, the enforcing authority, and the business – as to whether the proposed enforcement action is inconsistent with Primary Authority Advice and whether that advice was correct and properly given by the primary authority the Secretary of State is consulted and makes a determination.

Further details are set out in the BEIS Primary Authority Statutory Guidance.

2.9.4 Supporting regulator

The FSA became a Primary Authority supporting regulator on 1 October 2017 following changes introduced by the Enterprise Act 2016. Primary authorities can seek support from supporting regulators in relation to the provision of Primary Authority Advice or the development and management of an inspection plan.

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[27] Defined in regulation 5 of the Coordination of Regulatory Enforcement Regulations 2017 (CORE)

Further guidance and request template are available on the FSA's communication platform.

2.10 Facilities and equipment

Competent Authorities should:

- provide officers with the equipment and facilities necessary to enable them to carry out the full range of food controls:
  - competently
  - in accordance with food law
  - in accordance with the requirements of the Code
  - provide officers who carry out interventions with clean protective clothing, including headgear, consistent with good industry practice
- require officers, when inspecting businesses to:
  - wear protective clothing, when required
  - give any relevant information on their health status when requested
  - adhere to any reasonable precautions that are required by the business

The Code requires that appropriate equipment is available, which means that it may be shared with other Competent Authorities, provided they will be readily available for use, when required, so as not to impede the effective delivery of official food controls.

2.11 Enforcement e-mail addresses

As required by Chapter 2 of the Code, Competent Authorities must notify the FSA of the email address to which communications can be sent by email to Executive.Support@food.gov.uk.

2.12 Registration of food establishments

2.12.1 What is a food business establishment?

Article 2(1)(c) of Regulation (EC) No 852/2004 defines 'establishment' as any unit of a food business.

A 'food business' as defined in Article 3(2) of Regulation (EC) No 178/2002 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.

A food business establishment may include units where food may not be handled, but where decisions are made on relevant aspects of the food business such as the food's movement/transportation and/or labelling.

2.12.2 Who is a food business operator?

Article 3(3) of Regulation (EC) No 178/2002 defines a FBO as the natural or legal persons responsible for ensuring the requirements of food law are met within the food business under their control.

A natural person is a human being, as opposed to an artificial, legal, or juristic person.

A legal person has a legal name and has rights, protections, privileges, responsibilities, and liabilities under law, just as natural persons (humans) do. Legal personality allows one or more natural persons to act as a single entity (such as a limited company - considered under law separately from its individual members or shareholders) for legal purposes.

When considering who to register as the FBO under Article 6(2) of Regulation (EC) No 852/2004, Competent Authorities should request that the FBO identifies themselves, including the name of the operator in the case of legal persons, address, and type of business entity on the registration form.

The types of business entity are defined according to the legal system for an individual country but may include a charity, limited company, organisation, or trust that operates it, partnerships, and sole traders.

2.12.3 Requirement to register a food business establishment

Under Article 6(2) of Regulation (EC) No 852/2004, FBOs must register the establishment(s) under their control with the appropriate Competent Authority.

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

Competent Authorities are encouraged to make information available to businesses on the requirements relating to registration.

There may be situations when a FBO registers as a food business in advance of 28 days before they intend to start operations. The FSA’s view is that in such circumstances Competent Authorities may find it useful to avoid inputting registrations onto their databases until they have confirmation that those businesses have started or have an imminent date to start operations. This could mean keeping a temporary record of such businesses with some periodic checks to verify if they have commenced food operations.

If registration relates to a business that includes more than one mobile unit, the FBO should provide details of all mobile units that they own (i.e., registration/identification numbers, identifying features, types of facilities, food types etc.).

2.12.4 Channels of registration

Competent Authorities should require FBOs to register to provide them with full details of the activities undertaken at the establishment(s) under their control.

Under the Regulation 32(1) of The Provision of Services Regulations 2009, Competent Authorities must have an electronic means for FBOs to register food business establishments. Digital registration is the preferred method for registration and FBOs should, where possible, be encouraged to complete their registration online.

The Register a Food Business (RAFB) online service is a tool for FBOs to register their food business with the Competent Authority responsible for food safety in their area. This service can be accessed via the FSA website, or through the participating Competent Authorities' website.

Competent Authorities are encouraged to help those FBOs requiring support to complete their registration online. Support can be given in person at the establishment, over the phone or by inviting an FBO into the office.

2.12.5 Use of Information from other sources

Where information about the address of the establishment and the activity carried out is already available for other sources as provided below, that information may be used for registrations purpose[28].

2.12.5.1 Fishing vessels

Fishing vessels at the level of primary production that have been registered with the Registrar of Shipping and Seamen (RSS) and licensed by DAERA are considered registered for the purposes of Article 6(2) of Regulation (EC) No 852/2004. This list is published online by the Marine Management Organisation (MMO).

2.12.6 Exemptions from registration

2.12.6.1 Degree of organisation and continuity of activities

Establishments undertaking food activities that do not involve a certain degree of organisation and a continuity of activities[29] do not meet the definition of a food business establishment, so fall outside the scope of Regulation (EC) No 852/2004. Therefore, registration is not required for establishments who occasionally handle food.

The FSA guidance on the application of EU food hygiene law to community and charity food provision, has been published to provide clarity on Recital 9[30].

Furthermore, the European Commission 'guidance document on the implementation of certain provisions of Regulation (EC) No 852/2004 on the hygiene of foodstuffs' states that 'somebody who handles, prepares, stores or serves food occasionally and on a small scale cannot be considered as an 'undertaking'.

Although such establishments are exempt from registration requirements, they do, however, remain subject to certain provisions of the Food Safety (Northern Ireland) Order 1991 and Regulation (EC) No 178/2002.

An example would be in respect of a charitable or community event where a private person prepared cakes for a bake sale, but inadvertently substituted a dangerous substance for a food ingredient.

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[28] Article 10(2) of Regulation (EU) 2017/625
[29] Recital 9 of Regulation (EC) No 852/2004
[30] Article 3(2) of Regulation (EC) No 178/2002

Further advice as to which food suppliers or sellers might not count as undertakings can be found in the FSA guidance on the application of EU food hygiene law to community and charity food provision.

2.12.6.2 Approved establishments

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

2.12.6.3 Other exemptions

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

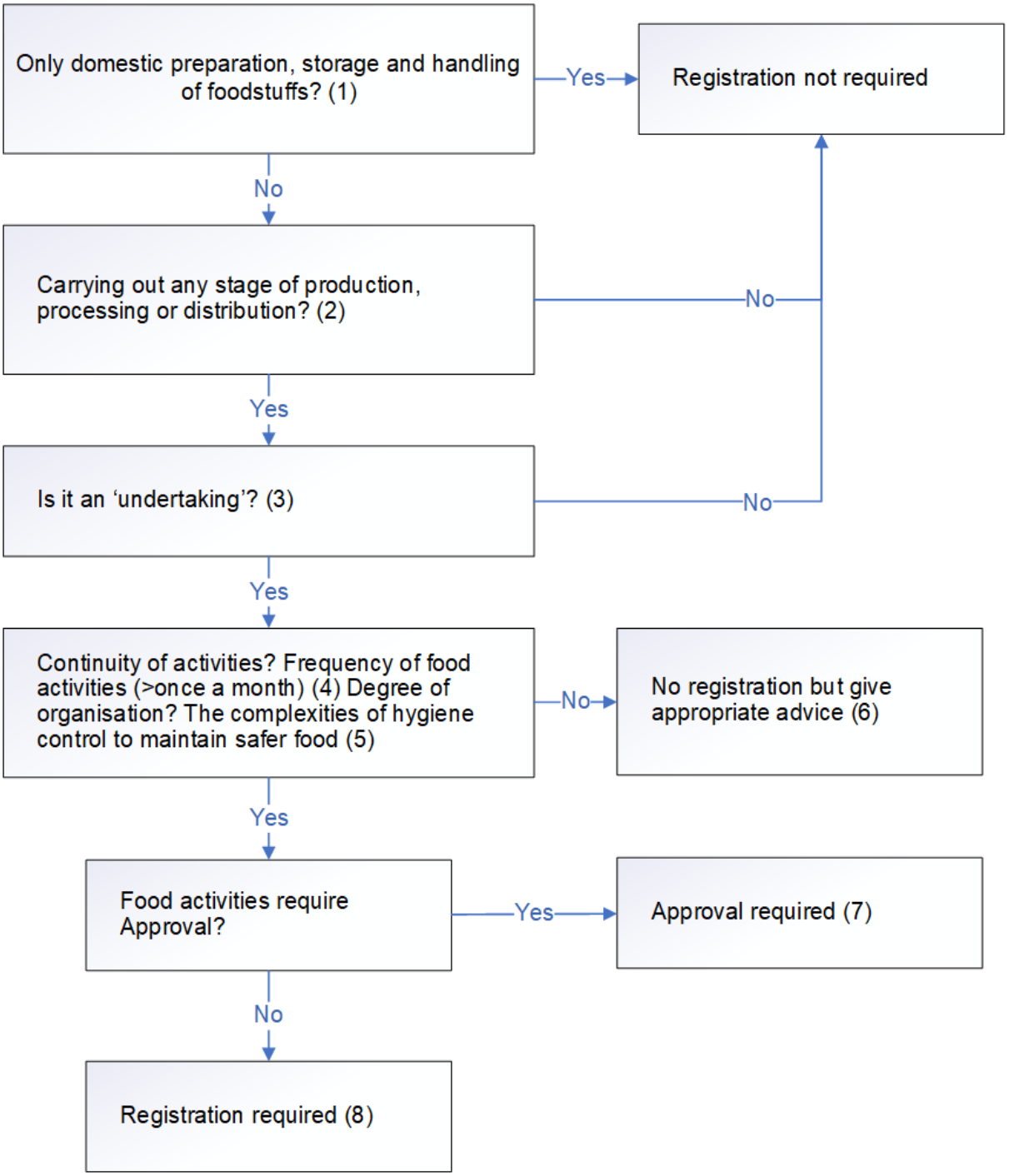
- primary production for private domestic use
- the domestic preparation, handling, or storage of food for private domestic consumption
- small quantities[31] of primary products supplied directly by the producer to the final consumer or to local retail establishments directly supplying the final consumer
- collection centres and tanneries which fall within the definition of food business only because they handle raw material for the production of gelatine or collagen

[31] For further information see guidance on approval of food establishments

2.12.6.4 Registration flow chart

Figure 1 provides a decision tree to help determine which food activities require registration with the Competent Authority.

Figure 1



Explanatory notes:

1. Community Regulations do not apply to primary production for private domestic use or to the domestic preparation, handling, or storage of food for private domestic consumption[32].
2. This means any stage, including import, from and including the primary production of a food, up to and including its storage, transport, sale, or supply to the final consumer[33].
3. 'Undertaking' is not defined in food law but the EU Commission document suggests that an undertaking is not somebody who handles, prepares, stores or serves food occasionally and on a small scale.
4. Continuity of activities[34] – the FSA's view is that generally operations providing food less frequently than on an average monthly basis should be considered as not having a continuity of activity and should not require registration.
5. Degree of organisation[35] – the FSA's view is that the following issues should be considered when deciding how much any given operation can be said to be organised: foodstuffs and risk, and nature of event. This is set out in more detail in the FSA guidance on the application of EU food hygiene law to community and charity food provision.
6. Competent Authorities should advise that if food operations change, they should contact the relevant Competent Authority to check whether registration is subsequently required.
7. Approvals guidance available on the FSA's communications platform.
8. Guidance and online registration on the FSA website.

2.12.7 Action on receipt of a completed registration

On receipt of a completed registration form, Competent Authorities should record the date of receipt. Where any activities indicated on the form fall outside of their enforcement remit, the relevant Competent Authority should be notified as soon as practicable.

For Competent Authorities on the RAFB service this will be recorded automatically by the system.

Competent Authorities should enter relevant information from the registration form onto their database of registered food business establishments. The registration form should then be placed on a file (electronic or otherwise) prepared in respect of each food business establishment.

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

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[32] Article 1(3) of Regulation (EC) No 178/2002 and Article 1(2)(b) of Regulation (EC) No 852/2004
[33] Article 3(16) of Regulation (EC) No 178/2002
[34] Recital 9 of Regulation (EC) No 852/2004
[35] Recital 9 of Regulation (EC) No 852/2004

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

If any information is omitted from a registration form submitted by a FBO, the Competent Authority should either contact the FBO to obtain the missing information or, if a substantial amount of information is missing, return the submission to the FBO for full completion.

On receipt of a completed application form, Competent Authorities should have regard to Chapter 4 of the Code with respect to carrying out any inspection, if required.

2.12.8 Acknowledgement of registration

Competent Authorities should acknowledge receipt of a submitted food business registration.

The confirmation of registration will include a reminder to the FBO to advise the Competent Authority of any subsequent changes to the business, in accordance with Article 6(2) of Regulation (EC) No 852/2004.

Where a Competent Authority is connected to the RAFB service, acknowledgement of an application to register by an FBO is sent automatically by the service. The Competent Authority may wish to send their own acknowledgement in addition.

2.12.9 Changes to food establishment operations

Under Article 6(2) of Regulation (EC) No 852/2004, FBOs must ensure that the appropriate Competent Authority always has up-to-date information on their food establishment(s) and must notify their registering Competent Authority of any significant changes to the operation and closure.

This requirement includes changes to both the operation and the operator.

Significant changes are considered to include changes in, or ceasing of:

- food activities
- ownership
- changes to the details previously supplied

2.12.10 Change of ownership following registration

Competent Authorities may come across changes of ownership during interventions at food business establishments. The FBO by virtue of Article 6(2) of Regulation (EC) No 852/2004 is required to notify the Competent Authority of any significant changes, which includes change of ownership. Not complying with this requirement is an offence under regulation 17 of The Food Hygiene Regulations (Northern Ireland) 2006. The table below outlines circumstances in which changes of ownership have been identified and therefore a new registration form should be completed by the FBO.

Table 1 – Change of FBO scenarios – when a new registration is required.

Existing FBO (as stated in registration document)	Change of FBO (assuming no other changes to the business)	Comments	New registration required?
Sole trader, partnership, or incorporated company (for example Ltd, PLC, etc.)	Different sole trader, partnership or incorporated company takes over ownership	Discontinuation of operator/s	Yes
Sole trader or Partnership	Company incorporated (and registered), sole trader or partner/s become Director/s	Creation of a company changes the legal matrix of FBOs	Yes
Sole trader	Creation of a partnership where the sole trader is one of the partners	Continuation of operator	No
Partnership	Dissolved and one of the partners takes over sole ownership as a sole trader	Continuation of operator	No
Partnership	New partner joins or a partner leaves, as long as there is a continuation of at least one partner	Continuation of operator	No
Incorporated company	Company goes into administration and run as a going concern by administrators	Discontinuation of operator/s	No

Existing FBO (as stated in registration document)	Change of FBO (assuming no other changes to the business)	Comments	New registration required?
Incorporated company in administration	Company taken over from administrators by a different sole trader, partnership, or incorporated company	Discontinuation of operator/s, registration expires	Yes
Sole trader, Partnership, or Incorporated Company	Bankruptcy, insolvency or in liquidation (wound up/dissolved)		Not applicable

Other business types such as co-operatives, registered charities, and other specialised types of organisation (for example establishments under the control of a board/committee) should be treated on a case-by-case basis to identify the natural person or legal person required to ensure that food law is complied with within the food business under their control.

2.12.11 Movable food business establishments

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

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

2.12.11.1 Ships and vessels

FBOs must register vessels under their control that meet the definition of a food business establishment, unless they require approval (i.e., freezer and factory vessels). This includes:

- vessels that are permanently moored in the UK (floating restaurants)
- vessels that are engaged for the purposes of catching, gathering and distribution of food
- passenger vessels that ply their trade on inland water ways and travel the same routes, never leaving territorial waters for example cross channel ferries, river ferries and pleasure craft.

If the vessel routinely calls at more than one UK port, the ‘registering authority’ should usually be the Competent Authority where the vessel has its ‘home port’ as a registered vessel with the Registrar of Shipping and Seamen (RSS) and licensed by DAERA.

2.12.11.2 Aircraft

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

2.12.11.3 Trains and coaches

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

Individual trains and coaches are not subject to separate registration but the FBO should register any other establishment or static unit undertaking activities of the food business.

Registering Competent Authorities for the main establishment should inspect a representative number of train cars providing foodstuffs (such as buffets and dining cars) where the food service units across the stock are of similar design and operate to common food safety management procedures. Where main establishments and train operations (which provide food) are co-located, the registering Competent Authority itself can undertake these inspections.

2.12.11.4 Markets

In the case of vehicles and stalls (whether these facilities are provided by the market controller) used for transporting, preparing, or selling of food to consumers within the area of a market, the FBO should register the establishment with the Competent Authority in which their food stocks are ordinarily stored.

Where a market stall is considered an extension of an existing food business i.e., an additional activity of the existing food business, separate registration of the market stall may not be necessary.

It is the responsibility of the registering Competent Authority to ascertain and assess the full extent of a food business’s activities which fall under registration when undertaking interventions and determination of their intervention rating.

This may require liaison with the inspecting Competent Authority where these activities take place.

Following registration of a food business establishment, the FBO should not be asked to register the same food business with any other Competent Authority in whose area it trades.

This does not limit other inspecting Competent Authorities carrying out official controls of the activities undertaken by a food business operator of establishments such as, mobile food businesses/stalls etc. that operate in their area. However, inspecting Competent Authorities should contact the registering Competent Authority

before any intervention to determine whether an inspection is due and if so, the type of intervention that may be appropriate in the circumstances. The registering Competent Authority has the discretion to decide whether it needs to undertake any specific intervention, for example in circumstances, where full inspection has been carried out by the inspecting Competent Authority in whose area the mobile food business/stall operates. To ensure consistency and to avoid 'over inspection', the inspecting Competent Authority must provide the registering Competent Authority with information relating to interventions undertaken of mobiles operating their area.

Details of interventions and enforcement action should be passed to the registering Competent Authority as soon as possible, following an intervention. The registering Competent Authority should take account of information supplied in determining the Intervention Rating, and when this should be revised in accordance with section 5.6 of the Code and recorded on the Competent Authority's database of food establishments.

2.12.12 Mobile food establishments

The following sections refer to food establishments that have the mobility to trade in more than one location.

2.12.12.1 Registration requirements

Mobile food establishments are required to be registered by the FBO with the Competent Authority (the registering Competent Authority) within which the establishment is ordinarily kept or returns to between trading. For example, the private residence house of the owner of the mobile food establishment.

Following registration, the FBO should not be asked to register with any other Competent Authority in whose area it trades.

2.12.12.2 Competent Authority responsibilities

Competent Authorities may responsible for carrying out official food controls of the activities undertaken by a mobile establishment that operates in their area.

Inspecting Competent Authorities should contact the registering Competent Authority before any intervention to:

- seek up to date information regarding the establishment
- determine whether an inspection is due
- if an intervention is due, the type of intervention that may be appropriate in the circumstances (for example full inspection, partial inspection, or audit)

The registering Competent Authority has the discretion to decide whether it needs to undertake any specific intervention, for example in circumstances, where full inspection has been carried out by the inspecting Competent Authority in whose area the mobile establishments operate.

To ensure consistency and to avoid 'over inspection', the inspecting Competent Authority must provide the registering Competent Authority with information relating to interventions undertaken on mobile establishments operating in their area.

Details of interventions and enforcement action should be passed to the registering Competent Authority as soon as possible, following an intervention. The registering Competent Authority should take account of information supplied in determining the intervention rating, which should be revised in accordance with Chapter 4 of the Code and be recorded on the Competent Authorities database of food establishments.

2.12.12.3 Mobile food business with multiple units

Where a food business operates more than one mobile establishment, each individual mobile establishment should be separately registered.

2.12.12.4 Risk rating of mobile establishments

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

2.12.12.5 Sources of information on mobile food establishments

The Nationwide Caterers Association (NCASS) has developed NCASS Connect, an online database that allows FBOs to store documents such as registration documents, staff training records and HACCP-based procedures for the establishment. The database includes records for a range of catering establishments and mobile food businesses.

Competent Authorities can access NCASS Connect for free to view documents uploaded by NCASS members, as well as any non-NCASS members using the service. The database may also help in obtaining information on a mobile trader scheduled to attend a local event and identify any that have not registered.

NCASS currently has a Primary Authority Partnership with Royal Borough of Greenwich. See the Primary Authority register for further information on this partnership, including details of any Primary Authority advice or inspection plans.

2.12.12.6 Food hygiene rating scheme - mobile trader resources

A template letter and inspection report template are available to help Competent Authorities apply the guidance on mobile traders that is set out in the Implementation and operation of the statutory Food Hygiene Rating Scheme in Northern Ireland guidance.

2.12.13 Other types of establishments

2.12.13.1 Food businesses operating out of domestic premises such as home caterers and B&Bs

The domestic preparation, handling or storage of food which is to be placed on the market (whether free of charge or not) and which meets the definition of a ‘food business’, is subject to registration requirements and should be registered with the Competent Authority where the undertaking takes place.

2.12.13.2 Domiciliary care/assisted living care

Food business registration will apply where it is considered that the care service operations fall within the legal definition of a 'food business'. If registration is required, then the establishment itself should be registered even if some operations carried out by the establishment do not need to form part of the registration. For more information refer to the FSA's guidance on 'The application of food hygiene legislation to domiciliary care, assisted living and care homes'.

2.12.13.3 Food banks

Food banks run by community volunteers, if they meet the definition of a food business, will require registration, and will need to comply with food law proportionately. Some food banks may be exempt from registration if they do not meet the definition of an 'undertaking' given in Recital 9 of Regulation (EC) No 852/2004 and Article 3(2) of Regulation (EC) No 178/2002. The FSA guidance on the application of EU food hygiene law to community and charity food provision should help determine this.

2.12.13.4 Food brokers

Food brokers are food businesses that operate as intermediaries in the supply chain, operating at various stages between other food businesses and the final consumer or caterer.

While they may arrange for the movement of food between suppliers or to retailers, they do not necessarily handle the food or even store it on their establishment (which may effectively be an office). Provided they meet the definition of 'food business' and 'FBO', then the registration requirement applies, and they must be registered with the Competent Authority in which they undertake the work.

In respect of (POAO), Article 3 of Regulation (EC) No 931/2011 on traceability requirements for food of animal origin, places a duty on the FBO, including food brokers, to be able to identify and provide specific traceability information to the Competent Authority.

Guidance for authorised officers on food brokers includes information on the distinction between food brokers and food agents, who act as a representative of a FBO without any authority to trade in their own name and do not take legal or physical possession or custody of the food at any time.

2.12.13.5 Internet sales

Certain businesses offer their goods for sale via the internet. Although such trade is not specifically referred to in Regulation (EC) No 852/2004. If such businesses fall within the definition of a food business as outlined in Regulation (EC) No 178/2002 then relevant requirements of food law will be applicable to them.

Such businesses must register with the most appropriate Competent Authority. This may be where they live, where their office is located or where the food stocks are stored.

Food businesses such as those who set up websites providing caterers' menus to consumers, which facilitate sale of the food and arrangement of its delivery from caterer to consumer, should also be registered as food businesses.

Guidance for Competent Authorities regarding foods sold online can be found on the FSA's communications platform.

2.12.13.6 Temporary food business establishments

Temporary food businesses or 'pop-up' food businesses are establishments that are only open for a limited period. The time they are open for can range from a few hours, to a few months, depending on the nature of the food business. These businesses should be treated in the same way as mobile food establishments for the purposes of registration.

Competent Authorities should prioritise initial inspections of these businesses based on risk and in accordance with their service plan and intervention programme.

2.12.13.7 Vending machines

Vending machines are subject to the relevant provisions of Annex II of Regulation (EC) No 852/2004. The FSA does not see practical value in the registration of individual vending machines or the establishment on which they are sited if the only food related activity on those establishments 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 should be registered with the relevant Competent Authority. The delivery vehicles used for the transport of food for stocking vending machines should be covered in the interventions at such establishments.

2.12.13.8 Non-commercial establishments

Food activities which do not operate from primarily commercial premises but meet the definition of a 'food business', must be registered as a food business establishment. This may include, for example, a food business operating from domestic premises, primarily used as a dwelling.

2.13 Approval of establishments

2.13.1 Division of responsibilities between local authorities and FSA

Responsibility rests with DCs for the approval and enforcement of establishments subject to approval under Regulation (EC) No 853/2004 in respect of which control does not fall to an 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
- dairy products
- egg products
- frogs' legs and snails
- rendered animal fats and greaves
- treated stomachs
- bladders and intestines
- gelatine and collagen

This will include certain re-wrapping/re-packing establishments, cold stores, and some wholesale markets.

DCs are also responsible for enforcement in respect of collection centres and tanneries supplying raw material for the production of gelatine or collagen intended for human consumption.

The FSA is responsible for the approval of the following establishments subject to approval under Regulation (EC) No 853/2004, and for enforcement in such establishments once approved. Such establishments include:

- slaughterhouses
- game handling establishments
- wholesale meat markets
- cutting plants
- raw milk processing establishments
- egg packers

The FSA is also responsible for establishments co-located with these establishments which also produce:

- minced meat
- meat preparations
- mechanically separated meat
- meat products
- rendered animal fats and greaves
- treated stomachs
- bladders and intestines
- gelatine
- collagen
- dairy products
- egg products

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

Where a food business is carrying out any activity that is subject to approval under Regulation (EC) No 853/2004 (including those that require approval by the FSA but

is not yet approved) without the required conditional or full approval, an offence is committed under regulation 17 of The Food Hygiene Regulations (Northern Ireland) 2006, and enforcement action is the responsibility of the relevant DC.

2.13.2 Exemptions from approval

On receipt of an application for approval or when providing advice to FBOs, Competent Authorities will need to consider whether the activities proposed require approval, or whether the FBO might be exempt.

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

- direct supply of small quantities of primary products[36]
- retail exemption[37]
- food containing both products of plant origin and processed POAO (composite products)[38]

Competent Authorities must be aware that establishments which are exempt from approval because they assemble, manufacture, or handle composite products only, must demonstrate that the POAO used to make the composite products were produced and handled in accordance with the specific requirements in Regulation (EC) No 853/2004 as well as the requirements in Regulation (EC) No 852/2004. This is specified in Article 1(2) of Regulation (EC) No 853/2004.

Further information on these exemptions is provided in the FSA guidance, 'Approval of establishments - Guidance for local authority authorised officers'.

2.13.3 Applications for approval

Under the Provision of Services Regulations 2009, Competent Authorities must have an electronic means for FBOs to seek approval for food establishments.

Applications for approval may be electronically completed and submitted to the relevant Competent Authority online using the GOV.UK website.

2.13.4 More than one type of product

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

There will be establishments where two or more POAO subject to requirements of Regulation (EC) No 853/2004 are applicable, for example 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.

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[36] Article 1(3)(c) to (e) of Regulation (EC) No 853/2004
[37] Article 1(5)(b)(ii) of Regulation (EC) No 853/2004
[38] Article 1(2) of Regulation (EC) No 853/2004

2.13.5 Determination of approval

Before reaching a decision on an application for approval, the Competent Authority must ensure that an on-site visit[39] is made in the form of an inspection of the establishment, to verify that, where necessary, all systems, procedures and documentation meet the relevant requirements of Regulation (EC) No 852/2004 and Regulation (EC) No 853/2004.

The inspection must be conducted in accordance with, and cover, all aspects of the relevant inspection form for the business concerned, and consider all issues identified by Regulation (EC) No 853/2004, as requiring Competent Authority consent.

As per Article 148(3) of Regulation (EU) 2017/625 the relevant requirements of food law must be fully complied with prior to full approval being granted.

2.13.6 Conditional approval

Article 148(4) of Regulation (EU) 2017/625 permits the granting of conditional approval to an establishment, following an onsite visit, which does not fully comply with the requirements of food law, but only if the establishment meets all the infrastructure and equipment requirements. It is for Competent Authorities to decide whether to grant conditional approval to a food business establishment which does not fully comply.

If conditional approval is granted, a new official control visit must be carried out within three months of the conditional approval being granted.

In appropriate circumstances conditional approval may be extended, but it must not be extended to more than six months[40] from the date of the initial granting of conditional approval.

In the case of factory and freezer vessels, conditional approval shall not exceed 12 months.

Professional judgement must be used in deciding whether it would be appropriate to extend conditional approval on a case-by-case basis, but Competent Authorities should note that Article 148(4) of Regulation (EU) 2017/625 requires clear progress to have been made towards compliance.

2.13.7 Refusal of approval and appeals

Competent Authorities must bear in mind that the FBO has the right to appeal to a relevant Court against decisions on approval. Rights of appeal are subject to regulation 12 of The Official Feed and Food Controls Regulations (Northern Ireland) 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.

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[39] Article 148 (2) of Regulation (EU) 2017/625
[40] Article 148 (4) of Regulation (EU) 2017/625

2.13.8 Change of activities, ownership or details

For guidance on the action required where there has been a change in activities, ownership, or details, see the FSA document, 'Approval of establishments - Guidance for local authority authorised officers'

2.13.9 Notification to the FSA regarding approval status

Chapter 2 of the Code sets out the circumstances where Competent Authorities are required to notify the FSA of approved establishment details.

Competent Authorities must as soon as practicable notify the FSA of these details by email to Executive.Support@food.gov.uk.

This information will then be used to update the lists of approved food establishments published on the FSA's website.

2.13.10 Competent Authority files

The following guidance will support Competent Authorities to ensure consistency in the content and structure of files produced for establishments which require approval.

A properly structured file, in hard copy or held electronically, containing all the relevant information is important to the Competent Authority. It provides:

- a history of the establishment and how it has developed
- continuity for new officers
- for the facilitation of monitoring exercises
- assistance to the Competent Authority in demonstrating competence

An example of what an approval file may contain, as relevant and appropriate for the establishment includes:

- the application form
- a plan(s) of the establishment indicating:
  - layout of the establishment
  - location of equipment
  - workflows for each product line
  - water distribution system within the establishment including all outlets and sampling points
  - drainage layout
  - pest control - baiting and/or trapping points within the establishment and external areas
- a synopsis of the establishment (no more than one side of an A4 sheet) which briefly describes what type of establishment it is, products produced, volume of product, type of trade, number of employees, approval number, what it is approved for, details of other businesses that produce or import for the business
- a pre-approval inspection report
- a planned programme of works to achieve approval

- an approval notification document specifying:
  - details of activities to which the approval relates
  - approval number
  - classification
  - special hygiene direction(s)
  - any establishment-specific derogations that have been granted
  - any other conditions or limitations specified by the Competent Authority
- any arrangements acceptable to the Competent Authority
- all relevant information and documentation, including:
  - labels and commercial documents bearing the identification mark
  - letter indicating the Competent Authority's involvement in the planning and implementation of the establishment's hygiene training of staff
  - intervention reports in chronological order
  - correspondence with establishment in chronological order
  - copies of notices or other formal action taken, in chronological order
  - a copy of company's emergency recall and withdrawal plan and traceability system including names, telephone numbers, etc. of key personnel within the company
- results of all samples taken by the Competent Authority
- location of any off-site facilities
- copies of any other documents that have been provided by, or copied at, the approved premises, including:
  - HACCP documentation
  - supplier information
  - product list
  - raw material, product and water sampling plans and test results*
  - other sampling plans and results for example environmental sampling*
  - process records
  - management and key contact names and contact details
  - photographs and digital images, as appropriate

*Where FBOs are using alternative sampling plans or methods in accordance with Article 5 of Regulation (EC) No 2073/2005 on the microbiological criteria for foodstuffs, the Competent Authorities verification of the proposed alternative approach should be held on file.

2.13.11 Identification mark (including approval code)

Chapter 2 of the Code requires Competent Authorities to give an approval number to each food business establishment it approves, or conditionally approves, in accordance with Article 148 of Regulation (EU) 2017/625.

This approval number must be a three-digit number unique to that authority, which should form part of an approval code consisting of the Competent Authorities two-letter code followed by the approval number.

The Competent Authority must agree an identification mark with each establishment it approves which:

- incorporates the approval code it has allocated
- meets the requirements of Annex II, Section I B of Regulation (EC) No 853/2004 including the need for the mark to be within an oval shape

Approved establishments are required to apply the identification mark to their products, as appropriate. The requirements for the application and form of the identification mark as well as the method of marking are set out in Annex II, Section I, A, B and C of Regulation (EC) No 853/2004.

Guidance on the health and identification marks that must be applied to food products of animal origin (POAO), such as meat, egg products, fish, cheese and milk, after the end of the EU Transition Period is available on the FSA website.

2.13.12 Template forms

A series of template forms to assist Competent Authorities in the administration of approvals can be found on the FSA's communication platform.

This includes the following forms:

- Application for Approval
- Notification of Grant of Full Approval/Conditional Approval
- Notice of Decision Not to Grant Approval
- Notice of Decision to Withdraw Approval/Conditional Approval
- Notice of Decision to Suspend Approval/Conditional Approval
- Notification of Refusal to Grant Full Approval to an Establishment which was Conditionally Approved

Note: these forms are all included in the same composite document.

Whilst the content of these documents must be regarded as the minimum required, Competent Authorities can adapt them as necessary to meet local requirements.

2.13.13 Further guidance

For further guidance on the approval of food business establishments that handle POAO, see the FSA document entitled, Approval of establishments - Guidance for local authority authorised officers.

The Operational Policy for the approval of meat establishments by the FSA is available on the FSA website.

2.14 Food Business Establishment records

2.14.1 List of registered Food Business Establishments

Chapter 2 of the Code requires Competent Authorities to maintain an up-to-date list of food business establishments registered with them. This list should contain the following information about each food business establishment:

- name of the FBO
- name of the food establishment

- address of the food establishment
- nature of the food business

2.14.2 Freedom of Information and data protection

This section contains information about the Data Protection Act 2018 and the Freedom of Information Act 2000 as they relate to food business records.

Competent Authorities must ensure that their data protection registration encompasses all their reasons for holding data, including its supply to other agencies for the purposes of ensuring public health and the effective enforcement of food law.

If Competent Authorities have any doubts about the release of data or information, they should seek legal advice and/or contact the Information Commissioner's Office.

2.14.3 Information requirement

The Competent Authorities establishment record files, which may be computer based, must be updated after each intervention, and include:

- information on the size and scale of the business and its customer base
- information on the type of food activities undertaken by the business, including any special equipment, processes or features
- copies of any correspondence with the business, including documentation associated with approvals or registration
- copies of food sample analysis/examination results
- a system of flagging for significant issues, including details of any non-compliance to be reviewed at future interventions
- in respect of establishments inspected for food hygiene purposes, an assessment of the businesses compliance with procedures based on HACCP principles, where appropriate
- information on hygiene training undertaken and qualifications held by employees; including any training on the implementation and operation of the food safety management system
- information as to whether the business imports food and/or is the first destination inland after import and, additionally in respect of premises inspected for food standards purposes:
  - the existence and assessment of any documented quality system
  - details of other businesses that produce or import for the business

2.14.3.1 Retention of HACCP plans

The public inquiry into the 2005 outbreak of E.coli O157 in South Wales, recommended that, Officers should obtain a copy of a business HACCP/food safety management plan at each inspection, which should be held on the business' inspection file.

With regards to this recommendation, the primary concern was for retention of the core elements of the plan. Retention of the critical control points from a business' HACCP plan, rather than the entire plan is considered to be sufficient to ensure that

authorised officers looked at the performance of a business over time and did not miss danger signs from previous inspections.

The FSA has produced guidance highlighting the recommendation made by the Public Inquiry to assist Competent Authorities in effectively managing their establishment records.

2.15 Escalating technical queries to the FSA or other Government Agency

Before escalating a query to the FSA, Competent Authorities must consider and follow the agreed hierarchy for escalating queries that is endorsed by the Food Hygiene Focus group and Food Standards and Information group, which is to liaise:

1. within your Competent Authority
2. with the relevant NI food liaison group
3. with NI Food Managers Group

For consistency we also advise posting queries or requests for information on the Knowledge Hub.

Chapter 3 Authorisations, competence, and qualifications

3.1 Introduction

This Chapter provides advice on the requirements for qualifications, competency and training for officers undertaking official food controls, other official activities, and any other activities related to these.

3.2 Authorisations

3.2.1 Appointment of staff

The Code requires Competent Authorities to appoint a sufficient number of suitably qualified and competent officers so that official food controls and other official activities can be performed efficiently and effectively, as part of their statutory obligations[41].

This may involve:

- establishing regional or cross-regional arrangements so other Competent Authorities may undertake official food controls and/or official activities on behalf of the Competent Authority
- employing temporary staff or contractors

The advantage of regional or cross-regional arrangements is that it supports resilience and sustainability in respect of knowledge transfer between and within Competent Authorities and regions.

3.2.2 Lead food officer

There may be separate lead food officers with responsibility for food hygiene, food standards, and/or food import controls, and for specific tasks, for example:

- developing, implementing, monitoring, and reviewing documented policies, procedures, and plans
- management of the response to an incident and alert; and
- collating and reporting data

As required by Chapter 2 of the Code, Competent Authorities must provide the FSA with the name and contact details of their appointed lead food officer(s) and provide details of any changes as soon as practicable to Executive.support@food.gov.uk.

3.2.3 Authorisation procedure

Competent Authorities must have a documented authorisation procedure that sets out the process to be followed in assessing the competence of the officer to undertake official food controls, other official activities, and any other activities related to these prior to their authorisation. This applies equally to officers who are

[41] Article 5(1)(e) of Regulation (EU) 2017/625 and Chapter 2, Paragraph 5.3 of the Framework Agreement

directly employed, agency staff, temporary staff, and to those employed by or as contractors.

3.2.4 Authorisation of officers

All Competent Authorities must ensure they have a sufficient number of properly authorised officers to undertake imported food controls, food hygiene and/or standards control work and related enforcement action.

Competent Authorities are not required to authorise officers to undertake all food enforcement activities. An officer's authorisation can be extended as the officer gains the necessary competency and qualifications where these are required.

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

Officers must be authorised to enforce relevant food law regulations that include specific enforcement powers within the regulations themselves.

The Food Safety (Northern Ireland) Order 1991 allows for the authorisation of officers, in writing, either generally or specifically to act in matters arising under the Order or Regulations made under it. However, for example, officers performing duties under The Food Hygiene Regulations (Northern Ireland) 2006 and The Official Feed and Food Controls Regulations (Northern Ireland) 2009, need to be separately authorised in writing to deal with matters arising under these regulations, because they are not made under the Food Safety (Northern Ireland) Order 1991 and contain specific enforcement powers within the regulations.

These regulations therefore must be specifically referred to in authorisation documents, including officers' credentials.

The FSA view is that officers do not need to be specifically authorised to enforce declarations made under regulation 33 of the Official Feed and Food Controls Regulations (Northern Ireland) 2009 if already authorised under these regulations.

Competent Authorities might also wish to consult their legal advisors on this matter.

3.3 Qualification requirements

3.3.1 Qualifications with restrictions

3.3.1.1 Food Hygiene

Competent Authorities must ensure officers have their authorisation of legal powers and duties restricted, until they can demonstrate the competency[42] requirements relevant to the activities they will undertake, as detailed below.

Higher Certificate in Food Premises Inspection awarded by the Environmental Health Registration Board (EHRB), the Institute of Food Science & Technology (IFST), and the Scottish Food Safety Officers' Registration Board (SFSORB)

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

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

Activity restriction	Competency requirements to undertake restricted activity
Undertake inspection of food to determine fitness	Activity A: Common competencies. Activity B6: Assessing products, labelling and other information. Sub-activity B6.1: Assessing whether food products are safe and fit for human consumption.
Seize and detain food	Activity A: Common competencies. Activity D2: Formal enforcement action. Sub-activity D2.2 Detaining, seizing and voluntary surrender of food.
Undertake import control functions for fishery products	Activity A: Common competencies. Activity E2: Import controls. Sub-activity E2.1: Import controls at point of entry. Sub-activity E2.2 Import controls fishery products.

[42] Competency is a combination of the knowledge and skills required to effectively deliver official food control activities, other official controls.

Ordinary Certificate in Food Premises Inspection awarded by the EHRB, IFST or the SFSORB

Activity restriction	Competency requirements to undertake restricted activity
Undertake inspection of food to determine fitness	Activity A: Common competencies. Activity B6: Assessing products, labelling and other information. Sub-activity B6.1: Assessing whether food products are safe and fit for human consumption.
Seize and detain food	Activity A: Common competencies. Activity D2: Formal enforcement action. Sub-activity D2.2: Detaining, seizing and voluntary surrender of food.
Serve Remedial Action Notices	Activity A: Common competencies. Activity D2: Formal enforcement action.
Serve Hygiene Emergency Prohibition Notices	Activity A: Common competencies. Activity D2: Formal enforcement action. Sub-activity D2.1: Emergency prohibition procedures

3.3.1.2 Food standards

Competent Authorities must ensure officers holding one or more of the following qualifications are not authorised to undertake food standards enforcement unless they hold one or more of the suitable qualifications as listed in section 3.4.2 of the Code.:

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

3.3.2 Equivalency of qualifications

The relevant awarding bodies are the Chartered Institute of Environmental Health (CIEH), the Chartered Institute of Trading Standards (CTSI) and the Institute of Food Science & Technology (IFST), the Royal Environmental Health Institute of Scotland (REHIS) and the Scottish Food Safety Officers' Registration Board (SFSORB).

The FSA is informed by these bodies of any determination concerning the assessment of qualifications.

Competent Authorities must consider and recognise European Economic Area and Swiss qualifications which are of an equivalent standard to UK qualifications in scope, content, and level[43]. 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.

The equivalence of non-UK qualifications can be determined by the United Kingdom National Academic Recognition Information Centre (UK NARIC) on the recognition of professional qualifications.

3.4 Competency requirements

3.4.1 Introduction

Competency is a combination of the knowledge and skills required to effectively deliver official food control activities, other official controls and any other activities relating to these.

The Competency Framework is activity-based and describes the competencies required to undertake an activity. The Competency Framework is activity-based and describes the competencies required to undertake an activity.

Each activity stands alone, which means an individual can be authorised to undertake one or multiple activities within the framework depending on their role. There is no expectation that an individual must be competent for all activities within the framework.

Competent Authorities may have existing competency assessment tools that meet the requirements laid down in the Code. These can continue to be used provided they meet the objectives of the Competency Framework in this Chapter.

Competent Authorities should satisfy themselves through appraisal and assessment that an officer can provide evidence that they meet the relevant competency requirements set out in this Chapter.

Competency recognises that an officer's authorisation can be broadened as the person gains knowledge and develops new skills.

In the Competency Framework, authorised officer competencies, are those relevant to the activities the officer will be authorised to undertake.

[43] The Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2019

3.4.2 Lead food officer competency requirements

Lead food officer specific activities, in the Competency Framework, are E1.1 to E1.3 ‘Operational Management’:

- E1.1: Developing, implementing, monitoring, and reviewing documented policies, procedures, and plans
- E1.2: Management of the response to an incident and alert
- E1.3: Collating and reporting data

In addition, lead food officers must meet the competencies required for an authorised officer as detailed in the Competency Framework, relevant to the activities they will be authorised to undertake.

