Food Law

Practice Guidance (Northern Ireland)

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Food Standards Agency

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Chapter 1 Introduction

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

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

It complements the statutory Food Law Code of Practice (the Code) and provides general advice on the approach to enforcement of the law where its intention might be unclear.

The guidance contained in this document:

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

Under the Windsor Framework, certain specified European Union (EU) laws continue to apply to, and in, Northern Ireland. Most food hygiene and safety laws therefore continue to apply in Northern Ireland in much the same way as they did before the UK exited the EU.

However, EU laws listed in annex I of Regulation (EU) 2023/1231 do not apply to consignments of retail goods moved to Northern Ireland under the Northern Ireland Retail Movement Scheme (NIRMS). Equivalent assimilated law applying in Great Britain (GB) applies to those goods, and relevant domestic legislation in Northern Ireland now provides for the execution and enforcement of both EU legislation and parallel assimilated law for retail goods moved to and placed on the market in Northern Ireland.

EU legislation in all areas continues to apply to goods that are not eligible for NIRMS. This includes goods from traders not signed up to NIRMS, agri-food goods destined for the EU either directly or indirectly, and goods produced, processed and manufactured in Northern Ireland.

All references to legislation in the Practice Guidance should be read as the official current version. It is the Competent Authorities' responsibility to ensure that they correctly refer to the current versions of relevant legislation when carrying out official

controls, other official activities, and any other activities related to these. EU legislation applicable to Northern Ireland can be accessed on the EUR-Lex website.

Unless stated otherwise, references to chapters and sections in the Practice Guidance are to the relevant parts of the Practice Guidance. Additionally, there is a glossary with definitions of terms and abbreviations used throughout the Practice Guidance.

Guidance within the Practice Guidance is not an authoritative statement or interpretation of the law, as only the Courts have that power. Any examples given are illustrative and not comprehensive.

Chapter 2 Administration, liaison, and co-ordination

2.1 Introduction

Chapter 2 deals with:

- the organisation of official controls, other official activities, and any other activities related to these, such as non-official controls
- the administrative arrangements, including designation of Competent Authorities, registration, and approval of food business establishments
- liaison arrangements to ensure the:
  - efficient and effective co-ordination between Competent Authorities, delegated bodies, and other government departments responsible for official controls, other official activities, and any activities related to these
  - consistency and effectiveness of official controls and other official activities across the UK
- avoidance of conflicts of interests
- control verification procedures

2.2 Requirements relating to documented procedures, policies, plans and programmes

2.2.1 Approval of food business establishments procedure

The purpose of the approval of food business establishments procedure for food business operators (FBOs) is to ensure FBOs have a procedure to follow when applying for approval of their establishment. To support this, it is recommended that Competent Authorities refer to the Approval of Establishments: Guidance for District Councils in Northern Ireland.

2.2.2 Control verification procedure

The purpose of the control verification procedure (often referred to as the internal monitoring procedure) is to ensure that official controls and other official activities are carried out consistently and effectively. To support this, it is recommended that Competent Authorities ensure the procedure:

- provides measures to establish:
  - that action taken by officers during and following an official control or other official activities, including at points of entry, is appropriate and consistent with, the Competent Authorities procedures and policies, and other relevant guidance
  - how the planned official control programme can be amended to allow for in-year changes, for example, new and closed food business establishments and food business establishments which have changed risk rating
  - that officers are aware of, and have access to, other published industry guides relevant to the businesses within the Competent Authority's area
  - that officers have due regard to published Guides to Good Practice

  - compliance with relevant legislation, due regard to the Code and the FSA 'Knowledge and skills for the effective delivery of official food and feed controls and other activities' (the Competency Standard), and consideration of other relevant guidance
  - appropriate use of relevant proforma forms (including enforcement notices)

2.2.2.1 Monitoring of service delivery

Competent Authorities are required by article 12(2) of Regulation (EU) 2017/625 to have control verification procedures. As part of these procedures, Competent Authorities will carry out checks to verify conformance with legal duties, official guidance and their own procedures, policies, plans and programmes. It is recommended that:

