

# Chapter 7 Enforcement

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# 1. Introduction

- 1.1 Purpose
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## 1.1 Purpose

### 1.1.1 FSA enforcement role

These enforcement arrangements apply to all meat establishments approved in Great Britain (GB) and under veterinary control.

Enforcement action is taken in accordance with the FSA enforcement policy.

## 1.2 Relevant references

### 1.2.1 Authorised Officers (AOs)

Authorised Officers (AOs) involved in enforcement activities must bear in mind the definitions contained within the various pieces of legislation.

### 1.2.2 Plant management

Proprietor: Under the Food Safety Act, Section 53 (1) in relation to a food business, means the person who carries out the business.

### 1.2.3 Food Business Operator (FBO)

Food Business Operator means the natural or legal persons responsible for ensuring that the requirements of food law are met within the food business under their control.

**Regulation:** (EC) 178/2002, Article 3, Paragraph 6.

### 1.2.4 Court

References to 'court' should be taken to mean, in England and Wales, a magistrates' court.

### 1.2.5 Justice of the Peace

References to the 'Justice of the Peace (JP)' should be taken to mean, in England and Wales, a magistrate.

### 1.2.6 Duly authorised representative

Duly authorised representative is a responsible person who has the authority to act on behalf of the FBO.

### 1.2.7 Legal definitions

Most legislation includes a definition section that provides guidance on many of the phrases contained within it. The table below identifies where this guidance can be found in the main pieces of legislation that we enforce.

Legislation	Location of definition
(EC) 178/2002	Articles 2 and 3
(EC) 882/2004	Article 2
(EC) 852/2004	Article 2
(EC) 853/2004	Article 2 and Annexes I, II, III
(EC) 854/2004	Article 2
(EC) 999/2001	Article 3, Annex I
(EC) 1069/2009	Article 3
(EU) 142/2011	Annex I
(EC) 2073/2005	Article 2
(EC) 1099/2009	Article 2
The Food Safety Act 1990 (as amended)	Sections 1,2 and 53
All domestic regulations, for example, the Food Safety and Hygiene (England) Regulations, the TSE Regulations, Animal By-Product (Enforcement) Regulations, the Welfare of Animals at the Time of Killing Regulations	Regulation 2 'Interpretation'

### 1.2.8 Guidance documents

- EU Commission Guidance on Implementation of HACCP.
- EU Commission Guidance on Implementation of EC 852/2004.
- EU Commission Guidance on Implementation of EC 853/2004.
- EU Guidance on Key questions relating to import requirements.
- EU Commission Staff Working Document on the understanding of certain provisions on flexibility provided in the Hygiene Package.
- EC 2073/2005 Microbiological Criteria for Foodstuffs.
- EC 178/2002 Guidance Notes for Food Business Operators on Food Safety, Traceability, Product Withdrawal and Recall.
- Food Law Code of Practice and Practice Guidance.
- Meat Industry Guide (MIG).
- Industry Guide on Edible Co-products and Animal By-products.
- Food Safety Management Diary for Meat Producers.
- The Wild Game Guide and Photo Annex.

## 2. Legislation, Enforcement Roles and Provisions

- 2.1 Legislation and enforcement provisions
- 2.2 Division of enforcement responsibilities
- 2.3 Communication with FBOs
- 2.4 Recording and monitoring enforcement action
- 2.5 Guidance on completion of enforcement programme
- 2.6 Gathering and preserving evidence
- 2.7 Information obtained from unauthorised sources (The Regulation of Investigatory Powers Act 2000 (RIPA))

### 2.1 Legislation and enforcement provisions

#### 2.1.1 Code of Practice

The 'Food Law Code of Practice and Practice Guidance' have been issued under:

- Section 40 of the Food Safety Act 1990 (as amended)
- Regulation 26 of the Food Safety and Hygiene (England) Regulations 2013 / Regulation 24 of the Food Hygiene (Wales) Regulations 2006, and
- Regulation 6 of The Official Feed and Food Controls (England / Wales) Regulations 2009

To provide guidance for food authorities on enforcement issues under the legislation. Whilst the FSA is not a food authority, it is an enforcement authority and the principles set out in the Code have been mirrored in this chapter.

#### 2.1.2 Requirement to enforce

Each Member State (MS) must enforce food law by monitoring and verifying that relevant legislative requirements are met through a system of official controls and other activities. It is for each MS to lay down the rules on measures and penalties

to be applied when infringements of food law are detected. Regulation (EC) 178/2002, Article 17, Paragraph 2.

*When the competent authority identifies non-compliance, it shall take action to ensure that the operator remedies the situation. When deciding which action to take, the competent authority shall take account of the nature of the non-compliance and the operators past record with regard to the non-compliance;* Regulation (EC) 882/2004, Article 54

Food law includes all statutes, regulations and administrative provisions governing food in general, and food safety in particular, whether at Community or national level. It covers all stages of production, processing and distribution of food, and also of feed produced for, or fed to, food-producing animals.

### **2.1.3 Enforcement provisions**

Each MS must enforce food law by monitoring and verifying that relevant legislative requirements are met through a system of official controls and other activities. It is for each MS to lay down the rules on measures and penalties to be applied when infringements of food law are detected. Regulation (EC) 178/2002, Article 17, Paragraph 2.

*When the competent authority identifies non-compliance, it shall take action to ensure that the operator remedies the situation. When deciding which action to take, the competent authority shall take account of the nature of the non-compliance and the operators past record with regard to the non-compliance;* Regulation (EC) 882/2004, Article 54

Food law includes all statutes, regulations and administrative provisions governing food in general, and food safety in particular, whether at Community or national level. It covers all stages of production, processing and distribution of food, and also of feed produced for, or fed to, food-producing animals.

### **2.1.4 General principles**

(EC) 178/2002 sets out the general principles and requirements of food law, establishes the European Food Safety Authority (EFSA) and lays down procedures in matters of food safety. It contains:

- definitions (of food, food business operator, and other terms)
- basic principles – FBO responsibility for food safety

- traceability requirements
- EFSA to provide independent scientific opinion

### 2.1.5 Official controls

(EC) 882/2004 sets out the official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare.

Key points covered are:

- organisation of official controls
- crisis management
- imports from third countries
- financing / charges
- national enforcement measures
- community controls – for example, FVO audits

### 2.1.6 EC hygiene regulations

The hygiene regulations include:

- (EC) 852/2004 dealing with the hygiene of foodstuffs. Key points:
  - applies to all food businesses
  - looks for good hygiene practice and HACCP based procedures
  - concept of industry guides
- (EC) 853/2004 laying down specific hygiene rules for food of animal origin. Key points:
  - requirements beyond 852/2004 for food of animal origin
  - approval of meat premises
  - identification marking
  - objectives of the HACCP based procedures
  - food chain information
- (EC) 854/2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption. It contains:

- nature of official controls – for example, inspection, verification, auditing
- role of OV and MHI and trained, qualified operatives, and
- control on imports
- (EC) 2073/2005 on microbiological criteria for foodstuffs
- (EC) 2075/2005 laying down specific rules on official controls for *Trichinella* in meat and
- The domestic Food Safety and Hygiene (England) Regulations 2013 and Food Hygiene (Wales) Regulations 2006.

### 2.1.7 Amendments

EC Regulations are amended periodically and it is important that the original published versions are read in conjunction with any amendments.

**Note:** It is suggested that users ensure that they access the latest version of the EC Regulations by checking at: <http://eur-lex.europa.eu/en/index.htm> or

Volume 2, chapter 14 of the MOC carries recently published consolidated versions of all EC Regulations.

### 2.1.8 Domestic regulations

The domestic regulations include:

- The Food Safety and Hygiene (England) Regulations 2013 and The Food Hygiene (Wales) Regulations 2006 - as amended.

**Note:** These provide enforcement powers in respect of the obligations that apply in Regulations (EC)852/2004, 853/2004,854/2004, 2073/2005 and 2075/2005.

- The Official Feed and Food Controls (England / Wales) Regulations 2009- as amended.

**Note:** These provide enforcement powers in respect of the obligations that apply in Regulation (EC) 882/2004

- The General Food Regulations 2004 (Wales) and The Food Safety and Hygiene (England) Regulations 2013 (England):



- Provide enforcement powers in respect of the obligations that apply in Regulation (EC) 178/2002. For example:
  - Article 14 ‘the food safety requirements’
  - Article 19 ‘recall, withdrawal and notification requirements’

**Note:** Domestic Regulations are amended periodically and it is important to read the original text in conjunction with the amendments. Consolidated versions are available in Volume 2 of the MOC.

### 2.1.9 Meat Industry Guide compliance

Use of the ‘Meat Industry Guide’ (MIG) by an FBO is voluntary. However, where an FBO fails to follow good hygiene practices described in the guide, they would need to demonstrate to the competent authority’s satisfaction that they have nevertheless complied with all legal requirements in the Hygiene legislation.

Failure to follow the guide or a suitable alternative (agreed with the OV) that achieves the same outcome may prevent the FBO from being able to rely upon a statutory due diligence defence if the non-compliance resulted in a prosecution.

### 2.1.10 Enforcement Concordat

In addition to the legal requirements imposed by the EC legislation, FSA Operations Group has been a signatory to the Enforcement Concordat since June 2001 and is required to adhere to its main principles, which **include proportionality and consistency of enforcement**.

The DTI Enforcement Concordat: Good Practice Guide for England and Wales states of proportionality that apart from taking a progressive approach, enforcement will **mean applying the principles of risk assessment to enforcement activity and enforcement bodies should focus their attention on the most serious risks**, or where potential hazards are least well controlled. Compliance in lower-risk business activities should be encouraged by being open and helpful (paragraph 44).

In respect of consistency, the Enforcement Concordat states that ‘it is important to ensure, and demonstrate, that enforcement activities are **consistent both within a single enforcement body and between enforcers regionally and nationally**. Whilst consistency of approach does not mean uniformity, it does mean **‘taking a similar approach** in similar circumstances to achieve similar ends’ (paragraph 50 of the Guide).

### **2.1.11 File contents**

A premises file must be maintained by the OV at all slaughter establishments supervised by the FSA. This should include details of the plant approval, the FBO responsible for potential offences, all correspondence in date order, copies of all letters, formal notices, minutes of meetings, accounts of telephone conversations and informal notes taken.

Audit reports, letters, formal notices and other correspondence served on FBOs of non-slaughter establishments must also be retained and sent to York to be scanned and retained in electronic premises folders.

### **2.1.12 Security**

The premises file and all enforcement literature must be kept secure at all times. When not being referenced or updated, the premises file should be kept in a locked filing cabinet. It will contain evidence that may be required at a later date, together with additional unused material that the prosecution lawyer may have to disclose should a case go to trial.

## **2.2 Division of enforcement responsibilities**

### **2.2.1 FSA enforcement responsibilities**

- Red meat slaughterhouses (cattle, pigs, sheep and goats, domestic solipeds, large farmed game, ratites).
- White meat slaughterhouse (poultry, lagomorphs, farmed game birds).
- Game handling establishments (wild game dressing and cutting).
- Cutting plant.
- Establishments approved as 'slaughterhouses' for activities limited to the dressing of carcasses.
- Any of the following where co-located with a slaughterhouse, cutting plant or game handling establishment:
  - minced meat establishment
  - meat preparation establishment
  - mechanically separated meat establishment

- processing plant (for meat products, rendered animal fats and greaves, treated stomachs, bladders and intestines, gelatine and collagen)
- cold store

### 2.2.2 Local authority enforcement responsibilities

- Hunters supplying small quantities of wild game or wild game meat directly to the final consumer / local retailers.
- Primary production of wild game carcasses by hunters, including game larders they operate.
- Producers supplying small quantities of meat from poultry and lagomorphs slaughtered on farm directly to the final consumer / local retailers.
- Butchers' shops (retailing meat to the final consumer or exempt under marginal, localised and restricted).
- Any of the following **not** co-located with slaughterhouses, cutting plants or game handling establishments:
  - meat preparations establishment
  - minced meat establishment
  - mechanically separated meat establishment
  - processing plant (for meat products, rendered animal fats and greaves, treated stomachs, bladders and intestines, gelatine and collagen)
  - cold stores where storage is the only activity
- Premises manufacturing composite products containing meat and other edible co products.
- Collection centres and tanneries that handle raw material for the production of collagen and gelatine.

## 2.3 Communication with FBOs

### 2.3.1 Communication channels

Effective communication is essential when guiding an FBO on compliance with legal requirements as well as best practice.

The majority of day-to-day compliance can be achieved through verbal discussion.

The OV should work with the FBO to establish agreed lines of communication between the FSA and the FBO and their staff.

It is also important that contingency arrangements exist to avoid difficulties when the FBO's normal contact person is unavailable.

### 2.3.2 FBO contact details

The OV must have available at the establishment the contact details for the FBO. For example:

- full name(s)
- address(es)
- telephone numbers
- full limited company name and registered office address

Where any ownership or approval details change at an establishment, the FBO is obliged to pass this information on to the competent authority:

*The FBO shall ensure that the competent authority always has up to date information on establishments, including the notification of any significant change in activities and any closure of an existing establishment.*

**Reference:** (EC) 852/2004, Article 6, Paragraph 2.

This information should subsequently be provided to:

- FSA York Finance
- FSA York Operations Assurance (OpA) Approvals and Registrations
- the Inspection team at the plant

This will ensure that the OV is always aware of the legal entity responsible for any potential offences within the establishment, whether they are a sole trader, partnership or limited company.

### 2.3.3 Key communication functions

The OV is responsible for:

- advising the FBO on compliance with legal requirements
- advising the FBO on corrective actions when infringements of legal requirements have been detected

### 2.4 Recording and monitoring enforcement actions

#### 2.4.1 FSA enforcement programme

Enforcement action taken by AOs must be recorded accurately on the Enforcement Programme.

The purpose of this document is to help the OV in their:

- assessment and prioritisation of enforcement action
- communication of enforcement action to other members of the inspection team
- tracking or monitoring of enforcement action through to compliance or a referral for investigation

The document:

- acts as an aide memoire and provides a comprehensive record of enforcement action taken in the establishment
- enables the FSA to assess the FBO's record as regards compliance with food law
- contributes to the risk assessment process and will help set the frequency of future competent authority audits
- provides an outline of the non-compliances to both Veterinary Auditors and internal audit staff

#### 2.4.2 Ongoing enforcement action

When attending any establishment either on a temporary basis or when replacing the previous OV, the incumbent OV or Veterinary Auditor must:

- familiarise themselves with all ongoing enforcement action
- maintain the momentum of existing enforcement action, and only where they are able to support this enforcement, should they escalate it

#### 2.4.3 Completing the enforcement programme

The enforcement programme should be a 'live' form, updated as necessary every time enforcement action is taken. Entries should be grouped together in themes that match the categories contained in the audit form. This will:

- ensure that all non-compliances relating to the same subject are easily identifiable
- allow similar non-compliances to be tracked more effectively to facilitate follow up action
- permit the AO to identify systemic failures; that is, where numerous individual non-compliances in an area illustrate the FBOs failure to have appropriate systems in place to manage and prevent such issues from occurring, such as cleaning and maintenance
- allow the AO to prepare for regular meetings with the FBO to discuss progress with corrective actions from audit and rectification of general contraventions observed

Some non-compliances may be of a recurring nature (solved once corrective action is requested but re-appear shortly afterwards). In order to demonstrate continuity of enforcement action, and, if necessary, prove repeated non-compliance in cases referred for investigation, such deficiencies should be entered under the same reference number. In electronic forms, the additional entries can be made on subsequent lines of the same box, underneath the original entry.

Alternatively, details may be entered under a different reference number, which may be cross-referenced to the previous entry where details of the offence were recorded.

#### **2.4.4 HACCP based non-compliances**

Where numerous contraventions are observed in an area and these are the result of the FBOs failure to have effectively implemented and maintained their food safety management systems, the entry made in the enforcement programme to evidence the escalation of the HACCP failure should be linked back / cross referenced to the individual non-compliance(s) in the appropriate themed area of the enforcement programme to evidence cause and effect. Enforcement action on HACCP based failures should be escalated in parallel to the non-compliance that results from its failure to show cause and effect.

### **2.5 Guidance on completion of enforcement programme**

#### **2.5.1 Reference number**

The AO should enter the plant number, followed by the last two digits of the year, and a sequential number for each deficiency (for example, 9999/07/001, 9999/07/002/, 9999/07/003/).

These numbers should correlate with the reference number for any written enforcement. In letters, the reference number should be included in full.

#### **2.5.2 Regulation reference and deficiency**

The AO should:

- state the legal provisions that have been breached
- give a short description of the deficiency, for example, fittings in the chillers are rusting

More than one line may be used if required.

#### **2.5.3 Action required**

The AO must detail any action the FBO must take in order to satisfy the requirements of the legislation.

#### **2.5.4 Agreed completion dates**

The AO must insert the date agreed with FBO management for the correction of the deficiency, or the date for compliance specified in any formal notice.

If the FBO management does not agree to a completion date, the AO must insert the date they consider appropriate for completion and indicate that it was 'not agreed'. Any letters should also include this date.

The date should be used as a milestone. Where compliance has not been achieved by the due date, the FBO should be reminded of the issue and then enforcement action may require escalating to the next stage in the hierarchy.

When agreeing or setting completion dates, a reasonable deadline for the rectification of each deficiency should be agreed. The deadline should be realistic

to allow the FBO to rectify the deficiency, whilst still considering the risk to public health.

### **2.5.5 Detention notice served and withdrawn**

The AO should specify the date on which a formal detention notice (ENF 11/1 or ENF 11/26) has been served on the FBO. It is essential that the issue for which the food is detained is monitored, paying particular attention to the 21 day time limit for a Food Safety Act detention.

Where the AO is satisfied that the food can enter the food chain, they should insert the date on which the detention notice is lifted, below the date on which it was served.

If, as a result of the examination / investigation, the AO does not wish to release the meat for human consumption, they must insert 'Not Released' under the date the notice was served. This is to indicate the action taken and to verify that the detained food has not been forgotten about.

### **2.5.6 Date compliance achieved**

Record the actual date that compliance was achieved, even if it was the same day that enforcement action was taken.

### **2.5.7 Structural work**

Where structural work must be undertaken, the 'corrective action' section of an advisory letter or Hygiene Improvement Notice (HIN) should be specific enough to explain the legal requirement and the outcome to be achieved, without being too prescriptive about the exact way in which this must be achieved.

There may be many ways that the FBO can achieve compliance, but provided they comply with the legal requirement, they have the option to do the work in the way that they see fit, or to carry out equivalent work.

### **2.5.8 Monitoring progress**

The AO should regularly monitor progress towards compliance to identify whether the deficiency is likely to be rectified within the agreed time scale. If necessary, they should ask to see evidence of how corrective action is progressing, for



example, planning permission application / copies of quotes for work / structural plans.

Where the work does not progress at the agreed rate, the AO should escalate the matter and consider serving a HIN to formalise a suitable time scale, thereby maintaining the momentum in enforcement.

However, it is important that an agreed action plan is set out at the start and that the OV takes a reasonable approach where certain issues arise that are outside the FBOs control.

## 2.6 Gathering and preserving evidence

### 2.6.1 Introduction

The AO must gather evidence at the time the offence is witnessed, making detailed contemporaneous notes, which at a later stage could be relied upon in Court. It may be impossible to gather evidence retrospectively as it may no longer exist. Evidence may come in a variety of forms and must supplement a witness statement as an exhibit in order that it may be admissible in court. It is always useful to obtain corroboration and assistance from other members of the Inspection Team.

Detailed evidence gathering at the time of the offence will provide the AO with as much material as possible to support their witness statement and prove the elements of the offence.

**Note:** Look after evidence – keep it secure. It is fundamental to proving the offence should formal action be pursued.

### 2.6.2 Best evidence rule

The AO should also have regard to the 'best evidence' rule. Whenever possible, any original items of evidence should be preserved, for example, the original form of a document, rather than a photocopy. If the evidence is a part of a carcass, SRM or a broken limb, it should be preserved by the OV (for example, by freezing).

If it is not practical or not possible to preserve the evidence, at the plant, for example, if perishable goods are involved and no facilities are available to freeze the product, the OV should try to organise alternative facilities at which to securely

store the evidence. The FBO should also be given the opportunity to have the evidence examined by an expert before destruction.