An appropriate manager (such as a service manager or senior officer with responsibility for the Competent Authority’s food service) should work with the lead food officer to assess their competency. Alternatively, this could be done by another lead food officer from another Competent Authority.

To provide further assurances, lead food officers are encouraged to participate in inter-authority audit and peer review. This will help with the development of consistent approaches to competency assessment.

The Code recognises that more than one person may perform the lead food officer role. Competencies relevant to an individual’s role should be considered when conducting assessments.

3.4.3 Regulatory support officer competency requirements

Regulatory support officer specific activities, in the Competency Framework, are:

- alternative interventions – B11
- education, advice, and coaching – B7
- information gathering - B8 excluding the sub-activity B8.1: Gathering, processing, and sharing intelligence

3.4.4 Officers performing official food controls or certain tasks related to other official activities at BCPs

Competent Authorities need to determine which of the activities within the Competency Framework the officers performing official food controls or certain tasks related to other official activities at BCPs need to be competent to undertake.

As a minimum those officers performing official food controls and/or other official activities on imported food at BCPs must be able to demonstrate the competencies for the following activities:

- Activity A: Common competencies
- Activity E2: Import controls
- Sub-activity E2.1: Import controls at point of entry
- Activity B5 Sampling
- Sub-activity B5.1 Taking formal samples
- Sub-activity B5.2 Taking informal samples

- Sub-activity E2.2: Import Controls for fishery products (only for official fish inspectors)

Where a Competent Authority chooses to authorise an officer to undertake enforcement those officers must be able to demonstrate the competencies for the relevant enforcement activities, for example:

- Activity D1: Informal enforcement action
- Activity D2: Formal enforcement action
- Sub-activity D2.2: Detaining, seizing and voluntary surrender of food

3.4.5 Competency assessment

Competent Authorities must ensure that the lead food officer(s) determines whether officers meet the competency requirements relevant to the activities they will be authorised to undertake. Other competent authorised officers may assess competency and make recommendations to the lead food officer, but the decision to authorise remains solely that of the lead food officer(s).

Competent Authorities should ensure the following approach to the assessment of competency of its officers.

- **Step 1:** identify the activities and sub-activities within the competency framework relevant to the:
  - officer's role
  - activities the officer will be authorised to undertake
- **Step 2:** conduct a competency assessment against the Competency Framework to determine whether the officer can satisfy all the competency requirements for each activity they will undertake
- **Step 3:** following the competency assessment, the lead food officer, in consultation with the individual officer, should identify development needs which can be used to inform an officer's personal development plan and CPD priorities
- **Step 4:** provide the necessary training that is supervised by a lead food officer(s) or another competent authorised officer to address any deficiencies highlighted in the competency assessment
- **Step 5:** authorise or restrict the officer's authorisation until they can demonstrate they meet all the competencies for an activity or sub-activity
- **Step 6:** keep a record, in writing, or by electronic means, of details of the competency assessment, qualifications and training

Competency should be reviewed on an ongoing basis, for example as part of a Competent Authority's appraisal process.

3.4.6 Evidence of competency

The following, are ways in which a Competent Authority can demonstrate competency of their officers, and Competent Authorities should consider maintaining a portfolio of evidence for each of their officers to demonstrate their knowledge and skills which may include:

- academic and professional qualifications
- post qualifications courses that lead to an additional relevant qualification
- details of employment history detailing functions undertaken, responsibility exercised, and experience gained
- details of official food controls and other official activities carried out under the supervision of an appropriately authorised officer
- successful completion of training courses, including short courses and e-learning, for example, on matters related to official food controls, HACCP, enforcement sanctions
- accompanied inspections/visits under the supervision of an appropriately authorised officer
- having conducted a specific piece of work, for example drafting of notices, production of witness statements, gathering evidence, building elements of a prosecution file, conducting sampling to a specified protocol
- satisfactory performance of activities as part of internal performance appraisal/monitoring procedures
- doing any of the things suggested in section 3.5.3

3.4.7 Officers moving from one Competent Authority to another

There is an expectation that Competent Authorities will cooperate and assist in the verification and transfer of relevant information and evidence in respect of qualifications, competency assessment, training and CPD records when an officer moves from one Competent Authority to another.

- Competent Authorities should ensure officers have a formal induction and familiarise themselves with the Competent Authority's policies and procedures
- they carry out an appropriate competency assessment against the Competency Framework in accordance with their authorisation procedure, taking into account:
  - the activities the officer will be authorised to undertake
  - any information or evidence provided by the previous employing authority

3.5 Training

3.5.1 Training Programme

The training programme may be included in the authorisation procedure.

The FSA recognises the need for all officers to update or refresh their knowledge and competency to adapt to the changing circumstances they work in, and for officers who are starting out in food law enforcement for the first time, or officers returning to food law enforcement after a break who need to develop their knowledge and competency.

There are several FSA e-learning courses available.

3.5.2 Training for staff on import controls on aquatic animals, products of animal origin, animals, germinal products, or animal by-products at Border Control Posts

The content of the training programme at Border Control Posts must:

- be determined according to the animals and goods for which the border control posts are designated and the tasks and responsibilities to which the staff are assigned
- cover the following subjects[44]; as appropriate:
  - applicable EU legislation concerning the importation into the EU of animals and goods, including procedures and activities to be carried out during and after physical checks
  - sensorial examination of goods
  - examination of the means of transport and the transport conditions, including the management of temperature-sensitive goods (cold chain)
  - control procedures, concerning the use of equipment, the implementation of monitoring plans and sampling procedures and laboratory analysis with regard to public health aspects
  - methods for the interpretation of laboratory test results and related decisions in accordance with the requirements of applicable EU legislation
  - risk assessment, including data gathering in relation to public health in order to carry out appropriately targeted physical checks
  - prevention of cross-contamination and compliance with relevant biosecurity standards
  - labelling requirements for POAO
  - investigations and control techniques aimed at detecting fraudulent or deceptive practices in trade

3.6 Continuing Professional Development

3.6.1 Introduction

CPD is how authorised officers maintain, improve, and broaden their knowledge and skills, and develop the personal qualities and competencies required to undertake their food law enforcement role. Many professions define CPD as a structured approach to learning to help ensure competence to practice, taking in knowledge, skills, and practical experience. CPD can involve any relevant learning activity, whether formal and structured or informal and self-directed.

Fundamental to a CPD scheme is the need for individuals to take ownership of their career progression.

Professional bodies such as the CIEH, CTSI, IFST and REHIS operate CPD requirements for their respective membership, which includes providing CPD

[44] Article 3 of Regulation (EU) No 2019/1081

evidence as part of their membership or chartered status. These bodies should be contacted directly if there are any questions on their respective CPD requirements.

Officers who are not members of professional bodies should still maintain a record of their CPD, which should be countersigned by a lead food officer.

3.6.2 CPD requirements

Other than where unavoidable (for example because of an extended absence), those carrying out official food controls and other official activities must undertake a minimum of 20 hours CPD each year. A CPD year could be a calendar year or a rolling 12-month period.

While the Code sets a minimum level, extra hours may be required depending on the experience of individual officers and their area(s) of authorisation, any specific training needs or deficiency in competency identified at their annual reviews.

The Code requires that at least 10 hours CPD must be spent on subject matters set out in Chapter 1 of Annex II of Regulation (EU) 2017/625 and on the obligations of the Competent Authority resulting from this Regulation, relevant to the activities officers are authorised to undertake.

Examples may include, but are not limited to:

- risk rating consistency exercises
- different control techniques, such as inspection, verification, screening, targeted screening, sampling, laboratory analysis, testing, and diagnosis
- control procedures
- requirements of food law
- assessment of non-compliance with food law
- hazards in production, processing, and distribution of food
- different stages of production, processing and distribution and the possible risks to human health
- the evaluation of the application of HACCP procedures
- management systems such as quality assurance programmes that FBOs manage and their assessment insofar as these are relevant to food law requirements
- official certification systems
- contingency arrangements for emergencies
- legal proceedings and the implication of official food controls
- examination of written, documentary material and other records, including those related to inter-laboratory comparative testing, accreditation, and risk assessment, which may be relevant to the assessment of compliance with food law; this may include financial and commercial aspects
- control procedures and requirements for food entering the UK and the EU
- any other area necessary to ensure that official food controls are carried out in accordance with Regulation (EU) 2017/625

The remaining 10 hours can be made up from learning related to ‘other professional matters’ i.e., CPD that will support an officer’s profession and not necessarily food related.

Examples of ‘other professional matters’ CPD may include but is not limited to:

- attending training courses/conferences not linked to official food controls but supporting professional development
- shadowing experienced (internal or external) colleagues to develop knowledge
- attendance at court
- participation in scenario-based case studies
- drafting relevant articles for peer-reviewed journals/papers
- undertaking relevant distance learning or e-learning activities for example, on evidence gathering
- making presentations to colleagues on new or changes to legislation

3.6.3 Ways of attaining CPD

The examples below are all ways in which authorised officers can undertake and attain CPD. Examples include:

- relevant training courses including distance learning or e-learning activities
- coaching from other experienced authorised officers
- review of case studies and literature
- conferences or meetings which involve an element of learning
- reading to understand the legal, regulatory framework for professional work
- maintaining or developing specialist skills
- shadowing of an authorised officer who meets the competency requirements
- attending training courses/conferences not linked to official food controls but supporting professional development
- taking part in a DGF audit or fact-finding mission
- shadowing experienced (internal or external) colleagues to develop knowledge of a specialist process, such as cheese-making; meat products; shellfish/fishery products
- participation in scenario-based case studies (for example notice drafting, risk-rating)
- authoring relevant articles for peer-reviewed journals/papers
- writing guidance on food law or other legislative requirements
- undertaking relevant distance learning or e-learning activities
- preparing and delivering presentations to colleagues or businesses on legislative requirements, particularly new changes to legislation
- appropriate discussions with colleagues and/or FBOs on legal requirements/enforcement action which involve an element of learning

3.6.4 Evidencing and recording CPD

Most CPD is likely to be evidenced by the established practice of certification from a training provider. However, other means of supportive evidence may demonstrate it, for example, publication in a peer-reviewed journal.

Competent Authorities should keep a record of their officer's CPD which should be used as part of their annual review of training and CPD needs. Such reviews might be combined with annual staff appraisals where appropriate.

The record, which can be electronic should include the following information as a minimum:

- date(s) of activity
- type of activity/activity description
- hours spent on an activity
- copy of certification or countersignature from an authorised officer who meets the competency requirements for the stated activity which took place

Chapter 4 Delivery of interventions

4.1 Introduction

Chapter 4 covers delivery of official food controls (their methods and techniques[45]), other official activities and alternative enforcement strategies.

4.2 Interventions

When selecting the type of intervention to use, the authorised officer must have regard to the limitations as laid down in the Code and the Competent Authority's own enforcement policy. The officer must choose the intervention that will be most effective in maintaining or improving compliance with food law.

4.2.1 Intervention types

Tasks relating to official food controls must, in general, be carried out using appropriate control methods and techniques, such as monitoring, surveillance, verification, audit, inspection and sampling for analysis (which can include a combination of such control methods and techniques), known as intervention types. For an intervention to constitute an official control, the officer must be satisfied that a single, or a combination of, control methods and techniques, will verify compliance with food law.

Examples of official control methods and techniques, non-official controls and other official activities are detailed in the below table.

Official control methods and techniques	Non-official controls	Other official activities
• Inspection • Audit • Sampling for analysis • Monitoring • Surveillance • Verification	• Education • Advice • Coaching • Information and intelligence gathering	• Enforcement measures and/or remedial actions following non-compliance • Management of lists of registered /approved FBOs • The act of issuing official certificates or official attestations

4.2.2 Inspections and audits

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

[45] Article 14 of Regulation (EU) 2017/625

The inspection form is intended to assist officers and businesses by introducing a structured approach to the inspection process consistent with quality assurance practice. It is not necessary to inspect every aspect of a food business at every inspection, for example a supermarket's in-store bakery or restaurant operated by that supermarket might not always need to be inspected during an inspection of a supermarket.

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

At the beginning of the inspection, the officer should discuss with the FBO or representative:

- the purpose and scope of the inspection
- whether there have been any changes in activities since the last visit
- what the officer intends to do

An inspection should include:

- assessment of the food safety management system, as applicable
- the identification of all the food related activities undertaken by the business
- the areas of the establishment used for the preparation, production, storage and transport of foodstuffs
- any processes used and the staff involved

Where an inspection form has been developed, officers should:

- complete it fully, to ensure that they have a sufficient record to show how the business is complying with relevant food law
- clearly record on the inspection forms any areas that were not inspected or assessed
- record any information on which decisions were based when determining the risk rating

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

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

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

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

- any corrective action necessary
- the timescale for corrective action

- any further action the officer intends to take and any recommendations of good practice that the officer considers appropriate

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

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

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

4.2.3 Factory and fishing vessels – hygiene inspections

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

Inspections of factory, freezer, or fishing vessels whilst at sea must not normally be undertaken by officers of Competent Authorities. In the case of factory vessels, there might be circumstances when inspections can only be carried out when the factory vessels are moored offshore or in another Competent Authority area. This may, on occasion, be in the jurisdiction of a Competent Authority area within the Republic of Ireland (ROI). In this scenario the inspecting Competent Authority must seek the permission of the ROI Competent Authority to undertake the inspection.

While a vessel can be approved by another Competent Authority, there is nothing to prevent any authorised officer of any other Competent Authority from inspecting the vessel, as long as they are satisfied that they have the appropriate legal authority to inspect and have contacted the Competent 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 must notify the Competent Authority, where the vessel is normally based, of the contravention. The Competent Authority receiving details of contravention must liaise with the notifying Competent Authority and take whatever follow-up action is necessary.

4.2.4 Verification

The circumstances below are examples of, but not limited to, when an intervention should be recorded as a verification visit.

These include:

- a visit to verify compliance with specific issue(s) identified at an earlier intervention, investigation of a complaint and/or serving of notices
- remote assessment of the adequacy of a HACCP plan and pre-requisites (not necessarily necessitating an actual physical visit to the establishment)
- validation of food labelling (including advertising materials and websites) with food labelling marketing and use rules. Checking, by examination and the

consideration of objective evidence, whether specified requirements of food law have been fulfilled
- investigation at a food establishment in response to a food poisoning incident where it is necessary to verify key aspects of the food business operation
- verification visits to confirm that the procedures for HACCP have been implemented
- one-to-one follow-up visit to verify compliance after participation of food business in a training seminar or completion of a business survey

4.2.5 Monitoring and surveillance

The circumstances below are examples of, but not limited to, when an intervention should be recorded as monitoring or surveillance. These include:

- information gathering if it includes verification of information collected on site by an appropriately qualified officer
- a visit to check the information supplied as part of an alternative enforcement strategy

4.2.6 Sampling visits

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

The circumstances below are examples of when an intervention should be recorded as sampling for that visit to the food establishment. These include visits:

- solely to take formal sample/samples to be analysed/examined at an official laboratory (NB if samples are taken during another sort of intervention for instance, an inspection, then the visit must be recorded as an inspection not a sampling visit)
- to take samples as part of a national, regional, or local sampling programme can be included in this category, as long the samples are analysed/examined by an official laboratory

4.2.7 Education and advisory work

Providing education, advice and training delivered at the business establishment, or remotely can be a key part of a Competent Authority's strategy to change behaviour and increase compliance in food businesses and should be encouraged whenever resources allow.

The circumstances below are examples of when the intervention should be recorded as advice and education for that visit to the food establishment. These include a visit to:

- premises to give advice and/or training
- give advice on Safe Catering Pack or Safer Food Better Business (SFBB) or equivalent schemes
- give advice on planning applications/building control applications

Educational and advisory work can also be delivered away from the food establishments, for instance, through a business forum or seminar. It can be targeted at specific types of food businesses or around specific food safety topics. Details of such education and advisory work should be recorded in the free text box of the annual monitoring return sent to the FSA.

Competent Authorities that undertake advisory visits to new and existing food businesses for both hygiene and standards must ensure that the delivery of the official control intervention programme is not compromised and in the case of food hygiene these advisory visits do not undermine delivery of FHRS.

The purpose of advisory visits is to provide guidance to businesses on achieving compliance with food law requirements.

If during an advisory visit to a business that is trading, significant non-compliances are identified that present a risk to public health, a full inspection should be undertaken, and appropriate enforcement action taken in line with the Competent Authority's Enforcement Policy. In such circumstances the use of formal enforcement powers may be necessary.

Advisory visits should not be carried out to the detriment of the planned intervention programme, specifically those relating to higher risk establishments.

4.2.8 Information and intelligence gathering

These are visits to confirm key information relating to the food establishment. They might be carried out under a scheme of information sharing between different regulatory agencies. The information or intelligence gathered should be reviewed by a competent authorised officer who will assess whether further action is appropriate.

The circumstances below are examples of, but not limited to, when the intervention should be recorded as information and intelligence gathering for that visit to the food establishment. These include a visit:

- to take sample/samples that will not be analysed/examined at an official laboratory, but that do provide information on some aspect of the food business
- by a regulator other than the Competent Authority to gather intelligence/information on a food establishment

4.2.9 Revisits

Revisits may focus on the significant statutory requirements that were found to be contravened at the previous intervention.

4.3 Delivery of official food controls

4.3.1 Notification of official food controls

Prior notification must be the exception[46].

Examples where notification may be appropriate, but not limited to, are:

- when the purpose of an intervention is to see a specific process in operation
- to examine records which are only available if the proprietor of the food business is present

Authorised officers must exercise discretion in this area guided by the overriding aim of ensuring compliance with food law.

4.3.2 Initial inspection of new establishments

The Code of Practice requires that all food establishments must receive an initial inspection. This should as a rule take place within 28 days of registration or from when the Competent Authority becomes aware that the establishment is in operation. This reflects the importance of ensuring new food establishments are complying with food law. This applies to both hygiene and standards inspections.

Prioritisation of initial inspections within the Competent Authority's intervention programme must be risk based.

4.3.2.1 Deciding when to undertake the initial inspection

The Competent Authority should consider the following factors when determining when to undertake an initial inspection:

- where the new establishment is believed to be undertaking high risk food activities the Competent Authority should undertake an initial inspection within 28 days of commencement of operations
- where the establishment is believed to be low risk from the available information, consideration can be given to postponing the initial inspection in circumstances where conducting it would delay planned interventions to premises involved in, or believed to be involved in, high-risk activities as defined in Chapter 4 of the Code
- where an establishment has registered 28 days before commencement of operations, the inspection can be delayed until operations within the establishment have begun

Where a decision has been taken to postpone an initial inspection, this should be recorded on the appropriate premises file record.

4.3.3 Undertaking inspections and audits

4.3.3.1 Food hygiene inspections

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

[46] Requirement as per Article 9(4) of Regulation (EU) 2017/625

- establish whether food is being handled and produced hygienically, and is safe to eat, having regard to any subsequent processing; assess the hazards posed by the activities of the business and the FBO's understanding of those hazards
- confirm that the FBO is carrying out their own controls and checks, based on HACCP principles (other than in the case of primary production) and these are being operated effectively and appropriate corrective action is being taken where necessary
- assess the efficacy of the controls in place to manage the risk of cross-contamination between ready-to-eat foods and foods requiring further processing
- assess the risk of the food business failing to meet food hygiene requirements; in respect of primary production, establish that FBOs and their employees have an understanding of the hazards posed by the activities of the business, and assess and verify that preventative/corrective actions necessary to protect the safety of food entering the human food chain take place
- recommend good food hygiene practice in accordance with relevant Good Practice Guidance and recognised UK Industry Guides, industry codes of practice, relevant sector specific codes, and other relevant technical standards, and promote continued improvements in hygiene standards through the adoption of good practice. Officers may wish to draw such guidance to the attention of FBOs in appropriate circumstances
- check the source and any health or identification marking of raw materials, and the identification marking and destination of finished products. Where deficiencies in health or identification marking are identified
- check compliance with product specific legislation, for example in relation to retail and catering businesses that sell or use live bivalve molluscs, ensure where parcels of live bivalve molluscs are split before sale to the ultimate consumer, that information on identification marks is retained for at least 60 days

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

- a discussion with any staff responsible for monitoring and corrective action at critical control points to confirm that control is effective
- a physical inspection to determine whether critical controls have been identified and whether the controls are in place, and to assess compliance with relevant food law
- an assessment of compliance with the traceability requirements of Article 18 of Regulation (EC) No178/2002
- a discussion regarding any hazards that have been identified by the officer that have not been covered by the business' systems
- a discussion regarding any failure to implement or monitor any critical controls that have been identified by the business

4.3.3.2 Food hygiene scoring system and FHRS ratings

The purpose of the food hygiene scoring system in Chapter 4 the Code is to determine planned intervention frequencies at all food establishments on the basis of assessment of compliance with food hygiene law. The system forms the basis of the Food Hygiene Rating Scheme, which operates as a statutory scheme in NI. The scheme helps consumers choose where to eat out or shop for food by giving them information about the hygiene standards in restaurants, takeaways, other places you eat away from home and food shops, based on a rating scheme of 0-5. Guidance on this is given in the statutory FHRS guidance.

Regulation 5 on allergens in the Food Information Regulations (Northern Ireland) 2014 relate to food labelling and information, so should not form part of this assessment since these are food standards requirements.

Consideration of the control of cross-contamination, including any allergen-related contamination identified in preparing food specifically for consumers with a food allergy or intolerance, should be part of the general assessment of hygiene procedures during a food hygiene inspection. These controls should be part of a business' food safety management system and should be considered when giving the confidence in management score.

4.3.3.3 Food standards inspections

An officer conducting a food standards inspection should:

- consider the existence and effectiveness of management systems designed to ensure that food standards requirements are met and, where they exist, test their effectiveness
- assess compliance with composition, presentation, and labelling requirements by examining advertisements, labels, descriptions, menus, claims, recipes and other records
- assess compliance with the traceability requirements of Article 18 of Regulation (EC) No 178/2002 as read with Regulation (EU) No 931/2011 on the traceability requirements set by Regulation (EC) No.178/2002 for food of animal origin
- assess compliance with supplier specifications
- assess the risk of the food business failing to meet food standards requirements
- recommend good practice in accordance with relevant industry codes and other relevant technical standards

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

4.3.4 Reports following official food controls

The information to be included in the report is:

- a description of the purpose of the official food controls
- the control methods applied

- the outcome of the official food controls and non-compliances identified
- where appropriate, action that the Competent Authority requires the operator concerned to take
- a clear distinction between legal requirements and recommendations
- timescales for addressing any non-compliances
- trading name and address of the business, and registered address if different
- name of the food business operator/food business proprietor
- type of business
- name(s) of person(s) seen and/or interviewed
- date and time of inspection
- specific food law under which intervention conducted
- areas inspected/audited (to be specified)
- documents and/or other records examined (to be specified)
- samples taken (to be specified)
- key points discussed during the visit (to be specified)
- action to be taken by the Competent Authority (to be specified)
- signed by the officer
- name of officer
- designation of inspecting officer
- contact details of inspecting officer
- contact details of senior officer in case of dispute
- date
- District Council name and address

Communications between Competent Authorities and multi-site food businesses should be in accordance with Primary Authority requirements and, or Home Authority Principle. The inspection plan issued by a primary authority may require feedback from Competent Authorities and this must be given, where requested.

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

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

Competent Authorities should ensure their management information systems (databases) are updated as soon as practicable.

4.4 Requirement for food safety management procedures based on HACCP principles

Article 5 of Regulation (EC) No 852/2004 requires all food businesses (except primary producers, with the exception of establishments approved for sprouting seeds) to develop food safety management procedures based on HACCP principles. Recital 15 of the regulation allows for a degree of flexibility in the application of these principles and implementation of such procedures, particularly in small, businesses where traditional HACCP might be difficult to apply.

Regulation (EC) No 852/2004 requires food businesses to put in place, implement and maintain food safety management procedures based on HACCP principles. The FSA has produced the Safe Catering Pack and the Safer Food, Better Business package to help businesses comply with Regulation (EC) No 852/2004, which are available through FSA's web site.

Food establishments that present significant health risk conditions or an imminent risk of injury to public health should be subject to formal enforcement action to secure compliance and protect public health.

Where food establishments do not present significant risks to public health, the aim must be to help the business improve standards of food safety and hygiene. In practice this means ensuring that significant hazards are understood and controlled, and where understanding and control is lacking – provide advice and guidance so FBOs adopt good practice to improve compliance with food law.

In following an educative approach, authorised officers should concentrate on significant hazards to public health, ensuring that those responsible for food safety understand these hazards and know how to control and manage them.

A graduated approach should be based on the expectation that businesses improve their standards over time, taking account of the understanding they gain from the authorised officer and other sources. Where a business does not improve – given reasonable time, after being offered guidance, hygiene improvement notices and other formal enforcement measures can be used.

4.4.1 HACCP flexibility

Regulation (EC) No 852/2004 provides flexibility, in that it requires food businesses to establish procedures in the business that control food safety hazards and integrate these procedures with documentation and record keeping appropriate to the size and nature of the business. In particular, it is necessary to recognise that, in certain food businesses, it is not possible to identify critical control points and that, in some cases, good hygienic practices can replace the monitoring of critical control points.

The European Commission has published a Commission Notice on HACCP and flexibility and which relates HACCP to Prerequisite programmes. Commission guidance on flexibility, in particular, for traditional products/methods and other specific manufacturing, is available for FBOs and for Competent Authorities.

Whilst larger, more complex businesses and businesses that have a high level of understanding of food safety management, may choose to demonstrate compliance with the legislation by putting in place a 'traditional' HACCP system, others may do so with simpler approaches that take account of the flexibility to put in place procedures based on the HACCP principles. This section describes this flexibility for small businesses.

For enforcement, in practice, compliance means:

- obtaining assurance that the person responsible for food safety understands significant hazards and has them under control for example by questioning
- seeing that there are written procedures where necessary that demonstrate how the business control these hazards at all times
- seeing evidence that these procedures are followed, and that they are reviewed and kept up to date

The key points are:

- flexibility applies to all food businesses
- the FBO or manager of a business should have the skills necessary to maintain a food safety management system proportionate to their business, and not simply be trained in HACCP principles. These skills can be gained in many ways; formal training is not the only route
- staff in a business should:
  - have the skills needed to undertake their duties
  - follow the food safety procedures in the business
  - have proportionate training (formal training may not be necessary to achieve the required competencies)
  - have on the job training where appropriate
- monitoring key activities in the business (critical control points) need not be numeric and can be based on sensory observation, craft skills and supervision
- incident recording is an appropriate and proportionate form of record keeping in many businesses
- corrective actions must supplement incident recording

In order to help businesses, develop appropriate procedures and to adopt a graduated approach to its enforcement it is important to understand how to judge progress. The table below describes the components of the legislation and how an authorised officer might judge progress towards complying with it in small businesses.

The table below breaks down the components of the legislation into the standard seven principles of HACCP, some of the flexibility in the legislation is identified. Although guidance materials may use the seven-principle framework, it is not necessary for this approach to be used. Provided the same outcome is achieved and safe food is produced. This is clarified in Annex III of the Commission guidance on flexibility.

Similarly, the terminology or ‘jargon’ of HACCP need not be used and may be confusing to some businesses.

This breakdown is based on the FSA approach ‘Safer food better business’ but should be useable to identify compliance in a business using other similarly flexible tools, or where the business has devised its own procedures.

4.4.1.1 Seven principles of HACCP

1) **Identify any hazards that must be prevented eliminated or reduced**

Mapping Hazard Analysis with tools such as flow-charts might not be suitable for all businesses. It would be sufficient that the business has thought about its activities in a structured way. The effect of the analysis and the procedures produced should be to ensure that safe food is always produced.

The traditional HACCP approach of controlling some hazards through pre- requisite programmes of Good Hygienic Practice and others through the HACCP system might not be appropriate, particularly in small businesses where it is not readily understood. Whatever the format of the guidance, the business must be managing all significant hazards including those traditionally controlled through Good Hygienic Practice.

For enforcement, in practice, this means:

Being provided with sufficient evidence that the person responsible for food safety has thought about their business and identified significant hazards and knows how to control them – for some businesses it may be appropriate to follow standard advice.

2) **Identify the critical control points (CCPs) at the steps at which control is essential**

Critical control points and their limits might not always be helpful ways of thinking about food safety for small businesses and they can instead identify generic controls - like thorough cooking, together with the ways of ensuring they know this has happened.

3) **Establish critical limits at CCPs**

The legislation is flexible in stating the requirement that establishing a critical limit does not always imply that a numerical value must be fixed. This is in particularly the case where monitoring procedures are based on visual observation, for example a business might rely on sensory information such as colour change, juices running clear, stews bubbling etc. Businesses must understand how these methods control hazards and be sure they are effective. This validation can be done by the business themselves (based on experience), or it might be appropriate to use pre-validated procedures that follow established best practice, produced by the FSA, trade bodies or others.

For enforcement, in practice, this means:

Being provided with sufficient evidence the business is following procedures that include steps where the significant hazards are controlled – for many businesses it may be appropriate to follow standard advice.

4) **Establish procedures to monitor the CCPs**

Management of food safety through the procedures detailed above will need to be demonstrated. This can be shown in many ways. In some larger businesses this may be achieved by monitoring protocols and record keeping. In other businesses, particularly where the person responsible spends significant time in the food preparation areas, this can be demonstrated by their ability to supervise their operation – that their procedures are being followed. It will be important to establish that if the procedures are followed, safe food will result.

Monitoring might in many cases be a purely sensory exercise, for example a regular visual verification of the temperature of cooked food by a colour change.

For enforcement, in practice, this means:

Being provided with sufficient evidence that the business is monitoring their procedures, either using physical checks such as noting temperatures or via sensory checks such as noting that a stew or sauce is bubbling. The person responsible for food safety should be able to explain the chosen method of monitoring.

5) **Establish corrective actions to be taken if a CCP is not under control**

It is also important that the business knows what to do when things go wrong – the corrective action that needs to be taken.

For enforcement, in practice, this means:

Verifying that the person responsible for food safety management ensures that there is adequate supervision of staff and equipment to assure that procedures are being followed and safe food produced, and also questioning staff working in the area where the CCP exists, to provide assurance that HACCP based controls are understood, implemented and that when things go wrong appropriate action is taken.

6) **Establish procedures to verify whether the above procedures are working effectively**

The business will need to demonstrate that its procedures are verified and reviewed and kept up to date, and that changes to menus, types of foods and cooking methods, and new equipment are reflected. In larger businesses, verification may be achieved by third parties, but for smaller businesses it is sufficient that the business carries out periodic reviews of its procedures and methods and takes account of good practice and safe methods.

For enforcement, in practice, this means:

Seeing sufficient evidence that the procedures in a business are reviewed to ensure they continue to be appropriate and reflect changes in the business.

7) **Establish documents and records to demonstrate the effective application of the above measures**

Documentation and record keeping are particularly onerous for smaller businesses and the legislation is clear that this should be well balanced and limited to what is essential, with regard to food safety.

For enforcement, in practice, this means:

- Seeing documentation that is up to date and describes the main procedures or methods used in the business to control the most important hazards
- Seeing periodic records that represent evidence that these procedures were followed, and that corrective action has been taken. This does not have to record every monitoring and supervisory activity - in small caterers, exception reporting will be acceptable

However, for simple small businesses following good hygienic practice, guides, documentation, and record keeping might not be necessary.

4.4.1.2 Role of the Competent Authority

Larger businesses and manufacturers may continue to develop and use traditional HACCP systems. The approaches developed by the FSA, Safe Catering Pack and Safer food, better business (SFBB) are approaches considered suitable for use by caterers.

Small food manufacturers represent a specific banding of businesses falling between those businesses where a SFBB type approach is suitable and larger manufacturing businesses with technical competence on the traditional seven principle HACCP approach.

To support small food manufacturing businesses, the FSA has developed MyHACCP a free interactive web tool, that guides food businesses through the process of identifying food safety hazards and controls and the production of a documented food safety management system based on HACCP principles. Online guidance is available for authorised officers.

Proper implementation of the appropriate support model constitutes compliance with the HACCP requirements of Article 5 of Regulation (EC) No 852/2004.

Businesses should either have in place or be seen to be making progress towards having effective food safety management systems. For businesses that are not a threat to public health, it is expected that formal enforcement action should only be taken where the business has been:

- given reasonable opportunity to implement food safety management
- directed to appropriate training, if needed
- provided with appropriate guidance

The graduated approach should seek to educate businesses and improve their standards in realisable steps. Guidance material should be broken down in such a way that the enforcer and business can agree that by their next visit, how much progress should have been made. The FSA's advice, Safe Catering Pack and SFBB, are broken down into sections.

It may be appropriate to set a business one section at a time. Other guidance material can also be divided into 'chunks' like this. Where fundamental skills are missing, enforcers should point businesses to sources of the competencies – guidance materials, books and courses.

A food safety management system should give assurance that the business knows how to produce safe food, has procedures in place that assure this, repeatedly produces safe food, and is capable of taking appropriate corrective actions when things go wrong.

4.5 Import controls

4.5.1 Guidance for Competent Authorities on food imported from outside the EU regulatory zone

Significant volumes of food are routinely imported into NI and it is important that effective arrangements are in place in Competent Authorities to check imported food both at the BCP and inland. Competent Authorities must have regard to the general guidance on enforcement contained in the Code in relation to their imported food enforcement control arrangements.

All Competent Authorities have responsibilities for imported food controls. The purpose of the Practice Guidance is to set out and assist competent authorities on the level and type of activity to achieve effective and consistent enforcement on imported food.

The guidance also focuses on the principal legislation relating to the import of food not of animal origin (FNAO). FNAO import controls were harmonised at EU level by Regulation (EU) 2017/625 and Regulation (EU) 2019/1793 which sets out FNAO products that are subject to increased levels of official food controls. The provisions of this Regulation are directly applicable but are given effect at national level by The Official Feed and Food Controls Regulations (Northern Ireland) 2009, and parallel legislation in Scotland, Wales, and England.

4.5.1.1 Scope

The scope of the Practice Guidance extends to imported FNAO and illegally imported POAO but does not cover control activities for POAO at BCPs.

Please note: BCPs may be situated at seaports, airports, or international rail links, and are for POAO from countries outside NI or the EU.

Except where a specific distinction is made, the Practice Guidance applies to all Competent Authorities, both inland and at points of entry. For the purpose of the Practice Guidance ‘imported food’ means food imported into NI and/or EU from countries outside NI or the EU; and ‘point of entry’ means a seaport or airport at which imported food is introduced into NI or the EU.

Competent Authorities with a point of entry provide the first line of control on imported food to ensure it is safe and complies with EU and UK requirements. However, it is important that controls are also in place at External Temporary Storage Facilities (ETSF), ships suppliers, international rail terminals, and other premises inland, as significant amounts of FNAO are not required to undergo checks at points of entry (specifically non-restricted FNAO as all restricted FNAO would be subject to controls) and there is also the possibility that POAO may have entered the UK illegally.

Please note: External Temporary Storage Facilities (ETSFs) are Customs approved warehouse facilities whereby imported goods are held in temporary storage under Customs control. They are intended to facilitate entry of goods for Customs purposes and may be some distance from the seaport/airport, and so may therefore fall under the jurisdiction of another Competent Authority.

Further details of the roles and responsibilities of Competent Authorities and other Government Agencies and Departments can be found in the FSA's Resource Pack for Inland Enforcement of Imported Food Controls.

This resource pack also provides guidance for inland authorities on the effective monitoring of imported food.

Competent Authorities should put risk-based planned arrangements in place and review and analyse the information gathered, acting where necessary. It is recommended that Competent Authorities should carry out quarterly checks at infrequent points of entry. This might include a visit or questionnaire being sent, liaison with port operators and manifest checks.

Guidance is also available for those Competent Authorities with points of entry through which occasional and/or low levels of imports of food of non-animal origin are received.

Competent Authorities responsible for imported Products of Animal Origin (POAO) at BCPs must refer to central guidance produced by Defra, available in the BCP Manual.

4.5.2 Imported food legislation – Food not of animal origin

4.5.2.1 The Official Feed and Food Controls Regulations (Northern Ireland) 2009

The Official Feed and Food Controls Regulations (Northern Ireland) 2009 give effect to the import provisions of Regulation (EU) 2017/625 in Northern Ireland only.

These regulations[47] include a mechanism (regulation 33) for ensuring that where there is a serious risk to animal or public health, control measures may be put in place. In particular, it may be used to ensure that Emergency Decisions made at EU level are implemented without delay. It does so by giving the FSA powers to make declarations regarding import conditions for particular products. These conditions can apply with immediate effect.

4.5.2.2 Other legislation

For certain areas, for example, contaminants, there are specific EU harmonised requirements for foods which can be applied at points of entry as well as inland. These EU requirements are implemented in the UK by separate legislation but the powers to deal with non-conforming food at import are those contained in The

[47] The Official Feed and Food Controls Regulations (Northern Ireland) 2009

Official Feed and Food Controls Regulations (Northern Ireland) 2009. European Commission guidance on the contaminant's legislation is available.

4.5.2.3 Food of 'known or emerging risk'

Article 47(2)(b) of Regulation (EU) 2017/625 provides that the Commission may issue a list of imported FNAO of 'known or emerging risk' regarding the increased level of official food controls.

Article 47(1)(d) provides for the types of animals and goods that official food controls are required to be performed on when entering the EU at a BCP.

The frequency and nature of such checks are specified by the European Commission when products with a risk from particular countries outside NI or the EU are identified.

Such products usually require prior notification by means of a Common Health Entry Document (CHED), import through BCPs (that must have particular facilities available and be approved by the FSA), and will be subject to documentary, identity, and physical checks.

The UK has an Early Warning System (EWS) for risks associated with imported FNAO. This is an emerging risk detection tool which aims to protect UK consumers from the risks that may be associated with imported foods. It does this in two main ways:

- by predicting hazards including *Salmonella*, mycotoxins, pesticide residues, sulphites, etc.) for specific food and feed from specific countries outside NI or EU for inclusion in legislation, for example Annex I of Regulation (EU) 2019/1793 or other safeguard measures
- alerts Competent Authorities with a port health function and inland Competent Authorities to newly identified imported food issues, primarily FNAO (foods not of animal origin) but increasingly POAO

Intelligence from the EWS is disseminated monthly to facilitate local targeted enforcement and authorised officers who deal with imported food are recommended to take note of its proposals.

4.5.2.4 EU safeguard measures

The European Commission imposes special conditions governing the import of certain FNAO from particular third countries where specific hazards are a risk to food safety. These special conditions can differ depending on the measure but may include that specified products can only enter the UK through specific ports or airports (usually BCPs) following prior notification and may require that they must be accompanied by an official certificate and results of sampling and analysis.

4.5.2.5 Third country pre-export checks

Regulation (EU) 2017/625 Articles 73(1), 73(2) and 74 include provisions for the Commission to grant third countries reduced import checks on imported goods. Such arrangements will be restricted to those countries where the Commission is satisfied that effective official food controls are in place to carry out the appropriate pre-export

checks immediately prior to export to the EU. Details of relevant products and third countries will be notified to Competent Authorities, as appropriate.

This status can be repealed by the Commission in the light of information or experience. Where such arrangements are in place, Competent Authorities at points of entry should check relevant certification to validate such assurances. Particular consideration must be given to consignments accompanied by certification from non-accredited laboratories. Where Competent Authorities have concerns relating to any such arrangements based on checks carried out, they must notify the FSA as soon as possible.

4.5.3 Information

Competent Authorities with a point of entry in their area should maintain up to date information on:

- the port operator
- stakeholders, including importers and import agents in addition to airlines/shipping operators
- Internal Temporary Storage Facilities (ITSF) and External Temporary Storage Facilities (ETSF)
- trade type (volume, nature, frequency, and trade routes)
- port health and safety requirements
- security requirements including access to port/Customs areas

Points of entry that are designated as BCPs 'authorised' for certain higher risk commodities should also:

- have access to facilities where imported food inspection can be carried out and arrangements for storage of detained/seized goods. Defra have issued further specific advice on operating procedures for sharing facilities at BCPs in their BCP Manual
- maintain equipment for carrying out inspections and sampling of imported food
- maintain details of appointed and specialist laboratories for analysis and/or examination of samples who are able to provide an appropriate service, in relation to the timescale of analysis/examination and issuing of the results

See Chapter 2 of the Food Law Code of Practice for information on the communication between Competent Authorities for Competent Authorities at Points of Entry, ETSF or international rail terminal.

Contact details and information on the roles and responsibilities of relevant central government departments and other organisations can be found in the FSA's Resource Pack for Inland Enforcement of Imported Food Controls.

Where relevant, Competent Authorities should ensure that their officers have access to secure areas under the Aviation and Maritime Security Act 1990. Information on this can be obtained from the port operator.

4.5.4 Records

4.5.4.1 Identifying and recording food importers

All Competent Authorities should ensure that food premises and traders in their district which import food are identified and recorded in premises/trader databases and included in inspection programmes as appropriate.

Completed food premises registration forms can be used to assist identification of food premises as being used for imports.

For the purposes of identifying and recording food businesses and systems falling under the official food controls, Competent Authorities should refer to the scope of Article's 44, 45 and 47 within Regulation (EU) 2017/625. Relevant activities should be identified on the appropriate files together with an indication of the type and origin of foods being imported.

To help identify food importers, Competent Authorities may conduct desktop exercises using such information sources as local knowledge, telephone directories or internet searches. Information from other Competent Authorities, including Port Health Authorities in GB might also assist this process. Records can be refined further after visits to food premises and/or communications with FBOs and other local government departments as part of outline programmed activities.

4.5.4.2 Records of consignments and examinations

Competent Authorities with a point of entry should ensure that where available, information relating to the number and type of food consignments is maintained together with relevant information on the checks made to determine compliance with legal requirements. Where information is recorded, the level of information about food examinations (including examinations undertaken at ETSF) and deferred examinations should provide consignment traceability and permit effective internal monitoring. This information should include any identifying reference for the consignment examined, country of origin, information on the nature of the food and the checks carried out and, where any enforcement action or sampling has been undertaken, the details of the agent and/or consignor/consignee. Records of sampling checks and records relating to emergency controls should be held for up to three years.

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

4.5.4.3 Arrangements for points of entry without a permanent Competent Authority presence

The Import controls at smaller seaports and airports guidance provides further advice on imported food control at points of entry through which occasional and/or low levels of consignments of FNAO are received.

4.5.5 Reporting, notification, and prohibition

4.5.5.1 Nominated officer for imported food controls

The details of the nominated officer or changes to the nominated officer should be notified to the FSA's Executive Support team, who can be contacted by e-mail: executive.support@food.gov.uk.

4.5.5.2 Monitoring returns

All Competent Authorities should provide data on imported food enforcement activity via the Local Authority Enforcement Monitoring System (LAEMS). This includes both points of entry, and all inland authorities. Where samples are taken of imported food, even at catering or retail level, a record should be made in the samples section of the imported food part of LAEMS. Guidance on the completion of imported food returns on LAEMS is available on the FSA's communication platform.