- monitoring is flexible, proportionate, varied, targeted, and tailored according to personnel and/or risks, eliminating unnecessary demands on managers
- consistency exercises, within and across Competent Authorities, are undertaken, to enable a comparison of officer assessments, these might include:
  - risk scores
  - enforcement decisions
- monitoring focuses on qualitative checks and improvements (rather than quantitative checks on the numbers of activities carried out), for example, monitoring trends in business risk profiles and the quality of official controls undertaken by officers
- a 'risk-based' approach to monitoring is taken, for example, greater emphasis on known problem areas (such as issues with a particular officer or higher risk businesses) rather than an inflexible percentage check of all files
- some routine monitoring activities are delegated to encourage all staff to participate in self-monitoring and peer review of each other's work, for example, letters, notices and file updating

Monitoring activities include:

- reviewing reports of recent risk-ratings, so managers can quickly identify and investigate the reasons for any businesses remaining high risk over a series of official controls
- periodic accompanied official controls
- reviews of post official control paperwork
- routine caseload meetings
- participating in relevant and robust peer review and/or inter-authority audit (IAA) schemes, which can be used:
  - for enforcement consistency purposes
  - to identify good practice that can be adopted
  - to identify any areas for improvement

2.2.2.2 Monitoring of official controls

The Code provides that monitoring of official controls and other official activities is undertaken. It is recommended that Competent Authorities ensure that records are sufficiently detailed, accurate and retrievable, in order to:

- demonstrate the overall compliance level of food businesses with relevant food law
- enable subsequent officers undertaking official controls to be aware of a business' compliance history
- inform each step of a graduated enforcement approach
- provide the evidence base for formal enforcement action
- enable effective monitoring, for example checking that:
  - official controls are risk-based, so that lower risk business official controls are not prioritised ahead of those which are higher risk, and/or at the expense of following up and addressing persistent problems at higher risk businesses
  - repeated or lengthy non-compliance is being tackled effectively and monitored by line managers
  - official control records (electronic or hard copy) are sufficient to inform subsequent official controls and actions
  - the legibility of handwritten official control reports
  - legal requirements are clearly distinguished from advice
  - any written correspondence specifies, where relevant, the follow-up action and time allowed for remedial works
  - appropriate action has been taken in relation to imported food by inland Competent Authorities, including liaison between authorities

2.2.2.3 Monitoring of follow-up action and enforcement

Part of the control verification procedure includes the monitoring of follow-up action and enforcement. It is recommended Competent Authorities ensure that:

- any enforcement action taken, is in accordance with local enforcement policies, national guidance and appropriate to the severity and persistence of the offences
- any decisions to deviate from the approach prescribed in the enforcement policy are duly considered, and the reasons documented
- the respective due legal process for the range of formal enforcement options is strictly observed
- formal notices are followed up in a timely manner (that is immediately following the date of expiry), with a presumption that enforcement will ensue in the event of continuing non-compliance
- identified instances of serious non-compliance and repeated poor risk-ratings are addressed

- they identify failure to take a graduated approach to enforcement and/or use the full range of enforcement tools
- they identify where symptoms of non-compliance have been treated (for example, a short-term fix) rather than addressing the root cause, resulting in repeated and continuing problems

It is also recommended that Competent Authorities consider:

- regular case conferences between managers and staff, for example, to discuss the compliance progress of all high-risk businesses in each officer's area
- including an 'enforcement review' section on 'official control forms/files for officers to provide brief reasons for any action taken/not taken, to inform officers undertaking subsequent official controls and to facilitate manager checks of consistency against the local enforcement policy
- consulting with legal services early in formal enforcement actions to ensure that cases can meet all evidential and procedural criteria, and to avoid unnecessary technical challenge to well-founded cases
- developing formal enforcement checklists to ensure due process is checked prior to each step of formal enforcement action
- officers' schedule and diarise follow-up visits/compliance checks against notices/formal actions, to ensure they are carried out on time (and where appropriate, that these dates are notified to the business in the relevant official control report or notice covering letter)

2.2.2.4 Monitoring of Management Information Systems (MIS)

Complete, up-to-date, accurate and reliable databases of local food businesses are essential to enable Competent Authorities to know of all the relevant businesses located in their area and to provide the basis for comprehensive risk-based official control programmes. Part of the control verification procedure includes monitoring of databases to ensure that changes of business use and ownership, closures and new businesses can be tracked.