The AO may also wish to consider taking photographs and / or sample evidence before perishable goods are destroyed. If there is doubt about what evidence should be retained, the AO can obtain further advice from FSA Legal.

### 2.6.3 Note taking

When gathering evidence, remember to record the details of any other persons present, to identify all potential witnesses in the case. This will enable corroborative witness statements to be taken; or for the investigating officer to test the strength of the evidence overall.

**The AO should make full use of their pocketbook to make factual contemporaneous notes.** These may be referred to in court to help recollect facts and figures that are impossible to recall in detail after the event.

**Note:** In court, a witness is able to refer to contemporaneous notes recorded in their pocketbook that were made either at the time of the incident or at a later time whilst the events were still fresh in their memory.

However, witnesses are not permitted to read from their witness statement when giving evidence, except in certain limited circumstances.

**Note:** Where an officer refers to their pocketbook when giving evidence in court, the defence is entitled to see that notebook.

### 2.6.4 Use of FSA official pocket book

The pocketbook is essential for recording details of incidents at times when the plant daybook is not readily available. For example, where an incident occurs away from the FSA office or in non-slaughter establishments where no daybook exists and where detailed facts need to be recorded immediately. The use of the pocketbook is not to replace the plant daybook for recording day-to-day activities, but should supplement completion of the daybook.

### 2.6.5 Important points

Pocketbooks may be inspected in court, therefore the following guidance must be followed to maintain validity:

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- Record name on front cover, designation and date started.
- Make all entries with ink or ball pen.
- Include only original entries and do not copy notes from elsewhere.
- Record the date and time at commencement, and upon completion.
- Enter the notes at the time 'the offence' is witnessed or as soon as possible afterwards (contemporaneously), whilst the facts are fresh in the memory.
- To make alterations, strike a pen through the error and write the correction. Then initial in the left hand column. **Notes must not be erased.**
- Do not remove pages from the notebook.
- Sign and date each entry at the base of each page.

Entries must be relevant, factual, legible, concise and written in plain English.

If accompanied by a colleague whilst witnessing a contravention, one AO may record the details in their pocketbook. The other may read through the notes made and where they agree with what has been recorded, they may countersign at the end of the entry to acknowledge that it is a true and accurate account of events.

Where the AO and FBO have had a conversation regarding action to be taken to achieve compliance, it may be beneficial to ask the FBO to sign the notes taken by the AO as an accurate account of what was agreed.

### 2.6.6 Security

The AO is responsible for ensuring the security of their notebook and for producing it in court. Further notebooks are available from York on return of the completed notebook – contact Operations Assurance Business Support by email.

### 2.6.7 Return of all notebooks

Notebooks remain the property of the FSA and **must** be returned to York prior to leaving the FSA.

### 2.6.8 Disclosure of unused material

The Criminal Procedure and Investigations Act 1996 (CPIA) places an obligation on the prosecuting authority to retain and record all relevant information relating to any enforcement action.

The prosecuting authority – a term which includes the OV, the FSA team members, the IO, the prosecuting lawyers and the enforcement agency itself – has a duty to investigate all reasonable lines of enquiry and disclose to the defence all relevant unused material which:

- might undermine the case for the prosecution, or
- might reasonably be expected to assist the defence case

This material may include:

- informal and formal memos
- email traffic
- previously unreported offences and / or warnings recorded on operational paperwork
- daybook entries
- contemporaneous notebook entries
- minutes of meetings
- draft witness statements
- photographs and all negatives from both used and unused photographs
- instructions to expert witnesses or analysts

### 2.6.9 Storage and availability

Anything that is relevant to the case and which is not used by the prosecution is unused material and can be potentially disclosed. This fact makes it important that when notes are taken, emails written or drafts prepared, they should be made on the understanding that the defence may be entitled to see them and refer to them in open court. Even if there are good reasons for arguing that they are so sensitive that the defence should not see them, there is a high threshold which needs to be met to satisfy the court that this is the case.

The OV and FSA team should therefore ensure that:

- all material relevant to a course of enforcement is recorded and retained

- all material is safely stored

The IO must be made aware of the existence of all relevant material as soon as possible after a referral for investigation is made.

### 2.6.10 Photographic evidence

Taking photographs in approved premises for the purposes of evidence gathering will often be a fundamental part of the evidence gathering process.

The AO may inform the FBO of what is intended as a matter of courtesy. However, the FBO cannot stop an AO from taking photographs for the purposes of evidence gathering and it could be an offence for them to obstruct the AO who is carrying out their duties.

- When photographs are taken, details should be recorded in a contemporaneous notebook, including the photograph number, the subject, location and date / time. Colleagues should assist one another in this process.
- Photographs should be taken with a suitable digital camera; however, a record must be kept of how the digital information was downloaded and on to what medium it was stored, together with the Supporting Evidence Photographic Report for recording full details of digital images taken (see annex 6).

**Reference:** See 'Digital Camera Protocol' on the following page for additional information.

- Where the subject photograph is not clear, it may assist the court to have a colleague appear in the photograph to point to the item that needs identifying.
- Video filming is very useful to demonstrate a particular high speed operation / operational practices or welfare issues in a live animal.
- When printed, it is useful to add details to the reverse of the photograph, clearly indicating the subject matter, location and other relevant details.

Although all AOs have powers to take **photographs for the purpose of evidence gathering**, they must always seek the permission of the FBO if they are taking photographs for any other reason than evidence gathering.

**Note:** Any verbal comment recorded whilst any filming is being undertaken must later be transcribed word for word and will constitute part of the evidence.

**Tip:** Give the camera lens time to adjust to the temperature / humidity before taking pictures in order to prevent fogging.

### **2.6.11 Conventional camera protocol**

If the AO intends to photograph evidence using a conventional camera, capture images and run off the remainder of the film taking blank shots.

### **2.6.12 Digital camera protocol**

When the AO intends to capture images using a digital camera, they should ensure the following:

- the memory card is clear of previous images, unless you have come from another visit; for this reason, it is advisable not to use a personal camera or a non-work issued camera phone to take evidential images, as these items may also contain personal photographs
- poor quality images must not be deleted as they may become unused material in due course
- full particulars of images of the case are recorded, using the Supporting Evidence Photographic Report, available at annex 6 of this chapter
- all images taken that relate to that case, together with the corresponding photographic evidence report, are downloaded onto the hard-drive of a computer
- when required for a referral for investigation, all the images relating to that case and supporting photographic evidence report are copied onto two separate non-reusable CD-ROMs
- one CD is marked as the 'Master Copy'; this must be bagged and tagged, and its details recorded in the daybook or in the AO's contemporaneous note book, and stored somewhere secure
- the other CD is marked as the 'Working Copy'; it should also be tagged and its details recorded in the daybook or in the AO's contemporaneous note book, and stored in a secure place for collection by the Investigating Officer

### **2.6.13 Supporting evidence photographic report**

The 'Supporting evidence photographic report' has been introduced to provide a contemporaneous record of images taken whilst gathering evidence.

In ideal circumstances, the report should be completed at the time the evidence is gathered. However, when this is not feasible, it should be completed as soon as possible thereafter.

The report should be stored electronically in the same file as the images to which it relates.

A new report should be prepared to accompany images of each separate incident.

This is available at annex 6 on 'Supporting evidence photographic report' of this chapter.

### **2.6.14 Retention of unused photographic images**

All unused photographs, images and negatives must be retained.

### **2.6.15 Samples: physical confirmation of the failure**

A variety of different types of sample may be gathered as evidence, for example:

- rust / dirt scrapings
- samples of meat / offal / SRM
- trimmings of faecal or other contamination
- heads of animals
- whole carcasses or joints
- bodies of dead animals

The AO should inform the FBO of their intentions. Enlist the services of a colleague to witness the collection of the sample (if available) and also to record details of what, when, where and how; recording the date and time in their pocket notebook. The samples should be bagged and labelled with all relevant details and sealed with a tamper evident seal.

All samples must be kept under secure conditions in an environment where they will not deteriorate. Details of storage location and transportation should also be recorded to maintain continuity of evidence. Temperature logs and relevant calibration records of chillers and freezers, where evidence samples are stored, should be accurately maintained, as they may be required as evidence in court.

### 2.6.16 Post-mortem evidence

There may be circumstances where an animal has died in transit or in the lairage, and a post mortem examination would be required, for example to support a case for a breach of animal welfare legislation.

Before undertaking any post mortem examination, the OV must have regard to the requirements in chapter 6 on 'Notifiable diseases'.

Where the OV is to perform a post mortem examination on site consideration must be given to the following:

- there should be suitable isolation facilities in the lairage to carry out the examination
- hygiene procedures must be followed and C and D carried out following examination and disposal
- the OV should have the appropriate protective clothing and equipment required for the procedure
- a detailed report of the findings must be prepared at the time
- photographic evidence should be gathered having regard to the guidance contained in this chapter
- appropriate specimens should be retained, for example, fracture site, limbs or bodies of animals / birds and stored as outlined below to maintain continuity of evidence

**Note:** Once examined, the specimen should be retained in a secure location in case the FBO requires their own appointed representative to view the evidence.

Where an on-site post mortem examination is not considered appropriate, the carcass can be sent to the nearest APHA laboratory for examination. Continuity of evidence must be maintained as outlined below.

The HOD / FVC should be consulted before initiating an off-site post mortem examination or advising the laboratory that the carcass is being sent.

The HOD / FVC will advise on any financial implications involved in the cost of the APHA post mortem and report.

**Note:** Body parts that are required as evidence, but are, by definition, ABP must be retained until the conclusion of the court case. Afterwards, they must be disposed of appropriately.



### **2.6.17 Temperature readings: factual figures**

The AO should ensure that where thermometers are used for evidential purposes, the thermometer used is periodically calibrated, and where required for evidence in court is recalibrated. The calibration certificates will be required as an exhibit and all relevant temperatures are recorded where necessary; ambient, surface, probe (internal) and between packs ask a colleague to help record these details at the time the readings are taken.

**Tip:** The AO should ensure that when asked, they can explain what temperature related to which carcass together with its location.

### **2.6.18 Light meter readings: factual figures**

When gathering evidence of poor lighting conditions, ensure that the light meter used is within calibration before taking the reading. If the meter readings are required as evidence for court, it is advisable the light meter is recalibrated to demonstrate that it was accurate on the day it was used.

**Tip:** Do not take light meter readings when the sunshine is streaming in and no processing is being carried out.

### **2.6.19 Humidity readings: factual figures**

When gathering evidence of poor humidity conditions, ensure that a calibrated hygrometer is used and if the readings are required as evidence in court, that the hygrometer is recalibrated to demonstrate that it was accurate on the day it was used.

## **2.7 Information obtained from unauthorised sources – RIPA**

### **2.7.1 Introduction**

This topic covers instruction on dealing with information which may be provided under the Regulation of Investigatory Powers Act 2000 (known as RIPA).

### **2.7.2 Information received**

Under the law, AOs should take extreme care when dealing with a case where plant staff or other contacts have provided information about possible offences or misconduct.

Where this sort of information is provided, the AO must **always** inform their line manager, who must in turn notify FSA York who will be responsible for informing FSA Legal Division and Investigation Branch.

### 2.7.3 Questioning contacts

Plant staff or any other person must not be asked to obtain or pass on information about possible offences or misconduct. If they are asked to pass on information, it almost certainly will not be possible to conduct a successful investigation into the allegations since it will not be possible to use the evidence obtained.

### 2.7.4 Use of informers

It is essential that AOs remember not to ask plant staff or other contacts to obtain or pass on information about possible offences or misconduct even where they have first come forward of their own free will and given information about such matters.

**AOs must not try to get someone to act as an informer or obtain information in an undercover way.**

### 2.7.5 Example 1

A disgruntled employee contacts you to inform you that the operator of a licensed slaughterhouse and cutting plant is using the licensed premises at night and without FSA supervision to slaughter and process cattle which have no passports. He is in a position to know when this is happening and to contact you at the time it is taking place.

### 2.7.6 Example 2

An MHI is transferred to a new plant and becomes aware that the ITL and other MHIs at the licensed premises are working in collusion with the plant management. The ITL and some other staff are returning condemned sheep carcasses to the line after trimming them. In return the ITL is receiving cash payments and meat cuts of his choice. The MHI is willing to inform you of when these incidents take place and to collate information on the dates, times, persons involved, number of carcasses and owners of the stock.

### 2.7.7 Example 3

A delivery driver from a licensed slaughterhouse has delivered several consignments of over temperature pig carcasses to a large city market. He is concerned that he may be prosecuted with the originating plant operators if a load is intercepted at the market. He is willing to provide information relating to dates times and consignment details of future deliveries which he believes have not been chilled to the correct temperature before transportation.

## 3. Surrender, Detention, Seizure and Condemnation

- 3.1 Voluntary surrender
- 3.2 On line temporary detention
- 3.3 Detention under the Food Hygiene / Food Safety and Hygiene Regulations
- 3.4 Detention under the Food Safety Act 1990
- 3.5 Condemnation procedure

### 3.1 Voluntary surrender

#### 3.1.1 Means of voluntary surrender

Where meat has **not** been produced in accordance with the hygiene regulations or is **unfit** for human consumption, the FSA should seek voluntary surrender of the meat.

Voluntary surrender is an everyday occurrence within a slaughterhouse and should always be evidenced by completing a 'Rejected Meat Receipt' (PMI 4/8). This will identify the carcass, part carcass, and offal and should be issued for all routine matters and signed by the OV/MHI and a responsible member of the plant management.

An 'Agreement to Destroy Food' (ENF 11/7) notice should be completed where any dispute arises, or where issues are more complex. For example, where:

- there are large quantities of meat
- the animal's identification is being questioned
- the farmer retains ownership of the carcass after processing and their consent is required

This agreement should be completed before the meat is consigned to the bin and is in addition to the 'Rejected Meat Receipt'.

**Reference:** See chapter 9 on 'Forms for PMI 4/8 and ENF 11/7'.

### 3.1.2 Legal powers

The authorised AO has powers to detain food under:

- the Food Safety and Hygiene (England) Regulations 2013 and the Food Hygiene (Wales) Regulations 2006 (as amended)
- the Food Safety Act 1990 (as amended), via the above Regulations
- Article 18 of Regulation (EC) 882/2004 for third country imports

### 3.2 On line temporary detention

#### 3.2.1 Holding carcasses identified for detention

In many slaughterhouses, the majority of detained carcasses are rectified on the detained rail, under the supervision of an MHI dedicated to that task.

Colour-coded plastic hook tags can be used to identify carcasses for detention. The colour-coded tags are used to signify specific conditions and serve to alert the MHI to the action required. Make the FBO aware of the system. The colour-coded tags should be used to represent the following:

Colour	Use for
Red	Pathology
Yellow	SRM
Green	Contamination
Blue	Sample identification tag
Grey	TB carcasses

#### 3.2.2 Labelling detained carcasses

Carcasses and offal that have been detained for further inspection and that require more secure individual identification can be tagged using individually numbered talisman seal(s).

To maintain correlation between the carcase and offal, several talisman seals must be used. The individual seal numbers should be recorded with any other relevant details for the carcase and cross-referenced on the Detention of Food Notice.

The seals must remain in place until the carcase and offal have been re-inspected and a decision made on the fitness of the carcase and offal for human consumption.

### 3.2.3 Detention tape

Detention tape should be used to help identify any boxed meat, or shrink wrapped pallets of boxed meat and should be used in conjunction with a Detention of Food Notice.

### 3.2.4 When to formally detain

There may be occasions where meat cannot be dealt with immediately on the detained rail because:

- the OV may wish to undertake a further examination of the carcass to identify any signs of oedema / emaciation, fever or other pathological condition that may not be evident when the carcass is still warm
- the OV may wish to carry out an investigation into the origin, marking, age, fitness, suitability of any meat or animal under the FBOs control
- the FBO prefers to carry out rectification work / removal of arthritic limbs when carcasses are chilled

In such circumstances, the OV will require the FBO to store the suspect meat in a detained chiller.

### 3.2.5 Assessment of the detention facilities and history and confidence in management

Detention facilities vary in type, size and security, the OV must assess how satisfactory the facilities are and how the FBO intends to detain meat that has to be stored for further examination / investigation.

The assessment should identify:

- how secure the facilities are, including number of people who are in possession of a key
- the level of confidence in management and their staff
- whether previously detained meat has ever been sold, gone missing or been moved contrary to the OV's instructions
- whether the size of the detained facility is sufficient to accommodate all the suspect meat

- whether the meat has already received a health mark or identification mark

The decision whether to formally detain meat with a Detention of Food Notice (ENF 11/1 or ENF 11/26) will depend on all the above factors.

**Reference:** See chapter 9 on 'Forms' for ENF 11/1 and ENF 11/26.

It **may not** be necessary to serve a formal detention of food notice on the FBO in many non-contentious day to day situations, for example:

- where meat is stored over night for routine rework and has not been health marked, and
- is secured in lockable detained facilities on the premises,
- where the FBO has always been compliant and has a good relationship with the FSA, or
- where carcasses have been tested for BSE / trichinella and are awaiting a negative test result prior to being health marked

However, where there are contentious issues, a history of non-compliance at the plant; and the FBO:

- refuses to voluntarily surrender non-compliant / certified meat declared unfit for human consumption, or
- has detention facilities that are too small / not secure enough, or
- intends to take the meat before a Magistrate / Sheriff to seek a condemnation order

the OV should, as a matter of good practice, always formally detain the meat using a formal detention notice (ENF 11/1 or 11/26). This is to ensure that the competent authority can secure all non-compliant meat **and** take formal action where the FBO breaches any of the requirements specified in a formal detention notice.

**Note:** (EC) 853/2004, Annex III, Section I, Chapter IV, Paragraph 12 requires the FBO to follow the instructions of the OV to facilitate post mortem of all animals. Where they fail to do so, this may constitute an offence for obstructing the OV and for failing to comply with the EC Regulations.

In order that the OV can prove that they instructed the FBO to detain the meat and take action where this did not occur, it is always good practice to serve the formal detention of food notice.

### 3.3 Detention under the Food Safety and Hygiene (England) Regulations 2013 and Food Hygiene (Wales) Regulations 2006

#### 3.3.1 Relevant legislation

A Detention Notice (ENF 11/26) can be served under Regulation 10(1) of The Food Safety and Hygiene (England) Regulations 2013 or Regulation 9(5) of The Food Hygiene (S/W) Regulations 2006.

#### 3.3.2 General principle

A Detention Notice provides powers to an AO to detain any animal or food of animal origin (specified in the notice), either on the premises, or at another location (specified in the notice).

Detention under the provisions of Regulation 10(1) or 9(5) is intended to be used in circumstances where further examination of the animal or food is required, or sampling is undertaken (for example, for potential residues or when a DNA test is being conducted by the Local Authority to clarify the identity and trace the origin of an animal).

#### 3.3.3 Declaring unfit

Formal detention is inappropriate when the OV is required to declare material unfit for human consumption because detention can only be applied to food. Once meat has been declared unfit, it will become an animal by-product and disposal should be in line with the requirements of the EU and domestic Animal By-Product Regulations. See annex 5 'Flow diagram' and chapter 2.8 'Animal by-products', section 5.

**Note:** where meat is being declared unfit and the FBO is disputing the actions of the AO, it is useful to set out the rationale for this action in writing to the FBO.

#### 3.3.4 AO duties

The AO should:

- discuss the reason for service of the detention notice with the FBO
- ensure the detained meat is accurately identified using an individually numbered talisman seal, the details of which must be recorded on the detention notice, or by using FSA detention tape for boxed meat



- once identified, ensure that the detained meat is secured so that it cannot be tampered with
- record details of the date and time of service of the notice on the back of the form, in a pocketbook, or in the plant daybook
- ensure that the FBO can easily identify what has been detained at the time of service
- advise the FBO of the likely timescale for the examination, so that they can take steps to prevent deterioration of the product; for example, boning under FSA supervision and freezing to preserve the value of the meat

### 3.3.5 Service details

The notices:

- should be served by hand on the FBO or their duly authorised representative
- may be hand written
- must be served as soon as practicable

The AO should always retain a copy of the notice served.