Competent Authorities should also supply any other information reasonably requested by the FSA. This can relate to information about the import of specific food or food products from certain countries. It might relate to information required by the European Commission in connection with emerging animal/public health issues or for inclusion in the Multi-Annual National Control Plan or annual reports that the UK produces in accordance with the requirements of Articles 110 and 111 of Regulation (EU) 2017/625. Commission safeguard and emergency measures also normally require monitoring returns to be made to the Commission through the FSA, as does Regulation (EU) 2019/1793.

4.5.5.3 Notification of food hazards or incidents

The Consumer Protection Team can be contacted by e-mail at incidents.ni@food.gov.uk or by telephone on 0330 332 7149.

All Competent Authorities should notify the FSA of a serious localised incident or a wider problem under the Food Alert System as soon as a decision has been taken that one has occurred. This must be done at the earliest opportunity and by the quickest available means using the appropriate contact details and reporting arrangements set out in Chapter 5 of the Code and any subsequent documents.

4.5.5.4 Notification of illegal imports of POAO

The Competent Authority should notify Defra, via DAERA, whenever illegally imported POAO are seized under Regulation 20 of The Trade in Animals and Related Products Regulations (Northern Ireland) 2011 (TARP). Competent Authorities should report the seizures to Defra using the IIT1 form. The reporting of seizures by Competent Authorities requires the completion (preferably electronically) of a common form (IIT 1 (4/08)), which is then sent by e-mail for Defra to record the appropriate information required. However, the option remains for the form to be completed manually, if that method is preferred, and sent to Defra by fax/post. Details of where to e-mail/fax/post the form is included on the form. The form is located on the secure parts of the following websites. Please note Competent Authorities will need to obtain the necessary password permission in order to access these areas from.

- The Association of Port Health Authorities
- CIEH

The information provided in this form is also shared with the FSA for evaluation and possible future investigation. The information provided in this form should be provided to FSA in NI's Consumer Protection Team at incidents.ni@food.gov.uk.

Please note: Where illegally imported POAO is found at a point of entry, this is dealt with there by the Competent Authority. If illegally imported POAO is found outside of the BCP it is the responsibility of the Competent Authority and should also be reported to the FSA.

4.5.5.5 Prohibition

It is an offence[48] for any person to import a product that does not comply with the food safety requirements as set out in Regulation (EC) No 178/2002 or with the requirements of Articles 3 to 6 of Regulation (EC) No 852/2004. This prohibition applies to products being imported either direct from a third country or from a third country through an EU Member State.

4.5.6 Liaison/referrals

Whenever inland Competent Authorities come across problems with imported food, where the point of entry for the goods can be ascertained and similar problems are likely to be found in other imported consignments, the Competent Authority at the point of entry should be informed as soon as possible, to help target their future surveillance activities.

In certain circumstances, it may be necessary for Competent Authorities covering points of entry to refer imported food matters to inland Competent Authorities. This would include situations where inland supervision of consignments is required and where checks at the point of entry reveal food safety or food standards concerns that are most appropriately dealt with by the inland Competent Authority. Examples include where:

- a consignment of FNAO, which is subject to emergency controls or other restrictions, has been illegally imported for example without being presented to the Competent Authority at the point of entry for the required checks to be carried out
- the Competent Authority at the point of entry is aware that illegal imports of POAO might have been distributed
- checks on imported food reveal labelling issues which cannot be enforced at time of import
- examination under The Official Feed and Food Controls Regulations (Northern Ireland) 2009 has been deferred

[48] Regulation 27 as read with regulation 39 of The Official Feed and Food Controls Regulations (Northern Ireland) 2009

- unsatisfactory test results are received for samples taken for routine surveillance but meanwhile the consignment has been released from the port
- analysis indicates, for example, that nuts are not suitable for human consumption but are referred for feed use
- 'Higher risk' FNAO transferred under detention to an inland ETSF facility to be supervised pending the outcome of laboratory tests.

Wherever practicable, inland Competent Authorities should agree to assist with these referrals and respond as appropriate without undue delay and provide feedback to the Competent Authority at the point of entry on the outcome. Records of such referrals and details of any action taken should be maintained by all Competent Authorities involved.

It might also be necessary for the FSA to refer matters concerning illegally imported POAO to inland Competent Authorities. This information will normally be received from DAERA or Border Force where they have intercepted illegal imports destined for commercial premises. Competent Authorities should respond to these referrals as soon as possible and where requested provide feedback directly to Border Force or DAERA. Competent Authorities should maintain records of action taken.

4.5.7 Inland inspection of imported food

When considering specific imported food inspection programmes Competent Authorities should not simply focus on food businesses that specialise in the supply of food to specific minority groups. They should consider food businesses within their area that routinely import or sell food from countries outside the UK or the EU, in particular those premises that are the first destination after import. Such premises are likely to include:

- specialist supermarkets/retailers
- manufacturers
- warehouses

Any inspection programme should also be informed by food alerts and the premises compliance history.

In addition to assessing fitness for consumption, reasonable steps should be taken to check the legality of the importation of any POAO and FNAO from a third country. The FSA's Resource Pack for Inland Enforcement of Imported Food Control provides detailed advice on points to consider when investigating the legitimacy of food imports. For further information about imported food controls and the types of food imports and countries of origin where there are prohibitions and restrictions see the FSA website.

4.5.7.1 Deferred examination of FNAO – Inland controls

Regulation 26 of The Official Feed and Food Controls Regulations (Northern Ireland) 2009 allows for (in exceptional circumstances and where the Competent Authority has valid reasons) import controls for the examination of consignments of FNAO to be deferred and undertaken by the inland Competent Authority covering the ETSF or at any other place of destination in the UK.

4.5.8 Sampling of imported food

4.5.8.1 Considerations for sampling

Routine imported food sampling considerations for Competent Authority surveillance and enforcement purposes should take account of:

- any statutory requirements for sampling laid down in European Commission Decisions or Emergency Control Regulations (usually this will occur at a point of entry)
- any agreed NILGA/FSA sampling programmes
- any sampling required following a Food Alert, EWS or RASFF notification
- information from any EU, NILGA, regional liaison group, local or other sampling survey
- any imported food where there is no known history or information on the product

Competent Authorities should also take into account local priorities, including consumer complaints relating to imported food, and their local business profile when considering sampling priorities, and include these in their sampling programmes. Sampling policies and programmes should be reviewed from time to time to assess the need to include national or regional imported food priorities/surveys and the UK's National Control Plan.

Competent Authorities should take into account any specific central guidance on sampling or other matters set out by the FSA or NILGA.

4.5.9 Official Controls on FNAO

This section applies to Competent Authorities with a point of entry, checks undertaken at ETSF, and deferred examinations under The Official Feed and Food Controls Regulations (Northern Ireland) 2009.

The advice in this section also applies to composite products that contain a small amount of product of animal origin and are outside the Veterinary Checks regime covered by Article 49 of Regulation (EU) 2017/625.

4.5.9.1 Identification

It is important that Competent Authorities with a point of entry are aware of the volume and nature of foods entering the port. Competent Authorities overseeing seaports where enquiries with the port operator indicate that food is imported should check 100% of ships' manifests (a document/computer file describing all cargo carried on a ship, cargo train or aircraft) for imported food. 100% checks should continue until enquiries with the port operator reveal no food imports for a continuous period of three months, and further food imports are not reasonably foreseeable. Thereafter contact should be made with the port operator at least once every three months to check the status of food imports.

Competent Authorities overseeing airports and ETSFs must set up, implement and maintain documented procedures on the arrangements in place to identify imported

food. Where appropriate, arrangements should be put in place to obtain/gain access to airline manifest documents that should be checked frequently.

This might be carried out through:

- liaison with HMRC regarding food imported directly from countries outside NI and the EU or via EU Member States or ports under T1 arrangements (a transit declaration made to HM Revenue and Customs. T1 signifies those goods that are not in free circulation i.e., still subject to Customs control)
- liaison with ITSF operators to obtain copies of cargo manifests
- random checks of ITSF (Internal Temporary Storage Facilities – formerly known as 'transit sheds')/ETSF transit sheds/ERTS handling imported food with a view to verifying the information arrangements in place
- informal notification systems in co-operation with importers, their agents or airlines and ITSF operators.

4.5.9.2 Examination

Imported food should be subjected to risk-based checks. Article 44(1) and (2) of Regulation (EU) 2017/625 outlines the requirements for documentary checks, identity checks and where appropriate physical checks. The checks that are conducted will vary slightly depending on whether these take place at the point of entry or whether these are inland.

Checks on imported food should take into account any guidance issued by the FSA. Such guidance might cover foods for which specific documentary checking regimes have been laid down or foods with restricted points of entry and/or testing regimes laid down in EU law or Commission Decisions or Regulations. Competent Authorities with points of entry which are not designated to handle certain 'higher risk' FNAO products subject to safeguard measures must ensure relevant port operators, local HMRC, or agents/importers are aware of any restrictions. Arrangements must also be in place to deal with any such consignments which arrive at the point of entry.

A systematic documentary check does not imply 100% checking of documents but there must be risk based planned arrangements in place. However, documents required to accompany any consignment by food law, such as under safeguard measures, are subject to 100% checking. At the BCP the documentation that would be checked, would consist of for example, health/official certification and non-UK or EU country results of sampling and analysis. However, inland documentary checks may involve, for example, checking the CHED and clarifying that the consignment was imported by the correct means.

An identity check involves checking that the consignment corresponds with the documentation that is provided. At the BCP the checks would be to ensure the product tallies up with all documentation provided, for example, checking batch/consignment codes for the products against the accompanying health/official certification. An identity check conducted inland would be closely linked with the documentary check but may include verifying that the CHED corresponds with the product. This may also assist with identifying and verifying whether the product has been legally imported.

Physical checks might include checks on the food itself, checks on the means of transport, checks on the packaging and condition of the product, temperature checks, organoleptic testing, and chemical or microbiological examination, or any other check necessary to verify compliance with EU food safety requirements. Such checks may also take account of any guarantees that the Competent Authority of the exporting country has given, and which have been assessed by the European Commission. The arrangements and follow up actions should be set out in relevant service policies and procedures.

For physical checks conducted at both points of entry and inland, these should be carried out under appropriate conditions inclusive of standards of hygiene and at a place with access to appropriate control facilities allowing investigations to be conducted properly. Samples should be handled in such a way as to guarantee both their legal and analytical validity.

Where an authorised officer reasonably requires facilities and assistance to carry out checks on a product, the importer may be asked to provide these. The Official Feed and Food Controls Regulations (Northern Ireland) 2009 also allow an authorised officer to require that physical checks and identity checks take place at a specified place, where necessary for proper examination.

Checks should be informed by:

- statutory requirements for documentary checks and associated sampling laid down in relevant safeguard legislation
- the risk associated with different types of food safety issues
- local knowledge of the product for example new or unusual
- any requirements following a Food Alert, EWS or RASFF notification
- the history of compliance for the product, country of origin and exporter/importer
- the controls that the FBO importing the food has carried out
- any guarantees that the Competent Authority of the third country of origin has given under the third country pre-export checks provisions in Regulation (EU) 2017/625
- any existing co-ordinated programmes for example at the request of or under the direction of other food control/advisory bodies
- adequacy or sufficiency of documentation for example discrepancies which need further investigation
- suspicion of non-compliance

Checks might also be influenced by information received from inland Competent Authorities regarding non-compliant food or from other control authorities or the port operator who may have concerns about a consignment.

As well as the reference sample required by The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 2013, officers should give the owner, importer, or importer’s agent a receipt for, or a record of, all samples taken and a copy of the results in the case of non-compliance.

Competent Authorities with points of entry or ETSF, should aim to establish effective detention/holding arrangements in liaison with local stakeholders such as ETSF operators or dock companies, to ensure that consignments for which they are seeking additional information cannot be removed from the port or ETSF.

4.5.9.3 Deferred examinations of FNAO

Deferred examinations may be considered where the Competent Authority at the BCP has a valid reason why an examination needs to be deferred, but it is anticipated this is likely to be in exceptional circumstances only.

Either the Competent Authority covering the point of entry or the importer can request deferred examination. However, the final decision on whether to defer examination rests with the Competent Authority covering the point of entry. In coming to any decision, liaison with the receiving Competent Authority should be carried out to ensure that appropriate checks will take place and deferral should therefore be based on full co-operation and agreement between the two Competent Authorities.

Where products are subject to a safeguard measure which requires entry through a BCP, deferred examination is unlikely to be appropriate but there might be exceptional circumstances where there are overriding health and safety considerations. In such cases the FSA should be informed. In all cases where there is a known or emerging risk, food should be subject to relevant document and identity checks before being deferred for physical checks.

When any examination is deferred, The Official Feed and Food Controls Regulations (Northern Ireland) 2009 require that the importer must provide a written undertaking that the consignment has been sealed and will not be opened until it reaches its specified destination and opening the container has been authorised by the receiving Competent Authority. This process should be supervised by the authorities involved. The Competent Authority at the point of entry should notify the receiving Competent Authority forthwith and in writing that the food has not been examined and forward to the Competent Authority a copy of any written undertaking given by the importer.

Deferred examinations under The Official Feed and Food Controls Regulations (Northern Ireland) 2009 should be carried out in accordance with regulation 26 of the regulations - only an outline has been provided in the Practice Guidance. Please note: these arrangements are not common practice.

4.5.10 Onward transportation

Article 51 of Regulation (EU) 2017/625 and some other safeguard measures permit the authorisation by the Competent Authority at a BCP for onward transportation of a consignment(s) of foods of non-animal origin that may have been sampled at the BCP pending results of tests/analysis. The Competent Authority at the BCP may authorise these arrangements; however, where authorisation is given, the Competent Authority at the point of destination must be consulted. Appropriate arrangements must be put in place to ensure that the consignment remains under

the continuous control of these Competent Authorities (so it may not be tampered with in any manner pending the results of the tests/analysis).

Please note: the onward transportation arrangement can apply for consignments of products of non-animal origin, moving inland i.e., from a BCP to an inland authority's remit but may also apply to consignments of products of non-animal origin transporting between EU Member States.

4.5.11 Fees

Article 79(2) of Regulation (EU) 2017/625 and the other safeguard measures provide that mandatory fees for FNAO imports of a 'known or emerging risk' are determined and calculated in accordance with the criteria laid down in articles 81 and 82 of Regulation (EU) 2017/625.

4.5.12 Retention of import documentation

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

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

A 'consignment' is a quantity of food of the same type, class or description covered by the same document(s), conveyed by the same means of transport, and coming from the same country outside NI or the EU.

Copies of the following information should be retained:

- the Common Health Entry Document (CHED) for a period of three years.
- the original of each third country health/official certificate or any document required to accompany a consignment and subject to checking for example results of analysis, for a period of three years
- all submission forms with which samples are sent to laboratories for examination/analysis and a record of the results of all such examinations, for a period of one year

4.5.13 Enforcement at points of entry and inland

Where there is no evidence to suggest that a deliberate attempt has been made to import non-compliant goods, and adequate control arrangements are in place, ports might consider voluntary surrender as an option for dealing with such consignments. In accordance with the Code, where food is voluntarily surrendered for destruction, a receipt should be issued, and the description of the food should include the phrase

'voluntarily surrendered for destruction' with the person surrendering the food or their representative signing the receipt.

4.5.14 Products of Animal Origin enforcement

4.5.14.1 Imported food legislation – POAO

Defra is the Government Department designated as the central Competent Authority for controls at BCPs on POAO (excluding fishery products and bivalve molluscs, for which the FSA has responsibility) and live animal imports in England.

Agricultural departments in the devolved administrations do have competency in these countries. Defra as the central competent authority has provided guidance on importing and exporting live animals or animal products .

The FSA has also provided a resource pack (see pages 29-31) for Competent Authorities within Northern Ireland that are responsible for enforcement of imported food inland to explain key elements of the Trade in Animals and Related Products Regulations (Northern Ireland) 2011, and how those regulations are applied and fit with other existing domestic legislation.

4.5.14.2 The Trade in Animals and Related Products Regulations (Northern Ireland) 2011

Under Regulation 19 of The Trade in Animals and Related Products Regulations (Northern Ireland) 2011, the enforcement authority must seize any consignment that is either: brought into Northern Ireland other than through a BCP approved for that animal or product, removed from a BCP without a Common Health Entry Document (CHED) or the authority of the Official Veterinary Surgeon (OVS) (or authorised officer in relation to fish and fishery products) at the BCP, or transported from a BCP to a destination other than that specified on the CHED.

If a consignment is seized outside a BCP under Regulation 19 the enforcement authority must dispose of the consignment as Category 1 material in accordance with Regulation (EC) No 1069/2009 (Animal-by products Regulation), or act in accordance with regulation 20(1)(b) or 20(1)(c).

4.5.14.3 Illegally introduced POAO

POAO must be imported in accordance with the relevant provisions of The Trade in Animals and Related Products Regulations (Northern Ireland) 2011. These require that POAO are imported through a designated BCP and are subject to veterinary checks. A CHED must be issued for consignments which pass the veterinary checks, and this should accompany the consignment to the first premises after import, where it should be retained for a period of one year. POAO are considered to be illegally introduced (smuggled) where they have not been presented at the BCP of entry, for clearance or have not received a correctly completed CHED from the BCP.

Border Force are responsible for detecting smuggled POAO in Customs controlled areas including ETSF. However, Competent Authorities have responsibilities relating to goods presented at BCPs and also inland where officers come across illegal POAO during their routine enforcement activities.

The FSA's Operations Policy and Delivery team is responsible for illegal POAO found at premises under its control. Where FSA Operations staff discover meat in approved cutting plants that they suspect is illegally imported, they have the primary responsibility and enforcement powers to deal with it.

All Competent Authorities should set up, implement and maintain arrangements to effectively deal with illegally introduced POAO. Due to the nature of the enforcement activity which might require prompt action, officers must be properly authorised, template notices should be available, and effective mechanisms for any likely sampling or examination should be in place. Consideration should be given to necessary arrangements for the transport, storage, facilities, and the necessary control arrangement for the destruction of POAO by high temperature incineration.

Where an authorised officer, in the course of their duties, comes across POAO at premises under Customs control i.e. in a port area or an ETSF, which they have reason to believe has been illegally introduced, they should notify HMRC (in the absence of any local reporting arrangements, contact HMRC National Co-ordination Unit on 0845 600 4374) and if needed for adequate interim control of the consignment, issue a detention notice under Regulation 32(7) of The Trade in Animals and Related Products Regulations (Northern Ireland) 2011. This should be done as soon as possible.

4.5.14.4 Reporting

A notification to Defra, via DAERA should be made when illegally imported POAO is seized under regulation 19 of the TARP Regulations (Northern Ireland) 2011.

The reporting of seizures requires the completion of IIT 1 (04/08) form (preferably electronically), which is located on the secure parts of APHA and CIEH websites.

4.6 Sampling and analysis

This section concerns the procedures that must be followed when food samples are procured under regulation 12 of The Food Hygiene Regulations (Northern Ireland) 2006 or Article 29 of the Food Safety (Northern Ireland) Order 1991, and the associated requirements of The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 2013. Guidance to help ensure sampling by Competent Authorities is undertaken effectively and consistently is set out below and on microbiological sampling in LGA advice which can be found on the knowledge hub. Note that the substance of the guidance is still relevant, but the references to legislation are out of date.

The Food Hygiene Regulations (Northern Ireland) 2006 and the Food Safety (Northern Ireland) Order 1991 allow samples to be procured either by 'purchasing' or 'taking'. The choice is at the discretion of the authorised officer, having regard to the policy of the Competent Authority. Where the quantity or frequency of sampling gives rise to significant financial consequences for the owner of the food, the Competent Authority could offer an ex-gratia payment if samples are not purchased. The officer must give the owner a receipt for, or a record of, all samples the officer has taken. If

enforcement action is anticipated following microbiological examination or chemical analysis, the sampling officer should purchase the sample.

Legislation provides a framework for Competent Authority sampling, which is carried out with a view to taking formal enforcement action if results are unsatisfactory.

All samples that are taken by authorised officers that are sent to an Official Laboratory constitute official control samples.

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 officer to determine the level of compliance.

The sampling provisions of this Section do not apply to samples of food:

- that are the subject of complaint and are brought to the Competent Authority by consumers or other agencies
- 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
- procured in accordance with food law which are not taken for analysis or examination, for example samples submitted for the opinion of other experts for example pest identification etc.
- that are taken as evidence for example use-by dates

4.6.1 Certificate issued by Public Analyst or Food Examiner

Regulation 13 of The Food Hygiene Regulations (Northern Ireland) 2006 require a Public Analyst or Food Examiner to give the officer who submitted the sample, a certificate specifying the result. Competent Authorities must discuss with the Public Analyst or Food Examiner how these requirements are to be met, including the means by which results that indicate a significant risk to public health, or where legislative deadlines apply, such as water in poultry, can be notified without delay.

The Certificates of Analysis or Examination (as specified in Schedule 3 of The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 2013) are available for formal samples on request from either a Public Analyst or Food Examiner. The laboratory issuing the test report and Certificate of Analysis or Examination must use test methods that are accredited to ISO/IEC 17025:2017 General requirements for the competence of testing and calibration laboratories standard which is an essential requirement of Official laboratories testing foods for food control under Regulation (EU) 2017/625. The test report and Certificate of Analysis or Examination are the only authoritative versions of the test results and other sources of information (such as results in UKFSS) are outside the control of the Public Analyst or Food Examiner and should be used (and interpreted) at the risk of the final users.

4.6.2 Division of samples for analysis

The sample must, as soon as possible, be divided into three representative parts. Unless the sample meets the criteria for submission for analysis without division.

The resultant parts of the sample are referred to in the Code as final parts. Where practicable, the division should be carried out in the establishment of the FBO, who, if present, should be given the opportunity to observe the sampling and division before being invited to choose one of the parts for retention.

The sampling of imported foods at the port of entry may pose difficulties. In the special circumstances found by Competent Authorities, a sample need not be divided on the premises or in the presence of any representative of the seller/owner or importer, unless the legislation under which the sample is taken specifically requires otherwise.

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

4.6.3 Samples for analysis – Quantity

The nature and quantity of any sample must be such as to enable the required analysis to be made, and that should be the case after it is divided into three parts. The nature of the samples that are appropriate will depend on the purpose for which the analysis is being undertaken. The quantity will vary according to the product and type of analysis to be carried out. The Public Analyst must be consulted in case of doubt.

National sampling protocols must be taken into consideration, where they exist. Some modification to the protocols might be necessary in the case of large consignments of imported foods.

All samples for analysis, taken under section 29 of the Food Safety (Northern Ireland) Order 1991 in accordance with The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 2013 and with the requirements of the Code, must be submitted to the appointed Public Analyst at a laboratory accredited for the purposes of analysis, and which appears on the list of official food control laboratories.

Samples procured under section 29 of the Food Safety (Northern Ireland) Order 1991 can be subject to examination if considered appropriate.

4.6.4 Samples for analysis – Containers for samples

Samples of non-prepacked food or opened cans or packets, must first be placed in clean, dry, leak-proof containers such as wide-mouth glass or food quality plastic jars, stainless metal cans or disposable food quality plastic bags. Disposable food quality plastic bags must be sealed securely after filling, so that they cannot leak or become contaminated during normal handling. Samples of alcoholic drinks must be placed in glass bottles.

The contained final parts must each be secured with a tamper-evident seal and labelled, specifying the name of the food, the name of the officer, the name of the Competent Authority, the place, date and time of sampling and an identification number. Where necessary, they must then be placed in a second container, such as a plastic bag, which must be sealed in such a way as to ensure that the sample cannot be tampered with. A copy of the food label if available and any other relevant details must be submitted to the Public Analyst with a final part.

4.6.5 Samples for analysis – Transport of samples

Final parts of food which are perishable must be kept refrigerated or in a frozen state, as necessary. The method of storage used will differ, depending on whether the final part is to be submitted to the Public Analyst, or retained for possible submission to the Laboratory of the Government Chemist in accordance with regulation 8(2) of The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 2013.

The final part to be submitted to the Public Analyst must be transmitted as soon as practicable after sampling, particularly where tests are to be made for substances which might deteriorate or change with time (for example certain pesticides, sulphur dioxide, etc). In any case, where doubt exists about suitable storage or transport arrangements for samples for analysis, the Public Analyst must be consulted. Since retained final parts might need to be stored for several months prior to submission to the Laboratory of the Government Chemist, it is important that they are appropriately stored.

4.6.6 Samples for analysis – Samples which present difficulties in dividing into parts

An exception to division into three parts applies where the authorised officer is of the opinion that division of the sample is either not reasonably practicable or is likely to impede proper analysis. Regulation 7(4) of the Food (Sampling and Qualifications) Regulations (Northern Ireland) 2013 allows for the sample to be submitted for analysis complete without division into three parts. There is no final part for the seller/owner, neither is there a final part to be retained. This procedure must therefore be used with caution. Situations where this procedure might be used will depend on the tests to be carried out but might include the following:

- where there is insufficient product available to comply with the procedures in regulations 7(1) or 7(2) of the Food (Sampling and Qualifications) Regulations (Northern Ireland) 2013
- there is no way of storing a final part for further analysis as with tests for previously frozen meat

This situation might also arise where foods are not pre-packed and are not homogeneous and it is difficult to divide the food into three parts, so that each part contains the same proportion of each ingredient, for example meat products with lumps of meat, pies where it is difficult to divide the pastry and the filling into three, fruit cocktail/yoghurts with fruit where an ingredient is to be quantified.

In any case, where a single sample is taken in accordance with regulation 7(4) of the Food (Sampling and Qualifications) Regulations (Northern Ireland) 2013 the owner must be notified of its submission for analysis.

Regulation 7(2) of the Food (Sampling and Qualifications) Regulations (Northern Ireland) 2013 sets out an exception from the general procedures where the sample consists of unopened containers and opening them would, in the opinion of the authorised officer, impede proper analysis. In these circumstances the authorised officer must divide the sample into parts by putting containers into three lots and each lot must be treated as a final part.

Where any doubt exists, the Public Analyst must be consulted.

4.6.7 Notification of formal sampling activity (analysis)

The owner of the food must be notified of any formal sampling activity.

The notice must be given as soon as practicable after sampling has taken place and should include the name of the food.

If the identity of other interested parties such as the manufacturer, packer or importer, agent, etc. is available on the packaging of the sample, with a United Kingdom address, the officer should notify that person of the procurement, in writing.

4.6.8 Certificate of analysis

Certificates of analysis must be in the format set out in Schedule 3 of the Food Safety (Sampling and Qualification) Regulations (Northern Ireland) 2013 but may be subject to adaptation as circumstances reasonably require).

4.6.9 Notification of results (analysis)

In accordance with Regulation 10 of The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 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 (for example telephone, subsequently confirmed in writing) along with the relevant Competent Authority.

The packer or, in the case of imported food, the importer, or their agent, may also be notified.

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

4.6.10 Samples for examination

All samples for examination, taken in accordance with regulation 12 of the Food Hygiene Regulations (Northern Ireland) 2013 and the requirements of the Code, must 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.

The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 2013 apply in relation to samples procured by an authorised officer of a district council under Regulation 12 of The Food Hygiene Regulations (Northern Ireland) 2006, as if it were a sample procured by an authorised officer under section 29 of the Food Safety (Northern Ireland) Order 1991 Act 1990.

4.6.11 Samples for examination – Avoiding contamination

Care must be taken to prevent contamination of samples and instruments, and containers used for samples must be clean and dry. It is important to avoid the use of cleaning and sterilising methods that might leave residues on instruments or containers that might, in turn, affect the results of the analysis or examination (for example alcohol).

4.6.12 Samples for examination – Continuity of evidence/traceability

Food samples are normally dealt with in a food laboratory and faecal specimens in a clinical laboratory, operating independently of the Competent Authority. Laboratory personnel might therefore need to be reminded of the possibility of legal action, the need to treat food samples and other specimens as evidence, and to ensure the continuity of such evidence.

Records must therefore be kept of all stages of transport, including:

- dates and times of transport
- identity of custodians
- date and time of receipt in the laboratory
- identity of the person receiving sample
- sample details (for example temp, batch no.)

For food samples, the temperature of transport must be monitored, and recorded on receipt at the laboratory. If the sample has been posted, proof of posting or a record of the method of despatch to the Food Examiner or Clinical Microbiologist must be kept. The Food Examiner or Clinical Microbiologist must be made aware that the results of their examination of the food or faecal specimen(s) might be used as evidence in Court, and that by examining the sample/specimen, they might be required to produce a certificate of examination, give a sworn written statement, and/or give oral sworn testimony in court.

Other laboratory personnel might also be required to give evidence as to the handling of food samples and faecal specimens and the testing and examination thereof in a criminal prosecution.

Full traceability in the laboratory therefore needs to be ensured, including recording the identity of everybody who has been involved in handling and examining the sample or specimen, and the action they took. Specifically, there must be a system at the laboratory for logging the sample or specimen’s arrival, and its storage, which must be secure. For food samples, the temperature of storage must be such as to minimise microbial change and be monitored using a calibrated thermometer or other similar device. Continuity preservation at the laboratory is vital so that there is certainty that the result relates to the sample/specimen submitted. An individual in

the laboratory must be capable of making a sworn statement and of providing sworn oral testimony on these points.

4.6.13 Samples for examination - Organisation

Samples for examination are not required to be divided into three parts, since the non-homogeneous distribution of bacterial contaminants means that no two samples will be the same. It is not appropriate to retain a part for examination later in the event of a dispute, as bacteria might not survive prolonged storage or conversely, might greatly multiply.

4.6.14 Samples for examination – Quantity of samples

The quantity of any sample procured must be such as to enable a satisfactory examination to be made. The quantity will vary according to circumstances but must normally be at least 100 grams. In any case of doubt the Food Examiner must be consulted.

4.6.15 Samples for examination – Handling

Samples of non-prepacked food, or from opened cans or packets of food, must be first placed in sterile, leak-proof containers or disposable sterile plastic bags. Disposable sterile plastic sampling bags must be sealed securely after filling, so that they cannot leak or become contaminated during normal handling. Advice must be sought from the Food Examiner in case of doubt. In any event, liaison with the Food Examiner before samples are submitted to the laboratory will ensure correct procedures are followed.

The samples, thus packaged, must be secured with a tamper evident seal, and labelled, specifying:

- type of food sample
- name of the Officer
- the exhibit identification number (for example RG/1)
- the date, place, and time of sampling

Containers that might be easily damaged, or that cannot themselves be made tamper-evident, must then be placed in a second container, such as a plastic bag, which must be sealed in such a way as to ensure that the sample cannot be tampered with. A copy of the food label, if available and any other relevant details must be given to the Food Examiner, for example food handling techniques/storage methods observed in respect of the food sampled.

Officers must take steps to ensure that, as far as possible, samples for examination reach the laboratory in a condition microbiologically unchanged from that existing when the sample was taken. During sampling it is vital that the sample is not contaminated by the sampling officer. Appropriate action must be taken to avoid contamination of the sample and microbial growth or death during sampling, transport, and storage. The temperature of transport must be monitored and recorded.

4.6.16 Samples for examination - Handling, transport, and storage of faecal specimens

When required to investigate reported or suspected cases of foodborne illness and obtain faecal specimens, officers must have a supply of appropriate leak-proof containers.

Such specimens must be collected as soon as possible after the onset of symptoms and submitted to the laboratory with relevant individual's details included on the container and on any accompanying documentation.

It is important that faecal specimens are transported to the laboratory as soon as possible; some important pathogens might not survive the pH changes that occur in stool specimens which are not promptly delivered to the laboratory, even if transported in a refrigerated state. Liaison with the laboratory will help ensure that the specimens receive prompt attention on their arrival.

4.6.17 Notification of formal sampling activity (examination)

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

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

4.6.18 Certificates of examination

Certificates of examination must be in the format set out in Schedule 3 to The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 2013.

4.6.19 Notification of results

In accordance with Regulation 10 of The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 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 (for example telephone, subsequently confirmed in writing), along with the relevant Competent Authority.

The packer or, in the case of imported food, the importer, or their agent, may also be notified.

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

4.6.20 Samples for examination – request for examination

The officer must ensure that all relevant information is passed to the Food Examiner with the sample to ensure that the sample is subjected to the most appropriate examination and to enable the Examiner to interpret the results.

4.6.21 Requests for information from manufacturers or importers

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

4.6.22 Sampling of goods attained via distance communication

Sampling of goods ordered via distance communication[49] (i.e., on-line) by the Competent Authority without identifying themselves can be validly used for the purposes of an official control. Competent Authorities must inform the food business operator that such a sample has been taken and, where appropriate, is being analysed in the context of an official control.

4.6.23 Right to second opinion

Competent Authorities must ensure that operators, whose goods are subject to sampling, analysis, test, or diagnosis in the context of official food controls, have the right to a second expert opinion, at the operator's own expense.[50]

Guidance on how to submit for a second expert opinion may be found here.

Guidance on how to submit a referee sample to the Government Chemist can be found here.

4.7 Inspection of ships and aircraft

4.7.1 Introduction

Officers to consider additional aspects relating to the inspection of ships and aircraft. An inspection template for airlines named 'Airline Food Safety Questionnaire', which may be adapted, where appropriate, provided that the procedures outlined in the Code are not overlooked, can be found in the Port Health at Airports Group (which you would need to join) on the Knowledge Hub. Competent Authorities must have regard to:

- The Food Hygiene Regulations (Northern Ireland) 206 include any ship or aircraft in the definition of premises
- Schedule 4 to these regulations which sets out specific temperature control requirements does not apply to these means of transport
- The relevant temperature requirements for these means are stated in Chapter IV of Annex II of Regulation (EC) No 852/2004

[49] Article 36 of Regulation (EU) 2017/625

[50] Article 35(1) of Regulation (EU) 2017/625

4.7.2 General

The types of hazards that may be present in the shipboard/aircraft environment may be considerably different to those that might be found in fixed premises.

Examples include:

- hazards resulting from the various sources of water and its storage in onboard tanks
- the 24-hour nature of operations onboard ships and aircraft
- the availability of provisions only when the vessel/aircraft is in port
- the restricted storage space available for provisions (dry, chilled, and frozen)
- the age and conditions on board
- the fixed layout of food production facilities which cannot be expanded or changed due to structural and safety issues

The shipboard environment is essentially a closed community, sometimes for long periods of time during voyages, which presents particular problems in relation to the hazards associated with food production and the potential results of contamination. In large passenger ships, for example, the presence of food contaminated by food poisoning bacteria or toxins could be devastating, amongst both passengers and crew. Even on smaller vessels, or vessels with smaller crews, an outbreak of food poisoning could have a significant impact on the ability to sail the vessel safely because critical members of the crew may be incapacitated.

The scale of food production on board vessels varies greatly, from large passenger vessels and cargo vessels with large crew and passenger numbers (for example some cruise liners over 3,000 passengers and 1,200 crew) to smaller vessels crewed by 10 to 15 personnel.

During any inspection of a ship or an aircraft, authorised officers must be aware of their own health and safety and have regard to any requirements of the port operator and the shipping operator or airline.

In many cases it would not be necessary to inspect aircraft on a regular basis if sufficient information has been obtained from the airline and/or relevant primary authority and has been verified.

When the service of notices is considered, it should be borne in mind that through case law, ‘proprietor’ does not necessarily mean ‘owner’, as it is the person who carries on the food business. It might be the company running a shipping operator or it could be a company hired to operate the food business. Authorised officers will need to establish who the FBO/food business proprietor is in each case.

Inspection reports should be copied to any food safety advisers employed by the shipping operator or airline.

4.7.3 Catering waste

There are requirements for FBOs in Chapter VI of Annex II of Regulation (EC) No 852/2004 for disposal of food waste and non-edible products. These require FBOs to ensure there is no accumulation of waste, that waste is stored in suitable containers

and are free of pests etc (further advice regarding the inspection is available at 8.10.2.) Waste must be disposed of hygienically and in an environmentally friendly way in accordance with other legislation.

For FBOs operating from establishments to which the rules of Annex II, Chapter III, (for example B&Bs, stalls and temporary premises) apply, point 2(f) of Chapter III requires adequate arrangements or facilities for the hygienic storage or disposal of waste to be available.

4.7.4 International catering waste

The disposal of international catering waste to landfill is regulated by the Animal By-Products Regulations (Northern Ireland) 2011. Defra has identified significant risks to animal health if this waste is not dealt with effectively at landfill. Specific measures are needed to ensure that disease is not introduced into the UK from landfill sites, which receive this waste. A mechanism for suspending or amending the conditions of a landfill site approved to deal with such waste is in place, in the event the conditions of approval are not observed.

4.7.5 Inspections and enforcement

Authorised officers should bear in mind that other parts of the Code and Practice Guidance are primarily designed for the inspection of fixed premises, and that there are significant differences between these and ships and aircraft.

Competent authorities should ensure:

- they obtain appropriate security clearance prior to inspection
- they consider the range and variety of vessels is an important factor when planning ship inspection activities. In respect of aircraft, primary consideration should be given to the origin of the food on board, including water and other drinks, and the transport to, and loading of, the aircraft
- they consider that food hygiene standards on ships and aircraft meet the relevant requirements of Regulation (EC) No 852/2004
- any procedures be commensurate with the size and type of the vessel and the nature of activities undertaken on board.
- enforcement action is carried out in accordance with a written enforcement policy
- when serving notice, the authorised officer contacts the Management Company or the Handling/Shipping Agent. If considered necessary, in respect of ships, the officer should also contact the Maritime and Coastguard
- a strategy for frequency of inspection is adopted, based on knowledge about different types of craft, their origin and history
- before they consider a ship or aircraft inspection, all relevant information is obtained from the other relevant authorities, the shipping operator, airline, or shipping agent as appropriate chapters of the Framework Agreement

Article 5 of Regulation (EC) No 852/2004 requires the development and implementation of food safety procedures based on HACCP principles.

An officer may serve a Hygiene Improvement Notice, Hygiene Emergency Prohibition Notice or a Remedial Action Notice in relation to any ship or aircraft. The conditions that must be met before such a notice can be served are the same as apply in relation to fixed premises.

4.7.6 Craft registered in Member States or third countries

If the craft is registered in a Member State, the procedures set out in Chapter 2 of the Code on liaison with Member States should be followed. Any difficulties should be discussed with the FSA.

If the ship or aircraft is registered in a third country, the FSA should be given full details to allow the matter(s) to be raised with the Competent Authorities in the relevant country.

4.7.7 UK military ships and aircraft

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

Force	Primary authority	Environmental health lead
Royal Navy	Portsmouth City Council ☎: (02392) 834253	SO2 Environmental Health Policy ☎: (02392) 625554
RAF	Wycombe District Council ☎: (01494) 421710	Command Environmental Health Officer ☎: (01494 494334)
Army	Rushmoor Borough Council ☎: (01252) 398398	SO1 Environmental Health Policy ☎: (01276) 412931

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

Authorised officers:

- should refer to Chapter 6 (Categories of Crown Premises) in relation to security considerations when visiting UK military ships and aircraft, which must be regarded as Group 3 premises
- give prior notification before a proposed visit
- report safety issues found on inspection, which concern UK military ships and aircraft to single Service Environmental Health leads and the relevant home authority or primary authority
- must bear in mind the ultimate purpose of military ships and aircraft, and that galley design may have been constrained for operational reasons
- should give military policy, procedures and practices due consideration

- should take account of the relevant parts of 'JSP 456 – Defence Catering Manual Vol. 3'

4.7.8 Food safety inspections of ships

4.7.8.1 Preparation

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

Before commencing an inspection for food safety purposes, authorised officers should ascertain whether it is appropriate to inspect the vessel based upon the suggested criteria in paragraph 4.8.8.7

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

The officer should ensure:

- the ship's Master (or appropriate officer in control) is aware of the purpose of the inspection
- they determine the scope of the food business activities taking place on the vessel

Initial discussions with the ship's Master or representative should include consideration of any documentation that is available and identification of all food and drink related activities undertaken on the vessel.

Where arrangements are in place, the relevant Competent Authority should ensure that shipping operators are aware of their responsibilities in relation to providing information to the Competent Authorities.

4.7.8.2 Decision to inspect and frequency of inspection

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

- whether the food operation serves members of the public (whether paying or not)
- whether the vessel has its home port in the United Kingdom

If the answer to both questions is yes, the vessel should be inspected in a manner commensurate with inland food premises. The frequency of inspection should be based on the intervention ratings set out in Chapter 4 of the Code. The ship food safety inspection should be recorded on the port health authority management information system and form part of a LAEMS return.

If the answer to either one of these questions is no, it will be the decision of each individual Competent Authority as to whether they deem a food safety inspection appropriate at any particular time based upon the criteria in 4.9.8.7. Inspections may be recorded via LAEMS in this scenario.

If the answer to both questions is no, it will not normally be appropriate to carry out food safety inspections. Inspections can and should still be carried out as per the three scenarios set out in Annex 2 of the World Health Organization (WHO) Technical Handbook. This will be an inspection for Ship Sanitation purposes and should not be recorded under LAEMS.

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

Account should also be taken of any available data-sharing facility with reference to historical evidence of non-compliance. Interventions necessary for food safety purposes should then be carried out accordingly and the outcome transmitted without delay to UK port health authorities via any appropriate method. If communication is necessary to European port health authorities, the SHIPSAN ACT SIS system may facilitate this.

4.7.8.3 Inspection of the vessel

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

Items for consideration include:

- specifications and sourcing of food and water
- transport to the vessel, loading and subsequent storage
- the type of vessel, the facilities, including equipment, for food preparation/production/storage and the storage, distribution and quality of water used in the food areas or available for drinking purposes
- adequacy of procedures based on the HACCP (hazard analysis critical control point) principles, which will depend on the type of vessel
- food temperature requirements in Annex II of Regulation (EC) No 852/2004
- their food handling activities, the food handlers' knowledge of food hygiene/own health status
- food and water sampling
- arrangements for international catering waste disposal
- pest control procedures
- any known adverse reports or cases/outbreaks of gastric illness, etc

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

4.7.8.4 Action on conclusion of the inspection

Following completion of the inspection, the officer should:

- discuss the findings with the ship's Master or delegated representative
- give an indication of the expected timescale of any corrective actions found to be necessary
- prepare an inspection certificate to be given to the ship's Master before leaving the vessel. Documents should be forwarded if this is not possible prior to the ship's departure, the ship's owner should also receive a copy
- send a copy of the inspection certificate to the MCA and the port health authority at the next intended port of call, if in UK and, if designated, the relevant home port health authority where any serious short comings are found. This should be prior to the next possible visit to the vessel

4.7.8.5 Liaison with the Maritime and Coastguard Agency

Contact should be maintained with the MCA in accordance with the Memorandum of Understanding (MoU) between the Association of Port Health Authorities (APHA) LGR 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 Competent Authorities/Port Health Authorities and the MCA, in accordance with the MoU.

Should there be difficulties with serious shortcomings relating to the existence of a health risk condition (as defined by regulation 7(2) and regulation 8(4) of The Food Hygiene Regulations (Northern Ireland) 2006 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.

Vessels such as Passenger Ferries which operate from or are based in NI Ports and are registered food businesses, will fall under the requirements of the Food Hygiene Rating Act (Northern Ireland) 2016 and related regulations.

In order to do this, vessels would need to be registered with the relevant Competent Authority as a food business and given an intervention rating in accordance with Chapter 4 of the Food Law Code of Practice.

4.7.8.6 Other issues – ships

If appointed, the Home Authority for the shipping operator should ensure that all relevant documentation is made available to it, (see below for examples of relevant documentation), for liaison with and the information of other relevant Competent Authorities. For military ships see paragraph 4.7.7 in this guide.

Recipient Competent Authorities should use the previous inspection report to ensure that: (a) if necessary, follow-up inspections are undertaken at that time and/or (b) inspections are not carried out at a frequency of greater than annually, unless there is clear justification for doing so.

It is also good practice to send a copy of the report to the UK Competent Authority which had carried out any previous inspection, in order that they may see what action, if any, had taken place as a result of their previous inspection of the vessel.

Ships may be inspected for training purposes so long as the purpose of the inspection is made clear to the Master and they agree to such an inspection taking place.

Examples of relevant documentation:

- food specifications/suppliers
- water sample results
- hazard analysis (HACCP)
- food temperature records
- food Handler Training Records

4.7.8.7 Other risk criteria

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

- type and size of vessel, for example general cargo/passenger vessel, passenger ferries, cruise vessels
- port of registration
- age/condition/history of vessel
- crew and passenger numbers/profile/'turnover'
- vessels trading pattern/schedule/previous port(s) of call
- confidence in food and water safety management systems
- available documentation
- recent significant reports of food related problems on the vessel
- certificates from previous inspections - level of compliance (these could include inspection certificates issued by competent authorities in the EU or countries outside the UK or EU

4.7.8.8 Application of the International Health Regulations 2005 (IHR)

Nothing in the Code of Practice overrides or compromises the duties of Competent Authorities to inspect and ensure compliance by vessels with their duties under the International Health Regulations 2005, their related technical standards and The Public Health (Ships) Regulations (Northern Ireland) 2008.

4.7.9 Aircraft inspections

4.7.9.1 Preparation

Authorised officers should initially satisfy themselves that any information provided by the airline regarding its food and water suppliers and supplies is satisfactory. It is

the responsibility of the airline to provide to the authorised officer any evidence of reputable food suppliers.

The decision to board an aircraft should be based largely on:

- any information provided by the airline
- confirmation of the authenticity of the information
- the receipt of any food or food hygiene related complaints from passengers or crew

If such information is satisfactory, there might be no need to board an aircraft, particularly if the information shows that specific types of aircraft and food safety practices meet requirements.

It is, however, essential to verify on-board conditions and practices at regular intervals by inspection. At least annual checks should be made on the information provided by the airline concerning food hygiene issues, either by:

- the primary authority
- an authorised officer of the relevant enforcing Competent Authority in the absence of the above

Such checks should confirm, for example, that no changes have taken place to in-flight caterers, source of water supply, etc. Such checks should also verify that the in-flight caterer's HACCP plan is being implemented on board and that systems are in place after food and drink has left the flight catering establishment to establish if risks of contamination (includes microbiological, physical, chemical, and allergenic contamination) are controlled up to the point of service to the passenger.

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

4.7.9.2 Information to be obtained to assist inspection procedures

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

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

- named contact and contact details for an airline to deal with enquiries (this might be a food safety advisor employed by the airline)
- number of aircraft, their type and registration numbers, where appropriate
- routes flown – long haul, short haul and countries of destination
- airline food safety policy/procedure documents or manual
- type of catering menus and the service of high-risk foods

- food handler (cabin staff) knowledge – up-to-date guidance notes/explanatory sheets and/or training commensurate with the food handling activity covering personal hygiene; handling of food; cross contamination issues arising from other duties; pest awareness; food temperature control (as required by Annex II of Regulation (EC) No 852/2004), if appropriate, and monitoring; own health status and exclusion from work policy
- training records, standard of training, including retraining, when appropriate
- flight caterers, and/or nominated companies assembling and/or transporting meals to the aircraft, used by each airline. In-flight menus should assist in the assessment of whether high-risk foods are handled and/or prepared on board. The onus is on the airline to provide evidence that the food originates from a reputable source
- specifications in place with the caterer for the supply of food to aircraft and the accepted temperature for delivery, including for high-risk foods
- details of food and water safety arrangements when supplied to an aircraft in a foreign location
- potable water supply – source, use of bowsers, cleaning/disinfection of storage tanks – frequency/effectiveness. To be checked prior to or after the inspection
- flights or routes with return catering including multiple sector catering, and from which airports
- pest control contract and monitoring
- cleaning contractor, with details of contracts, for example cleaning schedules, and monitoring of the effectiveness of the cleaning regime
- reports of analysis/examination of food and potable water on aircraft by the airline, which should relate to the Competent Authority's own sampling regime
- whether the airline undertakes self-audits and whether any reports are available

The above information should assist an officer to assess the need to board an aircraft to carry out an inspection. In practice, taking account of Section 4.5 of the Code, and with the appropriate information obtained from the airline company and/or the relevant primary authority, this might result in a visit to particular types of aircraft, providing high-risk meals once every eighteen months to two years, unless there are compelling reasons to undertake such visits in an intervening period.

4.7.9.3 Inspection of the aircraft

Cabin crew do occasionally prepare food on board an aircraft and should therefore be made aware in their training of possible cross contamination issues related to their other duties on board, such as handling sick bags and cleaning lavatories in flight. Inspections should normally be undertaken before passenger's 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 (or primary authority) should be contacted for clarification.

4.7.9.4 Items for consideration in relation to food safety on aircraft

Following a documentary check, the following matters should be considered/confirmed, as listed in Section 4.4.9.2, when appropriate:

- flight caterers – confirmation of the information obtained, regarding source of meals
- transport and loading of aircraft, including the means of temperature control of the food in the delivery vehicle
- food storage facilities on the aircraft, including the provision of insulated containers and/or icepacks and the maximum stated time period until serving and/or re-heating, taking account of the type of aircraft, for example long or short haul, and the food served
- whether food is prepared on the aircraft and the facilities available for such operations, for example personal hygiene; avoidance of cross-contamination; provision of disposable gloves for certain duties and disinfectant wipes
- return flight meals taking account of the shelf-life of the food
- temperature control (as required by Annex II of Regulation (EC) No 852/2004) and monitoring during flights
- reheating/cooking
- pest control
- water supply – source and potability of water/cleanliness of tanks
- procedures for cleaning food handling areas, trolleys/carts
- food and water sampling

4.7.9.5 Other issues – Aircraft

Airlines should be encouraged to adopt, where necessary, approved codes of practice, for example, the ITCA/IFSA World Food Safety Guidelines, to develop in-house supplier audits and aircraft audits and to make any reports available to the authorised officer.

Such reports, where available, should form part of the authorised officer's initial checks. Authorised officers should also give consideration, where appropriate, to these guidelines.

Aircraft meals are mainly, but not exclusively, prepared prior to departure, some of which might be for return flights. Flight caterers or secondary food suppliers should be requested to make details of meal ingredients available to their airline customers. Relevant cabin crew should have access to this information and be able to pass it on for the benefit of passengers who have allergies or food intolerances.

Authorised officers should be aware that there have been reported outbreaks of foodborne illness affecting the crew of aircraft, and airline policies might include the requirement for crew members to eat at different times to the passengers and from different menus.

Inspections of aircraft may be undertaken at the maintenance base, taking account of any documentation on, for example, food supply specifications, cabin crew training and food temperature control that is supplied by the airline or Home Authority.

When it is necessary for an authorised officer to board an aircraft, the actual time spent on board should be as short as possible, as most of the above issues should be standard operating procedures included in the airline's documentation. However, if there are any causes of concern relating to the above, the authorised officer should notify the relevant company and Home Authority, if designated, that increased surveillance may be undertaken, for example assessment of galley cleanliness, increased water sampling for analysis/examination, etc.

Delays to aircraft are costly. Aircraft operations should therefore not be interrupted unless there is an imminent risk to the health of passengers or crew. If flights are in transit, inspections should be undertaken only if absolutely necessary, based on background information relating to the specific type of aircraft, company policy, flight caterer, temperature control, etc. Authorised officers should also consider the practicalities of their inspection schedule and endeavour to work with the relevant crew/ground staff to avoid unnecessary difficulties, and bear in mind the primary objective of an airline is the safety of the aircraft, passengers, and crew.

The Association of Port Health Authorities has published Airline Catering Guidance for Inspectors.

4.7.9.6 Action on conclusion of the inspection

Following inspection, a report should be sent:

- to the airline
- to the relevant primary authority (where such an arrangement exists)

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, for example:

- the type of aircraft
- flight number
- insufficient knowledge of food hygiene issues amongst the cabin crew

Chapter 5 Incidents, alerts, and food fraud

5.1 Introduction

This Chapter deals with:

- food incidents, hazards, and alerts
- food fraud
- how Competent Authorities are expected to respond and liaise as appropriate, with other Competent Authorities, government departments, delegated bodies, FBOs, the FSA, other relevant agencies (which might include primary, originating, and neighbouring authorities, medical specialists, Food Examiners, Public Analysts and microbiologists), EU Member States and countries outside the EU.

5.2 Managing food incidents and alerts

5.2.1 Food incidents contacts

Guidance on incident reporting is available to Competent Authorities on incident reporting. Food incidents, where appropriate, should be reported by:

- emailing an incident report form to FSA's Consumer Protection Team at incidents.ni@food.gov.uk.
- online or via the FSA's communication platform
- telephone on 0330 332 7149

5.2.2 Action by the Competent Authority - pre-incident contact by Competent Authorities

Potential food safety incidents may require the Competent Authority to carry out scoping and assessment by contacting food businesses directly. At this stage of the process, these issues are not classed as food safety incidents: instead, they are *potential* food safety incidents.

5.2.3 Food Incident notifications to the FSA

Competent Authorities must notify the FSA Consumer Protection Team as soon as they become aware of a:

- serious localised food hazard
- non-localised food hazard
- withdrawal or recall of food by a FBO due to non-compliance with the food safety requirements of Article 19 of Regulation (EC) No 178/2002
- suspected cases of food fraud/food crime
- significant 'non-hazardous' food incidents
- serious localised outbreak of foodborne illness in conjunction with notifying the PHA

On receipt of a notification of a serious localised hazard, the FSA may request additional information to enable and inform a scientific risk assessment for

development of risk management advice or for the publication of a timely FSA alert notification. The Competent Authority should, where possible, respond to the FSA within two hours of this request.

For FSA requests for information in relation to an outbreak investigation that may require a site visit to be arranged. The Competent Authority should respond to the FSA without undue delay, where possible within 48 hours of the request. If a Competent Authority is unable to meet these timelines, then they should indicate the estimated time necessary to provide an informed response.

5.2.4 Information received locally that may indicate a wider problem

Competent Authorities are responsible for investigating and dealing with food that fails to comply with food safety requirements in their areas. Competent Authorities may identify potential problems in a number of ways such as:

- following microbiological examination or chemical analysis of samples submitted to a Food Examiner or Public Analyst respectively
- as a result of complaints from members of the public, either directly or through a third party, for example, the police, citizens advice
- through notifications from a manufacturing company, trade association, wholesaler, retailer, importer, or caterer
- information from enforcement agencies in other countries; and/or
- as a result of a notification from a GP of one or more cases of communicable diseases, including food borne illness, or from the Consultant in Health Protection, Public Health Agency.

Following consultation with the Food Examiner and/or Public Analyst, samples of relevant foods or ingredients and appropriate samples (vomit, stool) from any persons affected should be obtained where possible and sent for examination/analysis. These items can be critical in identifying the cause of the illness and may even save lives.

5.2.5 Root Cause Analysis

Where Competent Authorities becomes aware that a FBO has withdrawn or recalled food from the market in accordance with Article 19 of Regulation (EC) No 178/2002, due to non-compliance with the food safety requirements of that Regulation, the Competent Authority should:

- request the FBO to undertake a root cause analysis to determine the reason(s) that the withdrawal or recall occurred
- request the FBO to identify corrective actions which will mitigate reoccurrence
- where permitted, forward the results of the food business's assessment to the FSA for further analysis, to enable long-term preventative actions to be identified and best practice to be applied across the food industry

The root cause analysis should identify the initiating cause, in a causal chain, which led to the withdrawal or recall; and also, the stage at which intervention could

reasonably be implemented to mitigate risk and prevent future reoccurrence of the non-compliance.

A root cause analysis reporting form and e-learning course for FBOs are available on the FSA website.

5.3 Food Fraud and Food Crime

Food fraud is committed when food is deliberately placed on the market, for financial gain, with the intention of deceiving the consumer. Types of fraud include the sale of food, which is unfit and potentially harmful, and the deliberate misdescription of food.

Food crime is serious fraud and related criminality within the food supply chain. This might mean that the criminal activity has cross-regional, national, or international reach, that there is significant risk to public safety, or that there is a substantial financial loss to consumers or businesses or the public interest. Clearly the full extent and impact of food criminality may not be immediately apparent when information is received. The FSA's National Food Crime Unit (NFCU) works with partners to protect consumers from serious criminal activity that impacts on the safety or authenticity of the food and drink they consume.

More details on the NFCU are available on the FSA website.

5.3.1 Reporting suspicions of food crime

Suspicions or information relating to food fraud or food crime in Northern Ireland should be shared with the FSA by:

- emailing incidents.ni@food.gov.uk referencing 'for the attention of the Food Fraud Liaison Officer'; or
- by telephone 0330 332 7149 (and ask to speak with the Northern Ireland Food Fraud Liaison Officer)

Requests for searches of the intelligence database should also be submitted through these avenues.

Competent Authorities and regulatory partners should provide food fraud or food crime information. Ideally this will be on a graded and assessed Intelligence Report (sometimes referred to as a 3x5x2). If a 3x5x2 cannot be completed, such information should still be shared with the food fraud liaison officer by the most appropriate means and by the means of communication listed above.

Where necessary the NFCU can upskill the staff in Competent Authorities in identifying and recording intelligence.

5.3.2 Major Investigation and FSA support

Competent Authorities will be investigating food fraud offences under food legislative provisions. Some of the investigations will involve a multi-agency approach with other law enforcement partners. The Food Fraud Liaison Officer will coordinate these investigations and provide specialist assistance where required. The FSA will also provide financial assistance to Competent Authorities where investigations are

progressed to prosecution. All requests for investigation assistance should be made to The Food Fraud Liaison Officer.

5.4 Liaison with EU Member States and countries outside the EU

As of the 1 January 2021, UK arrangements for communicating food safety and non-compliances to other countries have changed.

In NI, the FSA, as the central competent authority for food and feed safety will continue to utilise the European Commission's Rapid Alert System for Food & Feed (RASFF) to communicate incidents to EU member states and third countries.

The FSA and Food Standards Scotland in Great Britain will use the International Food Safety Authorities Network (INFOSAN) to communicate incidents to countries outside of the UK.

5.4.1 The European Commission's Rapid Alert System for Food and Feed

The Rapid Alert System for Food and Feed (RASFF) is a network managed by the European Commission to facilitate communications between members of the network in responding rapidly to serious direct or indirect risks to human health relating to food and feed.

The RASFF allows Competent Authorities to exchange information about measures taken when responding to serious risks detected in relation to food or feed. This exchange of information helps RASFF Members to act more rapidly and in a coordinated way in response to a health threat caused by food or feed. Members consist of clearly identified contact points in the Commission, European Food Safety Authority (EFSA), European Free Trade Association (EFTA) Surveillance Authority (Norway, Liechtenstein, Iceland, and Switzerland) and the EU Member States. The legal basis for the network is laid down in Regulation (EC) No 178/2002 and Regulation (EU) 2019/1715.

5.4.2 Communications with EU Member States and countries outside the EU

All communications with countries outside the UK regarding incidents will be via the FSA or Food Standards Scotland (FSS).

Although the FSA in NI will still utilise the RASFF, it will no longer have full access to the system. Instead, the FSA in NI will communicate international incidents to the European Commission using an Alert and Co-operation Notification (ACN) Template.

There will be no change to the incident reporting processes for inland authorities. An incident report form should be submitted to the FSA in NI's Consumer Protection Team: incidents.ni@food.gov.uk

Port Health Authorities will no longer be able to create a RASFF notification from the TRACES platform. Instead, they should complete the ACN template and submit it by email to the FSA in NI's Consumer Protection Team (incidents.ni@food.gov.uk) for validation and onward submission to the European Commission.

Imports with non-compliance issues that have been released inland by Competent Authorities with port health function and/or BCPs should continue to be managed via the business handling the goods and the associated importers as part of usual enforcement activities, to achieve compliance.

Authorities should notify the FSA Consumer Protection Team where there is persistent non-compliance, widespread non-compliance or non-compliance presenting a safety risk.

Subsequent communications to enquiries from countries outside the UK should be sent via email to: incidents.ni@food.gov.uk.

Inland authorities investigating non-compliances involving distribution to or from an EU Member State should inform the FSA Consumer Protection Team using the incident report form. The FSA will then submit an Alert & Cooperation Notification form to the EC for follow up with implicated EU Member States.

The FSA may also pass non-compliance notifications from EU Member States relating to products originating in or distributed to NI for follow up by competent authorities.

5.4.3 Trans-border matters

This section of the guidance is under review and will be updated, as necessary.

5.4.4 Disclosure of information to EU Member States and countries outside the EU

If circumstances arise where this is required, then confidentiality, data protection and human rights issues will need to be considered. In such circumstances, the Competent Authority must take account of the contents of its own publication scheme under the Freedom of Information Act. They 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 must consult their own legal department.

Competent Authorities must therefore ensure that any release of information complies with national legislation including that relating to Freedom of Information, and Data Protection laws.

5.4.5 Use of overseas evidence in criminal proceedings

Evidence can be obtained from other countries for use in criminal proceedings in the UK. The primary method of obtaining overseas evidence for use in UK criminal investigations/proceedings is through Mutual Legal Assistance (MLA).

The UK has entered into a number of international bilateral agreements in relation to MLA[51]. The UK has also ratified the 1959 Convention on Mutual Legal Assistance in Criminal Matters[52]. Additionally, the EU-UK Trade and Cooperation Agreement

[51] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/516418/Treaty_List.pdf
[52] https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/030

(TCA) includes provisions regarding MLA, which expand upon the provisions of the 1959 Convention.

Where the UK has entered into a bilateral agreement with another country in relation to MLA the procedures laid down in that agreement must be followed. However, it should be noted that the UK can provide MLA to any country in the world whether such an agreement is in place.

Requests for evidence from another country are called 'International Letters of Request' (ILOR) and UK requests are made in accordance with the Crime (International Co-Operation) Act 2003 (CICA 2003). Under domestic legislation, such requests will need to be made by either a judicial authority or, in certain circumstances, a designated prosecuting authority.

A number of authorities have been designated by virtue of Designation Orders under CICA 2003, for example Crown Prosecutors. Requests may generally be sent directly to the appropriate overseas authority, however, there are circumstances where the request will need to be transmitted via a central authority. The primary central authority which deals with MLA for England, Wales and Northern Ireland is the UK Central Authority.

The UK Central Authority address is:

UK Central Authority International Directorate
Home Office
2nd Floor, Peel Building,
2 Marsham Street,
London
SW1P 4DF
Tel: 0207 035 4040
Email: UKCA-ILOR@homeoffice.gov.uk

Evidence obtained through MLA can only be used for the purposes it has been provided. Therefore, should a UK authority, wish to use information already obtained for a different purpose, the sending country's further consent would need to be sought. Similarly, if the UK has received information from another country outside of the MLA process which it now wishes to use as evidence in proceedings, the sending states specific consent will be required to use the information in this way, and it may be necessary for an ILOR to be issued.

Further guidance regarding MLA can be found on the GOV.UK website or if there are specific enquiries contact should be made with UKCA.

Chapter 6 Enforcement

6.1 Introduction

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

6.2 Powers to carry out official food controls

6.2.1 The Food Hygiene Regulations (Northern Ireland) 2006

Regulation 14 of these regulations permits an authorised officer to enter premises to undertake official food controls.

The same Regulation permits:

- inspection of records, including those held electronically
- seizure and detention of records, including those held electronically
- an authorised officer to obtain a warrant for entry

Further powers relating to the detention, inspection and seizure of food, the prohibition of certain activities and the procurement of samples are also contained in these regulations.

6.2.2 The Official Feed and Food Controls Regulations (Northern Ireland) 2009

Regulation 17 of these regulations contain further powers of entry which are applicable to the official control of food. These powers are separate and in addition to those given above. They mainly concern the monitoring of official control bodies and must be read in conjunction with regulation 16(1).

Regulation 30 permits authorised officers of Competent Authorities to use the powers set out in Articles 46, 65 to 69, 71 and 72 of Regulation (EU) 2017/625 to take the following action in relation to imported food:

- official detention
- destruction
- re-dispatch
- special treatment

Measures taken by Competent Authorities under Article 69(4) of Regulation (EU) 2017/625 are to be taken at the expense of the operator responsible for the consignment.

Regulation 37 of the regulations may also be used by authorised officers to enter a premise for the purpose of ascertaining whether there has been any contravention of the import provisions of these regulations in relation to food.

6.2.3 The Trade in Animals and Related Products Regulations (Northern Ireland) 2011

Regulation 33 of these regulations provides powers of entry to authorised officers for the purpose of enforcing the provisions of the regulations, including requirements on the importation of POAO.

6.2.4 The Food Safety (Northern Ireland) Order 1991

Article 33 of this Order permits an authorised officer to enter premises to undertake official food controls.

The same Order permits:

- inspection of records, including those held electronically
- seizure and detention of records, including those held electronically
- an authorised officer to obtain a warrant for entry

Further powers relating to the detention and seizure of food, the prohibition of certain activities and the procurement of samples are also contained in this Order.

6.3 Food complaints

6.3.1 General requirements

As a rule, anybody who may be prosecuted because of a complaint must be notified that the complaint has been made as soon as possible.

The Competent Authority must ensure:

- they notify anybody who has an interest, as soon as preliminary investigations indicate the complaint may be valid, and that other potential defendants are notified as they emerge
- where notification is provided other than in writing, confirmation in writing is provided as soon as possible, which must include the date and nature of the complaint

In exceptional circumstances, where notification might impede an investigation, the notification must take place once it would no longer prejudice investigation(s).

6.3.2 Involvement of other Competent Authorities

If an investigation of a complaint brings to light a problem or potential problem outside the area of the enforcing Competent Authority, the other Competent Authorities affected should be informed as soon as possible and, if appropriate, the primary authority or home authority.

6.3.3 Scientific investigation of food complaint samples

The authorised officer will need to consider whether food that is the subject of a complaint needs any scientific investigation. Advice should be sought from the Public Analyst and/or Food Examiner who will be able to advise on the form of scientific investigation, particularly where a combination of analysis and examination is required.

If the authorised officer decides that a food complaint sample requires analysis, it must be sent to the Public Analyst. If it requires microbiological examination, it must be sent to a Food Examiner. If any other investigation is necessary, the food should be sent to a suitably qualified expert who is able to give evidence in the event of prosecution.

The subject of a complaint or other interested parties might ask for a food complaint sample to be made available to aid in internal investigation(s). The Competent Authority should try to comply with any reasonable request provided it does not compromise the proper storage, analysis, examination, or evidential value of the sample.

6.4 Dealing with non-compliance

6.4.1 The enforcement approach

The primary objective of any enforcement action must be to achieve compliance in the most effective way and the approach must be in line with the 'hierarchy of enforcement'.

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

Authorised Officer should take account of the full range of enforcement options including, for example:

- educating and providing advice to FBOs
- informal action
- sampling
- detention and Seizure
- Hygiene Improvement Notices/Improvement Notices
- Remedial Action Notices
- Fixed Penalty Notices
- Hygiene Emergency Prohibition Notices / Emergency Prohibition Notices
- prosecution

The practice of giving advice, and communicating by letter about enforcement issues, are well-established approaches to enforcement that are understood by food businesses. Such procedures are therefore encouraged whenever they are likely to secure compliance with the requirements of food law within a time that is reasonable in the circumstances.

When determining the appropriate enforcement action, consideration should be given to:

- the level of risks to consumer safety resulting from the non-compliance
- sensitivities around an issue, which could lead to:
  - loss of consumer confidence
  - economic loss to industry

- the potential for non-compliant foods being distributed widely with large numbers of consumers affected
- previous history of compliance
- an assessment of the FBOs willingness to undertake the work identified by the officer
- collaboration with the primary authority or home authority, if applicable

6.4.2 Enforcement information

To ensure consistent interpretation and application of food law, Competent Authorities must ensure that authorised officers have up-to-date information readily available to enable them to carry out their duties competently.

For example:

- relevant legislation
- the Code and Practice Guidance
- EU Guidance documents
- UK Guides to Good Practice, where appropriate
- guidance/relevant correspondence issued by, jointly with, or on behalf of the FSA and LGA or NILGA
- FSA food alerts for example Food Alerts for Action
- relevant industry codes of practice
- appropriate technical literature

6.4.3 FSA's prosecution outcomes database

The FSA has created a central repository of information about successful prosecutions brought by Competent Authorities and the FSA. The database includes food standards, food safety and food hygiene related prosecution cases. Competent Authorities will be able to utilise this information to support their own enforcement activities. This can be found on the FSA's communications platform.

To help the FSA maintain the database, Competent Authorities should report successful prosecutions 28 days after a conviction has been obtained. unless the defendant has submitted an appeal. Cases should be reported using the Prosecution Outcomes spreadsheet which can be found on the FSA's communications platform.

Completed spreadsheets should be sent to the Local Authority Engagement Team at prosecutionsuccess@food.gov.uk.

The FSA will also record whether a defendant has been added to the prohibited persons register, which can also be found on the FSA's communications platform.

6.5 Investigating offences

6.5.1 Powers of entry, inspection and seizure and the Human Rights Act 1998

The right to privacy and respect for personal property are key principles of the European Convention on Human Rights, which the Human Rights Act 1998 gives further effect to.

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

Article 33(5) of the Food Safety (Northern Ireland) Order 1991 and regulation 14(5) of The Food Hygiene Regulations (Northern Ireland) 2006 permit an authorised officer to take with them such other persons as they consider necessary. This would include, for example, any officer assisting the authorised officer, or suitably qualified or skilled person. This could also include 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 must be dealt with. These provisions do not confer on the accompanying person any of the powers of an authorised officer, but they do give that person the right to be on the premises during the authorised officer's inspection without the occupier's permission.

Article 33(6) of the Food Safety (Northern Ireland) Order 1991 and regulation 14(7) of The Food Hygiene Regulations (Northern Ireland) 2006 provide that an authorised officer may seize and detain any records which he has reason to believe may be required as evidence in proceedings.

In all cases authorised officers must:

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

6.5.2 Powers in relation to vehicles

Authorised officers have powers which could be used to stop a vehicle.

Where legislation provides powers of entry to a premises (which includes vehicles) and an offence for obstructing an authorised officer, then failing to stop a vehicle when requested could be considered obstruction. Examples of legislation this would apply to include:

- Trade in Animals and Related Products Regulations (Northern Ireland) 2011
- Official Feed and Food Controls Regulations (Northern Ireland) 2009

Competent Authorities should ensure that where authorised officers use this power, they follow a health and safety risk assessment that has been provided by the Competent Authority.

6.5.3 Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) Code B Notices

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

A PACE Code B Notice, which sets out the powers of authorised officers and rights of occupiers, must be used in those circumstances where authorised officers are carrying out a directed search.

A directed search can be defined as looking for something predetermined as relevant to a suspected or alleged offence, and may be appropriate as part of an ongoing investigation for example in response to a complaint where evidence of suspected offences may already exist.

Ultimately a decision to serve a PACE Code B Notice will depend on the individual circumstance of the matter under investigation. Authorised officers should seek further guidance from their Competent Authority's' own legal counsel if further clarification is needed.

PACE Codes of Practice including PACE Code of Practice B can be found on the Home Office Police website .

6.6 Food hygiene and food standards notices

6.6.1 Introduction

This section deals with the use of:

- Hygiene Improvement Notices (HINs)
- Improvement Notices
- Fixed Monetary Penalty Notices
- Penalty Notices
- Enforcement Notices
- Prohibition Notices (served under The Wine Regulations (Northern Ireland) 2011)

6.6.2 Issuing notices and carrying out enforcement in a proportionate manner

Notices must be used in line with the Competent Authority's enforcement policy and must be considered as part of the escalation of enforcement action in line with the hierarchy of enforcement.

If the authorised officer has reason to believe that an informal approach will not result in a successful outcome, then a more formal approach should be considered.

When issuing a notice, Competent Authorities must ensure that:

- relevant procedures have been followed
- evidence of the non-compliance is obtained
- continuity of evidence is maintained

Due to the variety of notices available, authorised officers must ensure they are using the correct notice for the non-compliance, and that they follow the requirements of each notice as set out in legislation before issuing the notice.

6.6.3 When to use a notice

This section applies to those notices listed in section 6.6.1.
Notices may only be used for the provisions set out in the legislation, and may be appropriate in any of the following circumstances or a combination thereof where:

- formal action is proportionate to the risk to public health
- there is a record of non-compliance with breaches of the food legislation
- the authorised officer has reason to believe that an informal approach will not be successful

6.6.4 When to use Improvement Notices to enforce the Food Information Regulations (Northern Ireland) 2014

Regulation 12(1) of the Food Information Regulations (Northern Ireland) 2014 (FIR 2014) applies the provisions in Article 9(1) of the Food Safety (Northern Ireland) Order 1991 to enable improvement notices (INs) to be served for a contravention of certain provisions of Regulation (EU) No 1169/2011 on the provision of food information to consumers (FIC) and other provisions of FIR 2014. For these purposes, Article 9(1) of the Food Safety (Northern Ireland) Order 1991 has been modified by FIR 2014. Please see Part 1 of Schedule 4 of FIR 2014 for details of the modifications.

An IN may be served on a person requiring the person to comply with the provisions specified in paragraph (1A) of the modified version of Article 9(1) of the Food Safety (Northern Ireland) Order 1991 set out in Part 1 of Schedule 4 to FIR 2014. These are:

- the FIC provisions listed in Schedule 5, (the main provisions of 1169/2011), except insofar as they relate to net quantity (Article 9(1A) (a) to (c))
- the provisions in FIR 2014 listed in Article 9(1A) (d). These relate to:
  - the national requirements for non-prepacked foods requiring meat QUID labelling for foods containing meat (Regulation 7(1), (4) and (5))
  - food irradiation labelling (the provisions of Regulation 8(1) and (3))
  - the national requirements under Regulation 6 to provide the name of food for non-prepacked foods

6.6.5 When not to use a notice

This section applies to those notices listed in section 6.6.1.

Notices may not be appropriate in the following circumstances where:

- the contravention may be a continuing one and a notice would only secure an improvement at one point in time, for example, personal cleanliness of staff,
- in transient situations where swift enforcement action is needed, for example, a one-day festival or sporting event (a Hygiene Emergency Prohibition Notice may be more appropriate to achieve an immediate effect)

- there is a breach of good practice but no failure to comply with an appropriate regulation
- the legislation does not provide for a notice in that particular situation

Competent Authorities should ensure they deal with breaches of legislation by using the powers and notices in the relevant enforcement legislation. For example, for breaches of The Food Hygiene Regulations (Northern Ireland) 2006 a Hygiene Improvement Notice under regulation 6 should be served. However, where the legislation such as the Fish Labelling Regulations (Northern Ireland) 2013 is involved, they should issue an Improvement Notice under Article 9 of the Food Safety (Northern Ireland) Order 1991.

6.6.6 Drafting of notices

The notice should clearly set out the grounds for failure to comply with a relevant provision of food law, the matters which constitute the failure to comply, and the measures (or equivalent measures) the recipient is required to take. Notices must be clear and easy to understand.

An authorised officer who has decided to serve a notice should consider whether a single notice with a single time limit is appropriate.

It may be possible to cite more than one non-compliance in a notice provided the:

- issues are of the same theme
- action required of the FBO can rectify all the failures cited on the notice
- time frames for compliance are all the same

Simplicity is often better. Always ensure the notice is understandable for the FBO and that any time frames for compliance fit with the escalation of each issue.

Using multiple notices, each with a different time limit, may be more appropriate where there are multiple contraventions are concerned. Separate notices with separate time limits may also be easier to handle if there is an appeal.

An appeal against a single notice concerning multiple contraventions would result in the suspension of the whole notice until the appeal had been dealt with. Additionally, if one contravention on the notice is complied with while others remain outstanding, there is a question about whether the notice been complied with or not.

Before a notice requiring structural work is issued the authorised officer should discuss and agree the detail of any such work with the FBO, or with a person acting on the FBO's behalf who is in a position to authorise the work However, the issue of a notice should not be unduly delayed if agreement cannot be reached or a responsible person cannot be contacted.

It is the FBOs responsibility to ensure that any requirements and permissions are fulfilled in respect of any building works for example, planning permission, building control approval etc.

6.6.7 Works of equivalent effect

Where notices allow an FBO to carry out equivalent measures to those set out in the notice (for example, Improvement Notices), it is recommended that any equivalent measures are first discussed with the authorised officer who served the notice.

The Competent Authority should respond in writing to any request from a FBO to vary the work, and any agreed alternative measures should be confirmed in writing. Ultimately, it is for the FBO to decide how they will comply with the objectives of the legislation.

Disputes should be considered by the Competent Authority's lead food officer, or by the head of service or another appropriate senior manager.

Where notices do not state that works of equivalent effect may be taken, Competent Authorities should still take into consideration any alternative measures suggested by the FBO to remedy the contravention.

6.6.8 Time limits

A notice must clearly state the time limit by which the required measures must be completed or the penalty paid. Some notices are required to have a minimum period given (i.e., 14 days), while others do not have to give a minimum period of time.

Both the Food Hygiene Regulations (Northern Ireland) 2006 and The Food Safety (Northern Ireland) Order 1991 specify a minimum period of 14 days. The modification to Article 9(1) of the Food Safety (Northern Ireland) Order 1991 by FIR 2014 included the removal of the minimum 14-day requirement for compliance. This allows the notice to require immediate rectification to ensure that consumers are safeguarded where public safety is at risk through poor or incorrect labelling i.e., through the absence of or wrongly applied date marking.

As an appeal can be lodged against the time limit, they must be realistic, justifiable, and have regard to the extent and complexity of the measures required.

It is good practice to discuss and agree the time limit with the FBO or with a person acting on the FBO's behalf who is in a position to agree a time limit, before a notice is issued. The authorised officer may, however, set a time limit without such agreement if agreement cannot be reached or a responsible person cannot be contacted.

The following factors should be taken into consideration in setting a time limit the:

- risk to public health
- nature of the problem
- availability of solutions

6.6.9 Extension of time limits

Notices should be complied within the stipulated time limit. However, Competent Authorities should give due regard to any genuine difficulties that may occur in achieving compliance by that deadline.

There are no specific provisions in the regulations to extend the time limit for compliance with a notice. It may be reasonable to allow an extension if the FBO has provided a genuine reason for needing more time. If the FBO requests an extension to the time limit specified in the notice, this should be made in writing and be received prior to the expiry of the notice.

Before issuing a new notice, the authorised officer must consider again whether the conditions prevailing at the premises still warrant the issuing of another notice. If the authorised officer is satisfied that there is a genuine reason for an extension, they should make a note of the reasons for their decision on the relevant establishment file. The existing notice must then be withdrawn, and a new notice issued reflecting the new time limit by which compliance must be achieved.

The authorised officer should never issue such a notice automatically. When deliberating a request for an extension, the authorised officer should always consider whether the facts justify such an extension, taking account of:

- the reason for the request
- the remedy involved
- the risk to public health associated with the fault if an extension was granted
- past record of co-operation of the FBO
- any temporary action which the FBO proposes to take to rectify the non-compliance
- demonstratable evidence of steps taken to address the requirements contained in the notice

6.6.10 Service of notices

All notices issued by Competent Authorities must be served on the person they relate to and should be served by the authorised officer that observed the breach.

6.6.10.1 Methods of serving a notice

Notices must be served in accordance with the specific legislation.

Generally, notices can be served either:

- by personal service
- by post to the persons usual or last known place of residence or business
- by leaving it for them with someone over the age of sixteen at the persons usual or last known place of residence or business
- in the case of a corporate body or any association of persons, by delivering it to their secretary or clerk at their registered or principal office, or by sending by post

It is important to identify the person (FBO) where possible. If it is not practicable after reasonable enquiry to identify the person to serve the notice on, the notice may be addressed to the ‘owner’, ‘lessee’ or ‘occupier’ and delivered to some person on the named premises or left at the premises.

The authorised officer serving a notice should ensure, that the person who is responsible for taking action also receives a copy, especially where the local manager is not the FBO.

A notice can be served on a person outside of the Competent Authority area provided there is contravention inside the Competent Authority area.

Notices must be signed by the authorised officer that observed the non-compliance and should also be served on the FBO by that authorised officer. It may also be served by a different authorised officer who is competent to explain the purpose of the notice, and any steps to be taken and be able to deal with obstruction.

The document can be faxed and / or emailed to the operator / proprietor for information in advance of its formal service. A hard copy must follow for it to be properly served. It is useful to record the time of service, even when the postal service is used, and proof of posting should be kept.

6.6.11 Appeals

The Regulations that provide for notices include appeal mechanisms, so that a person who is aggrieved by the service of a notice can appeal it.

All notices must clearly indicate that there is a right of appeal and details of how that appeal can be made including the name and address of the relevant local court or body the appeal can be made to.

The recipient should also be asked to notify the Competent Authority if an appeal is lodged.

Although all notices can be appealed, the mechanisms for appeals differ, and authorised officers must be aware of the different appeal mechanisms for the notices being served. An overview of these mechanisms can be found in Table 1 below.

Table 1 Appeals

Type of notice	Legislation	Appeal heard by	Time to appeal	Notice suspended until appeal heard?
Hygiene Improvement Notice	Food Hygiene Regulations (Northern Ireland) 2006	Court of summary jurisdiction	1 month or time specified in notice, whichever is shorter	Yes
Improvement Notices	Food Safety (Northern Ireland) Order 1991	Court of summary jurisdiction	28 days	Yes
Improvement Notices made under specific legislation	Spirit Drinks Regulations 2008 Scotch Whisky Regulations 2009	Magistrates Court	28 days	No, unless Court directs otherwise
Warning Notices	Wine Regulations (Northern Ireland) 2011	Person nominated by the FSA	28 days	No, unless person nominated decides otherwise
Enforcement Notices	Wine Regulations (Northern Ireland) 2011	Person nominated by the FSA	28 days	No, unless person nominated decides otherwise
Prohibition Notices	Wine Regulations (Northern Ireland) 2011	Person nominated by the FSA	28 days	No, unless person nominated decides otherwise

6.6.12 Other discussions with the Competent Authority

Although a FBO has a right of appeal against all notices, the Competent Authority should be prepared to discuss the:

- notice and its requirements informally with the FBO if they wish to do so
- requirements of any letter or other enforcement action

If a FBO raises that the requirements of a notice are inconsistent with the interpretation or practice of other Competent Authorities, the Competent Authority should have regard to these views. In the case of a Primary Authority partnership or home authority relationship exists, the Competent Authority should comply with the enforcement notification requirements.

Competent Authorities should have internal processes to consider requests for further discussion and consider how they make these arrangements known to FBOs.

Any disputes that arise should be referred to the lead food officer, or an appropriate senior manager nominated by the lead food officer to come to a decision.

6.6.13 Compensation

Generally, there is no provision for compensation in relation to the notices issued by Competent Authorities. If a food business suffers financial loss as a result of a notice served in error, they may pursue compensation through a civil negligence claim against the Competent Authority. For example, an FBO who is unable to sell perishable food.

6.6.14 Compliance

The authorised officer who served the notice should:

- liaise with the FBO and monitor the work being undertaken
- encourage the FBO to notify the authorised officer when the work has been completed
- check the work as soon as practicable after notification has been received that it has been completed or as soon as possible after expiry of the notice
- confirm in writing to the FBO that the works have been satisfactorily completed

Another authorised officer should monitor the work if the authorised officer who served the notice is unable to do so.

6.6.15 Enforcement

Non-compliance with notices may lead to criminal proceedings being brought by Competent Authorities.

Non-compliance with the following notices are criminal offences:

- Hygiene Improvement Notices
- Improvement Notices
- Enforcement Notices

- Prohibition Notices

Non-compliance with the following notices, are not criminal offences, but a Competent Authority may take criminal proceedings for the matter specified in the notice:

- Penalty Notice
- Warning Notice

Before commencing criminal proceedings for these offences, the Competent Authority must ensure it complies with its own enforcement policy and the Code for Prosecutors.

Regulations may also provide criminal sanctions for breaches where a notice could be used. For example, Regulation 10 of the Food Information Regulations (Northern Ireland) 2014 provides criminal offences in relation to certain allergen labelling / information requirements. Authorised officers will have the choice of taking a criminal prosecution in relation to the contravention or serving a notice, or both.

Decisions on whether to issue a notice, take a criminal prosecution or do both, should take into account:

- the public health risk
- the evidence available
- the circumstances of the contravention
- what they believe is the most effective enforcement strategy

If a Penalty Notice or an Improvement Notice relating to novel foods is served, they prevent criminal proceedings being initiated. If the FBO subsequently fails to comply with the notice, criminal proceeding may then be initiated.

6.6.16 Publication of notices

The Spirits Drinks Regulations 2008 and Scotch Whisky Regulations 2009 provide that where an Improvement Notice is issued under these regulations, the Competent Authority must publicise the fact that it has been issued.

The Competent Authority must publicise the notice in any manner they see fit. The should not be published until either the appeal period has elapsed or an appeal against the notice has been heard. The Competent Authority must also not publicise the notice if it would be inappropriate to do so. If a Competent Authority decides against publicising a notice, they should keep records of why that decision was taken.

6.6.17 Template notices

The Food Safety (Improvement and Prohibition - Prescribed Forms) Regulations (Northern Ireland) 1991 provide a prescribed Improvement Notice to be used when issuing Improvement Notices under Article 9 of the Food Safety (Northern Ireland) Order 1991.

Other template notices can be found on the FSA's communications platform.

Further guidance on the drafting and use of Hygiene Improvement Notices has been issued by LGA and can be found on the Knowledge Hub.

The Competent Authority may want to discuss enforcement issues on a regional level or via the Knowledge Hub with other Competent Authorities to see if there is other established practice that should be taken into account. An opinion may be sought from the National Food Hygiene Focus Group or the Food Standards and Labelling Focus Group with cases submitted via the Northern Ireland Food Managers Group.

6.7 Remedial Action Notices

This section deals with the use of Remedial Action Notices (RANs) in relation to any food business establishment under regulation 9 of The Food Hygiene Regulations (Northern Ireland) 2006.

Authorised officers must seek to remedy non-compliance in establishments by a graduated approach to enforcement. When necessary, the Hygiene Improvement Notice provisions in regulation 6 must be considered. Authorised officers must consider these options before commencing any other enforcement action. However, Remedial Action Notices as provided for by regulation 9 of these Regulations can be used, when appropriate.