### 3.3.6 Time period

No time period exists within which the examination must take place, however, this must be completed as soon as practicable.

### 3.3.7 Right of Appeal

No right of appeal exists against the service of a 10(1) detention notice under the domestic Food Safety and Hygiene (England) Regulations 2013 or 9(5) of the Food Hygiene (Wales) Regulations 2006.

### 3.3.8 Withdrawal

The notice may be withdrawn by the AO completing the withdrawal section at the base of the detention notice, once they are satisfied that the meat is fit for human consumption. The meat may then be released / health marked.

If the AO is not satisfied that the meat is fit for human consumption, then they should seek voluntary surrender of the meat for disposal as an animal by-product.

Where voluntary surrender is not forthcoming, prior to the meat having been health marked, the OV should send a letter to the FBO explaining why they are declaring the meat unfit and serve an animal by-product notice requiring the disposal of the meat under the domestic animal by-product regulations. Where the meat has been health marked and subsequently deteriorates and becomes unfit, and the FBO refuses to surrender the product, the OV must seize the food under the provisions of Section 9 (3) (b) of the Food Safety Act 1990 (as amended) and take it before a Justice of the Peace or Sheriff to be condemned.

**Note:** Detention under the provisions of Regulation 10(1) or 9(5) of the domestic hygiene regulations is intended to be used for short term issues to allow a further examination to take place, or samples to be taken.

### 3.3.9 AO checklist

Where the detained food is not released, specify in the AO checklist on the reverse of the Detention Notice:

- the nature of disposal and the category of ABP that the food was consigned under
- whether an agreement to destroy food Notice was signed by the FBO and the notice reference number
- whether the detention led to the food being certified, seized and taken before a court to have it condemned

## 3.4 Detention of Food under the Food Safety Act 1990

### 3.4.1 Relevant legislation

Regulation 25 of the Food Safety and Hygiene (England) Regulations 2013 and Regulation 23 of The Food Hygiene (Wales) Regulations 2006 also allow the AO to detain suspect food for further investigation. This is achieved via the detention provisions contained in Section 9(3)(a) of the Food Safety Act 1990, which provides powers for the AO to detain, inspect and seize any food that is thought may not comply with the food safety requirements and is intended for human consumption. The Detention of Food Notice to use in these circumstances is the ENF 11/1

**Note:** Formal detention is inappropriate when the OV is required to declare material unfit for human consumption- because detention can only be applied to food. Once it has been determined that the meat has to be declared unfit, it will be an animal by-product and disposal should be in line with the requirements of the Animal By-Products Regulations. See annex 5 on 'Flow diagram' of this chapter and chapter 2.8 on 'Animal by-products', section 5.

### 3.4.2 When to serve a Food Detention Notice (ENF11/1)

When FBOs are unwilling to either surrender meat that the AO has judged unfit, or is un-cooperative with respect to the voluntary detention of food for further investigation into its fitness or for compliance with the food safety requirements to be properly assessed, the AO must formally detain or seize (as appropriate) the food in accordance with Food Safety Act Section 9.

**Note:** The AO shall as soon as is reasonably practicable, and in any event within 21 days, determine whether or not he is satisfied that the food complies with the food safety requirement.

#### Legislation:

- Regulation 29 (3) of the Food Safety and Hygiene (England) Regulations 2013 and Regulation 27(3) of the Food Hygiene (Wales) Regulations 2006 specify that where food has not been 'produced, processed, or distributed' in accordance with the regulations it shall be treated for the purposes of Section 9 of the Food Safety Act, as failing to comply with the food safety requirements.
- Art 14 (EC) 178/2002 identifies the food safety requirements.
- (EC) 854/2004, Annex 1, Section II, Chapters II, III and V identify the circumstances where meat is required to be declared unfit for human consumption.

### 3.4.3 Reasons for service

Meat which fails to comply with food safety requirements under Article 14, (EC) 178/2002 includes:

- meat that is unsafe
- meat that is unfit for human consumption
- meat that is injurious to health

### 3.4.4 Service of notice

Prior to serving a notice, the AO must have in their possession all the evidence to justify its service. The Detention of Food Notice should be served by hand on the person in possession of the meat who is deemed to be 'the owner'. A copy of the notice can be forwarded to the monetary owner, if different.

**Note:** Monetary owner could be the owner of the animal from which the meat was produced, for example, the farmer.

### 3.4.5 Content of notice

The notice must specify:

- description (carcase / box type, colour, markings)
- quantity
- identification marks if any (detained tags, numbers or labels)
- a different location to which it may be moved (if applicable)
- why, in the officers opinion, the food does not comply with the food safety requirements, linking the matter to Article 14 of Regulation (EC) 178/2002

### 3.4.6 Number of notices

Where a quantity of meat of different types or batches is being detained, the AO should issue a separate Detention of Food Notice for each type or batch.

Where the meat that fails to comply with the hygiene requirements is part of a batch of the same class or description, it shall be presumed unless the contrary is shown that the whole batch fails to comply and the AO should detain all of it. Part of the food may subsequently be seized if necessary and an Order for Condemnation of Food applied for. The Detention Notice must be withdrawn in respect of the remainder if the AO is satisfied that the problem affects only part of the batch.

**Regulation:** 29 (3) of the Food Safety and Hygiene (England) Regulations 2013, Regulation 27 (3) the Food Hygiene (Wales) Regulations 2006 and Food Safety Act 1990 Section 8 (3).

### 3.4.7 Right of appeal

No right of appeal exists for a Detention of Food Notice under the Food Safety Act 1990. However, if not voluntarily surrendered, the meat must be seized and taken before a Justice of the Peace or Sheriff for them to determine whether the food should be condemned or not.

### 3.4.8 Time limit

The AO shall, as soon as is reasonably practicable, and in any event within 21 days, determine whether or not they are satisfied that the meat complies with the food safety requirement.

If they are satisfied that the food complies with food safety requirements, the AO must immediately withdraw the notice.

Or, if the AO is not satisfied that the food complies, they must seize the food and have it dealt with by a Justice of the Peace.

### 3.4.9 Withdrawal

If the notice is to be withdrawn, the AO must immediately serve a Withdrawal of Detention of Food Notice upon the recipient of the original Detention Notice - ENF 11/2.

If a Detention of Food Notice is withdrawn, or condemnation order is refused, compensation is payable to the owner of the food for any depreciation in its value which can be shown to result from the AOs actions.

The AO must ensure that all detained food is suitably and securely stored to minimise any deterioration.

Examples: In a lockable room, or by means of a security talisman tag on the chiller door.

### 3.4.10 AO checklist

Where the detained food is not released, specify in the AO checklist on the reverse of the Detention Notice:

- the nature of disposal and the category of ABP that the food was consigned under

- whether an Agreement to Destroy Food Notice was signed by the FBO and the Notice reference number
- whether the detention led to the food being certified, seized and taken before a court to have it condemned

### 3.5 Condemnation procedure

#### 3.5.1 When an application for a Condemnation Order from the court is not appropriate

When the provisions relating to 'Decisions Concerning Food Chain Information; Decisions Concerning Live Animals and Decisions Concerning Meat' in Regulation (EC) 854/2004 require meat to be declared unfit for human consumption prior to the Health Mark or ID Mark being applied.

**Reference:** (EC) 854/2004, Annex I, Section II, Chapters II, III and V.

The OV should inform the FBO, **in writing** where a dispute arises, that the legislation requires the material to be declared unfit for human consumption and disposed of as an animal by-product (ABP). See Article 54 of Regulation (EC) 882/2004.

If the FBO fails to voluntarily surrender such product, the OV must serve a 'Notice for the Disposal of Animal By-Products' (ENF 11/12) in accordance with chapter 2.8, section 5 on 'Enforcement'. See also annex 5 of this chapter.

#### 3.5.2 When to apply for a condemnation order from the court

Only after meat has been health marked or ID marked and it has failed to be produced, processed or distributed in accordance with the hygiene regulations, or breaches the 'food safety requirements' should the OV:

- formally detain the food (ENF 11/26 or 11/1)
- certify the food as non-compliant (ENF 11/25)
- formally seize the food (ENF 11/ 27)
- apply to a Magistrate or Sheriff to issue a Condemnation Order

### 3.5.3 Obtaining a condemnation order

In England and Wales a Condemnation Order may be obtained from a Justice of the Peace at the Magistrates' court.

### 3.5.4 Action to take

The OV is to follow the steps in the table below.

**Reference:** The Food Safety Act 1990 Section 9 (3) (b), Section 9(4) (b).

**Reference:** The Food Law Code of Practice.

Detain the food (ENF 11/1)	Ensure that any food that you suspect does not comply with the food safety requirements is formally detained using a Food Safety Act Detention of Food Notice (ENF 11/1) or Detention Notice (ENF 11/26). <b>Reference:</b> See chapter 9 on 'Forms' for ENF 11/1.
Complete and serve Certification of Meat Notice (ENF 11/25)	Once the OV has determined that the food has not been produced, processed or distributed in accordance with the provisions of the Hygiene Regulations they must serve notice on the FBO with the reasons why it fails to comply. <b>Reference:</b> See chapter 9 on 'Forms' for ENF 11/25.
Complete and serve a Seizure of Food Notice (ENF 11/27)	If after certifying the meat, the FBO refuses to voluntarily surrender the food, complete a Seizure of Food Notice (ENF 11/27) and serve it on the FBO and a copy on the owner of the food where relevant. <b>Reference:</b> See chapter 9 on 'Forms' for ENF 11/27.
Complete and serve a Food Condemnation Warning Notice (ENF 11/3)	ENF 11/3 should be served on the owner / person in charge of the food (FBO). If relevant, a copy of the Condemnation Warning Notice should also be served on the owner of the animal from which the meat was produced, for example, the farmer.

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Advise FSA legal adviser	FSA will arrange legal representation. A summary of events and copy of all legal notices must be sent to FSA Legal.
Contact the local police	Establish which court covers the area for the establishment where the detained food is held.
Contact the court	<p>In England / Wales - speak to the Clerk of the Court to establish local procedures.</p> <p>Explain:</p> <ul style="list-style-type: none"> <li>• the officer is authorised under the Food Safety Act 1990 and Food Safety and Hygiene (England) Regulations 2013 or Food Hygiene (Wales) Regulations 2006</li> <li>• that the OV is seeking an Order for Condemnation of Food from a Justice of the Peace</li> <li>• the nature, quantity and location of the product detained, and confirm that the premises fall within that court's jurisdiction</li> <li>• the reason the Order is being sought referring particularly to the legislation under which the case is brought</li> </ul> <p>In England and Wales establish with the Clerk a date, time and location for the court hearing. The location can be either the local courtroom or the plant depending upon circumstances.</p>
Complete and serve Food Condemnation Warning Notice (ENF 11/3)	<p>Ensure that the notice is served by the most appropriate method available in the circumstances to ensure that all relevant parties are informed of the time and place of the hearing in good time. Document and retain records of service to show the court.</p> <p>Retain copies of the Condemnation Warning Notice, the Certification of Meat Notice and the Seizure of Food Notice to produce to the Justice of the Peace, the Clerk to the Court and the FSA legal representative. Have a copy of the relevant sections of the Code of Practice and Practice Guidance.</p> <p><b>Reference:</b> See chapter 9 'Forms' for ENF 11/3.</p>



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<p>Contact the court</p>	<p>In England / Wales - speak to the Clerk of the Court to establish local procedures.</p> <p>Explain:</p> <ul style="list-style-type: none"> <li>• the officer is authorised under the Food Safety Act 1990 and Food Safety and Hygiene (England) Regulations 2013 or Food Hygiene (Wales) Regulations 2006</li> <li>• that the OV is seeking an Order for Condemnation of Food from a Justice of the Peace</li> <li>• the nature, quantity and location of the product detained, and confirm that the premises fall within that court's jurisdiction</li> <li>• the reason the Order is being sought referring particularly to the legislation under which the case is brought</li> </ul> <p>In England and Wales establish with the Clerk a date, time and location for the court hearing. The location can be either the local courtroom or the plant depending upon circumstances.</p> <p><b>Note:</b> The court date must coincide with the availability of the FSA legal representative, so liaise with FSA Legal prior to serving the Condemnation Warning Notice.</p> <p>The OV and any other witnesses should inform Operations Assurance (OpAs) of dates when he/she/they are available for court. The OV and witnesses should bear in mind the comments of the Code of Practice on the speed with which the case should go to court.</p>
<p>Complete and serve Food Condemnation Warning Notice (ENF 11/3)</p>	<p>Ensure that the notice is served by the most appropriate method available in the circumstances to ensure that all relevant parties are informed of the time and place of the hearing in good time. Document and retain records of service to show the court.</p> <p>Retain copies of the Condemnation Warning Notice, the Certification of Meat Notice and the Seizure of Food Notice to produce to the Justice of the Peace, the Clerk to the Court and the FSA legal representative.</p> <p>Have a copy of the relevant sections of the Code of Practice and Practice Guidance.</p> <p><b>Reference:</b> See chapter 9 'Forms' for ENF 11/3.</p>

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<p>Attend the hearing</p>	<p>Prepare three copies of the Complaint for Condemnation of Food Order (ENF 11/15) and of the Order For Condemnation of Food (ENF 11/16) itself for the Justice of the Peace to sign.</p> <p>Read the papers again before going to court.</p> <p>Attend court early to meet the FSA advocate.</p> <p>On attending the hearing, the AO should take:</p> <ul style="list-style-type: none"><li>• their Authorisation Certificate / Warrant for the legislation being enforced</li><li>• copy of the Certification of Meat failing to comply with the requirements of the Hygiene Regulations</li><li>• copies of the Detention and / or Seizure Notice and a record of service</li><li>• copies of the Condemnation Warning Notice and record of service</li><li>• copies of the Complaint for Condemnation of Food Order</li><li>• copies of the Order for Condemnation of Food</li><li>• contemporaneous notes which may be referred to (notebook or plant daybook)</li><li>• a consolidated copy of the relevant legislation (highlight sections for easy reference)</li><li>• copies of the Code of Practice</li><li>• any additional evidence, for example, copies of a public analyst or expert report</li><li>• a representative sample of the food if the hearing is to be held in court and the entire batch cannot be transported (where appropriate)</li></ul> <p><b>Reference:</b> See chapter 9 'Forms' for ENF 11/15 and ENF 11/16.</p> <p>Explain clearly when presenting the evidence in court:</p> <ul style="list-style-type: none"><li>• why the meat should be condemned</li><li>• quote the Regulation(s) which has / have been breached</li><li>• what the problems are if the meat is not condemned</li><li>• what the risk is to public health</li></ul>
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<p>If successful: maintain supervision to ensure meat is disposed of</p>	<p>If the Justice of the Peace / Sheriff issues an 'Order for Condemnation of Food', upon receipt of the Order, ensure that the person in charge of the meat (and the owner if notified) receives a copy. Ensure that the details of disposal have been recoded and that a copy of the waste transfer note has been kept on file.</p>
<p>If unsuccessful: meat is health-marked and restored to owner</p>	<p>Where any issue of compensation arises the AO must not discuss or negotiate any compensation for depreciation in value of the meat or food. The AO should ask the FBO / Owner of the food to put any complaint in writing to the Head of Operational Delivery (HOD).</p>
<p>Official Detention of non-compliant meat from third countries</p>	<p>Where meat has been imported directly from a third country into the UK and suspicion exists of non-compliance with traceability requirements or correlation between the product and any certified guarantees, an AO may officially detain the product using the ENF 11/32. See chapter 3 on 'Imported and exported meat and animals', section 4 on 'Action for unsatisfactory consignments'.</p>

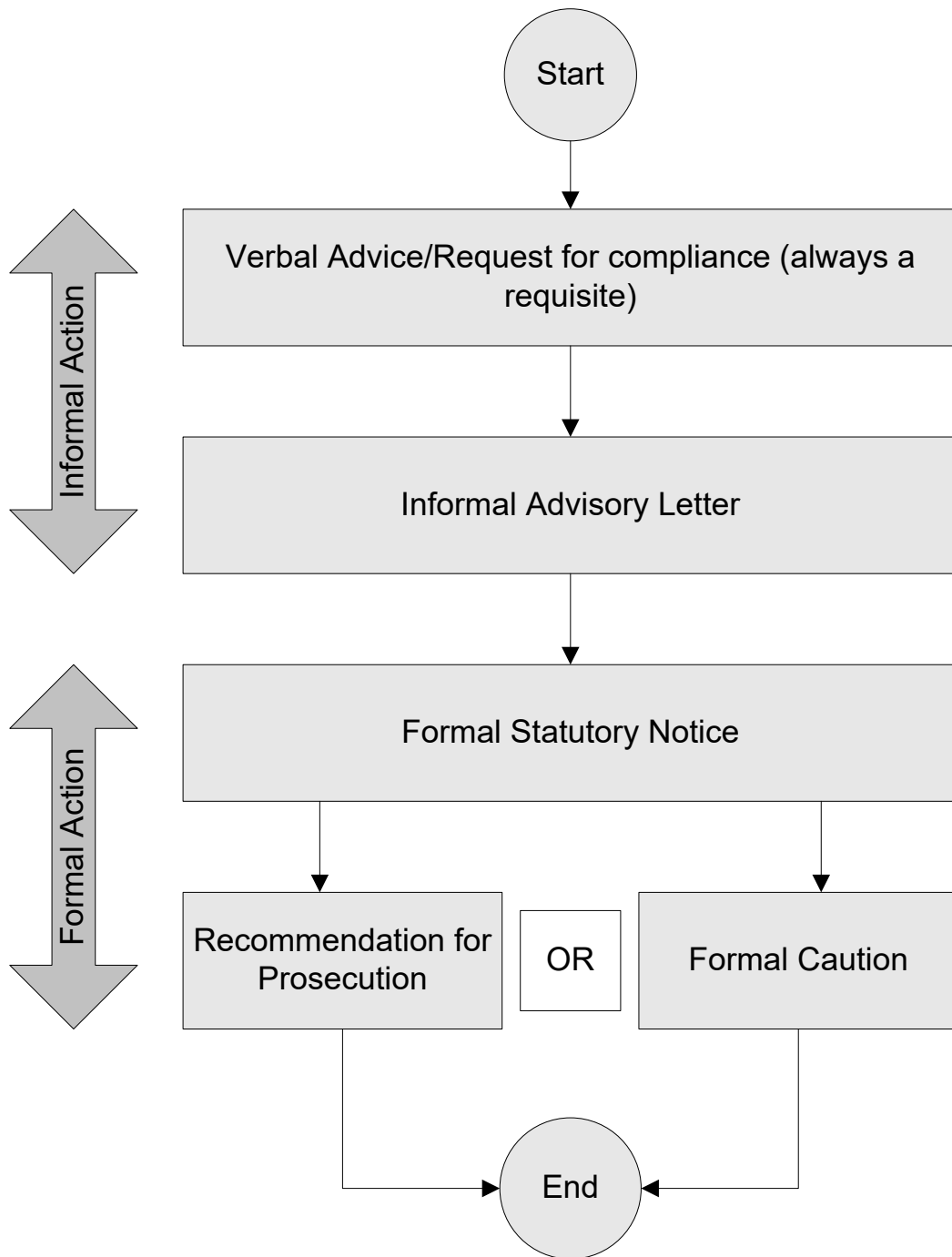
## 4. Hierarchy of Enforcement

- 4.1 Introduction
- 4.2 Informal enforcement action: Verbal
- 4.3 Informal enforcement action: Written
- 4.4 Formal enforcement action: Statutory Notice
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- 4.15 Process for obtaining warrant to enter premises in England and Wales

## 4.1 Introduction

### 4.1.1 The hierarchy of enforcement

The flow diagram below outlines the stages that comprise the hierarchy of enforcement.



### 4.1.2 Approach to the hierarchy

The approach to the hierarchy of enforcement and level at which the AO commences enforcement action will be dependent upon:

- the urgency / severity of the situation
- the most appropriate course of action that will control the risk
- the enforcement tools available under that piece of legislation
- the history of the FBO and their willingness to comply
- the FSA Operations Enforcement Policy

### 4.1.3 Enforcement; informal and formal action

The term 'Enforcement' includes advisory visits, assisting the FBO with compliance, approval visits and formal enforcement action (see Enforcement Concordat: Good Practice Guide for England and Wales Paragraph 88).