If an authorised officer considers it necessary to serve a RAN owing to the conditions or practices found the authorised officer must also consider whether food at the establishment should be detained for the purposes of examination or seized. Further information relating to the seizing and detaining of food can be found below.

6.7.1 When to use a Remedial Action Notice

Regulation 9 of The Food Hygiene Regulations (Northern Ireland) 2006 provides for authorised officers to serve a Remedial Action Notice where it appears to them that the requirements of the “Hygiene Regulations”, as defined by Regulation 2 of the 2006 Regulations, are being breached or an inspection under the “Hygiene Regulations” is being hampered. More specifically, this provision provides, through the service of a Remedial Action Notice:

- for the prohibition of the use of any equipment or any part of the establishment,
- the imposition of conditions upon, or prohibiting, any process and
- allows for the rate of an operation to be reduced or stopped completely.

Circumstances which may lead to the issue of a Remedial Action Notice in respect of an establishment include:

- the failure of any equipment or part of an establishment to comply with the requirements of the “Hygiene Regulations” as defined by regulation 2 of The Food Hygiene Regulations (Northern Ireland) 2006
- the need to impose conditions upon or the prohibition of the carrying on of any process breaching the requirements of the regulations or hampering adequate health inspection in accordance with the regulations

- where the rate of operation of the business is detrimental to its ability to comply with the regulations

Such action must be proportionate to the risk to public health and where immediate action is required to ensure food safety. A Remedial Action Notice can be used if a continuing offence requires urgent action owing to a risk to food safety.

6.7.2 When not to use a Remedial Action Notice

Remedial Action Notices may not be appropriate in the following circumstances where:

- In the case of maintenance/structural problems that can be rectified as a non-urgent matter where informal action or a Hygiene Improvement Notice would be more appropriate
- The operation of an entire establishment needs to be prohibited and the most appropriate course of action is the service of a Hygiene Emergency Prohibition Notice
- Suspension of an approval on an establishment approved under Regulation (EC) No 853/2004 is required

6.7.3 Drafting of Remedial Action Notices

A remedial action notice must be served as soon as practicable and state why it is being served i.e., the requirements of the Hygiene Regulations are not being met and/or that an inspection under the Hygiene Regulations is being hampered.

It must be clear and easy to understand from the notice:

- the grounds for serving the notice
- the measures (or equivalent measures) the recipient is required to take and
- the actions required to remedy the situation

If the RAN is served under regulation 9 (1)(a) i.e., when requirements of the Hygiene Regulations are being breached, the notice must also specify the breach.

6.7.4 Withdrawal of a Remedial Action Notice

As soon as the authorised officer who served the Remedial Action Notice is satisfied that the action specified in a Remedial Action Notice has been taken, the notice must be withdrawn by means of a further notice in writing.

6.7.5 Appeals

Regulation 19 of The Food Hygiene Regulations (Northern Ireland) 2006 allows any person who is aggrieved by an authorised officer's decision to serve a RAN can appeal to the court of summary jurisdiction. The time limit for such an appeal is 1 month from when the authorised officer served the notice. The notice remains in force until the appeal decision is determined. The court may cancel or affirm the notice. If affirmed it, may do so either in its original form or with modifications.

6.7.6 Template Forms

The following templates can be found on the FSA's communications platform:

- Remedial Action Notices
- Notice of Withdrawal of a Remedial Action Notice

6.8 Prohibition procedures

6.8.1 Introduction

This section deals with the use of:

- hygiene emergency prohibition procedures (Regulation 8) and Hygiene Prohibition Orders (Regulation 7), under The Food Hygiene Regulations (Northern Ireland) 2006
- emergency prohibition procedures (Article 11) and Prohibition Orders (Article 10) under the Food Safety (Northern Ireland) Order 1991

6.8.1.1 Hygiene prohibition procedures and prohibition procedures

Hygiene Prohibition Orders[53] (HPOs) and Prohibition Orders[54] (PO) are made by a Magistrates' Court following the conviction of a FBO for an offence either under The Food Hygiene Regulations (Northern Ireland) 2006 for an HPO or the Food Safety (Northern Ireland) Order 1991 for a PO, to prohibit the use of:

- a process or treatment for the purposes of the business
- the premises or equipment for the purposes of the food business or any similar food business
- the premises or equipment for the purposes of any food business

The authorised officer may bring to the attention of the Court Regulation 7 of The Food Hygiene Regulations (Northern Ireland) 2006 or Article 10 of the Order so that an HPO/PO against a FBO may be considered.

The Court will make an order if it is satisfied that the premises, equipment, treatment and/or process fulfil the health risk condition.

The Court may also make an order prohibiting a FBO from managing any food business, or a particular type of food business provided the FBO has been convicted of an offence and the Court thinks it appropriate in the circumstances of the case.

The sentencing guidelines covering food safety and hygiene offences includes considering this prohibition as part of the sentencing process. Further information can be found on the Sentencing Council website.

[53] Regulation 7 of the Food Hygiene Regulations (Northern Ireland) 2006
[54] Article 10 of the Food Safety (Northern Ireland) Order 1991

6.8.1.2 Hygiene Emergency Prohibition Procedures and Emergency Prohibition Procedures

If the health risk condition is fulfilled in respect of a food business and there is an imminent risk of injury to health, an authorised officer may serve a Hygiene Emergency Prohibition[55] Notice (HEPN) or Emergency Prohibition[56] Notice (EPN) on the FBO. Depending on circumstances, the use of voluntary procedures may be more appropriate.

If the appropriate evidence is found, a HEPN/EPN may be served on the FBO, followed by an application to a court of summary jurisdiction for a Hygiene Emergency Prohibition Order (HEPO) / Emergency Prohibition Order (EPO).

The effect of the notice is the immediately closure of the premises, or to prevent the use of equipment, a process, or a treatment.

The authorised officer must apply to a court of summary jurisdiction for a HEPO/EPO within three days of a HEPN/EPN being served, the day of service of the notice being Day 1.

The authorised officer must serve notice on the FBO at least one complete day (24 hours) before the day the authorised officer intends to make the application to Court.

There is no legal requirement for the application to be heard within the three days, but the Court should be asked to list the application for hearing at the earliest opportunity. Compensation may be payable to the FBO for loss of business if the Court refuses to grant the order.

The burden of proof falls to the Competent Authority that made the application. An authorised officer should use professional judgement to decide whether premises, process, treatment, a piece of equipment or its use involves an imminent risk of injury to health.

Once made, a HEPO/EPO supersedes a HEPN/EPN.

6.8.2 'Health Risk Condition' / '(Imminent) Risk of Injury to Health'

Prohibition procedures and emergency prohibition procedures under The Food Hygiene Regulations (Northern Ireland) 2006 and Food Safety (Northern Ireland) Order 1991 can only be used if the 'health risk condition' is fulfilled.

For prohibition procedures to be revoked, there must be a risk of injury to health, while in respect of emergency prohibition procedures there must be an imminent risk of injury to health.

There must always be an imminent risk of injury to health before a HEPN or EPN can be served. The injury itself may occur sometime in the future, but it is essential to show that it could occur for the action to succeed. Not everyone exposed to the

[55] Regulation 8 of the Food Hygiene Regulations (Northern Ireland) 2006
[56] Article 11 of the Food Safety (Northern Ireland) Order 1991

risk of injury would need to suffer the injury for it to be an imminent risk. It is the exposure to the risk of injury that enables action to be taken.

6.8.2.1 'Health Risk Condition' – Food hygiene

In relation to food hygiene, the health risk condition under The Food Hygiene Regulations (Northern Ireland) 2006 may exist if, for example:

- conditions in premises, or a defective process or treatment, carry a high risk of causing food borne infection
- the premise was in very poor structural condition
- poor equipment and/or poor maintenance or routine cleaning and/or serious accumulations of refuse, filth or other extraneous matter, resulted in contamination of food or a significant risk of food contamination

Note: these examples are not prescriptive and are for illustrative purposes only.

Foods containing potentially harmful levels of pathogenic micro-organisms represent an imminent risk and should be seized or detained under regulation 25 of The Food Hygiene Regulations (Northern Ireland) 2006. This should be done by using the powers in Article 8 of the Food Safety (Northern Ireland) Order 1991 (see also Regulation 9 of The Food Hygiene Regulations (Northern Ireland) 2006 in regard to detention of food in establishments subject to approval).

The process or treatment which exposed the food to this microbiological contamination should be dealt with under regulation 8 of The Food Hygiene Regulations (Northern Ireland) 2006 where appropriate.

6.8.2.2 'Health Risk Condition' – the Food Safety (Northern Ireland) Order 1991

The 'health risk condition' applies specifically in the context of seeking a Prohibition Order under Article 10 of the Food Safety (Northern Ireland) Order 1991or an EPN/EPO for the purposes of Article 11 of the Order.

The following are examples of circumstances that could involve an imminent risk of injury to health where an authorised officer would consider the use of prohibition powers. These examples are in no way prescriptive or exhaustive and are for illustrative purposes only.

- a process or treatment that introduces a teratogenic chemical (one that damages a developing foetus in the womb) into food, which might cause injury to the developing foetus, but the damage will not be apparent until the baby is born
- a process or treatment that introduces a genotoxic chemical (one that damages genes or chromosomes) into food, the effects of which might not manifest themselves until an affected child, as yet unborn, of a mother who has consumed the food, develops a malignant tumour sometime in the future

Foods containing potentially damaging levels of such chemicals represent an imminent risk and should be seized or detained under Article 8 of the Food Safety (Northern Ireland) Order 1991. The process or treatment which exposed the food to

this chemical contamination should be dealt with under Article 11 of the Food Safety (Northern Ireland) Order 1991.

6.8.3 Criteria for action - hygiene prohibition procedures/prohibition procedures

The following paragraphs provide examples of circumstances that may show that the health risk condition exists as defined by regulation 7(2) of The Food Hygiene Regulations (Northern Ireland) 2006 or Article 10(2) of the Food Safety (Northern Ireland) Order 1991, i.e., there is an imminent risk of injury to health, and where an authorised officer may consider the use of prohibition powers. These examples are in no way prescriptive or exhaustive and are for illustrative purposes only. Prohibition Orders can only be made by the courts.

6.8.3.1 Health risk conditions where prohibition on use of premises may be appropriate

- infestation by rats, mice, cockroaches, birds or other vermin, serious enough to result in the contamination of food or a significant risk of contamination
- very poor structural condition and poor equipment and/or poor maintenance, or routine cleaning and/or serious accumulations of refuse, filth or other extraneous matter, resulting in the actual contamination of food or a significant risk of contamination
- drainage defects or flooding of the establishment, serious enough to result in the contamination of food, or a significant risk of food contamination
- premises or practices which seriously contravene food law and have been, or are implicated, in an outbreak of food poisoning.
- any combination of the above, or the cumulative effect of contraventions which, taken together, represent the fulfilment of the health risk condition

6.8.3.2 Health risk conditions where the prohibition on use of equipment may be appropriate

- 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
- dual use of complex equipment, such as vacuum packers for raw and ready-to-eat foods. However, dual use of less complex equipment such as weighing scales may be appropriate subject to the business being able to demonstrate that such equipment will be effectively cleaned and disinfected between use for raw and ready-to-eat foods
- use of storage facilities or transport vehicles where the storage facilities or transport vehicles have been inadequately cleaned or disinfected

6.8.3.3 Health risk conditions where prohibition on use of a process may be appropriate

- serious risk of cross contamination
- failure to achieve sufficiently high processing temperatures

- operation outside critical control criteria, for example, incorrect pH of a product which may allow Clostridium botulinum to multiply
- the use of a process for a product for which it is inappropriate

6.8.4 Seeking additional advice

Authorised officers should seek expert medical or other professional advice if a process or treatment is producing food that appears to contain chemicals or other substances that might pose an imminent risk of injury to health, or where the process or treatment in question itself requires other specialist knowledge or expertise[57].

An authorised officer exercising a right of entry under Regulation 14 of The Food Hygiene Regulations (Northern Ireland) 2006 or Article 33 of the Food Safety (Northern Ireland) Order 1991 can be accompanied by any other necessary persons, including experts.

It is the authorised officer who must be satisfied that the health risk condition is fulfilled with respect to the food business.

6.8.5 Deferring immediate action

There may be circumstances where immediate closure is not necessary, even though there might be an imminent risk to health. For example, the condition of a retail food premises that might pose an imminent risk but would not necessarily warrant immediate closure if the condition was only discovered at the end of trading hours.

In such a case, the authorised officer might decide not to impose an emergency prohibition if the FBO undertook the necessary measures to clean the premises overnight.

The risk in such circumstances might be minimal, as the premises would not be open to the public. The authorised officer would be free to decide on the following morning whether the imminent risk still required action.

6.8.6 Prohibition of a person

When a FBO has been convicted of a relevant offence, the authorised officer may feel that it is appropriate to ask the Court to consider making a Prohibition Order against the FBO.

Such action may be appropriate for repeated offences such as failure to clean, failure to maintain equipment, blatant disregard for health risks, or putting health at risk by knowingly using unsafe food.

[57] The Institute of Food Science and Technology maintains a list of experts in particular fields.

6.8.6.1 Notification of a prohibition order against a person

A Prohibition Order[58] issued by a Court can only be fully effective if other Competent Authorities are notified, as the individual concerned may try to start a business in another area.

The Competent Authority must notify the FSA as soon as possible after an order is made against a person. This prohibits the person from running a food business, provided the order is not the subject of an appeal, and the period allowed for appeal has expired. The Competent Authority should supply the following information:

- case number
- court details
- date of Prohibition Order
- date(s) of offence
- nature of offence(s)
- regulation/section number under which offence was made
- penalties
- name of prohibited person
- name of the business
- food business establishment address including post code
- business type/main activity (for example catering, retail etc.)
- details of assumed names

Where there is an appeal and the order is confirmed, the information must be supplied at that point. Competent Authorities should report this information in the spreadsheet found on the FSA's communications platform.

Completed spreadsheets should be sent to the Relationship Management Team at prosecutionsuccess@food.gov.uk.

6.8.7 Court proceedings

6.8.7.1 Evidence required

The authorised officer must collect sufficient admissible evidence to substantiate any proceedings in court.

It is important that contemporaneous notes, including sketches and photographs, are taken during an inspection as they may be used in evidence in Court. Samples of insects, dirt or other contaminants may also be useful.

Although authorised officers do not need to be accompanied by a witness, there may be occasions when visual reports are of particular relevance. An authorised officer's notes made during or at the end of a visit to an establishment must be accurate and factual, so that they may rely on them in Court.

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[58] Regulation 7(4) of The Food Hygiene Regulations (Northern Ireland) 2006 or Article 10(4) of the Food Safety (Northern Ireland) Order 1991

6.8.7.2 Application to the Court

Some Competent Authorities have authorised officers under Section 117 of the Local Government Act (Northern Ireland) 1972 to represent the Competent Authority in proceedings before the court of summary jurisdiction as prosecutors.

Where such arrangements do not exist, the Competent Authority should try to agree procedures. The Competent Authority should discuss a detailed programme of formal action with its litigation solicitor and with the clerk of the local Court. They should clarify details of the local Court practice to try and resolve potential difficulties of obtaining Court time at short notice. This can be initiated by informal contact with the court's Clerk's Office to ensure that applications for EPOs and HEPOs are expedited.

The FBO must be notified if an authorised officer intends to apply for an HEPO or EPO. A notice of application for the order must be served on the FBO, at the latest, on the day before the date of the application, giving details of the Court appearance.

6.8.7.3 Action to be taken prior to the hearing

The authorised officer must organise monitoring of the premises between the service of the notice and the Court hearing. The authorised officer who served the notice need not necessarily carry out the monitoring but must fully brief the relevant colleague of the risks and evidence gathered.

The premises should be re-inspected shortly before the hearing (preferably the day before or on the day of the hearing itself) by the authorised officer who served the notice.

If this is not possible, an authorised officer with relevant experience must carry out the re-inspection. The same is true if any contravention was found during the monitoring.

The purpose of the re-inspection is to gather evidence as to the current condition of the premises or equipment for the Court hearing. The authorised officer must note any changes that have taken place since the notice was served. For example, the circumstances which led to the service of the notice might have worsened, or other new circumstances may now also pose a risk to health.

If a HPO or Prohibition Order against a FBO is to be considered, it is important that suitable evidence is gathered to produce to the Court.

It is important that the authorised officers brief their legal advisers fully on the public health aspect of the case in hand. This should include the public health basis for the legal requirements which have been breached. This allows them to advise the Court on the seriousness of the charges.

6.8.7.4 Information to be given to the Court

Information that the Court may require includes:

- the state of the premises or equipment, both at the time of the offence and at the time the premises were re-inspected prior to the hearing
- any evidence that the FBO had been involved in offences elsewhere, which tended to show weaknesses in management

It is usual practice for those prosecuting to ascertain if there have been any previous convictions or cautions. If so, they should obtain details for presentation to the Court in the event of the prosecution being successful. They may also be used in evidence if the requirements of Article 6 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004 concerning the defendant's bad character are met.

6.9 Service of prohibition notices and orders

6.9.1 Methods of serving the notice or order

Every effort should be made to serve Prohibition Notices and Orders made under The Food Hygiene Regulations (Northern Ireland) 2006 and the Food Safety (Northern Ireland) Order 1991 by delivering them by hand to the FBO, or to each of the operators/proprietors in the case of a partnership etc.

These notices and orders do not need to be served by the authorised officer who initiated the action. They must, however, be served by an authorised officer who is competent to explain the purpose of the order or notices, so the necessary steps to be taken by the FBO and be able to deal with obstruction.

If a notice or order cannot be handed to the FBO in person, a copy of the document should be handed to whoever is responsible for complying with immediate closure or prohibition action, for example the manager.

The authorised officer must ensure that the FBO is aware of the reasons for the imminent risk. Although this is included in the model HEPN and the prescribed EPN, the FBO may not understand what steps need to be taken to remove the imminent risk and further explanation may be necessary.

If the operator/proprietor is present in court, the authorised officer can consult with the Justices' Clerk to check if it is possible to serve an order before the operator/proprietor leaves the Court.

The service of the notice or order on a number of partners can sometimes present difficulties, particularly when a partner is not in the United Kingdom at the time. As soon as the notice or order is properly served on any one of the partners it takes effect.

If it is not possible to serve the document by hand, then the authorised officer must serve the document by post with proof of posting and, ideally, proof of delivery. It is useful to record the time of service, even when the postal service is used.

The document can be faxed and/or emailed to the operator/proprietor for information in advance of its formal service, but a hard copy must follow for it to be considered served.

Immediately after the document has been legally served, the prohibition becomes effective. This can relate to the use of the premises or equipment for the purpose of any food business, or a particular type of food business, or to a process or treatment. At this point the HEPN or EPN ceases to have effect.

6.9.2 Affixing the notice or order on the premises

After the making of an order or the serving of a notice, a copy of the order or notice must be clearly displayed on the premises by the Competent Authority. This applies under Regulations 7 and 8 of the Food Hygiene Regulations (Northern Ireland) 2006 and Articles 10 and 11 of the Food Safety (Northern Ireland) Order 1991.

The purpose of this is to inform the public and anyone that uses the premises that they have been closed. This may also relate to a process or piece of equipment prohibited from being used.

An authorised officer, who is competent to explain the meaning and importance of the notice, must take this action. A witness need only accompany the authorised officer if required by the Competent Authority. The authorised officer who initiated the action does not need to be involved.

The authorised officer must, firmly affix the document inside the premises, but in a position where it can clearly be seen and read from the outside, preferably on the inside of the glass of a front facing window.

If this is not possible, the authorised officer must use professional judgement as to the best placement. If needed a second copy of the document can be placed outside of the premises, ensuring that it is protected from the weather and vandalism. The Competent Authority should arrange for periodic checks to ensure it remains in place.

6.9.3 Unauthorised removal or defacement of notices or orders

The Food Hygiene Regulations (Northern Ireland) 2006 nor the Food Safety (Northern Ireland) Order 1991 make any reference to defacing or removing a HPO, a HEPN, a HEPO, a Prohibition Order, an EPN, or an EPO. Such action could be considered as obstruction under regulation 15 of The Food Hygiene Regulations (Northern Ireland) 2006, as removing or defacing a notice or order can be considered an act that ‘intentionally obstructs any person acting in the execution of the Hygiene Regulations’. Similarly, Article 34 of the Food Safety (Northern Ireland) Order 1991 makes it an offence to intentionally obstruct any person acting in the execution of this Order.

6.10 Breach of a prohibition notice or order

Where a notice or order is breached, the following offences may apply:

- a person who knowingly contravenes a HPO or a Prohibition Order is guilty of an offence under regulation 7(5) of The Food Hygiene Regulations (Northern Ireland) 2006 or Article 10(5) of the Food Safety (Northern Ireland) Order 1991, respectively
- a person who knowingly contravenes a HEPN or HEPO or an EPN or EPO is guilty of an offence under regulation 8(5) or (6) of the Food Hygiene Regulations (Northern Ireland) 2006 or Article11(5) or (6) of the Food Safety (Northern Ireland) Order 1991, respectively

Where a notice is breached, there are potentially several offences, including the breach of the:

- regulations and
- notice requiring the non-compliance to be addressed

Both are offences and should, having regard to the Competent Authorities enforcement policy, be referred for prosecution.

The authorised officer should start proceedings for the offence under the appropriate legislation by laying a draft summons before the court of summary jurisdiction which is subsequently served on the defendant requiring them to attend a first hearing to enter a plea.

If the authorised officer believes that there is sufficient evidence to show that the proprietor is unlikely to respond to a summons, application should be made for a warrant rather than a summons. The Court will decide if the circumstances justify this action and can ask the authorised officer for their view as to whether to endorse the warrant with bail. The authorised officer must use their professional judgement and consider all relevant circumstances in their decision.

The Competent Authority should make contingency arrangements with its legal department, so that in the event of the breach of a notice or order, there is no delay in making an application before the Court. Competent Authorities must refer to their enforcement policy when deciding what action to take regarding the breach of regulations and or notices.

6.11 Lifting a notice or order

6.11.1 Lifting prohibition notices and orders

The FBO must apply in writing to the Competent Authority for a certificate lifting a HPO, a HEPN or HEPO, a Prohibition Order or an EPN or EPO. On receiving such a request, the authorised officer should re-inspect the premises and determine whether the notice or order can be lifted. This must be done as soon as possible or in any event within 14 days of request.

The decision on whether to issue the certificate or not should be made by the authorised officer who initiated the action. If they are not available, the decision can

be made by another authorised officer with the relevant qualifications and experience.

If the Competent Authority is of the opinion that the health risk condition has been removed, arrangements should be made for the certificate under Regulation 7(7) or 8(8) of the Food Hygiene Regulations (Northern Ireland) 2006, or Article 10(6) or 11(8) of the Food Safety (Northern Ireland) Order 1991 as appropriate to be issued as quickly as possible, or within three days. The certificate can be sent by fax or communicated verbally, thus allowing the premises to re-open immediately.

If the authorised officer is of the opinion that the health risk condition has not been removed, arrangements should be made under regulation 7(7) (b) or 8(9) (b) of the Food Hygiene Regulations (Northern Ireland) 2006, or Article 11(7) (b) or Article 11(9) (b) of the Food Safety (Northern Ireland) Order 1991 as appropriate for the Competent Authority to issue a notification of continuing risk to health as quickly as possible or within three days. The Competent Authority must give reasons why it is not satisfied that the health risk condition has been removed.

If an authorised officer conducts a further 'inspection/audit before the Court hearing and they are satisfied that the health risk condition no longer exists, the authorised officer may still wish to continue with the application to request the HEPO/EPO. The reason for this is, that the hearing to request the HEPO/EPO may reduce the likelihood of a claim for compensation by the FBO.

A certificate lifting a HEPN or EPN can be issued before the application for a HEPO, or EPO can be heard, but the operator / proprietor can still be prosecuted for the offence(s) against the Food Hygiene Regulations (Northern Ireland) 2013 or the Food Safety (Northern Ireland) Order 1991 as appropriate.

The Competent Authority should ensure that the Court is informed in this situation.

6.11.2 Lifting of prohibition orders against persons

Hygiene Prohibition Orders or Prohibition Orders[59] against persons imposed by a Court can only cease to have effect if, on an application by the FBO or food business proprietor, the Court gives such a direction. No application will be entertained within six months of the date of the order being made.

The Competent Authority must notify the FSA at the earliest opportunity after they learn that a Hygiene Prohibition Order or Prohibition Order against a person ceases to have effect.

6.11.3 Appeals – refusal to lift prohibition order

Regulation 19(1) of The Food Hygiene Regulations (Northern Ireland) 2006 and Article 37 of the Food Safety (Northern Ireland) Order 1991 allow anybody to appeal a Competent Authorities decision to refuse to issue a certificate saying there is no

[59] Regulation 7(4) and 7 (8) of the Food Hygiene Regulations (Northern Ireland) 2006 or Article 10 (4) and (8) of the Food Safety (Northern Ireland) Order 1991

longer a risk to health, to appeal by way of a complaint to the court of summary jurisdiction. The time limit for such an appeal is one month from the date when the Competent Authority served the notice of their refusal to lift the prohibition.

The recipient of a notice of refusal should clearly understand their right of appeal. The notice should therefore include, or be accompanied by, details of the right of appeal and the name and address of the relevant Court.

6.12 Compensation

Regulation 8(10) of The Food Hygiene Regulations (Northern Ireland) 2006 and Article 11(10) of the Food Safety (Northern Ireland) Order 1991 provide for the Competent Authority to compensate the FBO in respect of 'any loss' which is directly attributable to the wrongful service of the notice. Any disputed question as to the right to or the amount of any compensation payable is to be determined by arbitration.

The Competent Authority can assess the amount of compensation giving due consideration to the following aspects, where applicable:

- the length of time the process or treatment was halted, or the use of premises or equipment was prohibited and for what purpose
- loss of trade
- value of spoilt food
- loss of goodwill
- loss of wages
- how much of the damage to trade is reparable
- obligation of the operator/proprietor to mitigate their own loss

Alternatively, if the operator/proprietor of the business is agreeable, a loss adjuster can be called in.

6.13 Detention and seizure

6.13.1 Introduction

This section concerns the use of the detention and seizure powers under Regulation 25 of The Food Hygiene Regulations (Northern Ireland) 2006 and/or Article 8 of the Food Safety (Northern Ireland) Order 1991.

6.13.2 Food which fails to comply with food safety requirements

If food does not satisfy food safety requirements for reasons other than hygiene, Article 8 of the Food Safety (Northern Ireland) Order 1991 should be used.

Article 8 of the Order permits the service of a Detention of Food Notice to prevent the use of the food for human consumption and require it not to be removed or removed to some place as specified in the notice.

Article 6 of the Order provides that food which is unsafe within the meaning of Article 14 of Regulation (EC) No 178/2002, fails to comply with food safety requirements.

Competent Authorities must use the forms set out in the Detention of Food (Prescribed Forms) Regulations (Northern Ireland) 1991 when using powers under Article 8 of the Order.

6.13.2.1 Food hygiene

When food has not been produced, processed or distributed in compliance with the 'Hygiene Regulations'[60] an authorised officer may use regulation 25 of The Food Hygiene Regulations (Northern Ireland) 2006 to certify it. The food may then be seized under Article 8 of the Food Safety (Northern Ireland) Order 1991.

Following the certification required by regulation 25, the food must be treated for the purposes of Article 8 of the Food Safety (Northern Ireland) Order 1991 as failing to comply with food safety requirements.

A model certificate for this purpose can be found on the FSA's communication platform.

6.13.2.2 Food standards

The following legislation gives specific powers of seizure and detention to Competent Authorities carrying out food standards controls.

- The Contaminants in Food Regulations (Northern Ireland) 2013
- The Eggs & Chicks Regulations (Northern Ireland) 2010
- The Food Irradiation Regulations (Northern Ireland) 2009
- The Genetically Modified Food Regulations (Northern Ireland) 2004
- The Tryptophan in Food Regulations (Northern Ireland) 2005
- The Scotch Whisky Regulations 2009
- The Spirit Drinks Regulations 2008
- The Food Additives, Flavourings, Enzymes and Extraction Solvents Regulations (Northern Ireland) 2013
- The Novel Foods Regulations (Northern Ireland) 2017

6.13.2.3 Presumption it is food

It is presumed under food law that all food is intended for human consumption until it is proved to the contrary.

Detention powers should not be used in relation to food that has already been clearly identified by a food business as not being intended for human consumption.

An authorised officer may assist or advise the person in charge of the food as appropriate. If there is any doubt about the food being used for human consumption, it must be presumed that it is. If a FBO wished to argue for a contrary intention, then it is for the FBO to prove this.

[60] Regulation 25 of the Food Hygiene Regulations (Northern Ireland) 2006

6.13.3 Dealing with batches, lots or consignments of food

Article 14(6) of Regulation (EC) No 178/2002 stipulates that where, ‘any food which is unsafe is part of a batch, lot, or consignment of food of the same class or description, it shall be presumed that all the food in that batch, lot or consignment is also unsafe. Unless, following a detailed assessment there is no evidence that the rest of the batch, lot or consignment is unsafe’.

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

When considering whether to seize or detain/inspect a batch, lot or consignment, the authorised officer must take account of the:

- evidence available
- nature of the contamination
- nature and condition of any container holding the food
- risk to health
- quantity of food involved in relation to any sampling which has been undertaken

The authorised officer must use professional judgement to decide whether to detain or seize the whole of the batch, lot, or consignment. Appropriate expert advice should be sought if necessary.

If a whole batch, lot, or consignment is detained and it subsequently becomes clear that only part of the detained food is affected and needs to be seized, the remainder of the batch etc. may be released. The compensation provisions under Article 8(7) of the Food Safety (Northern Ireland) Order 1991, as amended, should always be borne in mind if this course of action is taken.

6.13.3.1 Taking action without inspecting

The provisions of Article 8 of the Food Safety (Northern Ireland) Order 1991 also apply to food that has not been inspected.

This could apply when the authorised officer has reasonable grounds to suspect that consumption of the food would be likely to cause foodborne or other communicable disease, or that it was otherwise so contaminated that it would not be reasonable for it to be consumed in that condition.

Information from another reliable source, for example another Competent Authority, the Northern Ireland Public Health Laboratory, the CHP, or the FSA, can be sufficient to enable an authorised officer to act without inspecting.

An inspection of the food is not legally necessary in such situations, it might nonetheless be prudent, if only for identification purposes.

6.13.4 Detention of food

Unless the circumstances require immediate action, a decision to detain food must 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.

Authorised officers need to exercise careful judgement, and might need to seek expert advice, before using their powers to detain food pending further investigation.

Food that is suspected of causing food poisoning can often be readily identified, and the decision to detain can therefore be taken relatively easily.

6.13.4.1 Location of detention

Where the authorised officer has served a Detention of Food Notice, professional judgement must be used to determine whether the 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 of Food Notice must specify a place to which the food is to be moved.

If food is to be removed to another Competent Authority's area the authorised officer must notify that Competent Authority and make any necessary arrangements for the food to be checked while it is being detained.

In all cases, but especially with highly perishable food, the authorised officer must act quickly at every stage and provide full information to those required to carry out analysis or examination of samples of the food.

Food that requires special storage conditions, such as refrigeration, might need to be moved elsewhere, in which case the decision to require the food to be moved should be discussed with the owner of the food.

If food is to be detained where it is found, the authorised officer must be satisfied that adequate arrangements can be made to ensure its security.

The authorised officer must organise periodic monitoring of the food throughout the period of detention.

Before making such arrangements, regard must be given 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 must 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.

The decision to detain a whole batch, lot, or consignment needs careful consideration before a notice is served.

6.13.4.2 Detention of food notice

A Detention of Food Notice must be signed by the authorised officer who takes the decision to detain the food. Competent Authorities must use the Detention of Food Notice set out in the Detention of Food (Prescribed Forms) Regulations (Northern Ireland) 1991.

6.13.4.3 Withdrawal of detention of food notice

The authorised officer must act as quickly as possible when evidence or information indicates that detained food can be released. A Withdrawal of Detention of Food Notice must be served as soon as possible or within 21 days of the detention.

The decision to issue a Withdrawal of Detention of Food Notice must be taken either by the authorised officer who originally issued the notice or initiated the action, or by another authorised officer with the relevant competence.

A Withdrawal of Detention of Food Notice must be served as soon as possible to prevent deterioration of the food and to minimise the Competent Authority's exposure to compensation under Article 8(7) of the Food Safety (Northern Ireland) Order 1991. The notice need not be served by the authorised officer who made the decision but can be served by any authorised officer.

Competent Authorities must use the Withdrawal of Detention Notice set out in the Detention of Food (Prescribed Forms) Regulations (Northern Ireland) 1991.

6.13.5 Seizure of food

6.13.5.1 Arrangements for treatment or processing

When considering whether to seize food, authorised officers must consider whether the food in question can be treated or processed before consumption. If so, whether the food, after treatment or processing, would satisfy food safety requirements. It must be noted that mixing of food to reduce high levels of contaminants is not permitted by Article 3 of Regulation (EC) No 1881/2006.

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

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

Arrangements must be made for that Competent Authority to take steps to ensure the processing or treatment is carried out, including the service of a Detention of Food Notice, if appropriate.

If the receiving Competent Authority is unable to accept responsibility for ensuring that the food is properly processed or treated, the arrangement must not proceed, unless there is no other way of rectifying the problem with the food product.

6.13.5.2 Seizure of food - Process

Unless the preceding paragraphs of this section apply, or the use of Voluntary Procedures is more appropriate, food must be seized if an authorised officer has evidence that it does not satisfy food safety requirements.

If evidence indicates that detained food that has already been detained must be seized, the authorised officer must serve a Food Condemnation Notification, warning of the intention to take the food before a Justice of the Peace and apply for its condemnation.

Food that has been seized must be dealt with by a Justice of the Peace as soon as practicable, normally within two days. If necessary, the timescales can be longer to ensure that parties can attend and be represented should they choose to do so. Highly perishable food must be dealt with by a Justice of the Peace at the earliest opportunity.

The person in charge of the food or the owner must be given the opportunity to be present and represented should they choose to do so when the food is dealt with by the Justice of the Peace. Action must not be delayed if the owner cannot be traced or contacted. The Food Safety (Northern Ireland) Order 1991 requires that anyone who may be liable to prosecution is entitled to attend the hearing. Good service of notice of the hearing must be documented and retained to show the Court that was the case.

The authorised officer must ensure continuity of evidence. This must be done regardless of whether there may be a subsequent prosecution. The food must not be left unsecured once it has been seized, as the authorised officer might be required to prove that the food produced before the Justice of the Peace is the food that was seized.

The food should only be left if the authorised officer is confident that it will not be moved, used for human consumption, or the evidence destroyed.

The fact that food had been condemned by a Justice of the Peace would be persuasive in any prosecution. However, this alone would not necessarily establish an offence. It is still be necessary for a case to be proved beyond reasonable doubt. In this respect certificates of analysis or examination are of particular value.

6.13.5.3 Food condemnation warning

The person in charge of the food must be given a food condemnation notification once the decision to seize food has been taken. This notification must give details of the time and place of the appearance before a Justice of the Peace. This notification is purely administrative and can therefore be signed by any authorised officer.

The authorised officer delivering the notification does not need to hold the same qualifications as the authorised officer who took the decision to detain or seize the food. However, the authorised officer must be sufficiently competent to explain the purpose of the notification and to deal with any obstruction.

Notification to the owner of the food can be by personal delivery, fax, telephone, e-mail, or other rapid means of communication.

This is especially important in cases of seizure, because of the right conferred by Article 8(5) of the Food Safety (Northern Ireland) Order 1991. This gives any person who might be liable to prosecution for selling or producing unsafe food the right to attend before a Justice of the Peace, to be heard and to call witnesses.

6.13.5.4 Notices of seizure

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

When the authorised officer intends to have the food dealt with by a Justice of the Peace, a Food Condemnation Notification must be given to the person in charge of the food. The notification must, where possible also be given to the owner of the food if different from the person in charge.

Competent Authorities must use the Food Condemnation Warning Notice set out in the Detention of Food (Prescribed Forms) Regulations (Northern Ireland)1991.

6.13.6 Destruction or disposal of food

The Competent Authority is responsible for ensuring the destruction or appropriate disposal of food that has been condemned under Article 8(6) of the Food Safety (Northern Ireland) Order 1991 or voluntarily surrendered.

Competent Authorities must ensure arrangements are made for the food to be supervised until it can be dealt with in the appropriate manner. If there is likely to be some delay before destruction or disposal, the food must be disfigured, to prevent any possibility of it being returned to the food chain.

In the case of destruction, the Competent Authority must ensure the total destruction of the food by incineration or some other appropriate method, having regard to the requirements of relevant waste disposal legislation. If total destruction is not possible, Competent Authorities must ensure such a degree of disfigurement that the food could never re-enter the food chain, for example by flattening tin cans for disposal in a suitably licensed landfill site.

A copy of the waste transfer note must be obtained and kept on file for any food that has been disposed of by a licensed waste disposal contractor under these arrangements.

6.14 Voluntary procedures

6.14.1 General requirements

Voluntary procedures may be used as an alternative to formal action and can be suggested by either an authorised officer or an FBO.

Where voluntary procedures are used, Competent Authorities should ensure:

- they are used in line with the Competent Authorities enforcement policy

- they consider the risks of the business not complying with the voluntary agreement, as there is no legal sanction against a FBO for not adhering to it, although formal enforcement action for these non-compliance(s) may remain available
- the circumstances would have permitted the authorised officer to take formal enforcement action if the voluntary arrangement was not agreed to
- the FBO agrees that there is a non-compliance
- the voluntary agreement is put in writing and signed by both the authorised officer and FBO. If the FBO is not present, any manager agreeing to the voluntary arrangements has the authority of the FBO to agree to such action.
- the document clearly indicates that it is a voluntary agreement, ensuring an FBO is not misled into believing it is a formal notice
- the voluntary agreement sets out the non-compliance, including legislative references
- the voluntary agreement clearly states what the FBO is agreeing to (for example, prohibiting the use of a premises)
- the voluntary agreement makes clear there is no formal appeal nor right to compensation

6.14.2 Voluntary prohibitions

Voluntary prohibitions are an undertaking by the FBO not to use the premises, equipment, process, or treatment set out in the voluntary agreement, as appropriate, to remove a health risk condition.

Voluntary prohibitions can be used when:

- an FBO agrees that a health risk condition exists (i.e., there is an imminent risk of injury to health)
- the authorised officer would have been able to use a Hygiene Emergency Prohibition Notice or Emergency Prohibition Notice

When issuing a voluntary prohibition, the authorised officer should consider whether there is a risk of the continued use of the premises, equipment, process, or treatment, without the authorised officer's knowledge and/or agreement. If continued operation were to cause a food incident, the Competent Authority could be criticised for not having used statutory powers.

Where a voluntary prohibition is agreed to by the FBO, the written documentation should include an undertaking by the FBO not to re-open without the authorised officer's prior approval.

The authorised officer must ensure that frequent checks are made on the establishment to ensure that they are adhering to this voluntary prohibition.

6.14.3 Voluntary surrender/destruction

Voluntary surrender/destruction can be used to remove food that is not suitable for human consumption from the food chain. It can be used when the owner of the food agrees the food is not suitable for human consumption.

A receipt must be issued for food that is voluntarily surrendered to the Competent Authority for destruction. The receipt must:

- indicate that the food has been voluntarily surrendered to the Competent Authority for destruction (with reasons)
- be signed and counter-signed by the authorised officer and the person surrendering the food
- include space for recording the time, place and method of destruction of the food, these details must be recorded on the office copy by the authorised officer in due course
- be retained by the Competent Authority

As part of the voluntary surrender, the Competent Authority should secure an agreement by the owner to pay the reasonable expenses of destruction or disposal. If this is not done the Competent Authority will bear the expenses itself.

The use of voluntary procedures may also contribute to a defence in any subsequent prosecution. It could, for example, be argued that the food was not so contaminated that it had to be seized.

The fact that a Justice of the Peace had condemned food may be persuasive in any prosecution but would not necessarily establish an offence. It would still be necessary for a case to be proved beyond reasonable doubt.

6.15 Enforcement in establishments subject to approval

6.15.1 Introduction

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

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 138(2)(j) of Regulation (EU) 2017/625.

The immediate effect of the suspension or withdrawal of an establishment's approval is that the establishment cannot be used for any activities which would render it subject to approval under Regulation (EC) No 853/2004, or to place POAO on the market**.**

When non-compliance is discovered in establishments (subject to approval under Regulation (EC) No 853/2004) the Competent Authority must explore other enforcement options to control the hazards before considering suspension or withdrawal.

Non-compliance is not necessarily sufficient reason to justify the immediate suspension or withdrawal of an establishment's approval or conditional approval. Where appropriate, a reasonable opportunity should be allowed for the FBO to achieve compliance.

6.15.2 Suspension of approval or conditional approval

Competent authorities must only initiate procedures to suspend an establishment's approval or conditional approval if:

- non-compliances have been established[61]
- other enforcement options have been considered
- the action is in line with the Competent Authority's enforcement policy

Once the non-compliances have been resolved; suspension of approval must be lifted in writing by the Competent Authority.

Competent authorities can request that any guarantee provided by the FBO regarding future production be made in writing. Competent Authorities cannot insist on this as no requirement exists in law to provide such guarantees in writing.

6.15.3 Withdrawal of approval or conditional approval

Competent authorities must only initiate procedures to withdraw an establishment's approval or conditional approval if:

- non-compliances have been established[62]
- other enforcement options have been considered
- the action is in line with the Competent Authorities enforcement policy

An establishment's approval or conditional approval must only be withdrawn in circumstances where the FBO is unable to satisfy the Competent Authority that there is a reasonable expectation that the identified deficiencies will be rectified, and an acceptable standard will be maintained in the future. The provisional decision to revoke the approval must be communicated in writing to the FBO.

6.15.4 Notifications of suspension or withdrawal of approval or conditional approval

Under Article 138(3) of Regulation (EU) 2017/625, the Competent Authority must notify the FBO in writing of its decision to suspend or withdraw an establishment's approval or conditional approval.

This notification must:

- give the reasons for the suspension or withdrawal
- give the matters necessary to satisfy the requirements of the regulation
- make it clear that activities requiring approval cannot be undertaken
- inform the FBO of their right of appeal, against the decision, including information on the time limit[63], and provide the address of the court of summary jurisdiction where such an appeal can be made

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[61] Article 138(1) of Regulation (EU) 2017/625
[62] Article 138(1) of Regulation (EU) 2017/625
[63] Regulation 12(2) of Official Feed and Food Controls Regulations (Northern Ireland) 2009

Copies of notifications must be retained on the Competent Authority's files. The Competent Authority must notify the FSA when an establishment's approval or conditional approval has been suspended or withdrawn (see Chapter 2).

6.15.5 Appeals against suspension or withdrawal of approval or conditional approval

The FBO 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 Regulation 12 of The Official Feed and Food Controls Regulations (Northern Ireland) 2009. The establishment cannot continue operating whilst an appeal is being determined. This time period runs from the date on which the notice of the decision is served on the relevant person, irrespective of whether it is a suspension or withdrawal.

6.15.6 Detention Notices

Powers to issue Detention Notices in respect of establishments subject to approval under Regulation (EC) No 853/2004 are provided by regulation 9 of The Food Hygiene Regulations (Northern Ireland) 2006.

Regulation 9 makes provision for the detention of any food, including the taking of samples for the purposes of examination, by the service of a Detention Notice.

Circumstances which could lead to the issue of a Detention Notice include where there are indications or suspicions that food at an establishment is unsafe and therefore examination is necessary, including the taking of samples.

If the authorised officer is satisfied that the food no longer needs to be detained, the relevant notice must be withdrawn by means of a further notice in writing.

6.15.6.1 Template forms

The following templates can be found on the FSA's communication platform:

- Remedial Action Notice
- Detention Notice
- Notice of Withdrawal of a Detention Notice

6.16 Enforcement regarding imported food

6.16.1 Enforcement powers for imported Food Not of Animal Origin

The Official Feed and Food Controls Regulations (Northern Ireland) 2009 provides the enforcement powers for Competent Authorities in carrying out official food controls on FNAO from outside the UK, either at the point of entry or inland.

6.16.1.1 Detention

Where, for the purpose of examination at points of entry, or deferred examination at an External Temporary Storage Facility (ETSF), or other place of destination, an authorised officer has doubts about the compliance, identity or stated destination of a consignment, Article 65 of Regulation (EU) 2017/625 and regulation 30 of The Official Feed and Food Controls Regulations (Northern Ireland) 2009 allow the

product to be detained pending the results of any examination associated with the official food controls.

Where an authorised officer has detained a food consignment pending results of examination, they must notify in writing the person/importer responsible for it, serving a notice under regulation 31 of The Official Feed and Food Controls Regulations (Northern Ireland) 2009. The notice must specify that the food must not be removed from the place stated, until the authorised officer has properly considered the results of the examination.

Article 65 of Regulation (EU) 2017/625 and regulation 30 of The Official Feed and Food Controls Regulations (Northern Ireland) 2009 do not specify a time limit for examination and investigation of consignments. However, such examinations, and/or detention periods, must be completed as quickly as possible to avoid unreasonable disruption to the trade.

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

Arrangements must be in place to ensure that detained food is stored appropriately, particularly to avoid contamination of other goods.

6.16.1.2 Food consignments which are injurious to human or animal health or are unsafe

Article 67 of Regulation (EU) 2017/625 requires that where official food controls indicate that a consignment is injurious to human health or is unsafe, it must be detained pending destruction or subject to special treatment.

Food which is to be destroyed or disposed of must be dealt with to ensure that there is no possibility of it re-entering the food chain. Copies of waste disposal notes must be kept on file.

6.16.1.3 Food consignments not complying with food law

If it appears to an authorised officer upon inspection or examination of food, that a batch, lot, or consignment fails to comply with food law, regulation 31of The Official Feed and Food Controls Regulations (Northern Ireland) 2009 allows, after having heard from the importer, for the authorised officer to serve a notice requiring:

- destruction of the relevant batch, lot, or consignment
- the food be subjected to special treatment in accordance with Article 71 of Regulation (EU) 2017/625
- re-dispatch of the food outside the EU in accordance with Article 72 of Regulation (EU) 2017/625
- another use of the food for purposes other than those for which they were originally intended

In practice, the options specified in the notice must be drawn up after appropriate consultation with the person importing the food or their representative.

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

6.16.1.4 Special treatments

Special treatment can consist of:

- treatment or processing to bring food into line with the requirements of:
  - EU law
  - the third country to where it is to be re-dispatched
- processing in any other suitable manner for purposes other than human or animal consumption

Where special treatment is permitted, liaison must take place with any other relevant enforcement authority or organisation to ensure the necessary processing has been carried out. This process can also be used where a non-conforming product is being imported specifically for the purpose of undergoing treatment to comply with UK law.

Special treatment can include decontamination, where appropriate, but not dilution.

6.16.1.5 Re-dispatch of consignments

A consignment must only be re-dispatched outside the EU where the:

- destination has been agreed with the FBO responsible for the consignment
- FBO has informed the Competent Authority for the third country of destination why it has been rejected for import into the EU
- Competent Authority of the third country of destination (if not the third country of origin) has notified the relevant NI/EU Competent Authority of its willingness to accept the consignment

The consignment must be officially detained pending re-dispatch.

Article 69 of Regulation (EU) 2017/625 requires that re-dispatch takes place within 60 days of the Competent Authority notifying the operator of the destination of the consignment. However, this period can be extended to obtain results from a second expert opinion, as long as there is no adverse effect to human health. Otherwise, the consignment shall be destroyed.

Where a product is to be re-dispatched, notifications identifying the product and its final destination must be given to the FSA, who will then inform HMRC, the Commission and Member States.

6.16.1.6 Appeals against notices served under The Official Feed and Food Controls Regulations (Northern Ireland) 2009

The importer must be given the Competent Authority's decision by way of a notice in writing. The decision must relate to the most effective way of dealing with the product and must not be used as a punitive measure.

There is a right of appeal against the Competent Authority's decision provided by regulation 32 of The Official Feed and Food Controls Regulations (Northern Ireland) 2009. Appeals against the notice must be made within one month of the notice being issued.

6.16.1.7 Other provisions

Imported food failing food safety requirements can also be subjected to Food Safety (Northern Ireland) Order 1991 provisions to ensure appropriate action is taken. Such provisions include detention and seizure powers, applied in accordance with the Code and the Practice Guidance.

In deciding on the action to take authorised officers must have regard to:

- The Official Feed and Food Controls Regulations (Northern Ireland) 2009
- the Contaminants in Food Regulations (Northern Ireland) 2013
- any relevant Emergency Control Regulations, which might provide for specific detention powers and notice provisions in relation to certain foods.

6.16.2 Enforcement powers for imported Products of Animal Origin

Where illegal imports of POAO are found inland in an area/premises outside Customs control, the local Competent Authorities for that area have responsibility for enforcement action.

Where an authorised officer wishes to detain any POAO found inland in order to investigate further to establish its safety or compliance, voluntary co-operation might be sought in the first instance.

In situations where this is not possible, enforcement provisions are provided under The Trade in Animals and Related Products Regulations (Northern Ireland) 2011.

6.16.3 Further Guidance

Further guidance on the enforcement provisions relating to imported food is available on the FSA's communications platform.

6.17 Crown establishments

6.17.1 Introduction

This section deals with 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 NHS or NHS Trusts, since these are not Crown premises.

6.17.2 Powers of entry and interventions

6.17.2.1 Food Safety (Northern Ireland) Order 1991

The powers of entry under Article 33 of the Food Safety (Northern Ireland) Order 1991 may be used in respect of food standards issues, in relation to police premises and most Crown premises (subject to exemptions for certain members of the Royal Family and certain Royal residences) to investigate complaints and to carry out interventions in the same way as they do in any other food business. Authorised

officers therefore have the power to enter police premises and most Crown premises.

The provisions of the Food Safety (Northern Ireland) Order 1991 do not, however, apply to Her Majesty the Queen or His Royal Highness the Prince of Wales personally, nor to premises occupied by them in their private capacities such as their private residences.

Additionally, a national security certificate may have been issued by a Secretary of State certifying that powers of entry under the Food Safety (Northern Ireland) Order 1991 cannot be exercised. If an authorised officer seeks entry to Crown premises and is informed that such a certificate has been issued, the authorised officer is entitled to see the certificate or a copy of it.

6.17.2.2 Food Hygiene Regulations (Northern Ireland) 2006

The scope of the Food Hygiene Regulations 2006 extends to police premises, Crown premises and to people in the public service of the Crown. Authorised officers therefore have power to enter police premises and Crown premises to investigate complaints and to carry out Interventions in the same way as they do in any other food business.

The powers of entry under regulation 14 of The Food Hygiene Regulations (Northern Ireland) 2006 may be used in relation to Crown premises, as the regulations do not contain the specific exemptions for certain members of the Royal Family or certain Royal residences afforded by the Food Safety (Northern Ireland) Order 1991.

Competent Authorities should use discretion when exercising their powers in respect of Crown premises, and in practice should adopt the same approach to the enforcement of The Food Hygiene Regulations (Northern Ireland) 2006 in respect of Crown premises as they do in respect of the Food Safety (Northern Ireland) Order 1991.

6.17.2.3 Conduct and frequency of interventions

Food businesses in Crown and police premises, other than temporary or field catering facilities at military training camps, should be included in the Competent Authority's planned intervention programme in accordance with the Code.

Permanent kitchens serving military training camps should receive interventions at times they are in use, within the bounds of security restrictions that will be dependent on the organisation using the facility at the time.

Mobile field kitchens should not be subject to interventions by the Competent Authority.

6.17.3 Categories of Crown premises

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

Group 1 - includes premises situated on Crown land where there are normally no security implications, for example restaurants in museums or Royal Parks. These premises must be treated like any other food business.

Group 1 premises must normally be visited without prior arrangement.

Group 2 - includes premises with controlled entry but normally minimal security implications. Most government and police premises fall within this category. They are similar to many private businesses with security systems.

First visits to Group 2 premises must be by prior arrangement. Future visits may be unannounced, but arrangements for subsequent visits must 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, for example HM Forces, defence and national security establishments, prisons and remand centres, and parts of police premises that accommodate prisoners.

Group 3 premises must always be visited by prior arrangement with the appropriate contact at the establishment concerned, for example the defence establishment security officer, the commanding officer or nominated 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.

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

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 must not be regarded as obstruction.

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

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

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 authorised officer is on the way is essential in Group 3 premises and may save time in gaining entry to Group 2 premises. It is not normally necessary in such circumstances to give more than the briefest notice of such a visit.

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

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

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

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

6.17.3.1 Photographs

Before taking any photographs, making sketches, or taking measurements on Group 3 premises, the authorised officer should discuss such matters with the escorting officer and take 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.

6.17.4 Enforcement

6.17.4.1 Food Safety (Northern Ireland) Order 1991

Article 49(2) of the Food Safety (Northern Ireland) Order 1991 states that the Crown is not criminally liable if it contravenes the Order or regulations or orders made under it. This means that the Crown cannot be prosecuted if it contravenes the Order etc.

A Competent Authority may, however, apply, in the Queen's Bench Division of the High Court, for a declaration that any act or omission of the Crown, which amounts to a contravention of the Food Safety (Northern Ireland) Order 1991 or regulations made under the Order, is unlawful.

The identity of the proprietor of the food business concerned should be carefully considered if the question of action under food law arises.

Contract caterers operating on Crown premises can be prosecuted as they are not subject to this exemption. Careful consideration also needs to be given to the question as to whose failure gave rise to the contravention.

Although contract caterers operating on Crown premises can be prosecuted, structural failures might be the responsibility of the Crown itself.

Any application under Article 49(2) should be addressed to the Secretary of State or Head of Department and sent to the Solicitor for the relevant Government Department.

The summons should be sent to the principal officer of a non-Departmental Government body.

6.17.4.2 The Food Hygiene Regulations (Northern Ireland) 2006

Unlike the Food Safety (Northern Ireland) Order 1991, The Food Hygiene Regulations (Northern Ireland) 2006 do not exempt the Crown if it contravenes the

regulations. This means that the Crown can be prosecuted if it contravenes the regulations.

As mentioned above, Competent Authorities should use discretion when exercising their powers in respect of Crown premises and, in practice, should adopt the same approach to the enforcement of the Food Hygiene Regulations (Northern Ireland) 2006 in respect of Crown premises as they do in respect of the Food Safety (Northern Ireland) Order 1991.

6.17.4.3 Position of individual civil or government servants

Although the Crown is immune from prosecution under the Food Safety (Northern Ireland) Order 1991, individuals in the public service of the Crown can still be prosecuted in the same way as any other person. Failure to comply with the provisions of food law might therefore expose an individual civil or Government servant to the risk of prosecution.

Competent Authorities should not consider prosecuting an individual civil or Government servant as a substitute for action against the Crown. Action should only be considered if the circumstances would result in the prosecution of an individual in the case of any other business.

6.17.4.4 Statutory Notices

The service of an Emergency Prohibition Notice does not itself make the recipient criminally liable. Such notices can therefore be served on the Crown where it is the FBO concerned.

Emergency Prohibition Notices should be served on the appropriate Secretary of State or Head of Department and copied to the Solicitor as described above.

In order that such notices can be acted upon without undue delay, they should also be copied to the person in charge of the premises concerned, for example the Governor of a prison, or the Commanding Officer of a military establishment.

Competent Authorities should apply in the normal way to a Magistrates' Court for an Emergency Prohibition Order on the whole or part of a Crown premises, or to prevent the operation of a particular process or treatment or use of a piece of equipment in a business run by the Crown.

Although a Magistrates' Court can impose an Emergency Prohibition Order, it cannot impose a Prohibition Order. A Prohibition Order can only be made when there has been a conviction under relevant food law.

The FBO in Crown premises can appeal in the normal way to a Magistrates' Court against an Improvement Notice and can also appear to argue against the imposition of an Emergency Prohibition Order.

The Crown can also appeal against a refusal to issue a certificate lifting an Emergency Prohibition Order.

A Competent Authority can apply for a declaration in the High Court if a business run by the Crown fails to comply with an Emergency Prohibition Order.

6.17.4.5 Liaison with the Primary Authority / the FSA

Competent Authorities should report any difficulties encountered in the enforcement of food law in Crown premises to the appropriate primary authority, or, if there is no primary authority, or they are unable to assist, to the FSA.

Chapter 7 Subject specific guidance

7.1 Matters relating to live bivalve molluscs

7.1.1 Introduction

This Section provides specific guidance to Competent Authorities on the official food controls and enforcement of the aspects of Regulations (EC) No 852/2004, 853/2004, 2073/2005, Regulations (EU) 2019/624 and 2019/627 relating to Live Bivalve Molluscs (LBMs). These provisions relating to LBMs also include live echinoderms, tunicates, and marine gastropods, with the exception of the provisions on purification. The classification requirements do not apply to marine gastropods which are not filter feeders.

Under Regulation (EU) 2019/627 the Competent Authority must classify production and relaying areas from which it authorises the harvesting of LBMs. Production and relaying areas may be one of three classification categories according to the level of faecal contamination in shellfish flesh (using *E.coli* as the indicator organism). Classified areas are routinely monitored for microbiological quality, marine biotoxins, phytoplankton and chemical contamination.

7.1.2 The Local Market Exemption (Small Quantities)

Regulation (EC) No 853/2004 does not apply to the direct supply of small quantities of primary products to the final consumer or to local retail establishments directly supplying the final consumer. For LBMs, a small quantity equates to a total amount of not more than 25 tonnes harvested in a calendar year. The maximum harvested in a year can be made up of different species so long as neither the total allowance for each species nor the overall total is exceeded. Allowances are detailed below.

7.1.2.1 Allowances for small quantities of LBMs

Species	**Annual Maximum amount**
Cockles – *Cerastoderma edule*	25.0 tonnes
Oysters – *Ostrea edulis* and *Crassostrea gigas*	5.0 tonnes
King Scallops – *Pecten maximus*	5.0 tonnes
Queen Scallops – *Aequipecten opercularis*	10.0 tonnes
Mussels – *Mytilus spp.*	20.0 tonnes
Other Live Bivalve Molluscs	10.0 tonnes
Marine Gastropods	20.0 tonnes

Although exempt from the detailed requirements of Regulation (EC) No 853/2004, harvesters supplying small quantities are required to comply with the food safety and traceability requirements set out in Articles 14 and 18 of Regulation (EC) No 178/2002. The general traceability requirements for POAO in Regulation (EU) No 931/2011 also apply.

In order for harvesters of small quantities to meet the food safety requirements of Regulation (EC) No 178/2002, FBOs should consider the risks associated with LBMs such as microbiological contamination, viral contamination, marine biotoxins and chemical contamination and ensure that such risks are controlled.

These requirements do not apply to LBMs gathered for private domestic use and Competent Authorities may consider it reasonable to presume, unless there is an indication to the contrary, that individuals gathering small amounts of LBMs totalling less than 5kg in a day are gathering for private domestic use. These levels are for 'whole' LBMs and include the weight of the shell. This should not however detract Competent Authorities from pursuing instances where there is a suspicion of fraudulent activity or where public health could be at risk.

7.1.3 Pectinidae (scallops) and non - filter feeding gastropods harvested from outside classified production areas

Scallops ('*pectinidae'*) and non-filter feeding gastropods may be harvested from outside classified production areas, providing they meet the requirements of Annex III, Section VII, and Chapter IX of Regulation (EC) No 853/2004. FBOs are required to ensure that products placed on the market meets the food safety requirements and should have a system of 'own checks' in place to verify this. Competent Authorities can carry out verification checks of FBO compliance in accordance with Article 11 of Regulation (EU) 2019/624.

7.1.4 Permitted treatment methods

LBMs which are to undergo a permitted treatment method or other processing, for example freezing, are subject to the requirements of Regulation (EC) No 853/2004 that relate to LBMs up to the point where processing begins in an approved establishment. After that point they are considered to be fishery products (see section on fishery products).

The permitted treatment methods for bivalve molluscs from Class B or Class C areas are set out in Annex III, Section VII, Chapter II (5) of Regulation (EC) No 853/2004 and, if appropriate Annex III, Chapter IX of Regulation (EC) No 853/2004.

7.1.5 Shellfish liaison arrangements

The Competent Authority's shellfish liaison officer will be the FSA's first point of contact in relation to non-routine matters concerning the enforcement of the regulations mentioned in 7.1.1.

It is essential for the effective enforcement of the regulations that Competent Authorities maintain effective liaison arrangements. The NI shellfish liaison group should include representatives of other relevant organisations, including DAERA.

Harvesters and Official Control testing laboratories may also be invited to liaison meetings, as required.

The liaison group's functions should include:

- the identification of local LBM classified production and relaying areas (if any) (working with the industry)
- joint sampling plans to monitor the quality of LBMs from classified areas
- arrangements for the issue of registration documents
- arrangements for the issuing of Closure Notices covering waters from more than one Competent Authority area
- arrangements for the detention/recall of bivalve molluscs affected by any Closure Notice
- effective local notification procedures to advise interested parties of action taken under the regulations (where such notification is required by the regulations)
- arrangements for effective communication and sharing of information between various agencies and organisations to assist with identify/anticipating potential problems, such as spills etc

Cross border issues should be referred to FSA who will liaise with the relevant Authorities in the Republic of Ireland.

7.1.6 Requirements for classified live bivalve mollusc production and relaying areas

The FSA analyses official control microbiological monitoring results for all classified shellfish production areas to ensure compliance with the classification requirements in Regulation (EU) 2019/627:

- Class A (80% of results less than or equal to 230 *E.coli*/100g, no results exceeding 700 *E.coli*/100g) - LBM can be harvested for direct human consumption
- Class B (90% of samples must be less than or equal to 4,600 *E.coli*/100g, all results must be below 46,000) - LBM can go for human consumption after:
  - -purification in an approved purification establishment
  - -relaying for at least one month in an approved class A relaying area
  - -after heat treatment or sterilisation meeting the requirements of the EU Regulations in an approved establishment
- Class C (≤ 46,000 *E.coli*/100g) - LBM can go for human consumption only after:
  - relaying for at least two months in an approved class B relaying area followed by treatment in an approved purification centre
  - relaying for at least two months in an approved class A relaying area; or
  - after heat treatment or sterilisation meeting the requirements of the EU regulations in an approved establishment

In all cases, the health standards in Annex III of Regulation (EC) No 853/2004 and the microbiological criteria in Regulation (EC) No 2073/2005 must be met.

LBMs must not be harvested from areas that have not been classified or have been closed.

Class B beds that are marginally compliant (within 5% of legislative requirements) are held on a marginal compliance list and monitored closely.

An annual review of all shellfish bed classifications is carried out in January to ensure production areas are compliant. Classifications are also reviewed in-year as part of a rolling compliance system and amendments to classifications carried out when necessary.

Further information on the classification protocol can be found on the FSA website.

A list of classified LBM production and relaying areas is published on the FSA website.

Any changes to or new shellfish classifications that occur during the year are notified and a letter is issued to relevant stakeholders, including Competent Authorities. These changes may include upgrades, downgrades, new classifications, re-classifications, dormancy, declassifications, and prohibitions. Competent Authorities should forward letters concerning the classification status of production areas to the local shellfish industry including handlers, operators of dispatch and purification centres and other individuals and organisations likely to be substantially affected by the changes. The main classification list on the FSA website is updated accordingly.

7.1.7 Monitoring of registration documents

Competent Authorities must carry out regular examinations of the use and completion of registration documents to verify traceability. Examination of the documents should be carried out as part of the inspection of dispatch, purification centres or processing establishments (see Chapter 7 of the Code of Practice). However, checks can be made at any part of the traceability chain.

Regulation (EC) No 853/2004 requires food businesses placing LBMs on the market to complete a registration document (unless issued with a permanent transport authorisation) to identify each batch harvested from classified production and relaying areas. The registration document must accompany each batch up to and including the arrival of the shellfish at a dispatch centre or processing establishment. The date of receipt must be recorded on the registration document by the FBO at the dispatch centre, purification centre, relaying area, or processing establishment when the batch is received. Operators and gatherers/harvesters are required to retain registration documents for at least 12 months[64].

The same requirements apply to batches of scallops and non-filter feeding gastropods harvested from outside classified production areas. Although the

[64] Regulation (EC) 853/2004 Annex III, Chapter 1 (6)

classification status of the production area (i.e., Class A, B or C) is not appropriate, the location of the production area must be described in as precise detail as is practicable or by a code number (for example ICES coordinates, OS grid references etc.).

Competent Authorities must be aware of the commercial advantages of abusing the registration document procedure, for example by suggesting that LBMs have been taken from waters with a superior microbiological quality.

One method of verifying batches described as being from class A, B and C areas is to analyse samples of shellfish to assess the microbiological standard against that of the classified area it came from. However, on a cautionary note, it must be recognised that shellfish *E.coli* monitoring from any one production area might show significantly variable results, both temporally and spatially, due to environmental and other factors for example class C areas might occasionally yield single results <230 *E.coli*/100g (for this reason classifications are based on a time series of data rather than single results). Therefore, a batch sample returning a single result that meets the requirements of a particular classification category must not be considered conclusive proof that the batch originated from the same class of production area. Competent Authorities should refer to the classification status of the relevant production/relaying area and the official control monitoring data which is available on the FSA website.

It is not possible for Competent Authorities to monitor every landing in their area, or to detect abuse in the use of registration documents by concentrating resources on sampling only. Competent Authorities must familiarise themselves with the commercial activities within ports in their local area and implement some degree of monitoring of landings of LBMs and other shellfish (for example scallops). This can be achieved through effective and periodic liaison with other statutory inspectorates for example DAERA (Marine and Fisheries) and the Loughs Agency. It is within the remit of DAERA to track the movement of fishing vessels in their local waters and provide other vital information to help verify the information contained in registration documents and the activities of harvesters for example the seasonality of the harvesting, minimum landing sizes, checks on whether shellfish were harvested under the appropriate permissions/DAERA licences.

Competent Authorities responsible for establishments receiving batches of LBMs should ensure that establishments are only accepting shellfish with the appropriate registration documents. Competent Authorities receiving shellfish from outside their competent authority area, should contact the issuing Competent Authority when inspecting registration documents. In order to ensure efficiency in this verification process, Competent Authorities are advised to keep a log of all registration documents that have been issued by them for 12 months, including details of the harvesters to whom they have been issued and the production areas for which the harvester requires the registration documents.

In addition to local liaison, Competent Authorities are also encouraged to have in place procedures to assist tracking and verifying the authenticity of registration

documents they have issued. For example, the use of one or a combination of coloured carbon tear-offs, embossed Competent Authority stamps in conjunction with unique reference numbers on documents to help ensure registration documents are not easily falsified. In some circumstances it may be prudent to limit the number of documents issued to each harvester or ask for sight of previously completed documents to assist in effectively monitoring/tracking of product for traceability and verification purposes.

Competent Authorities must be aware that registration documents may be completed on behalf of the gatherer, for example, by an 'agent', providing all required information relating to the batch is appropriately completed. The supplying harvester(s) must be able to support the declaration made on the registration document by the 'agent'. Competent Authorities might wish to consider amending their forms to reflect this activity.

7.1.8 Sampling of Live Bivalve Molluscs by FBOs

Operators of approved processing establishments, auction halls and purification/dispatch centres must have adequate systems of own checks in place, including laboratory and commercial testing arrangements, to ensure that the LBMs comply with:

- the microbiological food safety criteria set for LBMs in Annex I, Chapter I of Regulation (EC) No 2073/2005
- The health standards referred to in Annex III, Section VII, Chapter V of Regulation (EC) No 853/2004
- limits for chemical contaminants in Regulation (EC) No 1881/2006

The EU Regulations do not prescribe a frequency for FBOs to undertake these tests, but they must be in line with the businesses' food safety management system for example HACCP and reflect the nature and size of the business[65].

In determining what level of sampling and testing is appropriate, the Competent Authority must have regard to HACCP principles and any advice issued by the FSA or contained in voluntary guidelines produced by relevant trade associations or Seafish.

7.1.9 Laboratories used in connection with dispatch, purification and processing establishments

There is no requirement for laboratories carrying out testing for food businesses to be accredited, however, FBOs must ensure that the results of testing are robust in order to accurately validate and verify their food safety management procedures. Accredited laboratories have been subject to comprehensive quality control so use of an accredited laboratory using a method for which the lab has been accredited can give the FBO more confidence in the test results. FBOs must be able to demonstrate to the Competent Authority how they ensure that test results are reliable and robust,

[65] Regulation (EC) No 2073/2005 on microbiological criteria for foodstuffs

and this should be evidenced and documented in their food safety management system. FBOs and Competent Authorities should consider whether the laboratory is accredited for the relevant method(s) and participates in proficiency testing as part of a recognised external quality assurance scheme. Alternative methods may be used if they are validated against the reference method in accordance with the criteria in EN/ISO 16140.

7.1.10 Microbiological testing of live bivalve molluscs

The current recognised method for microbiological testing of LBMs is appended to the paper entitled 'Modification of the standard method used in the United Kingdom for counting Escherichia coli in live bivalve molluscs', published in Volume 1 of Communicable Disease and Public Health of 3 September 1998. The current reference method for analysis of *E.coli* specified in the EU Regulation (EC) No 2073/2005 is the detection and Most Probable Number (MPN) technique specified in ISO 16649-3. The Impedance method is also an accepted and validated alternative to the MPN method for detecting *E.coli* in LBMs.

7.1.11 Marine biotoxins

The regulatory limits and recognised methods for the detection of marine biotoxins are included in the table below.

Toxin group and Regulatory Limit (Reg. (EC) No 853/2004)	**EU Reference method (Annex V of Reg. 2019/627)**	**Method of analysis in Northern Ireland**
ASP - 20 mg of domoic acid/kg shellfish flesh	HPLC/UV	HPLC/UV – all species
PSP - 800 µg of saxitoxin eq/kg shellfish flesh	HPLC	HPLC/FLD - all species
Lipophilic toxins (LT) 160 µg okadaic acid eq/kg 3.75mg yessotoxin eq/kg 160 µg azaspiracids eq/kg	LCMS/MS	LCMS/MS – oysters, cockles, hard/razor clams, mussels, and scallops

The Official Control Biotoxin and Phytoplankton results are reported by the laboratory directly to the FSA which are published on a weekly basis on the FSA website.

7.1.12 Official controls testing - sampling of Live Bivalve Molluscs by Competent Authorities

Competent Authorities are required to verify food safety management plans at dispatch, purification, and processing establishments. Part of this verification process may include the taking of samples to be analysed at an accredited official control laboratory. Any results that show breaches of the food safety requirements should be

investigated by the FBO in the first instance and corrective action taken which could include follow-up sampling, withdrawals/recalls. The Competent Authority should follow up any investigation to verify that corrective actions have been taken.

Where necessary, Competent Authorities should communicate non-compliant test results to neighbouring Competent Authorities, the FBO and the FSA.

The purpose of sampling by Competent Authorities must be the verification of the FBO's compliance with the appropriate requirements at all stages of production, processing, and distribution. Results that are inconsistent with the FBO's own records must be followed up by further investigations and tests by the FBO.

7.1.13 Standards for purification centres

Regulation (EC) No 853/2004 outlines the structural and hygiene requirements for purification centres. Information on the required standards of purification systems may be found in a series of operating manuals for the different types of purification system used in the UK and a further guidance document 'Procedures to Minimise Risks to Food Safety in Bivalve Mollusc Purification' published by Seafish. These documents contain recommendations designed to help shellfish processors achieve high quality standards, as well as to comply with the requirements of the EU Hygiene Regulations. In some instances, the guidance makes recommendations for good industry practice, which go beyond the requirements of legislation. These documents are available on the Seafish website

Competent Authorities may refer to the guidance document to establish a consistent approach to the requirements of the regulations but must avoid using, in support of formal enforcement action, those parts that are directed towards the achievement of good industry practice and high-quality standards. A further guide to assist Competent Authority inspections of purification establishments is available.

7.1.14 Live Bivalve Molluscs and other shellfish which fail to satisfy requirements

In accordance with regulation 25 of the Food Hygiene Regulations (Northern Ireland) 2006 any LBM or other shellfish that have not been produced, processed, or distributed in accordance with the regulations should be treated under the purposes of Article 8 of the Food Safety (Northern Ireland) Order 1991. If food safety requirements have not been met then the authorised officer may give notice to the person in charge of the food, that until the notice is withdrawn, the food is not to be used for human consumption or removed, except being removed to a specified place. The authorised officer can also seize the food and remove it, to be dealt with by a Justice of the Peace[66].

7.1.15 Transfer of seed Live Bivalve Molluscs to classified production areas

Seed LBMs might be transferred from areas that are not classified as production areas for 'growing on' within a production area of any class. Such LBMs must be

[66] Article 8 of the Food Safety (Northern Ireland) Order 1991

genuine ‘seed shellfish’ (shellfish too small to be marketed). Transfers of seed LBMs are only to be carried out under the authorisation of DAERA Marine and Fisheries.

Transfers of ‘seed shellfish’ are permitted, provided they remain in the classified production area for a period of not less than six months before they are harvested for human consumption. This does not permit the movement of adult or partially developed LBMs from an unclassified area for further short-term growth before marketing. It is restricted to the seeding of new areas or the re-seeding of existing classified production areas. If new areas are seeded, they must be classified before harvesting can take place. Harvesters must inform the relevant Competent Authority if any such movements are contemplated.

7.1.16 Closure Notices (temporarily closing Live Bivalve Mollusc harvesting areas)

See also Chapter 7 of the Code of Practice. When *E.coli* LBM results are recorded above trigger levels, investigations will be instigated. Actions will be taken where immediate action is required by the Competent Authority to deliver a responsive public health control system. The Competent Authority should implement short term control measures to protect public health, for example, issuing a Temporary Closure Notice (TCN) or a temporary classification downgrade which would ensure additional product treatment prior to LBMs being sold for human consumption. Procedures are set out in the classification protocol on the FSA website.

A TCN should also be considered where, a classified production area has been subject to sudden or accidental pollution, including unconsented and emergency sewage discharges, which is likely to have an adverse impact on LBMs in a classified production area. In the event of a regulatory breach of marine biotoxins, results equal to or above the regulatory limits, the Competent Authority must implement short term control measures to protect public health by closing the production area and issuing a TCN.

A link to the model Closure Notice can be found at 7.1.19 below. This should be copied to the FSA. Any person who contravenes or fails to comply with the closure would be committing an offence in breach of the terms of Regulation 17 of The Food Hygiene Regulations (Northern Ireland) 2006 and is committing an offence.

7.1.17 Reporting of illegal harvesting activity

It is an offence to place LBMs on the market that have been harvested from areas that are not classified, or which are unsuitable for food safety reasons. It is also illegal for food businesses to place on the market scallops and non - filter feeding gastropods harvested from outside classified areas unless they meet food safety requirements for microbiological, marine biotoxins or chemical contamination.

Competent Authorities should monitor harvesting areas within their remit, including areas affected by TCNs to ensure illegal harvesting does not occur. Where Competent Authorities become aware of these instances, they need to consider appropriate surveillance and follow up enforcement. Competent Authorities are encouraged to establish close working relationships with other local inspectorates,

such as DAERA who might be able to assist in combating the practice for example through surveillance, notification of fishing activity in waters under restrictions, assistance in the verification of information in registration documents etc.

All cases of illegal harvesting must be reported to the FSA at incidents.ni@food.gov.uk. The Food Fraud Liaison Officer may advise on investigative opportunities.

7.1.18 Shellfish identification marks

As part of the monitoring of the use of shellfish identification marks, Competent Authorities must, periodically, select a batch or consignment from a retail outlet or restaurant and seek to trace the batch or consignment back through an auction hall, dispatch centre or processing establishment, to the original gatherers to establish that records relating to the traceability of the batch and the identification mark are in order. Competent Authorities must co-operate with other Competent Authorities in any random check through the production and distribution chain.

Note: retailers are to retain the label/identification tags attached to the packaging of LBMs that are not in individual consumer-size packages for at least 60 days[67] after splitting up the contents to assist in tracing product in the event of a report of illness.

If any checks suggest that registration documents, identification marks or records are not in order, the Competent Authority must carry out an investigation to establish where the procedures have not been properly observed. In such cases they must also consider increasing the frequency of random checks through the distribution chain until they are satisfied that the appropriate procedures are being followed.

7.1.19 Template forms and additional guidance notes

The following template forms and guidance notes can be found on the FSA's communications platform:

- Model LBM/Live Shellfish Registration Document
- Model notice of temporary closure of classified production area(s) (live bivalve molluscs/shellfish)
- Q&A live bivalve molluscs

7.2 Matters relating to fishery products

7.2.1 Introduction

This section provides specific guidance to Competent Authorities on the application and enforcement of the fishery products aspects of Regulations (EC) No 852/2004, Regulation (EC) No 853/2004 and Regulation (EU) 2019/627.

[67] Regulation (EC) No 853/2004 Annex III, Section VII, Chapter 7(3)

7.2.2 Competent Authority

The FSA is the UK Central Competent Authority with lead responsibility for these Regulations. Competent Authorities are responsible for enforcement of the EU food hygiene regulations at their local level, and therefore approve fishery products establishments, register certain markets and fishing vessels, and otherwise enforce the EU food hygiene Regulations.

7.2.3 Scope of approval

The provisions of Regulation (EC) No 853/2004 do not apply to retail unless expressly indicated. A retail establishment which supplies fishery products to the final consumer therefore does not need to be approved. Approval would however be required where operations are carried out to supply fishery products to other establishments unless that supply is to other retail establishments only and is a marginal, localised, and restricted activity.

Factory and freezer vessels, auctions and wholesale markets are required to have approval and must be inspected at regular intervals to check for compliance with food safety, hygiene, temperature controls and structural requirements and subject to Regulation (EC) No 853/2004, Annex III, Section VIII, Chapters I and II.

7.2.4 Direct supply of small quantities of fish

The regulations do not apply to the direct supply of small quantities of fishery products (i.e., primary products) to the final consumer or to local retail establishments directly supplying the final consumer. For these purposes, a small amount is considered a total amount of not more than 25 tonnes of fishery products (not including live bivalve molluscs) in a calendar year. While the regulations do not apply to this allowance, the supplier must still ensure that these products meet the food safety requirements set down for placing fishery products on the market.

7.2.5 Conditions during and after landing

The EU Regulations require periodic inspection and checks on the fitness for human consumption of fishery products at the time of landing or before the first sale. Where fishery products are sold at a market associated with the landings, these inspections must take place in that auction hall or wholesale market. It is not normally necessary for inspections to be carried out at the time of landing. An organoleptic examination of the fishery products normally satisfies this requirement.

A Competent Authority can authorise the transfer of fishery products from the landing (ex-quay) into containers for immediate delivery to an approved establishment or auction or wholesale market for the checks to be carried out there. Deferring the checks to be carried out later in an auction or wholesale market normally does not require any special arrangements with the receiving Competent Authority.

Deferring checks to an approved establishment must, however, be subject to liaison and agreement with the receiving Competent Authority and have regard to the compliance record of the receiving establishment and confidence in its management. Authorisation of such deferred checks must be withdrawn if there is any suspicion of

non-compliance with the requirements of the regulations. If an organoleptic examination raises doubt as to the freshness of the product, the Competent Authority can consider submitting the product for chemical analysis or microbiological examination.

With respect to the landing of fresh fish, checks required under the EU Hygiene Regulations are without prejudice to other checks that are required under UK marketing standards regulations by other statutory bodies. Authorised officers must, where necessary, liaise with other statutory inspectors, for example DAERA to ensure that any enforcement action taken is appropriate.

7.2.6 Information on standards to be applied

Guidance on the requirements of EU Regulations relating to the Seafood industry can be obtained from Seafish. Competent Authorities can use the guidance as a reference in establishing a consistent approach to the requirements of the regulations. However, Competent Authorities should exercise caution and avoid using, in support of formal enforcement action, those parts of the Seafish guidance that are directed towards the achievement of good industry practice and high-quality standards.

7.2.7 Checklists and additional guidance notes

The following Checklists and additional guidance notes can be found on the FSA's communication platform:

- Fishing Vessel Check List
- Freezer Vessel Check List
- Factory Vessel Check List
- Q&A Fishery Products

Although the content of these documents is regarded as the minimum required, Competent Authorities may adapt them as necessary to meet local requirements.

7.3 Matters relating to meat

7.3.1 Meat - Guidance

A Food Safety Management Diary for meat producers has been produced for voluntary use.

7.3.2 Meat - Approval of establishments

Details of FSA approved establishments, and guidance on approval of establishments, can be found on the FSA's website.

The FSA is responsible for approving establishments subject to veterinary control (i.e., slaughterhouses, cutting plants placing fresh meat on the market and game handling establishments) as well as any cold stores, meat products, minced meat, meat preparations, mechanically separated meat premises and edible co-products plants that are co-located with approved slaughterhouses, cutting plants, or game handling establishments or wholesale meat markets.
Competent Authorities (District Councils) are responsible for approving all other food premises handling POAO (except for co-located premises described above) and for registering establishments that are exempt from approval.

7.3.3 Enforcement in meat establishments

DAERA Veterinary Service is responsible for enforcement in meat establishments that require veterinary control (see above).

7.3.3.1 Co-located establishments

DAERA Veterinary Service is responsible for hygiene enforcement in minced meat, meat preparations, mechanically separated meat plants, cold stores or edible co-products plants that are co-located with an approved slaughterhouse, cutting plant or game handling establishment. When a co-located meat establishment does not require approval for example a retail butcher, dual Competent Authority/DAERA Veterinary Service enforcement continues to apply.

7.3.3.2 Stand-alone establishments

Competent Authorities are responsible for enforcement in stand-alone establishments that produce meat products, minced meat, meat preparations and mechanically separated meat, and in establishments exempted from approval under Regulation (EC) No 853/2004.

7.3.3.3 Cold stores

Cold stores supplying the final consumer (see definition in 8.3.4.1) exclusively or supplying other establishments (including caterers) on a 'marginal, localised and restricted' basis (see 8.3.4.2) are not subject to approval and must be registered under Regulation (EC) No 852/2004.

European Commission guidance advises that wholesale meat cold stores require approval on the basis that they are used in relation to activities for which Annex III of Regulation (EC) No 853/2004 lays down requirements. It has been decided to follow the Practice Guidance. There is no requirement for veterinary control of cold stores and

Competent Authorities are therefore responsible for approving cold stores and for enforcement in cold stores, except where they are co-located with approved slaughterhouses, cutting plants or game handling establishments.

Additional advice on the approval of stand-alone cold stores which are not co-located with FSA approved establishments can be found in the FSA Guidance for Local Authorities on the approval of establishments.

7.3.3.4 Wild game

There are exemptions from the scope of Regulation (EC) No 853/2004 for the supply of wild game by primary producers or by hunters. Such supply can be in-fur or in-feather but must only be supplies of small quantities directly to the final consumer or to retail outlets directly supplying the final consumer – see 8.3.4 below. Additionally, hunters can supply small quantities of game meat. However, game supplied under the hunter exemption to a retail outlet cannot be supplied to another retail outlet under the retail-to-retail exemption. The retail-to-retail (wholesale) exemption must also be on a marginal, localised, and restricted basis.

Primary producers whose onward supply is limited to small quantities of primary product (i.e., in-fur or in-feather wild game) directly to the final consumer or to retail outlets directly supplying the final consumer are exempt from the scope of both Regulation (EC) No 853/2004 and Regulation (EC) No 852/2004. However, they are responsible for supplying safe food under Regulation (EC) No 178/2002.

Premises used for the supply of small quantities of prepared wild game to the final consumer or to retail outlets directly supplying the final consumer must meet the hygiene requirements of Regulation (EC) No 852/2004 and are subject to enforcement by Competent Authorities.

Establishments that process wild game and do not qualify under the Wild Game exemptions to supply in-fur/in-feather carcases or small quantities of wild game meat to the final consumer only or to local retail establishments that directly supply meat to the final consumer must be approved by the FSA as an approved game handling establishment (AGHE). AGHEs are subject to official veterinary controls and they need to comply with both the general hygiene requirements of Regulation (EC) No 852/2004 and specific provisions for the initial handling of large/small wild game in Regulation (EC) No 853/2004. They must have in place a food safety management procedure based on HACCP principles and must only accept game that has been examined by a trained person. In certain circumstances, where the trained person is unexpectedly unavailable, certain viscera such as the head (except for antlers and horns) and the heart, lungs, and liver but not the stomach and intestines of the deer, must accompany the body for post-mortem inspection. AGHEs must also ensure that animal by-products are handled and disposed of according to Regulation (EC) No 1069/2009.

7.3.3.5 Edible co-products

Competent Authorities are responsible for enforcement in stand-alone establishments producing edible co-products i.e., treated stomachs, bladders and intestines, rendered animal fats and greaves, gelatine and collagen.

Separate guidance on these products will be made available on the FSA website.

7.3.4 Exemptions from approval

See the Approval of establishments - Guidance for local authority authorised officers

7.3.4.1 Retail establishments (Regulation (EC) No 853/2004, Article 1(5) (b) (ii))

The exemption is for retail establishments that supply POAO to the final consumer, or that supply other establishments (including caterers) on a marginal, localised, and restricted basis.

'Final consumer' is defined as 'the ultimate consumer of a foodstuff who will not use the food as part of any food business operation or activity', i.e., the public.

The regulations require establishments that cut meat and which is placed on the market (i.e., rather than supplied for further processing) to be approved as cutting plants and subject to veterinary control, unless that supply is on a marginal, localised and restricted basis. Catering butchers who supply all or most of their production to the catering trade will therefore in principle be subject to approval, as well as retail butchers supplying caterers and/or other establishments in excess of the marginal threshold.