Verbal advice, written advice and written warnings all constitutes informal enforcement action.

Formal enforcement action includes official detention of food, the service of formal notices, cautions, referrals for investigation and prosecutions.

### 4.1.4 Subject of enforcement action

Any FBO or person who is the subject of enforcement action should be kept fully informed of any intended or actual enforcement action by the OV.

### 4.1.5 The health mark and enforcement hierarchy

The health mark is not part of the hierarchy. However, the AO should refuse to apply the health mark in red meat plants under the following circumstances:

- where the animal has not undergone ante-mortem and post-mortem inspection in accordance with (EC) 854/2004, Annex 1, Section I, Chapter III, paragraph 2 (a)
- where there are grounds for declaring the meat unfit for human consumption, or in the OVs opinion, after examination of all relevant information, the meat constitutes a risk to public or animal health, or is not

suitable for human consumption in accordance with (EC) 854/2004, Annex 1, Section II, Chapters II, III and V

- where the meat fails to comply with the provisions of Article 14.5 (EC) 178/2002 in that the food is unacceptable for human consumption according to its intended use, for reasons of contamination (whether by extraneous matter or otherwise), or through putrefaction, deterioration or decay

Similarly, the Identification Mark ((EC) 853/2004, Article 5,2) must only be applied by the FBO to products in poultry slaughterhouses and all cutting plants if the product has been manufactured in accordance with the requirements of (EC) 853/2004, in establishments meeting the requirements of Article 4 of (EC) 854/2004. Where the product has not been so manufactured, then any application of this mark to meat will contravene (EC) 854/2004, Article 5, 2.

This breach will:

- constitute an offence under Regulation 19 of the Food Safety and Hygiene (England) Regulations 2013 and Regulation 17 of the Food Hygiene (Wales) Regulations 2006
- potentially warrant the service of a Remedial Action Notice under Regulation 9(1) of the same Regulations, immediately prohibiting the use of the mark

### **4.1.6 When to give verbal advice**

The first stage of enforcement action considered by the AO should be education and advice. Whilst it is the FBOs responsibility to know which legal provisions are applicable to their business, the AO should ensure that, where necessary, they clarify and update the FBO on any relevant legal requirements. This is to ensure that the FBO understands the outcome to be achieved.

Verbal advice should go hand in hand with all stages in the enforcement process to help the FBO achieve compliance, and understand why enforcement action is being taken. For example AOs must always try to explain to the FBO why immediate action may be required, why a statutory notice is being served, or why the matter is being referred for investigation, if appropriate.

Where verbal advice is of a technical nature, it may be helpful for this to be followed up with a letter in writing confirming the discussion / meeting.

It is important that the AO does not continue to give verbal advice where this is being ignored, without escalating enforcement action in the appropriate way.

**Note:** Where immediate action is required on public health or animal welfare grounds, verbal advice should be given, but if ignored it may be appropriate to move straight to formal enforcement action to secure compliance as soon as possible (for example, Public Health - RAN, Animal Welfare – Welfare Enforcement Notice, Improvement Notice or refer for investigation).

### 4.1.7 Records

If it appears likely that enforcement may be escalated, or the FBO has a history of non-compliance, verbal advice should be recorded on the FSA enforcement programme.

## 4.2 Informal enforcement action: Written

### 4.2.1 Advisory letters

Advisory letters are considered 'informal' enforcement action and failure by the FBO to comply with a letter of advice will not necessarily constitute an offence. However, an advisory letter produced later in court will help to demonstrate fairness and proportionality in the enforcement approach and that the FBO may have ignored previous advice.

Advisory letters should be sent by the OV to the FBO when:

- the FBO or a staff member has failed to take appropriate corrective action following verbal advice
- where there is a contravention of the Regulations which does not have an immediate impact on public health or animal welfare

The AO should inform the FBO of the intention to write an advisory letter. Ideally, the AO should meet with the FBO or their representative before issuing an advisory letter to discuss all the issues including the timescale for completion. It is good practice to ask the FBO to confirm in writing their agreement to any timescale. Accurate minutes of any meetings in respect of compliance should be taken.

In advisory letters, the AO must not warn of prosecution action in the event of future contraventions, as this could prejudice any future formal investigation.

Advisory letters must be typed and sent on FSA official letterhead paper. In the case of advisory letters sent to limited companies, these should be addressed to

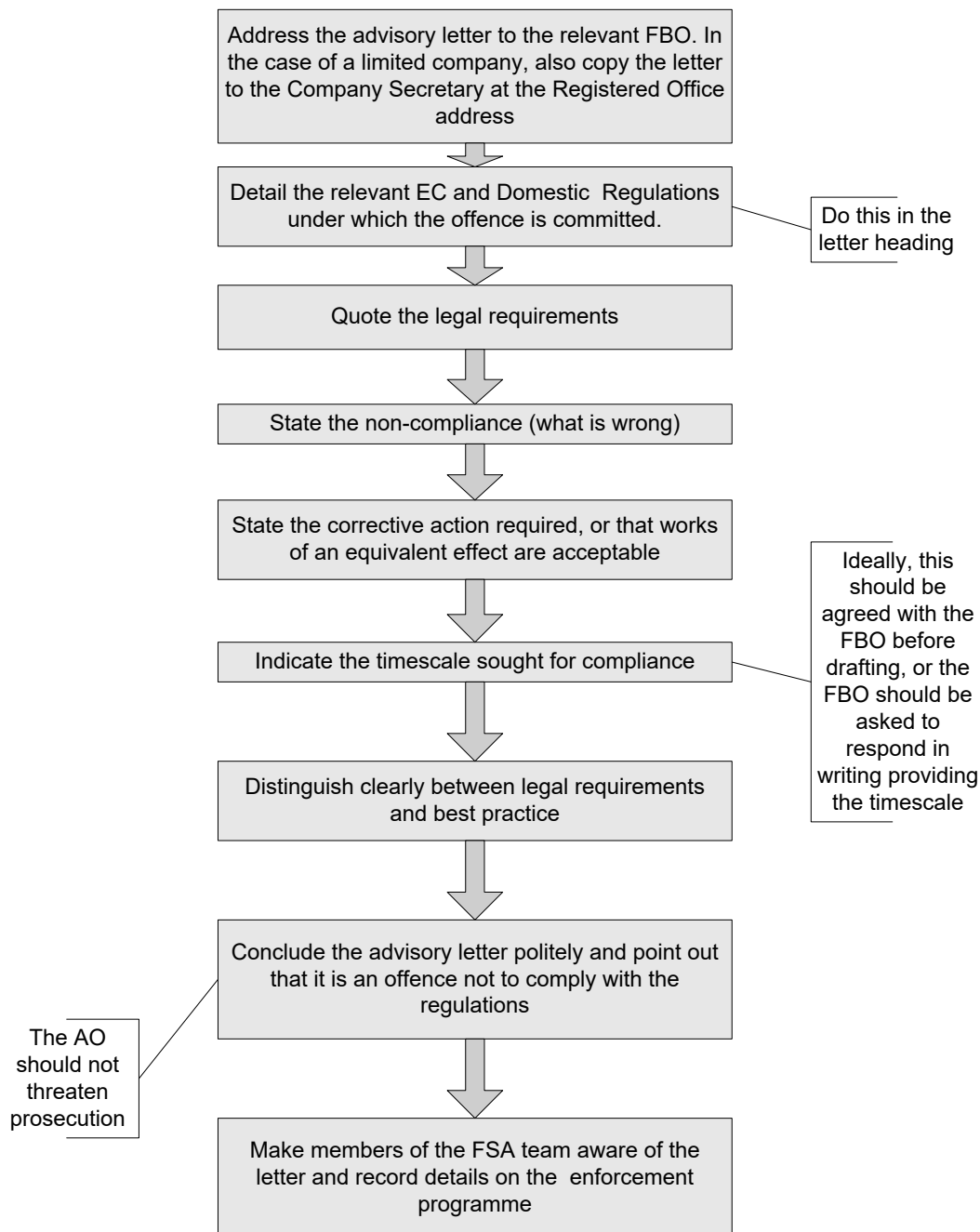


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the FBO c/o The Company Secretary at the Registered Office address and a copy handed to plant management.

### 4.2.2 Checklist for advisory letters

The table below lists the points that an OV should follow when drafting an advisory letter. The OV should:



### **4.3 Formal enforcement action: Statutory Notice**

#### **4.3.1 Preparation for formal action**

Before taking formal enforcement action, the AO should:

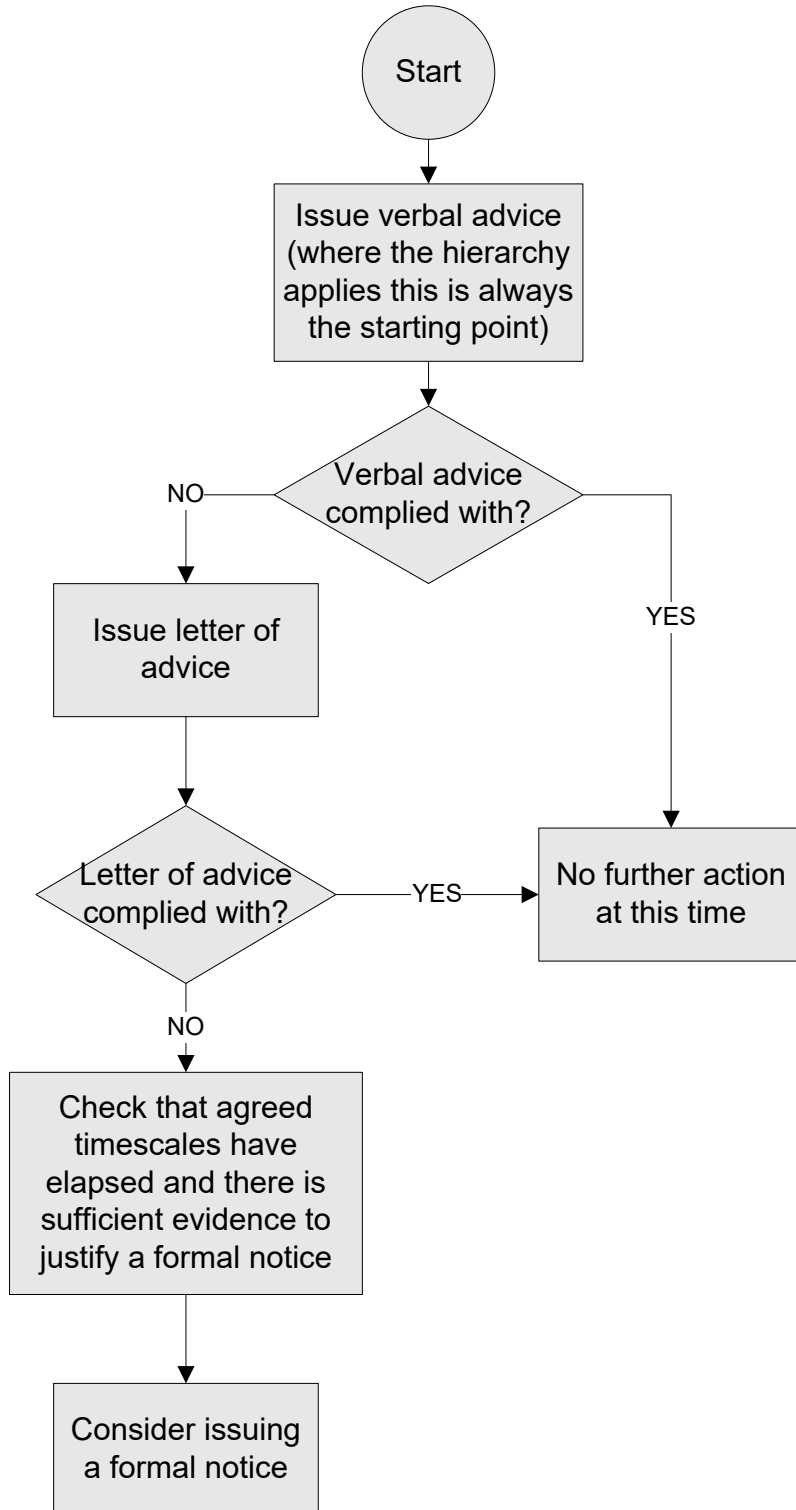
- advise the FBO verbally of this intention
- be aware of all ongoing enforcement action by reviewing the Enforcement Programme
- have regard to the FSA Operations Enforcement Policy
- ensure that evidence has been secured to demonstrate that the contravention still exists that will warrant the escalation of enforcement action

#### **4.3.2 Statutory notices**

Statutory Notices are legal documents and care must be taken to ensure they are completed correctly and used appropriately. They should only be served by FSA AOs authorised to do so.

### 4.3.3 Checklist prior to serving statutory notices

The diagram below lists the points that an AO should follow before serving a Statutory Notice. The AO should:



At the time of serving a formal Statutory Notice, the AO should ensure that *all* the following checks are complied with:

- the formal notice is addressed to and served on the correct person / legal entity; this will depend on which particular regulation has been breached
- the local plant manager has received a copy of any formal notice where the original was served on the limited company and sent c/o 'The Company Secretary' to the Registered Office address
- the notice is clearly worded, concise and easily understood; it is typed (unless drafted by hand and served immediately), dated and signed by the AO
- the notice accurately describes the non-compliance relevant time frame within which compliance should be achieved
- the action required to remedy the breach of the legislation and the problem identified in the contravention box is clearly described
- an official hard copy of the notice should be used (taken from the MOC) and not a photocopied, sample or draft notice
- all sections have been completed correctly and any irrelevant areas deleted as necessary
- the notice includes all required information on rights of appeal and on the applicable procedure and time limits, and a copy of the notice that was served has been retained and / or scanned as a permanent record

If **any** of the above checks are not complied with, the AO must ensure action is taken to secure compliance before proceeding to serve a formal Statutory Notice.

### 4.4 Statutory notices for hygiene contraventions

#### 4.4.1 Food Safety and Hygiene (England) Regulations 2013 and the Food Hygiene (W) Regulations 2006

The Food Safety and Hygiene (England) Regulations 2013 and the Food Hygiene (Wales) Regulations 2006, provide 3 notices for hygiene non-compliances:

- Remedial Action Notice (Regulation 9(1))
- Hygiene Improvement Notice (Regulation 6)
- Hygiene Emergency Prohibition Notice and Order (Regulation 8)

**Reference:** See section 3 on 'Surrender, detention, seizure and condemnation' in this chapter for details of detention for examination and sampling under

Regulation 10(1) of the England Regulations and 9(5) of the Scottish and Welsh Regulations and detention for further investigation under Section 9 of the Food Safety Act 1990, via the provisions of Regulation 25 of the domestic England Regulations and Regulation 23 of the domestic Scottish and Welsh Regulations.

### **4.4.2 Service details**

Formal Notices provided for under The Food Safety and Hygiene (England) Regulations 2013 and the Food Hygiene (Wales) Regulations 2006 and the Food Safety Act 1990 can be served by any AO.

FSA policy is that only OVs or competent MHIs that have successfully completed the unannounced inspections training should serve and withdraw formal notices.

Regulation 10(1) and 9(5) Detention Notices served under The Food Safety and Hygiene (England) Regulations 2013 and Food Hygiene (Wales) Regulations 2006, should be served on the FBO, or their duly authorised representative.

The Food Safety Act Detention Notice should be served on the person in charge of the food.

### **4.4.3 Formal service and delivery of notices**

When drafting formal notices, it is very important to ensure that they are directed at the correct legal entity responsible for any potential offences that can be committed.

### **4.4.4 Finding company addresses**

Checks on a company's registered office details may be done by logging on to Companies House website at <https://www.gov.uk/government/organisations/companies-house> and clicking on to the free company details link under the 'find company information' heading.

The organisation can also be contacted on 03031234500, or by email at [enquiries@companies-house.gov.uk](mailto:enquiries@companies-house.gov.uk) between 08:30 and 18:00, Monday to Friday.

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Type of Notice	Legislation	Purpose	Should be served upon
Detention of Food Notice	Section 9 Food Safety Act 1990 [via Regulation 25 Food Safety and Hygiene (England) Regulations 2013/ Regulation 23 Food Hygiene (Wales) Regulations 2006]	To detain food while further investigation is carried out	The person in charge of the food (the FBO)
Certification of Meat Notice	Regulation 29 Food Safety and Hygiene (England) Regulations 2013/ Regulation 27 Food Hygiene (Wales) Regulations 2006	To certify that food has not been produced, processed or distributed in accordance with the Hygiene Regulations and fails to comply with the food safety requirements	The FBO or person in charge of the food.
Seizure of Food Notice	Section 9 Food Safety Act 1990 [via Regulation 25 Food Safety and Hygiene (England) Regulations 2013/ Regulation 23 Food Hygiene (Wales) Regulations 2006]	To seize food in order that it may be taken before the court to be condemned	The person in charge of the food (the FBO)
Remedial Action Notices	Regulation 9 Food Safety and Hygiene (England) Regulations 2013 / Regulation 9 Food Hygiene (Wales) Regulations 2006	To seek compliance with hygiene matters that pose an immediate risk to public health	FBO or Duly Authorised Representative
Hygiene Prohibition Order	Regulation 7 Food Safety and Hygiene (England) Regulations 2013/ Regulation 7 Food Hygiene (Wales) Regulations 2006	Prohibition of a food business proprietor or manager from participating in the management of any food business	FBO

### 4.5 Remedial Action Notices

#### 4.5.1 When to use a Remedial Action Notice (ENF 11/24 (E and W))

The Remedial Action Notice (RAN) may only be used:

- when any of the requirements of the Hygiene Regulations\* are being breached, or
- when inspection under the Hygiene Regulations is being hampered

\*“The Hygiene Regulations” in this context means either the provisions of the EU Hygiene Regulations (852/2004, 853/2004, 854/2004, 2073/2005 and 2075/2005) or the Food Safety and Hygiene (England) Regulations (2013)/ Food Hygiene (Wales) Regulations 2006.

It should be used specifically where the AO considers that the operator should take immediate action to achieve compliance, or where the rate of operation of the plant is detrimental to its ability to comply with the Hygiene Regulations.

The OV must verbally request that the FBO rectifies the situation and serve the notice if compliance is not met. It is essential to gather the necessary evidence at the time the contravention is identified to justify its service in case an appeal against the RAN is lodged by the FBO.

The OV must verbally inform the FBO of the intention to serve the notice and record the information in the enforcement programme.

#### 4.5.2 Purpose of a RAN

A RAN places a legal requirement on a FBO to take immediate action to achieve compliance with the Hygiene Regulations. The AO must specify on the notice whether the RAN is intended to:

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

A RAN can be used to direct the FBO to rectify both hygiene and structural / maintenance deficiencies, which fall under (EC) 852 and 853/2004 and (EC) 2073 and 2075/2005 or the domestic hygiene regulations themselves and that require immediate action.

In the case of maintenance and structural problems, that do not pose an imminent threat to public health and can be rectified in the longer term, a Hygiene Improvement Notice should be used. This would be served under Regulation 6 of The Food Safety and Hygiene (England) Regulations 2013/ Regulation 6 of the Food Hygiene (Wales) Regulations 2006.

### 4.5.3 Identification of the non-compliance

Where the RAN is being served under section 9(1)(a), because a requirement of the Hygiene Regulations is being breached, the AO is required to:

- specify which requirement(s) of the Hygiene Regulations have been breached in the “contravention” box of the RAN; it is not sufficient to merely repeat the legal requirement set out in the legislation, as this does not specify the precise nature of the breach
- cite the relevant legal reference(s) of the Hygiene Regulations, ensuring this identifies the exact provision that places an obligation on the FBO; this should include the general obligations to comply with the relevant provisions in the Annex(es) to the EU Regulation, and any specific requirement contained in the Annex, for example, Regulation (EC) 853/2004, Article 3 and Annex III, Section I, Chapter IV, Paragraph 7(b) (i)
- if the FBO is breaching more than one legal provision by their conduct, cite the most relevant and specific applicable provision; where there are no specific requirements, use the more generic references which apply to the scenario in question
- describe the measure(s) / action(s) which, in your opinion, the FBO must take to remedy the breach identified in the “contraventions” box of the notice
- ensure that the contravention(s), legal reference(s) and action(s) all link to one another; the measure(s) to be taken must be relevant to the contraventions identified earlier in the notice; the AO must not require the FBO to undertake actions which they have not identified as contraventions in the earlier part of the notice
- if a RAN is served under Regulation 9(1)(d), conditions can only be imposed on a process in the establishment, and the process in question must be specified; examples of a process might be “evisceration”, “dressing”, and “skinning”

FBOs have a responsibility to monitor significant hazards in a process, determine where a process is out of control, identify the root cause of such non-compliances



and rectify them through corrective actions, as part of their HACCP based procedures. However, in many cases FBOs will have failed to monitor and failed to undertake the corrective actions identified in their HACCP plan. A HIN can be used to require compliance with the systemic HACCP deficiencies and the RAN can be used to address any hygiene risks evident as a result of the FBOs failure to have taken any appropriate corrective actions.

It is sometimes difficult to determine the root cause of a non-compliance where the causes are varied. In such circumstances, the AO should specify the actions they believe are required to remedy the issue and require that the FBO achieves any objectives the regulations set out.

In some cases – for example, where a slaughter process is clearly out of control, where the root cause of a serious problem is unknown, or where an AO has already served a RAN which has been breached by the FBO – the AO should consider serving a RAN which prohibits the carrying out of a process (under Regulation 9(1)(d)) or requiring the FBO to stop operations completely (under Regulation 9(1)(e)).

#### 4.5.4 Service and withdrawal

A separate RAN should normally be served on the FBO in respect of each specific deficiency, or for each item of equipment or machinery. In some circumstances, the effect of serving the Notice may be to stop the entire operation.

A RAN may be used to stop the operation completely in circumstances such as pest infestation, failure of sterilisers, inadequate overnight cleaning, failure of the hot water supply, lack of potable water supply or where the behaviour of the FBO is hampering adequate health inspection.

**Note:** Where the notice has the effect of stopping the operation completely, the OV must consult with their line manager to ensure that the action requested of the FBO is proportionate to the risk.

Service and withdrawal of a Remedial Action Notice must be done by an OV or suitably trained MHI.

The AO who observes the deficiency should serve the formal notice. If the Notice has been served by post on the FBO, a copy of the Notice should be handed to someone at the plant address by the AO that observed the deficiency.

### 4.5.5 Tagging

All equipment that has been the subject of a RAN must be clearly identified and tagged using a numbered security seal, and accurately cross-referenced to a RAN.

### 4.5.6 Who to serve the notice on

The notice may be served on the FBO in person if present at the plant, or on a duly authorised representative of the FBO, where it is clear who this individual is (see approval application document).

### 4.5.7 Alternative service methods

Where it is not possible to identify the name and address of the person on whom the notice should be served, it can be served by addressing it to the FBO in their capacity as “occupier” of the establishment at which corrective action is required (naming the establishment). The notice may then either be handed to someone else at the establishment who appears to be in charge, or by attaching the notice or a copy of it to some conspicuous part of the establishment.

The provisions relating to the service of notices are contained within Regulation 30 of the Food Safety and Hygiene (England) Regulations 2013/Regulation 28 of The Food Hygiene (Wales) Regulations. They correspond with the provisions of Section 50 of the Food Safety Act 1990.

### 4.5.8 Information for notices

The following information is to be included on the reverse of the OV copy:

- the name of the plant representative to whom any copy notices have been handed (in circumstances where the original has been posted to the FBO at the plant or served at the registered office address of a limited company)
- any comments made by the plant representative when handed the notice
- details of any food detained at the same time as the service of the RAN
- the reference number of the Detention Notice served
- details of any appeal that is lodged by the FBO in respect of the service of the RAN

### **4.5.9 Rights of appeal**

The FBO has the right of appeal (Regulation 22 (England), Regulation 20 (Wales)) to a Justice of the Peace or Sheriff regarding the decision of the OV to serve a Remedial Action Notice. If the occupier appeals, the OV must notify FSA York, Field Operations (FO) Enquiries immediately.

The provisions of the Remedial Action Notice remain in force until such time as the appeal is upheld.

### **4.5.10 If removed or defaced or destroyed**

The notice is the property of the FSA. If the AO discovers that any notice affixed to an establishment has been removed, defaced, or destroyed, the notice should be replaced as soon as possible and the events recorded in the pocketbook or daybook.

### **4.5.11 Failure to comply**

Failure to comply with a RAN is an offence (Regulation 9(5) The Food Safety and Hygiene (England) Regulations 2013 / Regulation 9 (7) The Food Hygiene (Wales) Regulations 2006). If the operator has failed to comply with such a notice, complete a Referral for Investigation report - ENF 11/6.

### **4.5.12 Corroborative evidence rules**

Where possible, service of a notice should be evidenced or corroborated in some way. If a notice is served by hand, then a second AO should be present when it is served to corroborate this fact. Both, the AO who served the original notice and the corroborating officer should sign a copy of the notice and indicate the date and time of service, and should also make a note of the details of service in the Plant Daybook and / or their pocketbook. A witness is required to observe any AO fixing a notice to the premises.

When posting a notice, the OV should obtain a proof of postage certificate and retain this as evidence. Where this is not possible, they should record the details of where the notice is posted and the postage address in their pocket book and have a colleague corroborate the postage and countersign the entry. Where no colleague is available to corroborate postage, record details of posting in the same way as above and photograph the envelope.

### 4.5.13 Multiple contraventions

Where different contraventions have been identified, a different notice should be served for each and every separate contravention.

A notice containing multiple contraventions:

- will be more complicated to draft and it is more likely that an FBO may be confused by what the AO is trying to convey; this may affect the validity of the Notice as it is important that enforcement requirements placed upon an FBO are **clear**
- will require actions that must be capable of curing all the issues cited in the contravention section
- cannot be withdrawn if there are certain issues still outstanding even if some aspects have been complied with
- cannot be referred for investigation as certain aspects of the notice may have been complied with
- if appealed, will result in all of the issues being the subject of the appeal, even where some may have been complied with

In limited circumstances, it may be acceptable to cite more than one issue and legal reference on a RAN, provided that:

- the legal references and contraventions relate to the same category, for example, maintenance, cleanliness of the premises
- the actions the AO requires the FBO to take are capable of curing all the contraventions identified earlier in the notice

### 4.5.14 Withdrawal of a RAN

A RAN is often used to correct problems with operational practices that pose a potential risk to the safe production of food. They may be left in place until the AO is satisfied that the FBO has complied with the legal requirement. There may often be occasions where the non-compliance is intermittent and the AO wishes to be satisfied that the FBO / their staff have changed their behaviour before withdrawing the notice.

However, the AO must monitor the situation and come to a determination within a reasonable time frame given the non-compliance they are requiring the FBO to correct. The time frame for removing the notice may vary depending on the nature of the non-compliance; however, if the Notice is breached, it must be referred for investigation.

If the officer is satisfied that the actions required by the Notice have been complied with, it must be withdrawn and it is not appropriate to leave the notice in place for long periods after this point as it does not offer certainty for the FBO as to whether they will face any future legal proceedings, since they are now complying with the Hygiene Regulations.

However, in situations where compliance with the requirements is intermittent, it is important to remember that there is no maximum timeframe to leave a RAN in place, and no requirement about when a RAN has to be withdrawn, except that it should be withdrawn once the AO is satisfied that it has been complied with.

Notification of withdrawal of a RAN must be effected in the same way that the notice was served. If the FBO is a limited company, and the Notice was served at the company's registered office address (with a copy of the Notice having been handed to a member of staff in charge at the production plant), then the withdrawal notice must also be sent in the post to the registered office address, and a second copy should be handed to someone appearing to be in charge / duly authorised representative at the plant.

## 4.6 Hygiene Improvement Notices

### 4.6.1 When to use a Hygiene Improvement Notice (ENF 11/23 (E and W))

The Hygiene Improvement Notice (HIN) should be used:

- where there is a record of non-compliance with breaches of the regulations
- where the history of compliance by the FBO is such that the OV has reason to believe that an informal approach will not be successful
- where formal action is proportionate to the risk to public health

A HIN should not be used for non-hygiene related matters, for example, failure to comply with the provisions of the Animal By-Product Regulations, WATOK or TSE Regulations.

The Code of Practice requires that both verbal and written advice be given to a FBO prior to a HIN being served. However, the Code also acknowledges that there may be circumstances where the AO believes this informal approach will be unsuccessful. If these informal stages are to be bypassed, the OV must have suitable evidence to demonstrate that the FBO has ignored previous informal advice in this area, prior to circumventing these requirements.

### 4.6.2 Purpose of a HIN

The purpose of a HIN is to place a legal requirement on a FBO to take action to achieve compliance with the EU Food Hygiene Regulations.

A HIN may require the FBO to:

- address any hygiene deficiency that does not require immediate action
- repair a structural defect with the building
- to build or construct additional facilities to cope with an increased throughput
- address failures to implement and maintain a sound HACCP based system

The identified action must be stated on the HIN.

### 4.6.3 When not to issue a HIN

A HIN cannot be used to impose a continuing burden, and should not be used in the following circumstances:

- where the contravention might be a continuing one, for example, wooden pallets stored in the presence of unprotected fresh meat and the Notice would only secure an improvement at that point in time
- where breaches exist that pose a potential and imminent risk to health and urgent action is needed; in these cases it is more appropriate to use a Remedial Action Notice (RAN) and in more serious situations (subject to Head of Operational Delivery approval) an Hygiene Emergency Prohibition Notice
- for the failure to implement good hygiene practice

An HIN cannot be issued unless a contravention of the Hygiene Regulations is identified.

### 4.6.4 Service

Service of a HIN is by an AO. HINs must be served on the FBO.

**Note:** Where the FBO is a limited company, the envelope (but not the notice itself) is to be addressed to the limited company c/o The Company Secretary at the Registered Office.

The AO who observes the deficiency should serve the formal notice. If the Notice has been served by post on the FBO, a copy of the Notice should be handed to someone at the plant address by the AO that observed the deficiency. Details of how the notice was served should be recorded on the back of the HIN.

### 4.6.5 Service checklist

When serving a HIN the AO must:

- have in their possession all the evidence to justify its service
- verbally inform the FBO of the intention to serve the notice
- state why it is served and the action needed to remedy the breach
- sign, date and if possible type the HIN

### 4.6.6 Drafting and serving a notice to a sole trader

Ensure that the name of the individual on the formal Notice clearly identifies the individual acting as the FBO, beyond doubt, and will need to include both their forename(s) and surname.

Where family members have the same names, try to include any additional names that the person may have, to avoid confusion. The notice may be served by hand on the sole trader at the plant, or addressed to them personally at the plant address.

### 4.6.7 Drafting and serving a notice to a partnership

Where a number of individuals act as the FBO under a partnership arrangement, a copy of the Notice must be served on each and every partner. The box identifying the FBO must include each and every partner's full name.

The notices may be served by hand on each partner at the plant, or addressed to each of them personally at the plant address, with a covering letter explaining that the **same** notice has been served on the other partners in the business.

### 4.6.8 Drafting a notice to a FBO with limited liability status

Where the FBO has limited liability status, the name of the FBO will be the full name of the limited company, for example, 'ABC Meat Ltd'. The Notice must be

sent by post to the registered office or principal address of the company, with a copy of the Notice handed to the relevant person in charge at the plant. The **envelope** must be addressed to the limited company c/o 'The Company Secretary', where one exists.

**Note:** Whilst a company secretary is no longer a legal requirement within a limited company structure, where they exist, they are generally the person responsible within a limited company structure, who receives such notices. They are **not** the FBO or proprietor, and therefore should **not** be referred to on the formal notice.

### 4.6.9 Content of notice

The notice must specify the:

- grounds for believing the FBO is failing to comply with the regulations
- precise nature of the alleged breach
- measures needed to be taken to secure compliance
- timescale (date) for compliance
- appeal provisions, including the name and address of the relevant local court

**Note:** Alternative works of equivalent effect may be acceptable.

### 4.6.10 Drafting the notice

The AO is required to:

- describe the contravention that has been observed that constitutes a breach of the Hygiene Regulations; it is not sufficient to merely repeat the legal requirement set out in the legislation, as this does not specify the precise nature of the breach
- cite the relevant legal reference(s) within the Hygiene Regulations, ensuring that this identifies the exact point or paragraph that places an obligation on the FBO, including the general obligation for the FBO to comply with the relevant provisions within the Annexes of the legislation where applicable; for example, Article 3 and Annex III, Section I, Chapter IV, Paragraph 7(b) (i) of Regulation (EC) 853/2004
- where the contravention breaches various legal requirements, use the most relevant and specific provision where this exists; however, where there are



no specific requirements, use the more generic references which apply to the FBO in question

- describe what measure(s) / action(s) in their opinion the FBO must take to secure compliance with the contravention(s) identified earlier in the notice
- ensure the contravention(s), legal reference(s) and action(s) must all link to one another; the AO must not require the FBO to undertake actions or measures that were not identified as contraventions earlier in the notice
- set out a timescale which is a minimum of 14 clear days from the date the notice is served; it is important that if the AO identifies more than one legal reference and contravention that are of a similar theme, that the time frame for compliance is suitable for both issues

### 4.6.11 Drafting notices with more than one legal breach identified

A notice should only deal with one contravention. This will avoid any potential problems if the Notice is appealed; in which instance, all of the issues cited on the notice will be held in abeyance until the court makes a determination on the validity of the Notice.

Where different contraventions need to be remedied within different time frames; for logistical and operational reasons you cannot place separate time scales on the same notice.

The more contraventions that are cited in a Notice, the more complicated the Notice will be to draft, and it is more likely that an FBO may be confused by what the AO is trying to convey. This may also affect the validity of the Notice as it is important that enforcement requirements placed upon an FBO are **clear**.

The actions the FBO must take that are specified by the AO in the Notice must be capable of curing all the issues cited in the contravention section; failure to do so will make it more problematic to ensure that the actions the FBO must take, will secure compliance with the relevant legal provisions.

It may be acceptable to cite more than one legal reference or issue on a notice, provided that:

- the legal references link to all the contraventions described by the AO
- they relate to the same theme
- the actions the AO requires the FBO to take are capable of curing all the contraventions identified in the notice and ensure all legal obligations are adequately dealt with

### **4.6.12 Posting**

Ideally, all HINs should be posted at a Post Office and a certificate of posting obtained. Where it is impractical to gain access to a Post Office the notice should be posted in a post box, corroboration obtained by a colleague where they are available, and a record made in the AOs pocketbook which should be countersigned.

### **4.6.13 Right of appeal**

Recipients have a right of appeal against Hygiene Improvement Notices to the Magistrates' Court. During the appeal period the requirements of the notice are suspended.

In the event of an appeal by someone who is aggrieved by the service of the HIN, the AO is to inform FO Enquiries at York immediately, who will arrange legal representation through FSA Legal for the appeal hearing.

### **4.6.14 Requests for notice extension**

If the FBO were to request an extension to a HIN, this must be in writing and requested prior to the expiry of the notice. This will be an informal arrangement between the AO and FBO as there is no legal basis for the AO to extend the notice. It will constitute an informal undertaking by the AO not to refer the matter for investigation unless the FBO continues to be non-compliant after the agreed extension date.

Where there is a genuine reason for such an extension and the criteria in the Code of Practice are met, the AO should discuss with the FBO the length of time required to comply and confirm their agreement to the extension in writing.

The AO must review the works carried out by the FBO after the agreed extension date specified in the letter has expired and either withdraw the Notice or refer the breach of the Notice for investigation; see below.

### **4.6.15 Failure to comply**

Failure to comply with an HIN is an offence.

If the FBO has failed to comply with a notice, complete a Referral For Investigation report for the breach of the formal notice as well as a breach of the substantive offence that led to the notice being served in the first place.

**Reference:** See the topic 4.9 on 'Referral for investigation' for additional information.

### 4.6.16 Compliance and withdrawal

After the service of a HIN, the AO must check that it is complied with by the stated date.

Where compliance is achieved, the AO must confirm formally in writing that they are satisfied with the works carried out.

Measures that achieve the same outcome as those specified in the notice must be accepted as achieving compliance.

A template is available in annex 4 to this chapter that can be used as the basis of a letter to the FBO where:

- the OV is satisfied that the action required in the HIN has been carried out and compliance has been achieved to their satisfaction, or
- the OV has served the HIN in error and/or it has to be withdrawn due to a technicality

**Note:** Please delete the paragraph that is not applicable.

**Reference:** See annex 4 on 'Hygiene Improvement Notice letter template'.

## 4.7 Hygiene Emergency Prohibition Notices

### 4.7.1 Caution

Hygiene Emergency Prohibition Notices (HEPN) can only be issued after authorisation from FSA Legal.

### 4.7.2 When to use

Issuing a Hygiene Emergency Prohibition Notice (HEPN) should only be considered after discussion with the FVC, and where there is a real and imminent

risk of injury to health that is so serious that action requires the backing of the court, for example, contamination of the potable water supply.

**Reference:** Specific examples and further guidance are given in the Code of Practice made under Regulation 26/Regulation 24 of the Regulations.

The HEPN must be served on the FBO by using the same procedures as outlined in the topic ‘Hygiene Improvement Notices’.

**Note:** The limited timescales are set out in the subsequent topics.

### 4.8 Hygiene Emergency Prohibition Orders

#### 4.8.1 Application process

The table below provides an overview of the application process for a Hygiene Emergency Prohibition Order (HEPO).

Stage	Description
1	<p>The AO must give the proprietor at least <u>1 full day’s notice</u> of their intention to apply for a Hygiene Emergency Prohibition Order (HEPO) by serving a HEPN on the FBO.</p> <p>A HEPN has an immediate prohibitory effect and once served the AO should contact the local court to immediately arrange for a hearing.</p> <p><b>Note:</b> A copy of the HEPN must be affixed in a conspicuous position to the premises at which the notice relates.</p>
2	<p>The AO applies for an HEPO from a magistrates’ court (England and Wales). The application must be made within three days of the service of the notice. The day of the service of the notice is regarded as day one. There is no legal requirement for the application to be heard in three days, although the court should be asked to list the hearing at the earliest opportunity. Once made the HEPO supersedes the HEPN. The AO must also affix a copy of the HEPO in a conspicuous position to the premises at which the HEPO relates.</p>
3	<p>Once the FBO applies, in writing, for the HEPO to be lifted, the application must be determined as soon as practicable and within 14 days. Once the OV is satisfied that the proprietor has taken significant steps to remove the health risk(s) specified in the notice, the OV should sign the withdrawal certificate at part 5 of the HEPN.</p> <p><b>Regulation:</b> The Food Safety and Hygiene (England) Regulations 2013/ The Food Hygiene (Wales) Regulations 2006, Regulation 8.</p>

### 4.8.2 Sources of advice

Advice should be sought from FSA Legal, who will assist in the preparation of the case prior to the court's hearing of a HEPO.

### 4.8.3 Evidence

Monitoring of the prohibition and any action taken by the proprietor must be recorded. Suitable evidence should be gathered prior to serving the HEPN for production in court.

### 4.8.4 Procedure

The table below shows the steps for an AO to follow when applying for a HEPO.

Stage	Description
Contact local court to arrange hearing	The hearing must take place within three days of service of the HEPN. On establishing dates and times, the AO must notify the FBO by serving a Notice of Intention to Apply for a Hygiene Emergency Prohibition Order.
Prepare for hearing	<p>Prior to the hearing the AO should:</p> <ul style="list-style-type: none"> <li>• read all the relevant papers</li> <li>• prepare to be questioned as a witness</li> <li>• bring all relevant evidence to court</li> </ul> <p>The AO should also prepare three copies of:</p> <ul style="list-style-type: none"> <li>• the HEPN</li> <li>• the Notice of Intention to Apply</li> <li>• the Complaint for a Hygiene Emergency Prohibition Order</li> <li>• the draft Hygiene Emergency Prohibition Order duly completed and ready for signing by the Justice of the Peace</li> </ul> <p>The AO must monitor the premises whilst awaiting the hearing and record any breaches of the notice or changes in circumstances at the plant.</p>
At the hearing	It is crucial that the AO has gathered significant evidence at the time the HEPN was served and that this evidence is presented to the court.