7.3.4.2 Retail establishments - 'marginal, localised and restricted' supply to other retail establishments

In respect of fresh or processed meat including meat products, the terms 'marginal', localised' and 'restricted' should be interpreted as:

- 'Marginal': Recital 13 of Regulation (EC) No 853/2004 interprets 'marginal' as 'a small part of the establishment's business', but European Commission guidance provides that it may also be interpreted as 'a small amount of food of animal origin in absolute terms. Thus:

  - i) 'a small part of the establishment's business' means 'up to a quarter of the business in terms of food'; or
  - ii) 'a small amount of food of animal origin' means, in relation to meat (fresh or processed, excluding wild game and wild game meat) up to two tonnes per week, (which could be averaged over any 12-month period) subject to the establishment having a genuine retail element to its operation supplying the final consumer with part of its production of meat.

  If either (i) or (ii) applies, the establishment is exempt from the requirements of Regulation (EC) No 853/2004. Provided, in relation to meat, the 'localised' criteria below are also met.

- ‘Local’/’localised’ is within the supplying establishment’s own county plus the greater of either the neighbouring county or counties or 50km/30miles from the boundary of the supplying establishment’s *county*, but never beyond the UK except supply from Northern Ireland to the Republic of Ireland. When the supplying establishment is in the Scottish islands, local is interpreted as anywhere within Scotland.
- ‘Restricted’ only applies to the supply of wild game. Supply is subject to the game having been examined by a trained person and carcases of large wild game animals must be accompanied by a trained person’s declaration stating that no abnormalities were observed either before or after shooting. For all other meat, the restrictions relate to the amount of meat supplied.

7.3.4.3 Guidance on the cutting of meat for direct sale by farmers (for example at farmers' markets)

The ‘marginal, localised and restricted’ exemption allows a butcher to cut meat on a farmer's behalf and return it to that farmer for onward sale; provided this is a marginal part of that butcher's business and the farmer being supplied is local.

7.3.4.4 Wild game (primary producers/hunters)

Regulation (EC) No 853/2004 Article 1(3) (e) exemption repeats the one at Regulation (EC) No 852/2004 Article 1(2) (c) allowing primary producers to supply small quantities of wild game carcases (i.e., in-fur/in-feather) either direct to the final consumer or to local retail establishments directly who can then supply the final consumer only. Primary producers, whether individual hunters or shooting estates, are exempt from these regulations.

Regulation (EC) No 853/2004 Article 1(3) (e) exemption applies only to individual hunters who prepare wild game meat from carcases they have shot themselves. Only small quantities of this meat may be sold either direct to the final consumer or to local retailers directly who can then supply the final consumer only. However, because the meat is not a primary product, the hunter is exempt only from Regulation (EC) No 853/2004, not from Regulation (EC) No 852/2004.

For these exemptions, the UK is interpreting supply of ‘small quantities’ as self-defining because the demand for in-fur/in-feather carcases from local consumers and local retailers is limited. In the case of the hunter claiming a Regulation (EC) No 853/2004 Article 1(3) (e) exemption, this is separate from the primary producer exemption as it allows the hunter to supply wild game meat in small quantities. The meat that is supplied would have to be part of this amount, rather than in addition to it. Supply direct to a final consumer can be via mail order or internet sales as well as by delivery/collection. The interpretation of ‘local’ is the same as for ‘localised’ (see 7.3.1.2).

The summary table at 7.4.4 below provides information on what elements of the various regulations apply to the hunting of wild game and its placing on the market.

Separate guidance on the supply of wild game outside approved premises can be found on the FSA website.

7.3.4.5 On-farm slaughter and cutting of small quantities of poultry and lagomorphs

Regulation (EC) No 853/2004 does not apply to the direct supply, by the producer, of small quantities of meat from poultry (i.e., farmed birds except ratites) or lagomorphs (i.e. rabbits, hares and rodents) slaughtered on the farm to the final consumer or to local retail establishments directly supplying such meat to the final consumer (Article 1(3)(d))[68]. Article 1(4) goes on to say that the rules governing the persons and activities benefiting from this exemption (in addition to those in Regulation (EC) No 852/2004) will be set out in national law. These national rules are set out in Schedule 5 to The Food Hygiene Regulations (Northern Ireland) 2006.

Which producers benefit from this exemption?

The exemption applies to producers of poultry or lagomorphs who slaughter their own animals on the farm of production, as long as only *small quantities* of meat are supplied.

The UK is interpreting 'small quantities' as:

- producers annually slaughtering under 10,000 birds or lagomorphs; or
- producers annually slaughtering over 10,000 birds or lagomorphs who are members of an appropriate assurance scheme and who either (a) dry pluck by hand or (b) slaughter for 40 days per year or less.

The limit of 10,000 birds or lagomorphs in the first category should allow for some fluctuation in annual throughput around that level provided, it does not habitually exceed a combined limit of 10,000 a year.

Although there is no limit to the number of birds or lagomorphs that producers in the second category may slaughter, the FSA anticipates that the restrictions will limit production to relatively small quantities. In judging whether an assurance scheme is appropriate, regard should be had as to whether the scheme has requirements that go beyond minimum legal requirements in relation to food safety and hygiene and whether it has independent verification arrangements. The FSA can advise in cases of doubt.

Where can the meat be sold?

Meat produced under this exemption may be supplied:

- direct to the final consumer; or
- direct to local retail establishments directly supplying such meat to the final consumer

In the first category, direct supply to the final consumer includes mail order or internet sales, as long as the supply is *direct* to the consumer. Such supplies are not

[68] As amended by Article 3 of Regulation (EC) No 2076/2005 (Transitional and Implementing Measures)

necessarily limited to meat in the form of fresh meat. They could be in the form of meat products or preparations.

In the second category, the supply must be direct to local retail establishments (in the form of fresh meat, meat preparations or meat products), and could include the supply by the producer to restaurants or other catering establishments. The retail establishments supplied must be *local*. 'Local' supply is interpreted as being the same as 'localised' and, in addition, anywhere within the UK in the two weeks preceding Christmas and Easter and (for geese) Michaelmas (late September).

What rules apply?

Regulation (EC) No 852/2004 applies to producers who benefit from this exemption. This includes, among other things, the requirement to register the establishment with the local Competent Authority, to maintain procedures based on HACCP principles and to comply with general hygiene and training requirements. The national rules in Schedule 5 to The Food Hygiene Regulations (Northern Ireland) 2006 regarding labelling and record keeping also apply.

The labelling rules require that the meat bear a label or other marking clearly indicating the name and address of the farm where the bird or animal was slaughtered. This is in addition to any labelling required by the Regulation (EU) No 1169/2011.

The record keeping rule requires the producer to keep a record in adequate form to show the number of birds and the number of lagomorphs received into, and the amounts of meat despatched from, the premises during each week. Such records, in order to be adequate, should at least record this information by species of animal slaughtered. The records should be retained for one year and be made available to an authorised officer of the local Competent Authority on request.

7.3.5 Meat products, minced meat and meat preparations – Cutting of meat

Premises that cut meat exclusively for the manufacture of meat products, minced meat, meat preparations or mechanically separated meat require approval in respect of their manufacturing activities and need to comply with the relevant requirements of Annex III of Regulation (EC) No 853/2004 for red or white meat cutting plants, but will not need approval as cutting plants.

7.3.6 Home slaughter of livestock: a guide to the law in Northern Ireland

Where slaughter of a livestock animal is carried out by its owner on their property for their own personal consumption or that of immediate members of their family living there and the meat is not placed on the market (whether free of charge or not), such activity falls out of the scope of both Regulation (EC) No 852/2004 and Regulation (EC) No 853/2004. However, Regulation (EC) No 999/2001 applies wherever a Transmissible Spongiform Encephalopathies (TSE) susceptible animal is slaughtered (including home slaughter). This means that after slaughter of cattle, sheep, or goats, specified risk material (SRM) must be removed, stained and disposed of in accordance with Regulation (EC) 999/2001 (as amended) and the Animal By-Products Regulation

(EC) No 1069/2009. Animal Welfare Regulations also apply. A more detailed guide on home slaughter is available on the FSA website.

7.3.7 The wild game sector - which regulations apply to which activities

The table provides information on what elements of the various regulations apply to the hunting of wild game and its placing on the market.

ACTIVITY	Regulation (EC) No 852/2004	Regulation (EC) No 853/2004	Regulation (EU) No. 2017/625[69]
Shooting for own consumption	No Article 1(2)(a) states exemption	No Article 1(3)(a) states exemption	No
Supply direct to final consumer or to local retailers (directly supplying final consumer) of small quantities of *whole carcasses by primary producer (hunter or estate)*	No Article 1(2) (c) states exemption National rules apply[70]	No Article 1(3) (c) exemption	No
Supply direct to final consumer or to local retailers (directly supplying final consumer) of small quantities of meat from carcasses (produced by hunter from own shooting)	Yes Premises to be registered as food business[71] and to operate under Annex II	No Article (1)(3)(e) states exemption National rules apply	No

[69] Regulation (EU) No 2017/625 and regulations made under it, such as Regulation (EU) 2019/627 and Regulation (EU) 2019/624

[70] Food Safety (Northern Ireland) Order 1991

[71] By the Competent Authority (district council)

ACTIVITY	Regulation (EC) No 852/2004	Regulation (EC) No 853/2004	Regulation (EU) No. 2017/625[69]
Supply of whole carcasses to approved game handling establishments (AGHEs) *either direct from shoot or from game larder operated by primary producer*	Yes Premises to be registered as food business and to operate under Annex I	Parts relating to primary producer ('trained person[72]' requirements and hygiene practices for example, initial handling, temperature controls and transport)	Parts relating to primary producer's documentation and hygiene practices, including OV[73] examination of 'trained person' information
Supply of whole carcasses to approved game handling establishments (AGHEs) *not by the primary producer*	Yes Premises to be registered as food business and to operate under Annex II (including any game larders and vehicles)	Parts relevant to documentation originally supplied by 'trained person', plus temperature controls, hygienic handling, and transport	Parts relevant to supplier's hygiene practices, plus OV to check supply of documentation from 'trained person'
All other (non-retail) establishments preparing wild game meat for placing on the UK domestic or export market. These are approved game handling establishments (AGHEs)	Yes	Yes Premises to be approved by FSA	Yes

[72] Either the gamekeeper or game manager on the hunting party/in the immediate vicinity or a hunter who has completed training provided to the satisfaction of the Competent Authority (see Regulation 853/2004, Annex III, Section IV, Chapter I)

[73] Official Veterinarian

7.3.8 Less than thoroughly cooked (LTTC) burgers

In March 2017, a specific requirement for establishments supplying minced meat (MM) and/or meat preparations (MP) intended to be eaten less than thoroughly cooked (LTTC) to be approved by either the FSA or their Competent Authority was introduced. Specific approval of this activity is an important step in delivering a high level of public protection. A published list of establishments approved for this activity can be viewed. The list assists FBOs at catering establishments to identify approved producers of MM/MP which are suitable for use in the production of burgers intended to be LTTC.

There is guidance for food businesses and authorised officers on 'Less than thoroughly cooked burgers' on the FSA website.

7.3.9 Halal food issues

Guidance for food law enforcement officers on Halal food requirements can be found on the FSA's communications platform.

7.4 Matters relating to raw milk and dairy products

7.4.1 Introduction

This section provides specific guidance to Competent Authorities with regard to Raw Milk and Dairy Products and clarifies enforcement responsibilities between DAERA (on behalf of FSA) and Competent Authorities (district councils).

7.4.2 Enforcement

Responsibility in relation to dairy establishments is as follows:

- Milk production holdings: registration and subsequent supervision and inspection rests with DAERA Agri-food Inspection branch (AfIb). DAERA AfIb will also be responsible, on behalf of the FSA, for the controls under regulation 29, Schedule 6 of The Food Hygiene Regulations (Northern Ireland) 2006 on the sales restrictions of raw drinking milk (RDM), i.e.
  - ensuring that raw drinking milk is only supplied from farms direct to consumers, at registered farmers markets, or via distributors
  - ensuring compliance with the appropriate raw drinking milk (RDM) labelling requirements
  - the management of the sampling programme to ensure adherence to standards for such milk set down in Schedule 6

  DAERA Veterinary Service is responsible for carrying out official tests of dairy cattle herds for bovine tuberculosis (TB) and brucellosis where appropriate, including annual TB testing of cattle herds that produce raw drinking milk for direct human consumption.

- Liquid milk establishments: approval rests with FSA and DAERA AfIb undertakes hygiene official controls on their behalf
- Dairy product establishments: Competent Authorities are responsible for their approval and enforcement. In establishments where both milk is bottled and dairy products are manufactured, FSA is responsible for approval following the

recommendation from the Competent Authority. These establishments will be subject to joint food law enforcement by DAERA AfIb and Competent Authorities

7.4.3 FBOs selling raw drinking milk and cream intended for direct human consumption

Article 10(8) of Regulation (EC) No 853/2004 allows the UK to establish national rules on the sale of raw milk and cream intended for direct human consumption.

The FSA is responsible for the enforcement of Schedule 6 of The Food Hygiene Regulations (Northern Ireland) 2006 with respect to RCDM for direct consumption. DAERA AfIb verify compliance with those provisions and are the relevant enforcement authority for failure to comply with:

- the Schedule 6 micro parameters for RCDM
- the limitations on sales routes for RCDM for direct consumption
- the health warning requirements for RCDM under Schedule 6

DAERA AfIB is also responsible, on behalf of the FSA, for enforcing the sampling requirements of Schedule 6 of The Food Hygiene Regulations (Northern Ireland) 2006 in respect of sales of RDM intended for direct human consumption, *from species other than cows* – specifically paragraph 5 and for the health warning requirements for RDM of non-cow species under Schedule 6.

There are *no similar restrictions on sales routes of raw drinking milk from other species* under this Schedule though the product is still required to comply with the food safety and traceability requirements set out in Articles 14 and 18 of Regulation (EC) No 178/2002.

DAERA AfIB (on behalf of the FSA) is responsible for verifying compliance with hygiene requirements during bottling or packaging processes for RDM of all species for direct consumption. Competent Authorities are the enforcement authority for general food labelling, including durability marking of RDM of all species.

All RDM for direct consumption is also required to comply with the food safety criteria under Regulation (EC) No 2073/2005 with respect to ready to eat foods, and the legal safety and traceability requirements for food.

Competent Authorities should alert DAERA AfIb if they become aware of sales of raw drinking milk at establishments other than those permitted under Schedule 6 of The Food Hygiene Regulations (Northern Ireland) 2006. DAERA AfIb will be responsible for taking the necessary enforcement action at food establishments where the sale of raw drinking milk is not permitted.

7.4.4 Reusable containers

The requirements for equipment to be clean and to disinfect reusable containers mechanically can be difficult to comply with, particularly for some smaller establishments. Dairies that obtain clean bottles from central units will not normally require mechanical bottle washing facilities, providing the clean bottles are not exposed to any risk of contamination during storage and before being filled at the dairy. Bottle

washing and storage can take place in the same room where products are handled, but at different times or in a separate area - providing hygiene is not compromised.

7.4.5 Health requirements for raw milk production

FBOs are responsible for ensuring that the requirements of Regulation (EC) No 853/2004, Annex III, Section IX, Chapter 1 are met through private veterinary inspections at regular intervals. The frequency of such inspections will be dependent on the individual circumstances. Such inspections can take place when a farmer's private veterinary surgeon is present for other purposes. FBOs will need to keep evidence of such visits for example a receipt/invoice - and of any follow up action taken if problems occur – for checking by authorised officers. First commercial purchasers (or processors) of raw milk are also required to ensure, for example through contracts, that checks have been carried out to assess compliance with relevant animal health standards. Immediate problems that may affect the safety of milk will normally be notified to DAERA Aflb by Private Veterinary Practitioners (PVP) or by DAERA Veterinary Service. Longer-term issues arising from records can also be referred to DAERA Aflb. Where DAERA Aflb suspect that requirements are not being complied with, or that follow up action has not been taken, they should raise the matter with the first commercial purchaser/processor, or with the producer direct, and advise them to take appropriate advice for example from their private veterinary surgeon.

Where DAERA Aflb becomes aware of an issue with the health status of an animal or the herd supplying milk for the production of dairy product on farm, or the test results of the milk, the Competent Authority will receive notification from DAERA Aflb.

7.4.6 Criteria and standards for raw milk

In the case of the standards laid down in Regulation (EC) No 853/2004, Annex III, Section IX, Chapter I, Part 3 for plate counts and somatic cell counts, the regulations specify a minimum frequency of sampling by the producer or the first commercial purchaser. Authorised officers need to ensure that FBOs are carrying out the specified sampling programme. Authorised officers should check FBOs' records, and if they have concerns about the test results, consider random official checks to satisfy themselves that the required standards are being met. Arrangements relating to milk for heat-treatment are set out in Annex III, Section IX, Chapter II of Regulation (EC) No 853/2004, as amended by Article 8/Annex VII(2)(d) of Regulation (EC) No 2074/2005.

7.4.7 Temperature requirements for milk used for the manufacture of dairy products

Regulation (EC) No 853/2004, Annex III, Section IX, Chapter II, Part 1, Paragraph 1 stipulates that the acceptability of raw milk applies from the arrival of the milk at a processing establishment. Paragraph 2 allows temperatures and times specified for treatment of raw milk to be exceeded for 'technological' reasons. These reasons will include cases where higher temperatures may be essential to the manufacture of certain products for example cheeses and instances over a weekend for example when establishments are unable to process milk within the specified period. Authorisation by the Competent Authority is required whenever it is anticipated that these times will be exceeded.

7.4.8 Heat treatment of raw milk or dairy products

Requirements for pasteurisation and ultra-heat treatment are set out in Annex III, Section IX, Chapter II of Regulation (EC) No 853/2004, as amended by Article 8/Annex VII (2) (d) of Regulation (EC) No 2074/2005.

7.4.9 Phosphatase testing

Regulation (EC) No 1664/2006, which amended Regulation (EC) No 2074/2005, implemented new requirements for the alkaline phosphatase (ALP) testing method for heat-treated milk:

- All FBOs should have implemented the new reference method for ALP activity ISO 11816-1
- An ALP test is considered to give a negative result if the measured activity in cow's milk is not higher than 350 mU/l.

An alternative analytical method can be used as long as it is validated against the reference method.

7.4.10 Labelling of cheeses made from raw milk

Cheeses made from raw milk which are sold pre-packaged are required to be labelled on the packaging as being 'made with raw milk' at point of sale. The legislation provides that 'labelling' includes any packaging, document, notice, label, ring, or collar accompanying or referring to such products.

Blocks of cheese on display at a delicatessen counter which it is intended will be cut into smaller portions for sale to the consumer are required to be labelled as 'made with raw milk' either by a label on the cheese or by a notice referring to it. However, such cheese once it is cut and wrapped and given to the consumer for purchase does not require to be labelled with the prescribed wording.

7.4.11 Officially tuberculosis free status and dairy hygiene legislation

7.4.11.1 Scope

This section provides information and advice for Competent Authorities in Northern Ireland who have dairy herds and/or dairy establishments in their area, including those producing RCDM[74] and/or unpasteurised milk-based products. The guidance will be of assistance to those involved in follow up actions following notification from DAERA of the loss of 'Officially Tuberculosis Free' (OTF) status of dairy herds.

For the purpose of the Practice Guidance and for the purposes of Dairy Hygiene legislation, the herd will have lost OTF status if: a reactor is disclosed by tuberculin testing, suspect lesions of TB are identified at routine post mortem meat inspection 'slaughterhouse cases'), inconclusive reactors are disclosed within three years of a previous confirmed TB incident in the same herd; or a tuberculin skin test has become overdue ('status suspended'- OTFS); or when *M. bovis* infection is confirmed in a herd by post mortem examination and /or bacteriological culture ('status withdrawn- OTFW').

[74] In this context raw cows' milk also includes raw buffalo's milk.

7.4.11.2 Introduction

Tuberculosis (TB) is an infectious disease of humans and many animal species, caused by bacteria of the genus *Mycobacterium*. Most cases of human tuberculosis are caused by *Mycobacterium tuberculosis (M. tuberculosis)*. TB in cattle is primarily caused by *Mycobacterium bovis (M. bovis*), which unlike *M. tuberculosis* has a very broad host range. DAERA is responsible for carrying out surveillance testing of dairy cattle herds for bovine tuberculosis (and brucellosis where appropriate) on a disease risk basis.

7.4.11.3 Legislative background

The details of the legislative background can be found in section 2 of the Milk Hygiene on the Dairy Farm NI, which summarises the provisions of Regulation (EC) No 853/2004, Annex III, Section IX, Chapter 1 for raw milk and dairy products.

7.4.11.4 Competent Authority enforcement issues

Action to take on loss of OTF status of a dairy herd

When a dairy herd is placed under TB movement restrictions, for whatever reason, DAERA Afib will send a notification to the herd owner (FBO), FSA and relevant Environmental Health Officer (EHO) within the Competent Authority. TB restrictions are imposed on the herd owner under the Tuberculosis Control Order (Northern Ireland) 1999 and this effectively suspends (or withdraws) the OTF status of that herd until further notice.

Competent Authorities responsible for inspecting on farm dairy product establishments should ensure that milk from the TB reactor animals is not being used in the manufacture of dairy products on farm. They should also ensure that where milk from non OTF herds are used in the manufacture of dairy products that this practice is authorised by the Competent Authority and that the FBO meets the requirements of Annex III Section IX, Chapter I, Part 1, 3 and that all hazard analysis controls are in place and working effectively at the establishment, in particular adequate heat treatment.

To give effect to this Competent Authority authorised officers will need to:

Contact the herd owner to establish:

a) that no milk from reactor animals is entering the food chain

b) whether milk from the herd is being offered without heat treatment as part of an on-farm business, for example a bed & breakfast

c) whether the milk is being, or has been used to make unpasteurised milk-based products either on the farm or elsewhere

These investigations may be facilitated by contacting DAERA AfIb.

If, as a result of the enquiries above, milk from reactor animals is found to have entered the food chain after the loss of OTF status this must be notified to FSA's Consumer Protection team immediately. Similarly, FSA's Consumer Protection team should be notified immediately if milk from the non-reactor animals in the herd is found to have entered the food chain without heat treatment.

Action to be taken on stocks of raw milk-based products following loss of OTF status

For products made prior to the herd losing its OTF status Competent Authorities should liaise with FSA who will conduct a risk assessment of the situation, which will assist in determining the action to be taken by the Competent Authority. If, as a result of the risk assessment, it is concluded that it would be appropriate to withdraw or destroy such products, a voluntary withdrawal/destruction should be pursued. Authorised officers will have to decide on appropriate action based on the circumstances of individual cases.

The factors to be taken into account in the risk assessment will include:

a) The reasons for the loss of OTF status. This may be due to the disclosure of TB test reactors, inconclusive reactors only, a reported slaughterhouse case, pending culture results, or an overdue TB test.

b) The number of reactors and slaughterhouse cases identified. This is the number of reactors in relation to the total herd size and number of cattle tested. A single or a low number of reactors in a large herd might represent a lower risk, since it might indicate that the infection has not had time to spread within the herd. A large number of reactors in any herd might indicate either a long term spread within the herd or multiple infections linked to a common source. Herds with larger number of reactors at the initial test are more likely to have additional reactors disclosed at the next tests.

c) Types of cattle reacting to the test. For example, maiden non calved heifers or bullocks being non-milk-producing animals might be of less significance than infection detected in adult milking cows. A high proportion of reactor calves may be indicative of milk-borne spread of infection from a cow with TB of the udder.

d) The number, severity and location of any TB lesions found at post-mortem examination (PME) and the bacteriological culture results.

   If no TB lesions are found, or lesions are confined to one organ or one part of the body other than the mammary gland, the risk of TB bacilli being present in milk may be considered low. If TB lesions were found in the mammary gland or in more than one organ or part of the body in a lactating dairy cow, the risk of TB bacilli being present in milk may be considered significant. TB bacilli may be present in milk even in the absence of obvious udder disease when the disease has been distributed systemically. Following PME tissue samples are collected from a small subset of reactors, including those where no visible lesions were found in the absence of lesioned cattle. Tissue culture takes a minimum of 6 weeks to positively identify *M. bovis,* with approximately <10% of reactors with no visible lesions at PME and >90% of reactors with visible lesions yielding a positive culture of *M. bovis*.

e) Testing history of the individual herd. Aspects to consider include:

   1. time elapsed since the last negative TB test
   2. previous TB history of the herd (recurrent incidents)
   3. the reason for conducting the test

f) The baseline testing frequency for the local area. This provides an indication of whether the herd is in a high TB prevalence area. The local DAERA Divisional Veterinary Office (DVO) will provide expert opinion and judgement of the TB incidence and prevalence in the locality.

g) General herd health and herd biosecurity. Consideration should also be given to:

    1. milk somatic cell counts - higher cell counts might indicate a higher likelihood of TB organisms being present in the milk; and

    2. animal trading record for the farm, highlighting numbers brought in, from where and their last TB test date (this is important because it may take a minimum of 6 weeks from the time of infection for an animal to react to the tuberculin test).

h) Type(s) of milk-based product and production process. For example, the use of bought in milk might make it more difficult to establish the necessary herd information. Consideration must be given to any scientific evidence, including that provided by the milk processors, that the production process might eliminate the pathogens and that TB organisms are absent from the product.

i) Fresh milk products. The shelf life of the product might have been exceeded by the time the post-mortem report or tissue culture results are received.

j) Size of the TB restricted herd. The likelihood, severity, and duration of TB incidents, as well as the probability of finding further reactors at follow-up tests, tends to increase with herd size. Although this trend has been identified the affect is difficult to quantify and therefore the other factors detailed above are of greater significance for the risk assessment.

Where there is evidence of active disease in an animal, then it is likely that withdrawal of batches of the product produced before the date of TB testing would be appropriate as a precaution. The DAERA Veterinary Officer dealing with the TB incident is often the person best placed to provide information and assist the Competent Authority with the risk assessment.

The regulations do not prohibit the marketing of products made before the removal of OTF status. If a voluntary solution cannot be concluded with the producer any action taken will need to be under the Food Safety (Northern Ireland) Order 1991. Authorised officer might consider action under Article 8 of the Order if they suspect that the products concerned fail to comply with food safety requirements as defined in Article 14 of Regulation (EC) No 178/2002 on general food law.

It is an offence under regulation 4(b) of the General Food Regulations (Northern Ireland) 2004 to contravene Article 14(1) of Regulation (EC) No 178/2002.

Action to take before OTF problems arise

Competent Authorities should liaise with DAERA AfIb to ensure that herds supplying RCDM and/or establishments or processors manufacturing unpasteurised dairy products are tuberculin tested annually. Competent Authorities should notify FSA when they become aware of the sale of RCDM for human consumption or the production of unpasteurised dairy products in their area. Competent Authorities should advise manufacturers producing unpasteurised dairy products that the law requires that the

milk they use may only come from herds classified as OTF. Therefore, enforcement officers should verify that those processors who buy in milk are able to produce evidence that the milk they purchase only comes from OTF dairy herds that are tested annually for TB. Competent Authorities should contact DAERA AfIb who will be able to supply further information about these issues.

Competent Authorities might find it helpful to liaise with the local DAERA DVO as their responsibilities include checking farm records under animal health legislation.

7.4.12.4 Cases of human illness

In the event of the Consultant in Health Protection being notified that a person(s) has confirmed bovine TB, and the infection is thought to be recently acquired, the Consultant in Health Protection should ascertain any connection with cattle that might indicate the infection might have been caught from an animal source or might be passed to animals. If so, they must inform DAERA and FSA for detailed guidance. For detailed guidance on dealing with human cases of TB please contact the Public Health Agency.

7.4.12.5 Further contacts and information

If further advice is needed on the action to be taken on stocks of raw milk-based products following the loss of OTF status, Competent Authorities should contact FSA's, Consumer Protection team.

If more information is required on DAERA procedures concerning TB controls Competent Authorities should contact the local DAERA DVO.

The following website may be useful.

7.5 Matters relating to egg packing centres

7.5.1 Introduction

This section provides specific guidance to Competent Authorities for the enforcement of Annex III, Section X, Eggs and Egg Products, Chapters I and II respectively of Regulation (EC) No 853/2004.

In addition to the relevant requirements of Regulation (EC) No 852/2004, this part of the aforementioned regulations lay down requirements for egg packing centres covering:

- hygiene and temperature requirements for the storage and transport of eggs
- the maximum time limit in which eggs must be delivered to the consumer

7.5.2 Scope of the regulations

The regulations apply to establishments engaged in the following activities:

- Egg Packing Centres – the grading, packing, handling, and storage of eggs
- Wholesalers and Retailers – the handling and storage of eggs

The production and collection of eggs at the producer's establishment are activities that take place at the primary production level.

Under the terms of the EU hygiene legislation, egg packing centres are not classed as primary producers, as they are engaged in activities one step removed from primary production. Therefore, in addition to the specific egg hygiene provisions contained in Regulation (EC) No 853/2004, egg-packing centres will be subject to the appropriate provisions of Regulation (EC) No 852/2004, including the Article 5 HACCP requirements and the relevant chapters of Annex II.

Egg packing centres will generally receive eggs from primary production units. From the packing centre, eggs will be distributed throughout the food distribution chain – to wholesalers, retailers, and the catering trade. Packing centres may be located on the same site as the production holding but they might also be sourcing eggs from a number of different production sites and may even take bulk supplies of eggs from the wholesale market and repackage them into smaller containers. These practices are acceptable; however Competent Authorities must verify that egg packing centres comply with the relevant requirements of the food hygiene regulations and general food law.

Egg wholesalers, while subject to the requirements of Annex III, Section X, Chapter 1 of Regulation (EC) No 853/2004, may be classed as 'retail' as defined in Article 3(7) of Regulation (EC) No 178/2002 and included in the retail exemption. However, if a wholesaler also conducts egg packing then approval is required for the area of the establishments involved in packing eggs.

7.5.3 Specific hygiene requirements for shell eggs

The specific requirements set out in the Regulations are:

- at the producer's establishment, and until sale to the consumer, eggs must be kept clean, dry, free of extraneous odour, effectively protected from shocks and out of direct sunshine
- eggs must be stored and transported at a temperature, preferably constant, that is best suited to assure optimal conservation of their hygiene properties
- eggs must be delivered to the consumer within a maximum time limit of 21 days of laying

These specific requirements are self-explanatory save for the requirement to deliver eggs to the final consumer within 21 days from laying. It is not possible to determine the age of an egg directly and any legal requirement to provide the date of lay or the age of an egg is covered in egg marketing legislation. Eggs might be stamped with 'best before dates'. In the case of Class A eggs, it is a legal requirement for a 'best before date' to be applied on all labels/packs. Given this information, if an authorised officer suspects eggs are being sold beyond the time limit required on food safety grounds, they must examine documentation from the egg producer to determine the age of an egg. The authorised officer should also contact the relevant Egg Marketing Inspector (EMI) for further guidance and help in taking the appropriate action. From a hygiene perspective, eggs need to be used within 28 days of lay. Retailers need to sell fresh eggs to the public within 21 days so that consumers have 7 days in which to use the eggs.

The Eggs and Chicks Regulations (Northern Ireland) 2010 cover most aspects of egg production, marking, transport, grading, packing and onward marketing.

The Registration of Establishments (Laying Hens) Regulations (Northern Ireland) 2003 require all laying hen establishments with 350 or more laying hens - whether from caged, barn, free range, or organic egg-producing hens - to be registered with DAERA.

Producers must also register with DAERA if:

- they have 50 or more hens and any of the eggs are marketed at a local public market
- any of the eggs are marketed to registered packing centres

If the eggs are supplied to shops, restaurants or bakeries, the producer will need to be approved and authorised as a packing centre by EMI in order to be permitted to grade them as Class A eggs.

All registered establishment are allocated with a distinguishing number that must be stamped on all eggs graded as Class A.

7.5.4 Egg marketing

Egg producers, packing stations, and wholesalers are also subject to egg quality and marketing regulations. These regulations are the responsibility of DAERA (AfIB). Inspections under these regulations are carried out by EMIs. It is recommended that authorised officers liaise with their respective EMI prior to inspecting relevant premises.

7.5.5 Lion scheme and other industry-led quality assurance schemes

There are a number of industry-based quality assurance schemes operating throughout the UK that enforcement officers should be aware of. These include the ‘Lion’ and ‘Laid in Britain’ schemes.

Both schemes incorporate food safety procedures based on the food hygiene regulations but also includes additional requirements. These include compulsory vaccination against Salmonella Enteritidis of all pullets destined for flocks producing ‘Lion’ eggs or ‘Laid in Britain’ eggs. The Lion scheme also has a ‘best-before’ date stamped on the shell as well as on the pack.

With these schemes, there are additional on-farm and packing station hygiene controls including a compulsory HACCP plan for packing stations. The regular inspections of egg packing and production sites by independent inspectors are part of these schemes but are different to Competent Authorities or the EMI inspections.

7.6 Matters relating to egg products and liquid egg

7.6.1 Introduction

This Section provides specific guidance to Competent Authorities on the enforcement of Section X, Eggs and Egg Products Chapter II of Regulation (EC) No 853/2004. This lays down the public health rules for the manufacture and placing on the market of egg products and liquid egg for human consumption.

The regulations lay down requirements for:

- establishments
- raw materials for the manufacture of egg products
- special hygiene requirements for the manufacture of egg products
- analytical specifications
- labelling and identification marking

7.6.2 Scope of the regulations

The regulations apply to establishments manufacturing egg products and liquid egg for human consumption, which include food businesses involved in the production of:

- processed products resulting from the processing of eggs, or various components or mixtures of eggs, or from the further processing of such processed products
- liquid egg for onward transportation to approved processing establishments

All establishments need to be approved if the regulations apply to them.

None of the requirements in Section X, Chapter II of Regulation (EC) No 853/2004 apply to retail, as defined by Regulation (EC) No 178/2002, so establishments such as bakers and caterers that process eggs and supply to the final consumer are not subject to any of the requirements of Regulation (EC) No 853/2004. However, there is a requirement under DAERA marketing legislation for caterers to only use Class A eggs, so they must have come from an approved egg packing establishment which meets the requirements in Regulation (EC) No 853/2004.

7.6.3 Types of approved premises

Premises requiring approval fall into two categories:

i. premises where egg products are manufactured and placed on the market, i.e., where processing of raw eggs takes place
ii. premises where liquid egg is produced for later processing by an approved egg product manufacturer

Category (ii) exists because egg packing centres might prefer to break out eggs, including cracked eggs, to produce liquid egg rather than risk breakage before they are sent to a processing establishment described in category (i). Such approvals must require that the eggs are broken out as soon as possible in accordance with the FBO's HACCP-based procedures and the resulting liquid egg frozen or chilled for transport to another approved establishment. If chilled, the storage temperature must not exceed 4^{o}C and the storage period before processing must not exceed 48 hours. Any establishment approved for category (ii) only, must comply with the same requirements for approval as egg product manufacturers in category (i). When notifying the FSA of approvals, the Authority should specify whether the approval is for i) or ii) and if the establishment is also a packing centre.

7.6.4 Dirty eggs

Eggs cannot be broken out unless they are clean and dry. Dirty eggs (non-Class A eggs) may be cleaned, but Competent Authorities must ensure that any washing, drying, and disinfecting of eggs is separated from all other operations of the business.

7.6.5 Centrifuging or crushing

The regulations prohibit the use of centrifuges or crushing to obtain egg contents or obtain egg whites from shells for human consumption. However, centrifuges can be used for the disposal of waste, and in such cases, the centrifuge must be situated completely separately from other operations of the approved establishment. Authorised officers must satisfy themselves that centrifuged material cannot contaminate egg products intended for human consumption. Waste material must be denatured upon entry to the centrifuge, for example by use of a dye.

7.6.6 Identification marking

The general requirements for identification marking laid down in Annex II, Section I of Regulation (EC) No 853/2004 must be complied with and are set out in of the Code. However, there are additional specific requirements for egg products. Regulation (EC) No 853/2004, Annex III, Section X, Chapter II, Part V requires that consignments of egg products to be used as an ingredient in the manufacture of another product must have a label giving the temperature at which the egg products must be maintained and the period during which conservation may thus be assured. If the egg in question is liquid egg, then the label must also state the words ’non-pasteurised egg products - to be treated at place of destination’ and indicate the date and hour of breaking.

7.6.7 Pasteurisation and heat treatment

The Regulations do not prescribe a time/temperature combination for the heat treatment of eggs, but they do require that the process must eliminate microbiological hazards or reduce them to an acceptable level. Processing is not required for egg white intended for the manufacture of dried or crystallised albumen destined subsequently to undergo heat treatment.

Competent Authorities will need to be satisfied that the heat treatment process is sufficient to ensure a reduction in the level of micro-organisms in the egg product to any levels laid down in EU Regulations on microbiological criteria.

Where a non-standard process is proposed, the onus is on the food business to show that adequate research has been carried out into its effectiveness. In establishments where heat processing takes place, Competent Authorities must establish that the operator of the heat process has an acceptable and appropriate level of expertise.

7.6.8 Analytical specifications

Part IV of Annex III, Section X, Chapter II of Regulation (EC) No 853/2004 lays down analytical specifications that the end-product must not exceed. Although there are no prescribed methods for testing for lactic or butyric acids, methods do exist. Where such methods are used, consideration must be given to the reliability of the results. Where samples are tested, the results must be compared with the standards specified.

Authorised officers can help food businesses develop sampling plans, which are not prescribed in the regulations.

7.6.9 Temperature control

The regulations require that products that have not been stabilised so as to be kept at room temperature must be cooled to not more than 4°C. Products for freezing must be frozen immediately after processing.

7.6.10 Storage and transport

Establishments must keep eggs and egg products separate to avoid contamination. If separate rooms are not available, egg products may be stored in separate containers and areas.

Storage rooms must be capable of maintaining any required temperature controls.

The regulations do not cover egg products that are stored in separate establishments such as depots or warehouses outside approved egg products establishments. Such storage is covered by Regulation (EC) No 852/2004.

7.7 Food for specific groups

7.7.1 Regulation (EU) No. 609/2013 on foods for specific groups

The Food Safety (Information and Compositional Requirements) Regulations (Northern Ireland) 2016, which puts enforcement provisions in place to enable the European Regulation on foods for specific groups (referred to as FSG Regulation) on Regulation (EU) No 609/2013 to be enforced in England, Scotland, and Wales.

This legislation replaced the rules on Foods intended for Particular Nutritional Uses (PARNUTS foods). The regulation repeals framework Directive 2009/39/EC on PARNUTS foods and covers:

- infant and follow-on formula
- processed cereal-based food and baby food
- food for specific medical purposes
- total diet replacement for use in energy restricted diets for weight control

The new regulation:

- sets general compositional and labelling rules and requires the Commission to adopt, through delegated acts, specific compositional and labelling rules for the above foods
- transfers rules on gluten-free foods and very low gluten under Regulation (EU) No 1169/2011 on food information to consumers (FIC) in order to ensure clarity and consistency
- Establishes that foods previously regulated under the PARNUTS framework, such as meal replacement products for weight control, will be treated as general foods and regulated under Regulation (EC) No 1924/2006 on nutrition and health claims

The FSG Regulation lays down *general* requirements for the four food categories above. In terms of labelling, there are only general requirements established for not misleading the consumer or attributing to the food the property of preventing, treating, or curing a human disease. There are additional requirements for infant formula and follow-on formula which require the labelling, presentation, and advertising to be designed so as not to discourage breastfeeding and must not include pictures or text idealising the use of infant formula or follow-on formula.

The FSG Regulation establishes *specific* compositional and information rules through Delegated Regulations for each of the four categories of food.

Food for other population groups is regulated as regular foodstuffs under general food law. Young-child formulae and food intended for sportspeople are exclusively covered by EU food law.

The regulations implement the minimal requirements of the FSG Regulation and give enforcement officers the power to serve Improvement Notices for failure to comply with existing provisions for labelling, composition, and advertising of foods for specific groups (see the FSA letter ENF/NI/16-05 for further guidance). Similar legislation applies in England, Scotland and Wales.

7.7.2 Legislative Requirements for infant formula, follow on formula and baby foods

Information on legislation in this area can be found on the EU website, which Competent Authorities may find helpful.

7.7.2.1 Infant formula and follow-on formula

Infant formula and follow-on formula are products designed to satisfy the specific nutritional requirements of healthy infants and young children. Infant formula is suitable from birth and is the only food which can be marketed as satisfying by itself the nutritional requirements of infants during the first months of life. Follow-on formulas are foods intended for older infants when appropriate complementary feeding is introduced and constituting the principal liquid element in a progressively diversified diet of such infants. These products are specifically covered by Commission Directive 2006/141/EC.

Under the new FSG Regulation, Delegated Regulation (EU) 2016/127 providing the detailed labelling and compositional rules for infant and follow-on formula applied from 22 February 2020 (except in respect toto infant and follow-on formula manufactured from protein hydrolysates for which the new rules do not apply until 22 February 2021).

The legislation sets out the requirements for the composition, labelling and advertising of infant formula and follow-on formula. This includes restrictions on advertising of infant formula and requirements to draw a clear distinction between the two products. The annexes of the legislation give criteria for the composition (protein, carbohydrate, fat, mineral substances, vitamins, and certain other ingredients) of infant formulae and follow-on formulae including, where necessary, minimum, and maximum levels. The legislation also requires all infant formula to be notified to the Department of Health prior to being placed on the market.

The legislation also encompasses the specific rules on the presence of *pesticides residues in infant and follow-on formulae*. It requires that baby food contains no detectable levels of pesticide residues, meaning not more than 0.01 milligrams of pesticide residues per kilogramme. The Directive also prohibits the use of certain *very toxic pesticides in the production of infant and follow-on formulae* and establishes levels lower than the general maximum level of 0.01 milligrams per kilogram for a few other very toxic pesticides[75].

In addition to the requirements relating to infant formulae and follow-on formulae, there are also specific provisions on hygiene, on the use of food additives, on the presence of contaminants in the products and on the use of materials intended to come into contact with foodstuffs.

The new Delegated Regulation (EU) 2016/127:

- Updates the existing compositional requirements based on the latest scientific advice.
- Modifies the rules on labelling to ensure consistency with Regulation (EU) No 1169/2011 on the provision of food information to consumers.
- Prohibits the use of nutrition and health claims on infant formula to protect breast-feeding.
  Strengthens the requirement to ensure infant formula and follow-on formula are clearly distinct from each other.

As a member state, the UK Government was fully involved and committed to the introduction of the new regime within the EU. The Delegated Regulation is enforced in Northern Ireland by the Food Safety (Information and Compositional Requirements) (Amendment) Regulations (Northern Ireland) 2020

Detailed guidance on the rules on infant formula and follow-on formula can be found at the following link (separate, but parallel legislation is implemented in Scotland, Wales and Northern Ireland).

7.7.2.2 Processed-cereal based foods and other baby foods

Processed-cereal based foods and other baby foods *(weaning foods)* are specifically intended for infants (children under the age of 12 months) and young children (between one and three years) as they progress onto a mixed family diet.

Processed cereal-based foods and baby foods for infants and young children are covered by Commission Directive 2006/125/EC. It sets out rules on the composition and labelling of processed-cereal based foods and other baby foods. It also gives criteria for the composition (protein, carbohydrate, fat, mineral substances, and vitamins) of weaning foods including, where necessary, minimum and maximum levels.

The Directive encompasses the specific rules on the presence of pesticides residues in processed cereal-based baby foods and baby foods set out in Commission Directive

[75] The results from monitoring undertaken at national level by the Chemical regulatory Directorate for pesticide residues in food including infant foods are published on the gov.uk website

99/39/EC and requires that baby food contains no detectable levels of pesticide residues, meaning not more than 0.01 milligrams of pesticide residues per kilogramme. In addition, the Directive prohibits the use of certain very toxic pesticides in the production of processed cereal-based baby foods and baby foods and establishes levels lower than the general maximum level of 0.01 milligrams per kilogramme for a few other very toxic pesticides.

In addition to the requirements relating to processed-cereal based foods and other baby foods in Directive 2006/125/EC there are also specific provisions on hygiene, on the use of food additives, on the presence of contaminants in the products and on the use of materials intended to come into contact with foodstuffs.

National provisions in Northern Ireland are the Processed Cereal Based Foods Regulations SR 2003 No. 530.

Under Regulation (EU) No. 609/2013 the EC was empowered to adopt delegated acts with respect to specific compositional and information requirements for each category of food.

7.7.3 Food for special medical purposes

Medical foods are classified as dietary foods for special medical purposes (FSMP) for which the compositional and labelling requirements are laid down and regulated by the following Regulations: Medical Food Regulations (Northern Ireland) 2000) Delegated Regulation (EU) 2016/128 providing the detailed labelling and compositional rules for FSMP came into force on 22 February 2019. This is enforced by The Food Safety (Information and Compositional Requirements) (Amendment) Regulations (Northern Ireland) 2020.

With regard to FSMP designed to meet the nutritional requirements of infants, Delegated Regulation (EU) 2016/128 applies from 22 February 2020 and this is enforced in Northern Ireland by the The Food Safety (Information and Compositional Requirements) (Amendment) Regulations (Northern Ireland) 2020

7.7.4 Foods for total diet replacement for weight control

Low and very low-calorie diet foods are specially formulated foods which replace the whole of the diet. Foods for total diet replacement for weight control are regulated in Great Britain by the Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations (Northern Ireland) 1997. These regulations implement Commission Directive 96/8/EC on foods intended for use in energy-restricted diets for weight reduction. Since 20 July 2016, Directive 96/8/EC no longer applies to foods presented as a replacement for one or more meals of the daily diet. Rules that regulate meal replacement for weight control are transferred to Regulation (EC) No 1924/2006 on nutrition and health claims made on food.

The new FSG Regulation requires the Commission to adopt, through delegated act, specific compositional and labelling rules for foods for total diet replacement for weight control, which will replace Directive 96/8/EC. Delegated Regulation (EU) 2017/1798 on total diet replacement for weight control was adopted in June 2017 and is set to apply in

Europe from 27 October 2022. Until then, the rules of Directive 96/8/EC remain applicable to foods for total diet replacement.

7.7.5 Addition of substances to FSG for specific nutritional purposes

Nutritional substances belonging to the following categories: vitamins, minerals, amino acids, carnitine and taurine, nucleotides, choline and inositol, that may be used in the manufacture of foods for specific groups are laid down in the Annex to the to the FSG Regulation (EU) No 609/2013. FSG Regulation (EU) No 609/2013. The category of food which each substance may be added to is specified in the Annex.

7.7.6 Notification procedures

When the following foods are placed on the market, the manufacturer or importer must notify the Department of Health and Social Care by completing a notification form and forwarding a model of the product label as required by the The Food Safety (Information and Compositional Requirements) (Amendment) Regulations (Northern Ireland) 2020. This includes:

- New or updated formulations of Infant formula
- Dietary foods for special medical purposes (FSMP)
- From 22 February 2020 some follow-on formula products will also need to be notified i.e., if their composition differs from the requirements of Annex II of Regulation 2016/128
- From 22 February 2021 follow-on formula containing protein hydrolysates will need to be notified.

7.7.7 Foods for sports people

There is no specific legislation on foods intended to meet the expenditure of intense muscular effort, especially for sports people; general food law therefore applies. Products presented as ‘food supplements’ need to comply with Directive 2002/46/EC. All products presented for sports people need to ensure that any nutrition or health claims made are compliant with the Nutrition & Health Claims Regulation (EC) No 1924/2006 and the EU Register of authorised claims.

7.7.8 Foodstuffs suitable for people intolerant to gluten

The rules on use of the statements 'gluten-free' and 'very low gluten' will be incorporated into Regulation (EU) No 1169/2011 on the provision of food information to consumers.

7.8 Temperature control provisions

7.8.1 Introduction

Temperature control requirements for food businesses in the EU are set out in Annex II, Chapter IX, Paragraphs (5) and (6) of Regulation (EC) No 852/2004. These requirements are given effect in Northern Ireland by regulation 27 / Schedule 4 of The Food Hygiene Regulations (Northern Ireland) 2006. In respect of circumstances exempted from the requirements of Regulation 27/Schedule 4 and where food is required to be kept under temperature control for safety reasons, the general requirements of Annex II of Regulation (EC) No 852/2004 which include Chapter I,

Paragraph 2 (d), Chapter III Paragraph 2(g), Chapter IV Paragraph 7, Chapter V Paragraph (2) and Chapter IX Paragraphs (2), (5), (6) and (7), of Regulation (EC) No 852/2004 would still apply, as appropriate.

Regulation 27 / Schedule 4 does not apply in respect of any FBO to which Regulation (EC) No 853/2004 applies.

7.8.2 General approach to temperature checks

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 might apply.

Where appropriate, regard must be given to any relevant temperature requirements of Annex II of Regulation (EC) No 852/2004.

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

Stage 1 - Air temperature monitoring

Air temperature monitoring provides an indication of the performance of a refrigeration system over time, and a single reading at any one time will not necessarily be an indication of product temperature. Air temperature monitoring records are an indication of temperature history, including defrost cycles, door openings, breakdowns etc. They must be regarded as a guide to how a particular system is functioning.

Stage 2 – Between-pack testing

Non-destructive temperature measurement, or between-pack testing, must normally be used as the next step in the enforcement process. This is done with a pre-cooled flat-headed probe, suitable for measuring surface or between-pack temperatures.

It is important to ensure good thermal contact between the product and the probe when taking between-pack measurements. A total tolerance of +2.8ºC (0.8ºC as specified for instrument accuracy and 2ºC for the limitation of the methodology) must be allowed. Care must be taken to allow time for the reading to stabilise, and to ensure that the temperature reading relates to the product, not the surrounding air, which can happen if the probe is not properly sandwiched between the packs. Testing must be conducted with the minimum of disturbance to the product or its temperature-controlled environment, particularly the airflow patterns in retail display cabinets. For products within an outer casing, it will be necessary to open the casing and insert the temperature probe between packs.

Not all packs or packaging materials are suitable for between-pack testing. Irregularly shaped packs where good thermal contact is not possible, packaging materials that act as an insulator and products in cartons or bubble packs where large air spaces exist are all examples where a between-pack temperature measurement might not be

sufficiently accurate to give an indication of product temperature. In such instances it might be necessary to proceed directly to a destructive temperature measurement.

Stage 3 - Product testing (destructive)

If a ‘stage 2’ temperature measurement has not been possible, or there is reasonable doubt after a ‘stage 2’ test about compliance with temperature requirements, it will be necessary to progress to destructive testing.

Sample preparation and temperature measurement must normally be undertaken with the sample in its temperature-controlled environment. If this is not possible, the sample must be removed to an appropriately refrigerated environment, provided the transfer does not prejudice product temperature. Any transfer must take place prior to preparation of the sample. Transfer of products within the normal cold chain, for example from a vehicle to a cold store, is acceptable.

When a ‘stage 3’ measurement is being carried out, insertion of the temperature probe into the food might render the food unsaleable. In such circumstances, the authorised officer must consider purchasing the food in question.

The selection of items to be tested is at the discretion of the officer. However, if ‘stage 2’ testing has been carried out and there appears to be a breach of the relevant temperature requirements, it must not normally be necessary to select large numbers of items for ‘stage 3’ testing.

In the first instance, items must be taken for ‘stage 3’ testing from the warmest part of the refrigeration system. This can usually be identified using thermochromic (liquid crystal) strip temperature indicators. Although these do not give an accurate temperature reading, they can provide a useful guide to relative temperature distribution within a refrigeration system.

General approach

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.

If there is no temperature monitoring system, or the officer has reasonable doubt about the information derived from the system where there is one, the officer should carry out a ‘stage 2’ check.

If the temperature measured at ‘stage 2’ gives the officer reasonable doubt that the relevant temperature requirements are being met, the officer should move on to ‘stage 3’ and measure the temperature of the food itself.

‘Stage 3’ product testing (destructive) methods must always be used to produce evidence for prosecution.

The FBO 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.

7.8.3 Taking temperature measurements

The temperature of a product must not be prejudiced by, for example, opening the doors in a vehicle too often or for too long, disturbing the air curtain in a chill cabinet, or removing the food from a refrigerated environment for long periods.

Any opened cases or cartons must be re-sealed and appropriately labelled or marked with the date and time of the inspection; the name of the person who opened it, and the name of the Competent Authority. This is to show that the case or carton was opened for an official inspection and removes any suspicion of malicious tampering.

7.8.4 Tolerances

'Stage 2' temperature readings might be up to 2ºC warmer than the true product temperature, especially product with thick packaging. They might also be affected by recent movement of goods, defrost cycles or instrumental inaccuracy as described below.

Authorised officers must use professional judgement in borderline cases to decide whether further 'stage 2' measurements are necessary before proceeding to 'stage 3'.

7.8.5 Checking and calibration of enforcement measuring thermometers

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

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

Competent Authorities must ensure that temperature measurements that are to be used in evidence are taken with a thermometer or other measuring device that has a current certificate of calibration.

The accuracy of the thermometer or other temperature measuring device, and any detachable probes, must be checked against a reference thermometer or calibrator that is certified to an appropriate standard, for example NPL, and the result recorded, before and after taking any temperature measurements that are likely to result in enforcement action.

The record of such a check must be referenced to the instrument's certificate of calibration and include serial numbers of the instrument and any interchangeable probes.

If a reference thermometer is not available, the sensor can be checked in a wet ice mixture. In this case, the system must be calibrated at 0ºC. The temperature of wet ice from distilled water is 0ºC. Drinking water with a salt content of 0.1% will only depress the melting point to -0.06ºC. Therefore, in most cases drinking water can be used to

make the ice for the checking procedure. Ice must be broken up into very small pieces, packed into a wide-necked vacuum flask, wetted with cold water and stirred. The sensor must be placed at the centre of the flask at a depth of at least 50mm and agitated frequently and the temperature read after three minutes when stabilised. The read-out instrument can be checked separately using calibration attachments at two or three different temperatures. The combination of checking the system at 0ºC with that of checking the instrument must ensure accuracy at higher temperatures.

7.8.6 Pre-cooling of instruments

The thermometer or other temperature measuring device and the penetration probe must be pre-cooled before being used to measure product temperature to ensure that instruments are as close as possible to the temperature of the product being measured. Pre-cooling reduces the likelihood of a rise in product temperature due to the temperature of the probe and the action of making the hole and can usually be done by leaving the instruments and probe in the same temperature-controlled environment as the sample for about 10 minutes. Provided there is no significant rise in the temperature of the instrument or probe, subsequent measurements can be made after a much shorter pre-cooling period.

7.8.7 Preparation of samples for temperature measurement

Only temperature measuring probes that are specifically designed for the purpose must be used to make a hole in the product. If the probe is not designed for this purpose a separate pre-cooled product penetration implement must be used. The diameter of the hole must provide a close fit to that of the probe and its depth will depend on the type of product being tested (as described below).

7.8.8 Measurement of product temperature

Preparation of the product for testing and its temperature measurement must take place with the product in its temperature-controlled environment. Measurement is as follows:

- where the product dimensions allow, insert the pre-cooled probe to a depth of at least 2.5cm from the nearest outside surface of the product
- where it is not possible, the probe must be inserted to a minimum depth from the surface of at least 3 times the diameter of the probe. With some products, because of their small size, greater care should be taken to avoid excessive rises in product temperature from unnecessary handling of the sample

Certain foods, because of their size or composition, cannot be penetrated satisfactorily to determine their internal temperature. In these cases, the internal temperature of the food package must be determined by insertion of a suitable pre-cooled sharp-stemmed probe to the centre of the pack to measure the temperature in contact with the food.

It may not always be possible to determine the internal product temperature accurately, especially of fragile or open-textured products. The temperature of such products must be measured by carefully removing the product from its packaging and firmly sandwiching a pre-cooled flat-headed probe between two items of product.

The temperature reading must not be recorded until it has stabilised.

7.8.9 Equipment used for chilled product temperature measurement

Temperature measurement systems that are used for enforcement purposes must meet the following requirements - the:

- system must reach 90% of its final reading within 3 minutes
- system must have an accuracy of +/-0.5ºC, or better when the sensor is measuring within the temperature range -20ºC to +30ºC
- accuracy must not change by more than +/-0.3ºC when the instrument is operated in temperatures of -20ºC to +30ºC
- instrument display must be readable to at least 0.1ºC
- system must be robust and shock proof
- temperature sensitive part of the system must be constructed to facilitate good thermal contact with the food and be easily cleaned

A dry cell battery, not mains electricity, must power the measuring instrument. The instrument must incorporate a method of checking the battery voltage to indicate when replacement or re-charging is necessary. The design of the probe depends on the type of temperature measurement:

- For product tests: a robust rigid stem with a sharpened point suitable for insertion into the product and capable of being sterilised
- For between-pack tests: a flat head suitable for a between-pack measurement with good surface contact, low thermal mass, and high thermal conductivity. If a suitable flat probe is not available, one can be constructed using a calibrated sensor crimped in the centre of a square, (approximately 4cm long) or circle (approximately 4cm diameter) or a double layer of aluminium foil. Any inter-connecting cables must be flexible between 0ºC and +30ºC

7.8.10 Food that is warmer than prescribed chill holding temperature

When measuring the temperature of food itself, authorised officers must be aware that the Schedule allows the temperature of a food subject to chill holding temperatures, whilst it is for service or on display for sale, to rise above 8ºC for one period only of less than four hours (Schedule 4, paragraph 5(1)(b) and (c)).

The officer must be satisfied that the FBO has measures in place, as appropriate, to ensure that the chill holding tolerance described above is not exceeded.

7.8.11 Food that is cooler than prescribed hot holding temperature

When measuring the temperature of food itself, authorised officers must be aware that the Schedule allows the temperature of a food subject to hot holding temperatures, whilst it is for service or on display for sale, to fall below 63ºC for one period only of less than 2 hours. (Schedule 4, paragraph 7(2) (a) and (b)).

The officer must be satisfied that the FBO has measures in place, as appropriate, to ensure that the hot holding tolerance described above is not exceeded.

7.8.12 Temperature deviations

Where the FBO suggests that specified temperatures have not been complied with for unavoidable reasons, the authorised officer must discuss the reasons with the FBO and, where possible, seek agreement on action to prevent any recurrence.

Authorised officers must always ensure that any measures taken by the FBO 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.

If the food itself is at a higher temperature than the prescribed chill holding temperature, or a lower temperature than the prescribed hot holding temperature, and the authorised officer is of the opinion that the food has not been produced, processed, or distributed, in accordance with the Food Hygiene Regulations (Northern Ireland) 2006, the officer must deal with the food under Regulation 25 of the regulations (see also Regulation 23 in this regard). Voluntary Procedures to remove food from the food chain can, however, be used in appropriate circumstances.

If food is at a higher temperature than 8ºC (chill holding) or below 63ºC (hot holding), but does not fail food safety requirements, the authorised officer must use professional judgement to determine the most appropriate action in the circumstances. The food can still be fit for consumption, even if it has been maintained at temperatures within this range.

Authorised officers should enquire into the history of the food, in particular to ascertain whether it could previously have been exposed to such temperatures. Enforcement decisions must take account of the history of the food and whether it is consistent with food safety. Authorised officers can adopt an educative approach as the first step towards securing compliance and discuss the requirements of the legislation with the FBO to ensure they understand the controls, why they are needed, and how they can be achieved. In considering the approach to take, enforcement officers should consider how likely it is that food may be being consistently placed on the market at these temperatures.

7.9 Bottled waters

7.9.1 Introduction

This section provides guidance to Competent Authorities on enforcement of The Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2015.

7.9.2 Legislation

These regulations transpose into UK legislation the provisions of European Parliament and Council Directive 2009/54 and Council Directive 98/83/EC, relating to the safety and quality of water for human consumption as it applies to bottled water.

The legislation also implements

- Commission Directive 2003/40/EC establishing the list, concentration limits and labelling requirements for the constituents of natural mineral waters and the

conditions for using ozone-enriched air for the treatment of natural mineral waters and spring waters.
- Commission Regulation (EU) No 115/2010 laying down conditions for the use of activated alumina for the removal of fluoride from natural mineral water and spring water and to incorporate text from Council Directive 98/83/EC on monitoring by Competent Authorities for regulatory purposes.
- Directive 2013/51 EURATOM laying down requirements for the monitoring of radioactive substances in water intended for human consumption in so far as those requirements apply to bottled water
- Commission Directive (EU) 2015/1787 amending Annexes II and III to Council Directive 98/83/EC on the quality of water intended for human consumption in so far as those requirements apply to bottled water

The regulations have been recently amended to reflect the new status of the UK in relation to the EU and the implementation of the Northern Ireland Protocol.

- The Food (Amendment) (EU Exit) Regulations 2020

7.9.3 Natural mineral waters (NMW)

The Regulations require each natural mineral water source to be recognised by the Competent Authority for the area in which the source is located.

Once recognition has been granted, the Competent Authority is required to make periodic checks to ensure that the source remains free from all risk of pollution and that the composition of the water remains stable in accordance with Schedule 3 and 4 of the Regulations.

It is not permitted to sell water as natural mineral water if the source has not been recognised.

The most recent list of all recognised sources within the EU is available on the EU's website.

The updated list of NMW recognised in the UK can also be found online in the guidance.

7.9.4 Recognition of natural mineral waters

Applications for recognition of natural mineral waters in the UK are submitted in writing to the Competent Authority. The Competent Authority is required to assess all the information required by the regulations.

Competent Authority must notify the FSA whenever they recognise a new natural mineral water, withdraw recognition, or approve a change in the name of the source or trade description of a natural mineral water.

Competent Authorities should also notify the Belfast Gazette, of any recognition, of a natural mineral water.

Natural mineral water cannot be tankered unless it was tankered for the purposes of exploiting the spring before 17 July 1980. Hence transport of water from the spring to the packaging line must be in a closed pipeline made of a suitable material and the

filling system must ensure that there is no microbiological contamination of the water before closure of its container.

Applications for recognition of natural mineral waters from outside the EEA should be submitted in writing to FSA in NI.

7.9.5 Labelling of natural mineral waters

The Regulations include detailed labelling requirements for containers of natural mineral water that must be met when natural mineral waters are packaged.

Among them, the one and the same spring rule applies.

7.9.6 Spring and other bottled drinking water

The recognition process required for Natural Mineral Water does not apply for spring and bottled drinking water. The parameters to be measured and the maximum limits which need to be met for spring and bottled drinking water also differ from those in natural mineral water.

One recent amendment to the regulations updated monitoring obligations by relevant authorities in relation to radioactive substances for spring and bottled drinking water and establishes the criteria for sampling by the Competent Authorities.

In relation to chemical and microbiological parameters, the minimum frequency for check monitoring and audit monitoring sampling as well as the parameters to be taken by each relevant authority for spring and bottled drinking have been removed by the latest amendment to the Regulations.

However, intervention by relevant authorities will continue to be required since official controls under Regulations (EC) No 178/2002 and Regulation (EU) 2017/625 are applicable. Furthermore, the sampling of water to ascertain that it remains compliant with the Regulations in terms of chemical and microbiological parameters will continue to be required.

Like natural mineral water, spring water cannot be tankered, unless it was being transported in tankers on or before 13 December 1996. The right to tanker is linked to the *spring*, not the bottler.

7.9.7 Labelling of spring and other bottled water

Any bottled water that is described as ‘spring water’ must meet the relevant labelling and exploitation requirements in the regulations. Bottled drinking waters are subject to the general labelling requirements of the Food Information Regulations (Northern Ireland) 2014.

7.10 Food waste and animal by-products

7.10.1 Introduction

This section provides guidance to Competent Authorities on the control of food waste and disposal of animal by-products.

The legislative framework that controls the identification, categorisation, segregation, collection and disposal of food waste includes regulations and orders that are made

under both the Food Safety (Northern Ireland) Order 1991 and the Diseases of Animals (Northern Ireland) Order 1981 and Regulation (EC) No 852/2004.

For the purposes of the Practice Guidance, 'food waste' includes food material that is not fit or not intended for human consumption, although please note 'food waste' is often used to refer to food that is being redistributed and so in those cases remains 'on the market' in food law terms.

Many food businesses will be making efforts to reduce food waste and distribute surplus food to charities or redistributive groups. The FSA supports food surplus redistribution where it can be done safely. A guidance document with helpful advice for charities and businesses redistributing surplus food titled 'Best practice on food date labelling and storage advice' published in November 2017 by WRAP in collaboration with the FSA and Defra is available.

7.10.2 Inspection of food businesses

Any inspection of a food business, including inspections of mobile establishments / premises, ships, aircraft, and trains, must include a check on the arrangements that the business has for the collection and disposal of food waste.

Checks must:

- include the arrangements in ports and airports for the collection and disposal of imported food waste from ships and aircraft; and
- verify that threats to human or animal health which can arise from the illegal disposal of food waste are effectively controlled by proper disposal in accordance with the requirements of the relevant legislation.

7.10.3 Disposal of animal by-products

According to Regulation (EC) No 1069/2009 Animal by-products (ABP) means entire bodies or parts of animals, POAO or other products obtained from animals (includes eggs, milk, and honey), which are not intended for human consumption including oocytes, embryos and semen[76]. Articles 8-10 of Regulation (EC) No 1069/2009 set out what is comprised by Category 1, 2 and 3 materials and should be referred to.

Food material consisting of or containing products originating from animals becomes an ABP when the food business manager determines that the product is no longer to be used for human consumption. Once this decision is made it is irreversible. The material then becomes a low risk (category 3) ABP, and the origin and nature of this food material determines how it can be disposed of or used, and the records required to be kept.

Where appropriate, inspections, which may be carried out by an authorised officer depending on the way that controls are arranged within the Competent Authority, should include checks that FBOs ensure that their food safety management system includes a documented procedure for identification, labelling (cat 1, 2 or 3), handling and disposal of such products. Containers used for collection of ABP need to be clearly

[76] as defined in point (1) of Article 3 of Regulation (EC) No 1069/2009

labelled and easily distinguishable from containers used for collection of products destined for processing and subsequent human consumption. Articles 12-14 of Regulation (EC) No 1069/2009 sets out requirements for the disposal of Category 1, 2 and 3 ABP.

Checks should also verify that these documented procedures are carried out accordingly at the premises by the FBO.

Further, detailed guidance on the Identification, labelling, storage and transport of ABP can be found in Chapter 5 of the Industry Guide to Edible co-products and Animal By-products.

7.10.4 Animal feed – former foodstuffs and co-products

Former foodstuffs, which can also be described as surplus food, may, subject to animal by-product rules be supplied for animal feed where for commercial reasons the food is no longer intended for human consumption. This can include out of date, out of specification, surplus product or ingredients, or food in damaged packaging.

Co-products of food processing may also be supplied for animal feed for example fruit pulp from the production of fruit juice, brewers' grains from the production of beer.

Former foodstuffs and co-products may be supplied direct to a farm or sent for further processing.

FBOs supplying former foodstuffs or co-products are feed business operators. If they are aware that their products are destined for feed they must register as a feed business with DAERA and ensure compliance with Regulation (EC) No 183/2005 Feed Hygiene, Regulation (EC) No 767/2009 Marketing and Use of Feed including labelling and Regulation (EC) No 178/2002 on the general principles and requirements of food law including feed.

Where during inspection of a food premises it is identified that former foodstuffs or co-product is supplied for animal feed, it should be established if the business is registered as a feed business with DAERA. If the FBO is not registered as a feed business or it cannot be established, DAERA must be informed.

7.10.5 Animal feed – animal by-product controls

If former foodstuffs or co-products consist of, contain, or is contaminated with POAO, it becomes subject to Animal By-Products controls. These products generally cannot be used for feed for farmed animals. Further information on disposing food and former foodstuffs is available from DAERA guidance. When a FBO makes the decision that food of animal origin or food that contain POAO is no longer for human consumption then the former foodstuff becomes an animal by-product, and this decision cannot be reversed.

7.10.6 Animal feed – catering waste

Catering waste is any waste food (including used cooking oil) that comes from restaurants, catering sites, commercial or household kitchens. Catering waste must never be sent for use as animal feed including for pet food. Due to the risk of cross contamination with POAO for example milk, this includes vegetarian kitchens.

Processed catering waste, known as ‘swill’, is also banned from feeding to animals. See the following article for supporting information.

7.10.7 Major investigations

Competent Authorities might become aware of instances of apparent food fraud involving the misuse of food waste that could have potentially serious implications for public or animal health, for example unfit meat being diverted into the human food chain.

The investigation of such cases might have serious resource implications for Competent Authorities, both in terms of time and other resources. Nevertheless, it is vitally important that the very serious risks to human health and animal health that such cases might involve are brought to the attention of the relevant enforcement authority and investigated without delay, and that all necessary steps are taken to deal with them thoroughly.

The resources required can impact on a Competent Authority’s ability to carry out its routine inspection and enforcement programme. If such circumstances arise, it is important that the Competent Authority contacts the FSA as soon as practicable.

The FSA and the Competent Authority will then be able to discuss options, including whether support might be available, or whether the Competent Authority’s inspection programme must be re-prioritised to ensure that inspections of higher-risk premises are maintained.

7.11 Distance selling/mail order

7.11.1 Introduction

This section provides guidance to Competent Authorities on the enforcement of food law in relation to the distance selling of food, and information on other generic legal requirements that relate to distance selling.

For the purposes of the Practice Guidance, ‘the distance selling of food’ means the advertisement of food for sale directly to consumers where the subsequent sale or supply of the food to the consumer takes place without the buyer and seller meeting face-to-face. Examples of distance selling include the sale of food through internet websites, mail order transactions, and telephone sales.

The enforcement issues for Competent Authorities that relate to the distance selling of food depend primarily on the location of the advertiser and/or seller.

7.11.2 Location of the seller

The ability of Competent Authorities to enforce food law in relation to the distance selling of food depends on where the seller is based.

It is important to bear in mind that food bought via an internet website involves a sale via the World Wide Web, and that the seller could therefore be located anywhere in the world.

7.11.3 Distance selling of food from the UK

The distance selling of food from the UK including NI takes place when the advertisement of food for sale or the sale transaction itself takes place within the jurisdiction of the UK legal system, even if the purchaser is based overseas.

The distance selling of food from NI is covered by relevant food law applied to NI under the terms of the protocol. Food that is sold by a distance selling method from NI, and advertisements for such food, must therefore comply with the same legal requirements as food sold from a NI high street supermarket or advertised in a national NI newspaper.

Competent Authorities

- are responsible for enforcing food law in relation to the distance selling of food, including food that is advertised or sold through NI-based internet sites
- must therefore have appropriate means of monitoring the distance selling of food by businesses for which they act as primary authority
- must include an assessment of relevant food hygiene, safety, advertising, compositional, and labelling matters in programmed inspections of businesses involved in the distance selling of food in their areas

7.11.4 Distance selling of food from the EU

The distance selling of food from the EU takes place when the advertisement of food for sale or the sale transaction itself takes place outside the jurisdiction of the NI legal system, and within the jurisdiction of an EU Member State.

As most EU food law continues to apply to and in Northern Ireland under the terms of the NIP, similar provisions to those that apply in NI will apply in EU Member States.

Competent Authorities must use the liaison role of the FSA (see relevant chapters of the Code and the Practice Guidance) to resolve problems relating to the distance selling of food from the EU.

7.11.5 Distance selling of food from third countries

In respect of Northern Ireland, the distance selling of food from third countries takes place when the advertisement of food for sale or the sale transaction itself takes place outside the jurisdiction of the UK legal system and outside the jurisdiction of any EU Member State.

7.11.6 Other references

A Guide to Good Hygiene Practice for the mail order food industry, developed in accordance with Article 8 of Regulation (EC) No 852/2004, was published in 2007. There is also FSA guidance on food sold online (as well as guidance for food businesses and consumers).

Generic law regulating distance selling in the UK is set out in the Consumer Protection (Distance Selling) Regulations 2000, which implement Council Directive 97/7/EC in the UK.

The central UK Competent Authority with responsibility for these Regulations is the Department for Business, Energy, and Industrial Strategy (BEIS). Enforcement is the responsibility of the Competition and Markets Authority (CMA) and Trading Standards Departments.

7.12 Additional guidance notes to Competent Authorities

Additional guidance on a variety of food law matters is available on the FSA's communications platform.

Glossary

Alternative interventions

Alternative interventions are interventions other than official food controls conducted at low-risk food businesses and includes alternative enforcement strategies.

Alkaline phosphatase (ALP)

In regard to phosphatase testing in milk AP; is an intrinsic enzyme secreted by ruminants in their milk. The enzyme is denatured during pasteurisation of the milk, hence is used to determine the efficacy of milk being heat treated.

Animal By-Products (ABP)

Defined in Article 3 of Regulation (EC) No 1069/2009 as ‘entire bodies or parts of animals, POAO or other products obtained from animals that are not intended for human consumption’.

Approved Game Handling Establishment (AGHE)

An approved premise in accordance with the Regulation (EC) No 853/2004. Where a business is processing unlimited quantities of game meat from brought -in fur/in feather carcases and supplying it to retail and wholesale customers.

Approved establishment

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

Audit

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

- a ‘full audit’, is an examination of planned arrangements and whether they are implemented effectively and will consider all aspects of a FBO’s operations
- a ‘partial audit’, is an audit that covers only certain aspects of a FBO’s operation

Authorised officer

Means a person (whether or not an officer of the enforcement authority) who is authorised by the Competent Authority, either generally or specifically, to act in relation to matters arising under the Hygiene Regulations.

Awarding bodies

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

Border Control Post (BCP)

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

Central Competent Authority

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

Chartered Institute of Environmental Health (CIEH)

A membership and awarding body for the environmental health sector.

Chartered Trading Standards Institute (CTSI)

CTSI represents trading standards professionals working in the UK and overseas - in local authorities, business and consumer sectors and central government. CTSI exists to:

- promote and protect the success of a modern vibrant economy
- safeguard the health, safety and wellbeing of citizens by enhancing the professionalism of its members

Common Health Entry Document (CHED)

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

Competent Authority

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

Compliant

Conforming with the requirements of the law.

Confidence in Management (CIM)

The confidence in management score is part 3 of the Hygiene/Standard Rating Intervention Rating Scheme. The Competent Authority assesses the business' food safety management/control procedures using their judgement on the likelihood of satisfactory compliance being maintained in the future. Factors that influence the CA's judgement include: the previous record of compliance with the FBO; knowledge on food safety; attitude towards hygiene compliance and satisfactory food safety management procedures.

Conditional approval

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

Consignment

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

Consultant in Health Protection

A senior role within the Public Health Agency, health protection team to provide leadership, management, and oversight of the health protection function, including the response to incidents and outbreaks.

Control verification procedure

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

Continuing Professional Development (CPD)

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

Could

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

Critical Control Point (CCP)

Any step in a process in which hazards can be prevented, eliminated, or reduced to acceptable levels. Example of critical control points include cooking, cooling, e-heating, and holding.

Department of Agriculture, Environment, and Rural Affairs (DAERA)

The Department of Agriculture, Environment and Rural Affairs (DAERA) is the UK government department responsible for the environment, food, and farming industry.

Department of Health (DOH)

The Department of Health is a devolved Northern Irish government department in the Northern Ireland Executive.

Has the meaning as defined by Regulation 2(1) of The Food Hygiene Regulations (Northern Ireland) 2006.

Detention Notice

A notice served on a FBO or duly authorised representative where detention of any animal or food for the purpose of examination (including the taking of samples) is required as specified in in Regulation 9 of The Food Hygiene Regulations (Northern Ireland) 2006.

Distance Communication

Any means of communication which, without the simultaneous physical presence of the supplier and the consumer, may be used for the conclusion of a contract between those parties.

District Council

As defined by Section 1 of the Local Government Act (Northern Ireland) 1972

Documentary check

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

Domestic premises

A dwelling house or other building used principally, but not exclusively as a dwelling and its curtilage.

Earned Recognition

FBOs who demonstrably maintain high standards of food safety by taking appropriate steps to comply with the law, may have these standards recognised by the Competent Authority when determining the frequency of their official food controls and therefore earn recognition.

Early Warning System (EWS)

An emerging risk detection tool to predict hazards for specific food and feed.

Escherichia coli O157 (E.coli O157)

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

Environmental Health Officer (EHO)

Authorised officers responsible for carrying out measures for protecting public health, including administrating, and enforcing legislation related to environmental health.

Environmental Health Registration Board (EHRB)

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

Emergency Prohibition Order (EPO)

Has the meaning as defined by Regulation 11 Food Safety (Northern Ireland) Order 1991 to mean if an authorised officer is satisfied the health risk is fulfilled, he may, by notice, serve on the proprietor of the business and impose the appropriate prohibition.

Enforcement Authority

Has the meaning as defined by Regulation 2(1) The Food Hygiene Regulations (Northern Ireland) 2006 to mean the authority which is responsible for executing and enforcing the Hygiene Regulations.

Establishment

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

European Economic Area (EEA)

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

European Food Safety Authority (EFSA)

A European agency funded by the EU where it provides scientific advice and communication on risks associated with the food chain. Their remit covers: food and feed safety, nutrition, animal health and welfare, plant protection and plant health.

Evidence

Information or items which provide proof of an allegation.

Export

The action of sending a commodity outside the EU sanitary and phytosanitary (SPS) regulatory zone. The movement of Northern Ireland qualifying goods to GB are excluded from this definition.

Feasibility study

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

Food alert

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

Food Hygiene Rating Scheme (FHRS)

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

Food business

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

Food business operator (FBO)

Has the meaning as defined by Article 3(3) of Regulation (EC) No 178/2002 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 Information Regulations (FIR)

Food Information Regulations (Northern Ireland) 2014

Food for Specific Groups (FSG)

The Food Safety (Information and Compositional Requirements) Regulations (Northern Ireland) 2016 establishes compositional and information requirements for the following categories of food: infant formula and follow-on formula; processed cereal-based food and baby food; food for special medical purposes; total die replacement for weight control.

Food Examiner

Any person who possesses the requisite qualifications to carry out examinations.

Food hazard

A biological, chemical, or physical agent in food capable of causing adverse effect to public health.

Food Hygiene

The measures and conditions necessary to control hazards and to ensure fitness for human consumption of a foodstuff, taking into account its intended use as set out in Regulation (EC) No 852/2004.

Food Hygiene Intervention

An intervention that ensures food meets the requirements of food hygiene law, including:

- microbiological quality
- absence of pathogenic micro-organisms
- safety for consumption

Food incident

Any event where, based on the information available, there are concerns about actual or suspected threats to the safety, quality or integrity of food that could require intervention to protect consumers' interests.

Food Standards Agency (FSA)

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

Food Standards Intervention

An intervention that ensures 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
- the absence of non-permitted or excessive levels of additives, contaminants, and residues

Food Standards Scotland (FSS)

The Central Competent Authority in Scotland.

Formal action

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

Formal notice

Means a notice as defined in the various Orders or statutory rules relating to food law.

Framework

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

Full approval

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

Hazard

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

Hazard Analysis Critical Control Points (HACCP)

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

Home Authority

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

Hygiene

The measure and conditions necessary to control hazards and to ensure fitness for human consumption of a foodstuff taking into account its intended use.

Hygiene Emergency Prohibition Notice (HEPN)

A notice served by the authorised officer where there is an imminent risk of injury to health which prohibits the use of a process, treatment, premises, or equipment, as appropriate, as specified in Regulation 8 of the Food Hygiene Regulations (Northern Ireland 2006.

Hygiene Improvement Notice (HIN)

A notice served by the authorised officer on a FBO where they have failed to comply with specified food law as specified in Regulation 6 of The Food Hygiene Regulations (Northern Ireland) 2006.

Hygiene Prohibition Order (HPO)

An order granted by the magistrate’s court following the conviction of a FBO for an offence under specified feed law as specified in Regulation 7 of The Food Hygiene Regulations (Northern Ireland) 2006.

Hygiene Regulation

As defined by The Food Hygiene Regulations (Northern Ireland) 2006.

Identity check

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

Import

The action of bringing a commodity from a country outside the EU.

Improvement Notice

A notice served on a FBO by an authorised officer who has reasonable grounds for believing that the proprietor of a food business is failing to comply with any regulatory requirement, as specified in in Article 9 of the Food Safety (Northern Ireland) Order 1991.

Integrated Management System for Official Controls (IMSOC)

A computerised information management system for official controls (IMSOC) to manage, handle and automatically exchange data, information, and documents in relation to official controls as specified in Regulation (EU) 2019/1715.

Inspection

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

- a ‘full inspection’, is a check on compliance with legal requirements and will consider all aspects of an FBOs operations
- a ‘partial inspection’, which is an inspection that covers only certain aspects of an FBOs operations

Intervention

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

Institute of Food Science and Technology (IFST)

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

Investigation

The action taken by the Competent Authority to gather evidence where it believes an offence has been committed.

Lead food officer (LFO)

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

Live bivalve molluscs

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

Local Authority Enforcement Monitoring System (LAEMS)

A web-based system to allow LA to upload data generated from their local system(s) on which they record data on food law enforcement activities.

Less than thoroughly cooked (LTTC)

Burgers not thoroughly cooked, they contain pink meat in the middle.

Malicious tampering

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

Maritime and Coastguard Agency (MCA)

The MCA is an executive agency of the Department of Transport working to prevent the loss of life on the coast and at sea. They also produce legislation and guidance on maritime matters and provide certification to seafarers.

May

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

May not

Indicates a prohibition.

Memorandum of Understanding (MoU)

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

Minced Meat (MM)

Meat that has been grounded or minced.

Mobile establishment

Premises other than permanent premises, and ‘relevant moveable premises’ means moveable premises, used for the transport or preparation of food or the retail sale of food on five or more days, whether consecutive or not, in any period of five consecutive weeks, other than – motor vehicles which are constructed solely for the purpose of carrying no more than 8 passengers (including the driver) and their personal effects, tents, or moveable premises which are ordinarily kept outside Great Britain.

Monitoring

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

MP

Meat preparation.

Must

Is used to confirm an obligation.

National Food Crime Unit (NFCU)

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

National Health Service (NHS)

A government funded medical and health care service in the UK.

Non-compliance

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

Northern Ireland Local Government Association (NILGA)

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

Official attestation

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

Official certificate

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

Official controls

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

Official control laboratory

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

Official Veterinarian

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

Originating authority

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

Other interventions

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

Other official activities

Activities, other than official food controls, which are performed by the Competent Authorities, or by the delegated bodies or the natural persons to which certain other official activities have been delegated in accordance with Regulation (EU) 2017/625. Including activities granting authorisations or approvals and issuing official certificates or official attestations.

Outbreak

Usually/particularly a foodborne disease and or infectious intestinal disease.

Penalty

The punishment imposed by a court on conviction for an offence under food legislation.

Physical check

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

Primary Authority

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

Primary production (Food)

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

Prohibition Order (PO)

An order served by the Court imposing appropriate prohibitions to a food business when convicted of an offence under any regulations to which the Food Safety (Northern Ireland) Order 1991 apply, and where the Court is satisfied the health risk condition is fulfilled by that business.

Prohibited Person

A FBO that has been convicted of an offence under The Food Hygiene Regulations (Northern Ireland) 2006 and has been issued a prohibition order.

Public Analyst

Scientists that ensure the safety and correct description of food by testing for compliance with legislation as specified in in Article 27 Food Safety (Northern Ireland) Order1991 and Regulation 4 Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 2013.

Public Health Agency (PHA)

The PHA was established in 2009 under a major reform of health structures in Northern Ireland. Their aims are to protect and improve health and wellbeing and reduce health inequalities.

Rapid Alert System for Food and Feed (RASFF)

RASFF is a quick and effective tool for the exchange of information between Competent Authorities when risks to human health are detected in the food and feed chain and measures - such as withholding, recalling, seizure or rejection of the products concerned are taken. This quick exchange of information allows all members of the network to verify immediately whether they are also affected by the problem. Whenever the product is already on the market and should not be consumed, the authorities are then in a position to take all urgent measures, including giving direct information to the public, if necessary.

Raw cows' drinking milk (RCDM)

Cow's milk that has not been heat treated above 40°c (it is raw milk) and is intended for direct human consumption.

Readily available

Any documents that are required to be readily available means that both consumers and businesses can quickly and easily obtain them, either in electronic or hardcopy format.

Records

Means information preserved in writing or the like.

Remedial Action Notice (RAN)

A notice served by an authorised officer to a FBO by an authorised officer where any of the requirements of the 'Hygiene Regulations', as defined by Regulation 2 of The Food Hygiene Regulations (Northern Ireland) 2006, are being breached or an inspection under the Hygiene Regulations is being hampered.

Registering authority

The Competent Authority in whose area the FBO is located. In relation to a mobile establishment, the registering authority will be where it is ordinarily kept.

Risk

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

Royal Air Force (RAF)

The UK aerial warfare force.

Safety

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

Safe Catering

Safe Catering is a food safety management guide for Northern Ireland. It helps catering businesses and retailers with a catering function to comply with food hygiene regulations.

Safer food better business (SFBB)

Food safety management procedures and food hygiene regulations for small businesses.

Sanction

The provision within a statute to take punitive action for failure to comply with the provisions of the statute.

Sampling

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

Scottish Food Safety Officers Registration Board (SFSORB)

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

Should

Is used to confirm best practice.

Signed

Means having a signature affixed either in writing or by electronic means.

Simple caution

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

Standards

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

Surveillance

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

Third Country

A territory or country which is not a European Economic Area (EEA) State.

United Kingdom Accreditation Service (UKAS)

United Kingdom Accreditation Service. UK’s National Accreditation Body, responsible for determining, in the public interest, the technical competence and integrity of organisations.

United Kingdom Food Surveillance System (UKFSS)

The National Database for Food sampling data in Local Authorities, Port Health Authorities & Public Analyst Laboratories.

Validation

Means confirmation that requirements have been complied with.

Verification

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

Writing

Has the meaning as defined by Schedule 1 of the Interpretation Act (Northern Ireland)1954 to mean typing, printing, lithography, photography, and other modes of representing or reproducing words in a visible form, and expressions referring to writing are construed accordingly.