Stage	Description
Court will decide whether to issue the HEPO or not	<p>If the order is made the AO should produce a draft completed order for signing by the Magistrate. The order must then be served on the FBO as soon as possible and a copy affixed to the premises in a conspicuous place.</p> <p>Any breaches of the order whilst in force should be recorded and evidence collected. The matter should then be referred for investigation.</p>
Risk is removed	<p>The AO must then formally cancel the HEPO by writing to the FBO. The withdrawal of such a HEPO must not be unreasonably withheld. Once the order has been complied with, the business can recommence its operation.</p>

### 4.9 Referral for investigation

#### 4.9.1 Appropriate uses

A referral for investigation is required in the following circumstances:

- repeated presentation of SRM
- SRM being consigned from the premises still attached to the meat (except in the case of VC being consigned to approved cutting premises)
- failure to test bovine animals which require BSE testing
- contraventions of the Animal Welfare Act and WATOK
- breaches of the European Regulations and / or the Food Safety Act leading to an imminent risk to public health
- continual failure to observe requirements of Regulations
- obstruction of FSA personnel engaged in official duties
- failure to comply with all formal notices
- breaches of Detention Notices
- failure to comply with legal requirements identified at an approval visit

#### 4.9.2 Evidence

The AO must collect adequate evidence at the time of the offence before referring the matter for investigation.

The AO must identify the contravention and complete the enforcement programme.

Regard should be given to the Enforcement Policy and relevant codes of practice prior to any referral for investigation being put forward.

### 4.9.3 Referral to FSA Legal

Where the AO considers that an incident requires investigation, the matter will be referred to FSA Legal for an investigation to be undertaken.

**Note:** The process to follow when making a referral for investigation is detailed in topic 4.11 on 'Protocol for a referral for investigation', in the table onwards.

### 4.9.4 Decision to prosecute

In England and Wales, the decision whether or not to prosecute for contraventions of hygiene and SRM rules is made by an experienced prosecutor in FSA Legal, having been investigated fully by an FSA Investigating Officer.

The decision to prosecute for contraventions in England of the animal welfare, TSE (RMOP and BSE testing) and animal by-product legislation will be made by an experienced prosecutor at the Crown Prosecution Service (CPS), on the basis of an investigation carried out by an FSA Investigating Officer.

(From 1 September 2011, the CPS took over Defra's prosecution functions).

The decision to prosecute for contraventions of the equivalent legislation in Wales will be made by Welsh Government lawyers on the basis of an FSA investigation.

### 4.9.5 Caution

For England and Wales, in certain circumstances where there is sufficient evidence that an offence has been committed, FSA Legal may decide a formal caution is more suitable than pursuing a prosecution. Once signed by the FBO, it will be retained for a period of at least 5 years. Where the FBO is found guilty of similar offences within this period the caution may be cited together with other previous convictions to the court. A formal caution has the status of a finding of guilt and is recognised as such by the courts. However, the caution itself is not classed as a criminal conviction.

Where the necessary criteria have been reached, the AO will be notified of the decision to issue a caution and the rationale for that decision. The FSA IO will oversee the signing of the caution.

### 4.9.6 Rules of evidence

The AOs main task will be to gather of facts and evidence at the time of the offence, which may be used in court at a later stage. An AO must not attempt to conduct a full investigation as specific training is needed to ensure that the investigation is carried out in compliance with the Police and Criminal Evidence Act 1984 (PACE) (or equivalent) requirements. Only specially trained FSA Investigation Officers conduct investigations. AOs must not attempt to caution or interview suspects or to take statements.

**Note:** Remember the requirement for corroboration in the Scottish courts.

### 4.9.7 Statements

Statements will be taken by an FSA Investigation Officer. They are a record of specific events an individual witnessed in a chronological order. They must refer to all relevant evidence and produce these as exhibits for the case, e.g:

- photographs
- samples
- copies of notices
- copies of daybook entries

Exhibits are usually identified by the initials of the AO and then consecutively numbered. The IO will assist with numbering when preparing the final statement.

**Note:** Where the AO is satisfied that the action required or work specified in a formal notice has been completed, the date that it was completed should be specified in a witness statement and on the back of the copy notice.

## 4.11 Protocol for a referral for investigation

### 4.11.1 Protocol for a referral for investigation

The table below outlines the process and rationale for a referral by the AO for formal investigation.



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Process	Rationale
The AO is to discuss the issue with the rest of the inspection team, where relevant when the contravention occurs, and prior to completing the ENF 11/6 'Referral for Investigation'.	<p>This will ensure that the entire inspection team is aware of all formal enforcement action taking place at the plant.</p> <p>All members of the Inspection Team are Authorised Officers and <b>must</b> assist in all enforcement action as and when required, including acting as a witness in court if necessary.</p>
The AO is to ensure the inspection team is aware of any proposed enforcement action before the FBO is advised of referral.	This will forewarn and forearm colleagues that a contravention has been referred for investigation.
The OV is to provide a summary at team meetings, detailing the stage to which the investigation has progressed.	The team as a whole will be more effective in identifying similar breaches, so that MHI/MT colleagues will never unknowingly condone activities that the AO is attempting to stop.
If advice is needed on the correct enforcement approach, the AO should consult with their Contract Manager and FVC at an early stage if necessary.	Early advice will provide the necessary support to quickly address any queries regarding enforcement approach.
Where FVCs or Contract Managers are not able to answer queries, relating to the current enforcement approach, the AO should request advice from FSA Legal via FO Enquiries (OpA) at FSA York.	This early clarification will avoid unnecessary mistakes, lead to a more consistent approach, reduce legal challenges, improve evidence gathering and ultimately improve the success of cases in court.
AO decision made to refer the case for formal investigation.	Remember that at this stage it is just a recommendation – the FBO is innocent until proven guilty in a court of law.

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Process	Rationale
The AO is to collect all evidence relating to the referral	All relevant evidence must be supplied to enable the referral for investigation to be considered. In particular, photographs must be taken to assist the court, especially where the nature of the offence may be difficult to visualise and where the photograph proves elements of the offence.
The AO is to send all evidence along with the ENF 11/6 and the latest FBO audit report, to the OpA Business Support team at FSA York within 10 working days of the offence being identified and the AO's decision being made to refer for investigation.	Hygiene offences carry a 12-month time limit from when they are discovered by the AO; within which charges should be laid at the court. The time limit between identifying obstruction contraventions and laying charges at the court is 6 months. The time limit between identifying animal welfare cases and laying charges is 6 months, beginning with the date on which evidence which the prosecution thinks is sufficient to justify the proceedings comes to the prosecutor's knowledge. The IO must be afforded enough time to investigate the offences identified.
Once received, OpA will acknowledge receipt of the recommendation and associated paperwork and allocate a unique number to the referral. This number will be notified to the AO in the confirmation email. (If confirmation is not received within 5 working days the AO should contact OpA Business Support.)	Confirmation will be sent to provide assurance that the documentation has been received.
Inform the FBO as a matter of courtesy	After a recommendation for investigation has been passed forward, it is inappropriate for Officers to pass comment on the potential outcome of any investigation under consideration.

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### 4.11.2 Process to be followed

Process	Rationale
If compliance is achieved after a referral for investigation has been made, the OV must record this, including compliance with any formal notice.	This will demonstrate the effectiveness of the operator's 'Due Diligence' systems and identify any defences or mitigation that the operator may wish to put forward.
Where additional information is required, FSA Legal will request further details, to gain a better understanding of the issues involved.	Where evidence is lacking, the issue is complex, the approach taken by the AO requires further explanation. FSA Legal may contact relevant colleagues (for example, OV, FVC, Contract Manager) so that a comprehensive and informed picture can be gained of the issues surrounding the referral.
This may include checking that: <ul style="list-style-type: none"> <li>all the necessary evidence has been gathered</li> </ul>	To prove the elements of the offence beyond all reasonable doubt.
<ul style="list-style-type: none"> <li>the correct course of action has been taken</li> </ul>	To stand up to legal scrutiny.
<ul style="list-style-type: none"> <li>all formal notices have been correctly drafted and served</li> </ul>	To make sure that all the procedural requirements relating to enforcement have been followed.
<ul style="list-style-type: none"> <li>all formal notices must only request the FBO undertake a course of action required by the Regulations</li> </ul>	To ensure that the notice is legally compliant and defensible in case of an appeal.
<ul style="list-style-type: none"> <li>time limits within which recommendations should be put forward by the AO after an offence has been identified</li> </ul>	To ensure that long delays are not holding up the recommendation process and the FSA does not have to defend any 'abuse of process arguments' by the defence alleging delays in investigating offences
<ul style="list-style-type: none"> <li>the hierarchy of enforcement has been followed and the approach to enforcement has been both reasonable and proportionate to the contravention identified</li> </ul>	To ensure that all Codes of Practice, the FSA Operations Enforcement Policy have been complied with.
<ul style="list-style-type: none"> <li>all formal notices have been correctly drafted and served</li> </ul>	To make sure that all the procedural requirements relating to enforcement have been followed.

### 4.12 Referral for investigation: FSA Legal

#### 4.12.1 FSA protocol

The table below outlines the process and rationale for formal investigation by the FSA.

Process	Rationale
<p>FSA Legal Services will review the referral and appoint an Investigation Officer to formally interview the alleged defendant(s) and take statements from the Inspection Team and any other potential witnesses.</p>	<p>FSA Legal will inform the AO and the Operations Assurance Team at York, which IO has been appointed to each case.</p>
<p>When the investigation is complete:</p> <ul style="list-style-type: none"> <li>• FSA lawyers will review all case files relating to hygiene and SRM contraventions</li> <li>• CPS lawyers will review all welfare, ABPR and RMOP and BSE testing infringements in England</li> <li>• Welsh Government lawyers will review all welfare, ABPR, RMOP and BSE testing infringements in Wales</li> <li>• the Procurator Fiscal's office will review all Scottish contraventions</li> <li>• and make a decision on the appropriate course of action</li> </ul> <p>This could be :</p> <ul style="list-style-type: none"> <li>• not enough evidence exists to pursue the case</li> <li>• procedural errors have been identified and no further action is taken, but it is recommended that enforcement action is restarted</li> <li>• it is not in the public interest to take formal action</li> <li>• it may be the FBOs first breach and/or they admit the offence and take appropriate corrective action so it is felt that a formal caution may be more appropriate</li> </ul> <p><b>OR</b></p>	<p>When a decision is made NOT to take the case forward the AO/ITL and the Operations Assurance Team at York will be advised of the reason by FSA legal</p>

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Process	Rationale
<ul style="list-style-type: none"> <li>The case is pursued with a view to prosecute the FBO and / or defendant and charges are laid with the local Magistrates or Sheriff Court.</li> </ul>	<p>When a decision is made to take the case forward to court, the IO must inform the AO/ITL and the OpA Team at York prior to informing the plant operator of this intention. This will ensure the Inspection Team is aware of the fact that the Plant Operator will be facing formal action, so that they are aware of any potential conflict.</p>
<ul style="list-style-type: none"> <li>Where the operator pleads not guilty and the case goes forward to trial, all witnesses must be made aware of where and when their presence will be required at court.</li> </ul>	<p>Any AO who is unfamiliar with court procedure may benefit from some discussion with their FVC or the IO before any court appearance. Arrangements can also be made for a visit to the court before the trial takes place. Witnesses will be sent a copy of their statement to review before appearing at court. See witness guide at annex 7.</p>
<ul style="list-style-type: none"> <li>When the case has gone to court and the outcome determined, this information will be cascaded back to the AO and OpA team through FSA Legal.</li> </ul>	<p>If the witnesses are not required to attend a guilty plea, the outcome of the case will be cascaded to all witnesses.</p>

### 4.13 Change of FBO during enforcement action

#### 4.13.1 New FBO

From the moment the new FBO takes over the premises they are responsible for its condition and operation. Any enforcement action initiated prior to the change of ownership should be reassessed. Where the new FBO fails to immediately address any outstanding enforcement issues, these should be pursued by the AO, through the hierarchy in the normal way.

#### 4.13.2 Re-issue of notices

In the event of the premises changing ownership whilst a formal Notice is still in force, the existing Notice should be withdrawn because it will not be enforceable against the new FBO. If the new FBO fails to immediately address the

outstanding issues a similar Notice should be issued on the new FBO with an explanation of why the Notice is being issued. Evidence must be gathered again to justify the service of the Notice.

The situation should always be reconsidered prior to re-issuing the Notice. The AO may have to justify to a court on some future occasion why they (re-)issued the Notice.

**Note:** Where the FBO has changed, the Approvals and Registrations Team in FSA OpA, York should be informed so that a FVC can assess the new FBO's operating practices.

### 4.14 Warrant to enter premises

#### 4.14.1 Access refused

An AO who has been refused entry to premises should contact their FVC/HOD immediately for further advice. In the event that access to an established is refused, it may be necessary for an AO to apply to a Justice of the Peace, for a Warrant to Enter Premises, to gain access to carry out their duties.

FSA Legal should be contacted for advice on any refusal by the FBO to grant entry to an AO. Where there is a threat of violence, reference should be made to <https://foodgov.sharepoint.com/hr/Documents/BullyingandHarassmentPolicy.pdf#search=bullying%20and%20harassment> for guidance. A report must also be made to the local police force.

Examples of when it is necessary to apply for a Warrant to Enter Premises include:

- circumstances where the AO needs to enter to find out if there has been a contravention of the Hygiene Regulations
- entry is required to find out if there is evidence of any such contravention
- reasonable access has been refused or the AO believes it will be refused **and** the AO has given the occupier notice of intention to apply for a warrant
- the premises are unoccupied
- asking for permission, or giving notice of asking for permission would defeat the object of the entry
- where urgent access is needed

### 4.14.2 Execution of the warrant

The warrant must be executed within one month and is no longer valid once the AO has used it to gain access. It cannot be used twice. When executing a Warrant to Enter Premises in England or Wales, Code B of the Codes of Practice, made under the Police and Criminal Evidence Act 1984 (PACE), should be complied with. Legal advice on this and other aspects of the Warrant should be obtained **before** entry is attempted. FSA Legal will advise further.

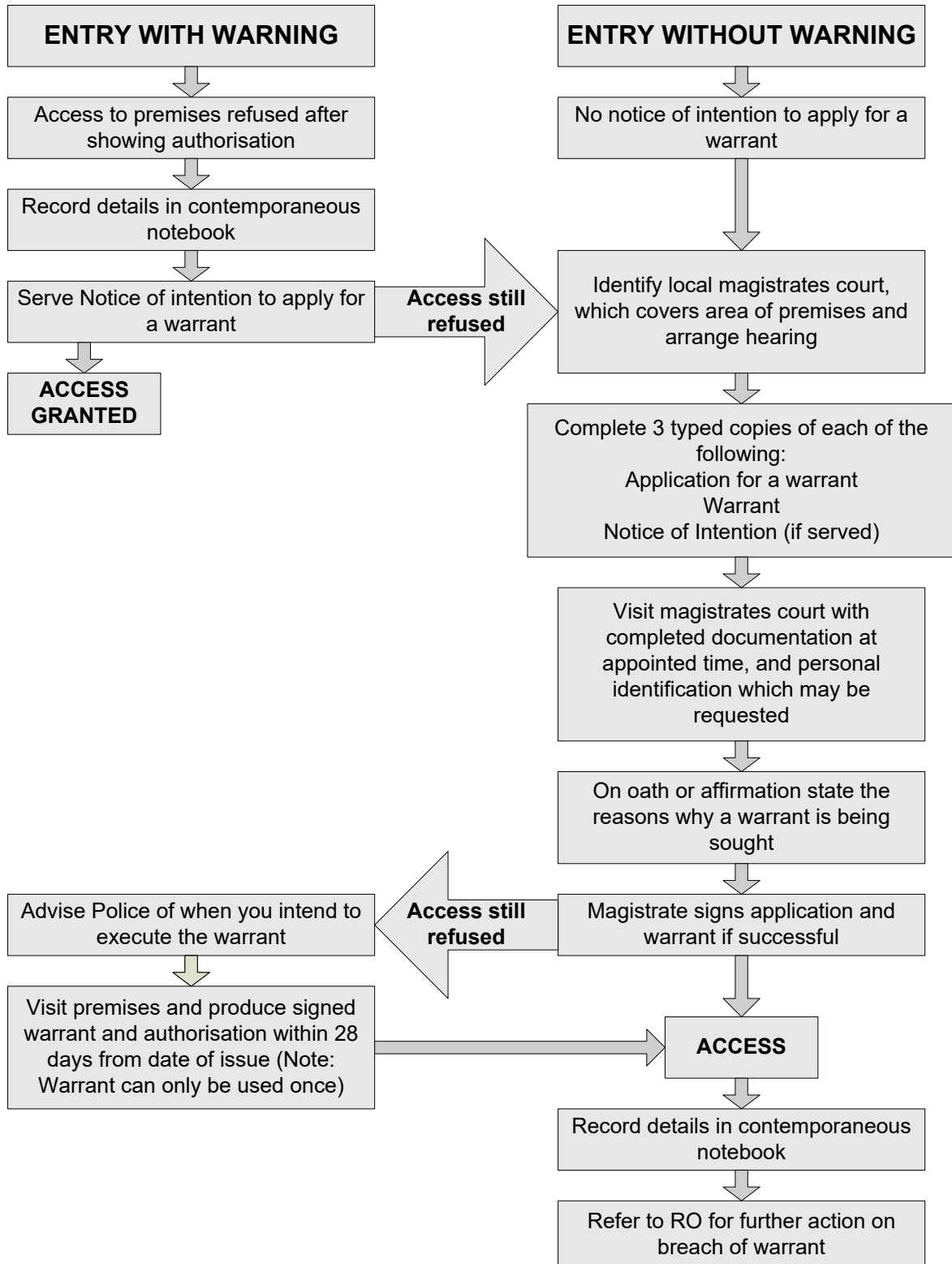
### 4.14.3 Access

Advise the local police of the intention to execute the Warrant at a certain time and date. The establishment must be visited as soon as possible and, on production of the Warrant to Enter Premises, the occupier should grant access. If the occupier fails to grant access, he or she will be in breach of the warrant. Record the events in the contemporaneous notebook and inform the FVC/HOD.

### 4.14.4 Forced entry

The Warrant to Enter Premises allows the use of force to gain entry when necessary. However, the AOs should never attempt a forced entry themselves, but should contact the Police for assistance.

4.15 Process for obtaining a warrant to enter premises in England and Wales





## 5. Risk Based Enforcement

- 5.1 Why a 'risk Based' approach: Legal references
- 5.2 Risk management
- 5.3 Risk assessment: Defining impact and likelihood
- 5.4 Recording procedure

### 5.1 Why a 'risk based' approach: Legal references

#### 5.1.1 Introduction

The FSA has adopted a risk based system of assessing public health and animal welfare risk in line with both legal requirements and codes of enforcement practice.

#### 5.1.2 Risk analysis and risk assessment

European food safety and hygiene legislation makes various references to the competent authority applying a risk based approach to the delivery of official controls.

Regulation (EC) 178/2002, Article 6, Paragraphs 1 and 2 state:

*'in order to achieve the general objective of a high level of protection of human health and life, food law shall be based on risk analysis, except where it is not appropriate to the circumstances or the nature of the measure', and that 'Risk assessment shall be based on the available scientific evidence and undertaken in an independent, objective and transparent manner'.*

#### 5.1.3 Intensity of official controls

Regulation (EC) 854/2004, Recital 6 states:

*'The nature and intensity of the official controls should be based on an assessment of public health risks, animal health and welfare, where appropriate, the type and throughput of the processes carried out and the FBO concerned'*

Article 4, Paragraph 9 states:

*'The nature and intensity of auditing tasks in respect of individual establishments shall depend upon the assessed risk. To this end the competent authority shall regularly assess:*

- a) public and, where appropriate, animal health risks*
- b) in the case of slaughterhouses, animal welfare aspects*
- c) the type and throughput of the process carried out, and*
- d) the FBOs past record as regards compliance with food law'*

(EC) 854/2004, Article 4, also requires the competent authority to carry out official controls to verify the FBOs compliance with (EC) 852/2004, (EC) 853/2004 and (EC) 1069/2009.

### **5.1.4 Risk based enforcement**

Regulation (EC) 882/2004, Article 54 states:

*Where the competent authority identifies non-compliance, it shall take action to ensure the FBO remedies the situation, however, they must also take account of the nature of the non-compliance and the FBOs past record with regard to non-compliance.*

### **5.1.5 Enforcement concordat**

As a signatory to the DTI Enforcement Concordat (See Annex 3), any enforcement action taken by the FSA should be proportionate to the risk. The DTI Enforcement Concordat: Good Practice Guide for England and Wales, also states:

*'apart from taking a progressive approach, enforcement will mean applying the principles of risk assessment to enforcement activity, and enforcement bodies should focus their attention on the most serious risks, or where potential hazards are least well controlled'.*

### **5.1.6 Suspected breaches**

Where breaches have been identified:

- persistent offenders should be identified quickly and face proportionate and meaningful sanctions

- regulators must act in a way that is proportionate to the risks as they understand them, except where immediate action is required

### 5.1.7 Risk based enforcement not risk based compliance

FBOs have a duty to comply with the general hygiene requirements laid down in Annex II to (EC) 852/2004, (see Article 4) as well as specific requirements contained in Annex II and III of (EC) 853/2004, (see Article 3).

All legal references applicable to a risk based approach apply to the competent authority and not the FBO. Therefore, whilst the FSA must take a risk based and proportionate approach to enforcement, the FBO must comply with **all** relevant hygiene / welfare / by-product requirements and may not conduct a risk assessment and decide to comply only with certain areas that **they** consider to be medium to high risk.

## 5.2 Risk management

### 5.2.1 Purpose of a risk management system

The purpose of a risk management system is to communicate effectively between colleagues when describing and comparing risks and to ensure that the different components of the risk assessment process have been defined.

In this way we can objectively compare both food hygiene and animal welfare risks at different premises, where FBOs employ different food safety management systems and have different attitudes towards compliance.

### 5.2.2 Defining risk

The risk assessment consists of two independent components:

- likelihood – how likely is it, that the risk is realised
- impact – how bad the outcome could be if it were realised

When describing risk, it is helpful to use the 'XYZ' model to help avoid ambiguity:

- that is, the 'risk' that a specific event or issue [X] occurs in the plant,
  - for example, the risk of microbiological contamination through offal being dragged across the floor
- because of a set of circumstances [Y] the 'likelihood',

- for example, that there will be massive microbiological contamination on dirty slaughterhouse floors and offal are being removed by new staff member who has had no training
- resulting in [Z] the 'impact',
  - for example, food poisoning of consumers, from bacteria on offal leading to death in vulnerable groups

### 5.2.3 Examples of how to describe risk

Some more examples using the 'X, Y, Z' model are set out below:

#### High risk

- the risk that carcasses with faecal contamination are produced [X], because the FBO does not have adequate systems in place to prevent dirty livestock from being slaughtered [Y], resulting in consumers getting food poisoning [Z]' – Public Health Risk
- 'the risk that lairaged animals cannot lie down, stand up or turnaround without difficulty [X], because the FBO has used untrained staff without the necessary knowledge and experience to lairage animals [Y], resulting in animals being overcrowded and experiencing avoidable suffering [Z]' – Animal Welfare Risk

#### Low risk

- 'the risk that wrapped and packaged meat will become cross contaminated from contact with a wall with a cracked tile [X], because the FBO has not implemented an adequate maintenance programme to replace broken tiles that cannot be effectively cleaned [Y], resulting in the potential for consumers getting food poisoning [Z]' – Public Health Risk
- 'the risk that wrapped vacuum packed meat will become contaminated from contact with used packaging and from other environmental contamination [X], because the wrapped meat is removed from a non-waxed box, that is not easy to clean, re- labelled and replaced in the same box [Y], resulting in the potential for consumers getting food poisoning [Z]' – Public Health Risk

## 5.3 Risk assessment: Defining impact and likelihood

### 5.3.1 Categorising impact

Impact can be categorised as:

1 = minor risk, technical breach with minimal or no implications

2 = moderate risk

3 = major risk

4 = catastrophic risk

### 5.3.2 Rate the impact

- Assess and describe the 'Reasonably Foreseeable Worst Case Impact' (RFWCI) for the event, but not the 'worst possible case scenario'.
- Rate the impact: 1 for a minor impact and 4 for a catastrophic impact.
- It is **not** a requirement to foresee bizarre events, or acts of God.
- It **is**, however, a requirement to understand that many risks are 'reasonably foreseeable' through a pro-active approach to risk management.

### 5.3.3 Scoring the impact

The impact rating will be determined by:

- the species of meat being processed
- the bacteria associated with that type of meat
- the intended customers of the FBO
- whether the customers are part of a vulnerable group

### 5.3.4 Categorising likelihood

Likelihood can be defined and categorised as:

1 = unlikely – do not expect to happen

2 = possible – may occur occasionally

3 = likely – will probably occur

4 = has happened or is almost certain to occur

### 5.3.5 Likelihood factors

- Has the event occurred, or could it occur at any moment?

- Intensity (speed of the line, pressure by management for operatives to do the job, operative being paid per carcase and not by time).
- Numbers of staff (for example, volume of staff to train, competencies, turnover).
- Duration (how long does the activity take, does it require a long concentration span?).
- Accident, incidents, near misses (past history of the FBO).
- Supervision of staff.
- Environment, age of equipment, ventilation, maintenance.
- Complexity of operation – multi species.

### 5.3.6 Recording likelihood data

When describing the likelihood factors, the account must be backed up with objective evidence. The likelihood should describe an unambiguous data driven account.

Gather and retain suitable evidence to demonstrate that the likelihood factors have been accurately considered.

### 5.3.7 Assessing likelihood

Impact and likelihood are treated as independent variables when undertaking a risk assessment.

Care should be taken to ensure that once the RFWC impact has been considered, you **do not** assess the likelihood of the RFWC factor (Z), for example, food poisoning and death occurring in consumers.

It is the likelihood of the risk being realised (X) that must be assessed, for example, assess the likelihood of carcasses becoming contaminated within the plant that could potentially lead to the RFWC (Z) factor.

### 5.3.8 Rating likelihood

- Look at the likelihood data for the risk.
- Check that the data is related to the concern [X] and not the impact [Z].
- Rate the likelihood.

### 5.3.9 Risk matrix

The risk score is a multiple of the reasonably foreseeable worst case impact and likelihood factors that prevail at the specific plant in question resulting from the food safety management systems the FBO has in place.

<b>Likelihood</b>	Almost Certain	4				
	Likely	3				
	Possible	2	<b>G</b>	<b>GA</b>	<b>AR</b>	<b>R</b>
	Unlikely	1				
			1	2	3	4
			Minor	Moderate	Major	Catastrophic
<b>Impact</b>						

G	Green
GA	Green / Amber
AR	Amber / Red
R	Red

Trend	
Unknown; baseline to be established	-
Situation Worsening; risk increasing	<b>R</b>
Situation Stable; risk unchanged	<b>A</b>
Situation Improving; risk decreasing	<b>G</b>

### 5.3.10 Trend

Assigning a trend allows you to indicate whether the risk is increasing, unchanged or decreasing, even where the overall score on the matrix remains the same.

For example, where an overall score is 4x4=16, the FBO may have taken some corrective action to improve the process and initial indications suggest that this has started to work. In this case the trend could change to demonstrate an improving status, even though the overall risk score may still remain unchanged.

All risks in the red (R) and amber red (AR) zone should have appropriate countermeasures by the competent authority to manage both the likelihood and impact with actions by the FBO to address both.

### 5.4 Recording procedure

#### 5.4.1 Recording requirements for risks scoring 4 to 16 (ENF 11/5)

All contraventions must be recorded on the Enforcement Programme, (ENF 11/5).

**Reference:** See chapter 9 on 'Forms' for ENF 11/5.

Where the assessed risk scores medium to high, between 4 and 16, the OV should progress the matter through the hierarchy in the normal manner, gathering evidence at the time the offence is identified.

**Reference:** See topic 2.6 on 'Gathering and preserving evidence' for additional information.

#### 5.4.2 Exception reporting requirements: low risks scoring 1 to 3 (ENF 11/29)

Where it has been determined that the risk posed is low, with a score between 1 and 3, the:

- non-compliance must be recorded on the Enforcement Programme (ENF 11/5), evidence of the low likelihood factors must be retained, to justify the low risk assessment
- the rationale for not escalating the non-compliance, perceived to be low risk, must also be recorded on the 'Risk Assessment For Enforcement Form' (ENF 11/29)

The assessment which details the appropriate evidence and backs up the likelihood factors will act as 'tangible' evidence of the decision making process that:

- justifies the reason for not progressing the non-compliance
- provides a rationale for colleagues to ensure a consistency of approach

Non-compliance should always be brought to the attention of the FBO. However, where there is no justification in escalating the issue, an entry should also be made in the 'Completion Date' column of the ENF 11/5.

**Note:** All issues identified as a low risk (1 – 3) must be re-assessed at successive audit frequencies to identify any changes to the likelihood factors and at monthly frequencies in slaughterhouses.

Where the likelihood factors remain the same, record this in your contemporaneous pocket book or in the plant day book.



**Note:** Where the likelihood factors have changed and the risk has increased, the non-compliance must be re-entered on the Enforcement Programme (ENF 11/5), evidence must be gathered and the issue progressed through the hierarchy in the usual manner.

For example, an isolated maintenance issue that has no major impact on public health should be pointed out to the FBO and recorded on the ENF 11/5. Where the risk assessment results in a low risk score, the matter can be recorded on the ENF 11/29 and closed off by cross referencing the ENF 11/29 with the Completion Date column in the ENF 11/5.

Where the unresolved maintenance issue becomes more serious or where other minor maintenance issues emerge that individually may not pose a major risk to public health, but cumulatively may lead to the deterioration in the fabric of the building, this will be indicative of a failure by the FBO to have in place and implement a suitable maintenance programme.

In such circumstances it would be reasonable for all these matters to be re-entered on the Enforcement Programme ENF 11/5 and escalated through to compliance.

**Reference:** (EC) 852/2004, Annex II, Chapter I, Para 1.

Other non-compliances that may constitute a low risk might include:

- minor cleaning issues in non-production areas
- ABP transit bins that have been colour coded but not labelled appropriately with the category of ABP
- operatives not wearing the appropriate PPE (for example, snoods) in boxed meat areas
- other low risk issues the FBO has identified themselves through effective monitoring systems, that have not been rectified immediately, but for which the risk is being managed and a plan exists for the matter to be resolved and the appropriate improvements to their process is being implemented

**Reference:** See chapter 9 on 'Forms' for ENF 11/29.

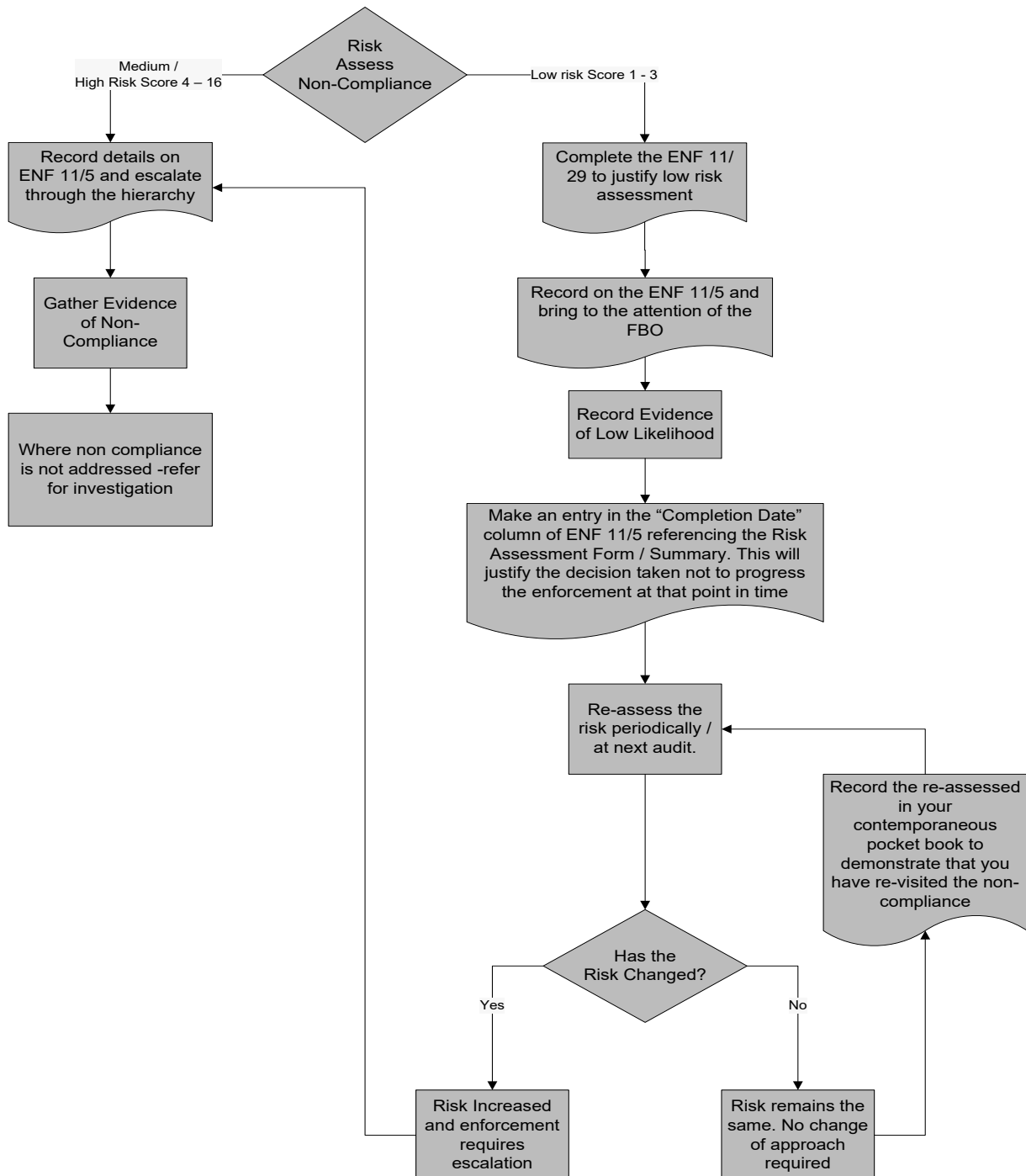
### 5.4.3 Audit

An audit trail must be established to demonstrate that the FSA is managing risk appropriately. Veterinary Auditors will review the risk assessment to satisfy themselves it provides the appropriate assurance and ensure the quality of

documentation by monitoring the effective recording of evidence for low risk issues.

### 5.4.4 Risk assessment process

The flowchart below outlines the steps in the risk assessment process.



### 5.4.5 Reporting considerations 1: proactive risk assessment

An initial risk assessment should be undertaken when the potential risk is first identified. Where the risk is then realised because the event has occurred, a further assessment will need to be undertaken.

It is important that initial risk assessments are not undertaken in hindsight and that all potential risks are identified.

### 5.4.6 Reporting considerations 2: frequency v likelihood

The likelihood rating for non-compliances should not be scored low after the risk has already been realised.

Do not confuse **frequency** with **likelihood** and score the risk low because the event has only occurred infrequently.

If an event could happen at any time, or has already occurred, the likelihood score must be **high**.

The frequency with which an event occurs is academic, once it has happened.

### 5.4.7 Reporting considerations 3: FSA controls not a likelihood factor!

The likelihood of an event occurring should not result in a low score, when the FSA has an inspection point at a specific stage in the process that is able to identify a problem.

The presence of an FSA inspection point should not be used to mitigate the risk score.

The likelihood of an event occurring will not be affected by the presence of the FSA Operations Group. It is the FBOs systems and controls that are being assessed to determine the likelihood factor [Y], not the presence of the FSA carrying out an inspection checks at a particular point in the process.

### 5.4.8 Other factors to be considered

The FSA has identified certain high level outcomes that are to be achieved:

- to limit food borne illness caused by meat
- to detect and control animal diseases

- to achieve high standards of animal welfare in approved establishments
- to facilitate the international trade of animal products
- meat entering the food chain is free from SRM
- animals intended for the food chain are tested for BSE / TSE where BSE testing is required
- meat from all animals tested for BSE / TSE does not enter the food chain unless tested negative
- meat from over age animals does not enter the food chain
- evidence of deliberate fraud

Where such contraventions are identified, that compromise these outcomes, the overall risk (reputational / business / public health / animal welfare) to the organisation will be high. As such these matters should always be recorded on the ENF 11-5 and progressed through the hierarchy.

### **5.4.9 ENF 11/29 risk assessment form**

It is important that the FSA can objectively assess the consistency of risk assessments. To ensure consistency of approach, the Risk Assessment Form (ENF 11/29):

- must contain valid data
- must demonstrate the data can be tested and is true
- must be consistent and appropriate (for example, the impact is reasonably foreseeable, the likelihood is of the risk being realised)
- must demonstrate competent authority controls are proportionate to the risks

## 6. Intervention Protocol

- 6.1 Introduction
- 6.2 Strategic aims
- 6.3 Background
- 6.4 Summary of risk rating
- 6.5 Approvals
- 6.6 Referral for review of approval
- 6.7 Additional controls
- 6.8 Low risk establishments
- 6.9 Medium risk establishments: Improvement necessary
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- 6.17 Flowcharts
- 6.18 Review

### 6.1 Introduction

This document provides guidance to Heads of Operational Delivery, Operations Managers, Field Veterinary Leaders, Field Veterinary Coordinator, Service Delivery Managers, Official Veterinarians (OVs) and frontline teams on:

- Monitoring performance of approved meat establishments; and
- Action that should be taken in the event that a Food Business Operator (FBO) does not put in place measures to raise levels of compliance with legal requirements.

Food Business Operators can access this protocol at:

<https://www.food.gov.uk/business-guidance/auditing-meat-establishments>

### 6.2 Strategic aims

The goal of the Intervention Protocol is to safeguard consumers and improve public health by improving overall business compliance through:

- Targeting high impact intervention where risks to public health exist
- Seeking prompt compliance in high risk areas of non-compliance and targeting intervention.
- Provide a graduated and proportionate response to legislative non-compliance ensuring advisory and deterrent elements, along with the escalation of sanctions, where necessary, based on the level of non-compliance risk at individual establishments.

### 6.3 Background

As part of the intervention protocol, we want to ensure that all FBOs of approved meat establishments are complying with legal requirements and are taking responsibility for the production of safe meat. FSA resources and attention will be directed to non-compliant FBO establishments utilising non-compliances identified during official control activities outlined below:

- results of FBO audits
- findings from unannounced inspections (for example, routine or investigating complaints)
- establishment level inspection and audit findings (serious deficiencies or where evidence of repeated stoppage exists)

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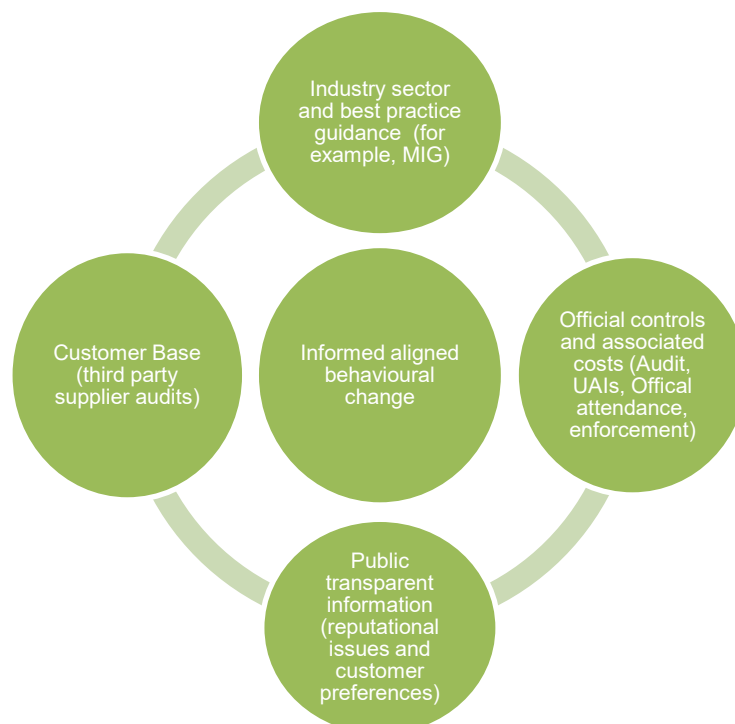
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The protocol also brings in a process for recommending the prompt withdrawal of approvals as the ultimate sanction for poor performance by FBOs, whilst taking an open and transparent approach to informing FBOs about what we are doing and why, in accordance with risk-based assessment methodology. We also want operational staff to have clarity on when to act and what action to take. However, the FSA must take action quickly in the event of significant FBO non-compliances / or consistent flouting of the regulations. Where an FBO fails to put in place the necessary measures leading to significant public health, animal health and welfare improvement, FSA officials may recommend that their approval status is reviewed. This could lead to their approval being withdrawn or suspended.

By gathering high quality evidence at the earliest stage via audits, unannounced inspections and regular official control activities, prompt intervention will be taken with the right enforcement actions.

Openness is one of the core principles of the FSA and underpins our strategic outcome that consumers and customers should have the information and understanding they need to make informed choices. Evidence suggests that consumer confidence and purchasing choice can also be a powerful incentive to drive up the standards of businesses.

Advice and education that can be applied will often secure sustained compliance as well as delivering a more cost-effective enforcement regime. Voluntary compliance is likely to be more sustainable in the long term than formal enforcement action as outlined in the following illustration:



### 6.4 Summary of risk rating

Actions taken by official staff will be driven by findings from audits, unannounced inspections and other OC activities. The FSA will use results from inspections and audit of FBOs to support informed tactical actions. Using these, we will

- escalate where necessary quickly the enforcement activity for high risk and/or persistent non-compliances; and
- Identify and prioritise criteria to assess risk-based planning and delivery of official controls.

Educational approaches should be considered at low and medium risk establishments and FSA training materials are available at the following link;

<https://foodgov.sharepoint.com/orggov/Documents/recommendedriskmanagementtraining.pdf#search=training>

The table below presents a summary of tactical information on required actions, using the audit outcomes as a guide to plant level characteristics of compliance.



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Compliance Category	FBO status	Intervention
<b>Serious Risk</b>  <b>Urgent Improvement Necessary (2 month audit category)</b>	Recurrent deficiencies and/or failure to permanently resolve deficiencies within a reasonable time frame (Reasonable is relative to the nature and magnitude of the deficiencies present and will be consistent with enforcement timelines and any written correspondence from the FSA)	Establish appropriate enforcement action.  Review approval if there are serious deficiencies or repeated stoppage of the line.
<b>Medium risk</b>  <b>Improvement Necessary (3 month audit category)</b>	Deficiencies / Repeated deficiencies	<b>Monitor</b> via unannounced inspections in cutting plants and routine attendance in slaughterhouses and follow up audit visits. Advice FBO on educational programmes aimed at improving compliance (Meat Industry Guide, FSA training package).  Reasonable timelines to correct deficiencies.  Review approval if there are serious deficiencies or repeated stoppage of the line.
<b>Low Risk</b>  <b>Good / Generally Satisfactory (12 – 18 month audit category)</b>	Compliant	<b>Monitor</b> via Unannounced Inspections in Cutting Plants and routine attendance in slaughterhouses and follow up visits.  Advice FBO on educational programs aimed at improving compliance (Meat Industry Guide, FSA training package) where conditions are deteriorating during interim audit period. Reasonable timelines to correct deficiencies.

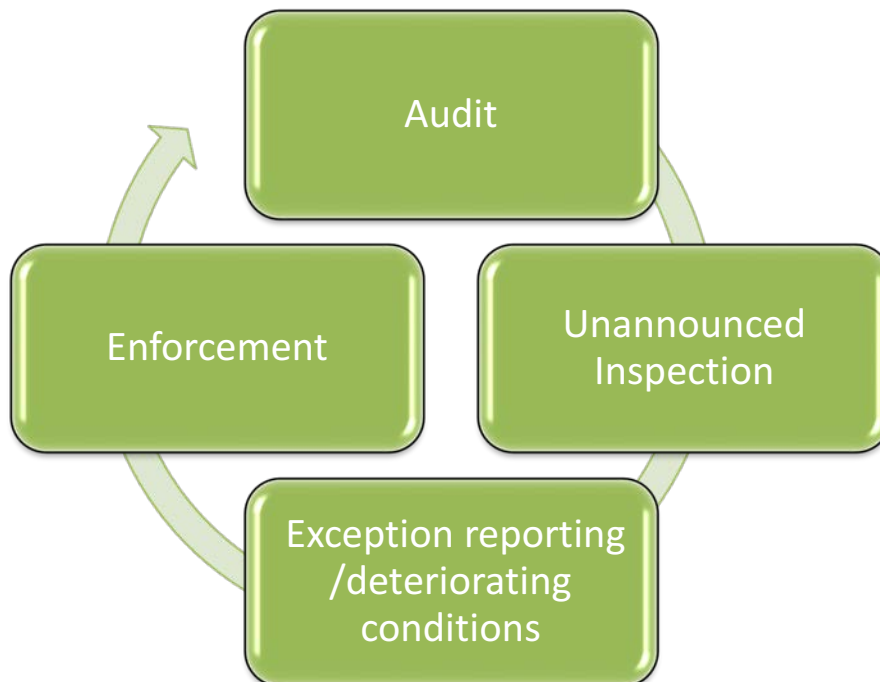
### 6.5 Approvals

Approval of establishments must be kept under review by the competent authority whilst carrying out official controls, including initiating action to withdraw or suspend the approval in certain circumstances as described in Article 31(2) (e) of Regulation (EC) No 882/2004. Interpretation of the 'criteria for suspension' / 'withdrawal of approval working' definitions for the terms 'serious deficiency and repeated stoppage' are available at the following link:

<https://www.food.gov.uk/business-guidance/approved-food-establishments>

In this intervention protocol the FSA is strengthening the links between official control activities, enforcement, and review of approvals. Audit is a useful tool for risk-profiling premises. Having good quality audits / unannounced inspections, and good quality enforcement action, will ensure that the right evidence is available to review approval, where there are concerns around non-compliance, repeated stoppages and / or deficiencies.

Activities / enforcement / approvals cycle



### 6.6 Referral for review of approval

Drawing on findings from the carrying out of official controls, or as a result of local intelligence, Field Veterinary Leaders will have responsibility for initially assessing

whether to undertake the process to initiate suspension / withdrawal in accordance with this protocol. Other matters which trigger a review of approvals are outlined in the approvals policy, for example, fire. Heads of Operational Delivery have an overarching responsibility to make sure that appropriate action is being taken.

The Field Veterinary Leader will arrange the collation of evidence packs to assist in any review of approval liaising with the relevant contractor where applicable. These evidence packs must include but are not limited to:

- current approval documentation and approval history;
- latest copy of Statement of Resources
- latest FBO audit report and unannounced inspection results and a comparison of trends over recent audits
- latest enforcement programme, any supporting intervention; records and pictures or any other evidence of the deficiencies
- an overview of activity, including reports of meetings held with the FBO (for example, following a establishment being identified as Urgent Improvement Necessary); and
- any other relevant information.

The 'Operational Policy for the Approval of Meat Establishments' gives details to FBOs of the process that will occur after the Field Veterinary Leader submits their recommendation to the Operations Head Veterinarian; this policy is available on the FSA website. Local Authorities will be informed in the event of revocation of approval by the FSA to establish an appropriate handover of responsibilities.

### **6.7 Additional controls**

Past experience has demonstrated that introducing additional controls may provide an effective incentive to the FBO and deliver improvements in compliance. The Head of Operational Delivery should consider whether additional official controls are required (up until satisfactory compliance is achieved), taking advice from the Field Veterinary Leader / Coordinator. For example, an additional OV may be brought in to focus upon enforcement and hygienic production and practice, allowing the resident OV to continue to carry out daily duties. It will also ensure that public health risks are safeguarded ahead of any such review.

Charges for additional controls will be made under Regulation (EC) 882/2004 and the Meat (Official Control Charges) Regulations 2009.

The Head of Operational Delivery has ultimate responsibility for determining where additional controls should be put in place. The Head of Operational Delivery should inform the FBO in writing prior to additional controls being introduced, explaining reasons for this action and that charges for these additional controls will be passed onto the FBO. Any changes to resourcing (for example, requirement for a second OV) should be communicated to the contract Area Veterinary Manager and to the Head Office for the contract supplier in advance, in the normal way.

The Statement of Resources must also be amended by FSA Service Delivery Managers to reflect changes to resourcing.

When reviewing corrective actions taken by the FBO the following considerations must be taken into account:

- confirm what actions were taken and why, the appropriateness of the actions
- review any records that demonstrate the effectiveness of the corrective actions
- observation the changes; a follow-up inspection may be needed to confirm that the corrective action has been completed and is effective

Once appropriate action has been taken to address non-compliances, the additional resource should be removed and this made clear to the FBO, backed up by evidence from the FSA enforcement programme demonstrating improving conditions, Adjustments can then be made to the Statement of Resources.

The Head of Operational Delivery should inform the FBO where normal resourcing is being re-established, drawing on advice from the Field Veterinary Leader / Coordinator, with formal confirmation provided in writing. The Head Office for the contract supplier should be advised on any changes.

### **6.8 Low risk establishments**

Low risk establishments will have audit outcomes of Good and Generally Satisfactory, with audit frequencies of 12 and 18 months (18 months for slaughterhouses only).

All premises must have at least one interim unannounced inspection (UAI). Field Veterinary Leaders should monitor the results of all UAIs and ensure enforcement action and / or official control activities are escalated accordingly and as per the Intervention Protocol.

Whilst the FSA reserves the right to carry out a chargeable re-audit should this be necessary, prompt action is required to ensure that appropriate action is taken immediately should conditions at the premises significantly worsen from the last audit outcome. FSA Veterinarians and OVs are supplied with the FVL Review of Approval Report at Annex 3 to report issues should they arise.

Compliance Category	FBO status	Intervention
Low Risk  Good / Generally Satisfactory  (18 and 12 month audit frequencies)	<b>Compliant</b>	<p><b>Monitor</b> via unannounced inspections and follow up visit.</p> <p>Advise FBO on educational programs aimed at improving compliance (MIG, FSA training package) any minor non-compliances with reasonable timelines to correct deficiencies in line with the FSA enforcement policy.</p>

### 6.9 Medium risk establishments: Improvement necessary

Improvement Necessary establishments will be subject to more frequent audits (3 monthly) and intervention than those that are demonstrating compliance with audit outcomes. Audit outcomes are designed to drive improvement in lower compliance premises by linking audit outcomes to follow-up action.

Improvement Necessary establishments will be those which are exhibiting major non-compliances that are likely to compromise public health (including food safety), animal health and welfare, or which may lead to the production and handling of unsafe food if remedial action is not taken.

There is a role for the FSA as a regulator to work with FBOs to facilitate compliance. The key to a successful working relationship is communication. There is nowhere that this is more important than in relation to guiding the FBO on compliance with legal requirements.

Improvement Necessary premises have the following audit outcome profile:

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Audit outcome	Definition	Non-compliance threshold
<b>Improvement necessary</b>	Major non-compliances identified at audit and/or non-compliances during the audit period not always responded to and corrected promptly.	3-6 majors during audit or during audit period  No critical during audit period

The approach for first time and repeat offenders is the same as outlined in the table below; however, the default position is to tactically address non-compliance concerns should conditions significantly worsen during the interim audit period.

Compliance Category	FBO status	Intervention
<b>Medium risk</b>  <b>Improvement Necessary</b>	Deficiencies/ Persistent deficiencies	<b>Monitor</b> via unannounced inspections and follow up visits. Advise FBO on educational programs aimed at improving compliance (Meat Industry Guide, FSA training package)  Reasonable timelines to correct deficiencies  Review approval where conditions are worsening resulting in serious deficiencies

Medium risk establishments should be identified utilising official control activities and dealt with in order of non-compliance, for example, by prioritising premises which are demonstrating significant enforcement.

### 6.10 Serious risk establishments: Urgent improvement necessary

In line with audit outcomes, establishments can be identified as Urgent Improvement Necessary based on the severity and quantity of non-compliances.

Urgent Improvement establishments may have a critical non-compliance where the contravention poses an imminent and serious risk to public health (including food safety), animal health and welfare and/or multiple major non-compliances (as per MOC guidance) which are likely to compromise public health (including food safety), animal health and welfare or may lead to the production and handling of unsafe or unsuitable food if no remedial action is taken.

Audit outcome	Definition	Non-compliance threshold
<b>Urgent Improvement necessary</b>	Multiple major non-compliances or a critical non-compliance identified during audit visit or interim audit period. Official intervention required to ensure public health safeguards.	1 critical or >6 major non-compliances during audit or during audit period

Urgent Improvement Necessary interventions and procedures are of paramount importance and the FSA needs to escalate enforcement activity quickly to influence food business perceptions around risk and consequences of non-compliance.

### **6.11 Approach to FBOs identified as Urgent Improvement Necessary and support to frontline teams**

Following an audit which places (or keeps) an establishment in urgent improvement necessary, notification will be sent to the FBO by Operations Assurance Division, this is to emphasize the seriousness of the FBOs current position following audit. The wording is provided at Annex 5.

**Note:** Where it is considered that critical establishment level activities are of serious risk to public health, these activities must be addressed using appropriate enforcement and put forward for a review of approval. More than 6 Major non-compliances, which have not been rectified within reasonable time periods (for example, interim audit period), will also trigger a review of approval. It is important to differentiate between historical NCs (even if major) which have been closed and those which are still open, or where FBOs have not shown willingness to cooperate.

Once the notification of audit outcome audit letter has been issued identifying an establishment as Urgent Improvement Necessary, it is important for the FSA Field Veterinary Leader to meet with the FBO to carry out a thorough assessment of enforcement action and any response by the FBO which has been taken in the premises, and to discuss the action that will follow.

Where audit scores trigger an FBO going into Urgent Improvement Necessary, the Field Veterinary Leader should carefully monitor action being taken, taking into account:

- patterns of non-compliances
- frequency of moving in to this compliance rating
- the need for additional controls
- more formal escalation of enforcement
- timelines for improvement, or for referral for a review of approval

As a starting point, the FBO has a responsibility to operate in compliance with the regulations and should be encouraged to look at their most recent audit report and / or unannounced inspection report (where applicable) and in particular the Corrective Action Report and Enforcement Programme. These should identify key areas where the FBO needs to take action or make improvements. In addressing corrective actions, it may also be helpful to refer the FBO to relevant sections of the Meat Industry Guide, for clarification on legal obligations and advice on how these may be met. Of course, an FBO may determine other ways of achieving compliance with the law as these may be equally valid.

The FSA Field Veterinarian [Field Veterinary Leader or Field Veterinary Coordinator] and contractor veterinarian should work with the FBO to help them draw up an action plan of steps that they can take and timescales to improve compliance offering ideas of the actions that the FBO may take to improve. FBOs should agree a reasonable timescale for any actions with the veterinarian, so that they can show satisfactory progress.

FSA Field Veterinarians will have an important role to play in overseeing the consistency and actions taken by the OV in partnership with the contractor, with the OV supported by the contract Area Veterinary Manager where applicable. In particular, the FSA Field Veterinarian should increase their visibility within the slaughterhouse. In standalone cutting establishments, the FSA Field Veterinarian will oversee official control attendance and actively liaise with contractors and FSA staff who have been allocated to the premises.

It is important that a brief report of any meetings with the FBO is produced; a template is available at Annex 6. This should summarise discussions held, and particularly any education and support provided to the FBO. These meeting reports (together with any subsequent progress updates) will serve as a useful reminder of the approach taken and may form part of the evidence base in the event that a referral for review of approval is made. The FBO should be given opportunity to comment and agree the content of the meeting record.



Heads of Operational Delivery should consider and authorise any additional controls recommended by the Field Veterinary Leader, and / or unannounced inspections within the interim audit period. Field Veterinarians shall provide progress reports to Heads of Operational Delivery as required.

During these inspections the FSA Field Veterinarians should ensure that the FBO is making progress against any agreed timescales and the action plan. Any issues or concern over action being taken should be raised with the contract Area Veterinary Manager in the first instance, as appropriate, or with the Field Veterinarian in the case of standalone cutting plants. The Head Office for the contract supplier should also be updated on any issues arising.

### **6.12 Dealing with adverse behaviour by the FBO**

It is appreciated that, whilst many FBOs will respond positively and will want to put in place measures for improvement, others may react in a negative way. There is a wealth of resources available on Foodweb on avoiding confrontation or aggression in the workplace, including a code of conduct, and what to do when an incident happens:

<http://fsahome/human/policiesprocedures/Pages/NewBullyingandHarassmentPolicy.aspx>

### **6.13 Time recording**

Cutting plant inspections by OVs should be coded to 'NOTH' (other non-chargeable time), although it should be remembered that if enforcement is necessary as a result of the visit (or subsequent visits) that this is chargeable to the FBO and should be coded to 'INSP' (official controls – inspection). Time spent on additional controls should also be recorded to 'INSP'.

At slaughterhouses, OV activities will typically form part of the normal official control duties and time should be recorded to 'INSP' (or other time-codes) as per guidance in the Manual for Official Controls. This should be time-coded to 'INSP'.

### **6.14 Routine monitoring**

Heads of Operational Delivery should review action taken at establishments within their areas at their Operations Management Team meetings, drawing on advice from their Field Veterinary Leaders.

Trends of compliance are monitored at a national level at the Field Management Group meeting. This includes a review of latest audit scores and changes to establishments that are identified as Urgent Improvement Necessary.

### **6.15 Support available**

Field Veterinary Leaders / Coordinators will ensure that support is in place for frontline teams, and will liaise with the contract Area Veterinary Managers and OVs working at establishments identified as Urgent Improvement Necessary to ensure a consistent approach is taken.

The Head of Field Operations will offer guidance and support to the Head of Operational Delivery and staff, as will legal and veterinary and technical colleagues.

Staff in the Operations Assurance Division's Delivery Assurance Team will issue relevant letters to FBOs and will also provide performance management information on activities in relation to Urgent Improvement Necessary establishments.

The Operations Assurance Division's Business Support Team may also be called upon to provide administrative support to Field Veterinary Leaders in the production of evidence packs.

The Operations Assurance Division's Approvals and Registrations Team will receive the review of approvals from the Field Veterinary Leader and compile a submission to the Operations Head Veterinarian. This submission will provide a background to the case, referencing the Field Veterinarian Leader report and accompanying evidence.

### **6.16 Routine publication of audits and naming Urgent Improvement Necessary establishments on FSA website**

The FSA publishes results of FBO audits on the FSA website:

<https://www.food.gov.uk/business-guidance/auditing-meat-establishments>

If an FBO is not satisfied with a score awarded in any section of the audit report, the FBO does have the right of appeal against the outcome of the audit. Any appeals must be made in writing within 14 calendar days of receiving an audit report. There is a form to complete and the process is explained in the letter issued to the FBO, accompanying the FBO audit report.

Chapter 4 on 'Audit, HACCP Based Procedures and Verifying Operators Own Checks', sets out the appeal procedure. We will not publish an audit report on the FSA website until after an appeal process has been undertaken and the audit has been finalised. Necessary FSA interventions will continue during the appeal period.

### **6.17 Flowcharts**

Two process flowcharts are available at Annex 4.

### **6.18 Review**

These guidelines will be kept under review yearly and will be updated as required.

## 7. Annexes

Annex 1	Examples of enforcement of the EC Hygiene Regulations
Annex 2	Enforcement policy
Annex 3	Enforcement Concordat
Annex 4a and 4b	Templates for HIN withdrawal letters
Annex 5	Flow diagram: The treatment of animals, meat and food unsuitable for the human food chain
Annex 6	Supporting evidence photographic report template
Annex 7	Intervention Protocol – FVL Review of Approval Report
Annex 8	Intervention Protocol – Process flowcharts
Annex 9	Intervention Protocol – FBO audit outcome letters note
Annex 10	Intervention Protocol – Meeting templates
Annex 11	Intervention Protocol – HOD FVL Meeting Template
Annex 12	Intervention Protocol – Example intervention log
Annex 13	Intervention Protocol – FSA intervention record