As part of this monitoring, it is recommended that Competent Authorities:

- have in place processes to monitor routinely both the accuracy of the premises database, and the action/information entries inputted for each business
- undertake occasional checks to identify any inconsistencies between file records and database entries of official control details, enforcement activities and actions
- routine cross-reference checks of businesses held on the premises database against other listings of local businesses, for example:
  - advertising on online search engines
  - social media pages
  - other internal Competent Authority databases for example, planning, business rates and building control

  - other relevant agencies
  - relevant assurance schemes

2.2.3 Conflicts of interest procedure and/or arrangement

The purpose of the conflicts of interest procedure and/or arrangement is to ensure that the authorised officers performing official controls and other official activities are free from any conflict of interest. To support this, it is recommended that Competent Authorities ensure the procedure and/or arrangements:

- cover how authorised officers carrying out official controls and other official activities:
  - are free from any conflict of interest
  - are aware of the potential conflicts of interest that can arise through the promotion of the Competent Authorities services
- prevents authorised officers from providing their own private services, to businesses, in their own time, within the area of the Competent Authority that employs them or within the areas of other Competent Authorities who liaise with the employing authority on enforcement matters
- prevents the exclusive promotion of the Competent Authorities services, if other providers of those services exist in the area, or the services are offered by a different organisation from outside the area
- mean that potential or actual conflicts of interest do not arise as a result of home authority responsibilities, chargeable discretionary services or the contracting-out of services
- includes processes so that enforcement decisions are free from any conflict of interest
- includes details on the action to take where a conflict of interest is identified or provide a reference to other documentation where these details can be found

2.2.4 Information procedure

The purpose of the information procedure is to ensure that any inaccuracies in published information are appropriately rectified. To support this, it is recommended that Competent Authorities ensure the procedure:

- covers the process for identifying inaccuracies and managing those that are brought to their attention
- covers the process for rectifying the inaccuracies and how consumers and businesses are made aware of this

2.2.5 Registration procedure

The purpose of the registration procedure is to ensure that there is a clear and consistent process for FBOs to follow. To support this, it is recommended that Competent Authorities ensure the procedure and/or arrangements:

- allow FBOs to submit a registration form that is complete and accurate at least 28 days before the business starts trading or food operations commence

- provide a registration form that is available to FBOs and enables them to give full details of all activities undertaken
- record the date of the receipt of the registration form
- detail the actions to be taken on receipt of completed registration forms, including notifying other Competent Authorities where activities fall outside the receiving Competent Authorities enforcement remit or jurisdiction
- include details on how, where applicable, the Competent Authority obtains information omitted from a registration form, and the circumstances where registration forms are returned to FBOs

2.2.6 Food incidents and alerts procedure

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

2.2.7 Corporate complaints procedure

The purpose of the corporate complaint's procedure is to ensure that complaints about the official control provisions and associated activities of a Competent Authorities are investigated and recorded. To support this, it is recommended that Competent Authorities ensure the procedure:

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

2.2.8 Food complaints procedure

The purpose of the food complaints procedure is to ensure that complaints about food and food business establishments are assessed, investigated, and recorded. To support this, it is recommended that Competent Authorities ensure the procedure:

- details how persons reporting complaints will be protected from retaliation, discrimination, or other types of unfair treatment as a result of their complaint (for example, whistle-blowers)
- details how personal data of persons reporting complaints will be protected

2.2.9 Equipment procedure

The purpose of the equipment procedure is to ensure that equipment is properly maintained, calibrated, and is removed from service when found to be defective. To support this, it is recommended that Competent Authorities ensure the procedure provides evidence of maintenance and calibration.

2.2.10 Enforcement procedure

The purpose of the enforcement procedure is to ensure that any follow-up checks, or enforcement action taken by the Competent Authority is risk-based and

proportionate. To support this, it is recommended that Competent Authorities ensure the procedure:

- leads to enforcement action being taken by their authorised officers which is reasonable, proportionate, risk based and consistent with good practice
- provides instructions for officers on how to undertake enforcement action for all of the available options
- takes into account the following when determining appropriate action to take:
  - the hierarchy of enforcement
  - the Code for Prosecutors
  - the Competent Authorities enforcement policy
  - level of risks to consumer safety resulting from non-compliance
  - whether formal action is in the public interest
  - consumer sensitivities around the issue, leading to loss of consumer confidence or economic loss to industry
  - potential for non-compliant foods being distributed widely with large numbers of consumers affected
  - previous history of compliance
  - primary authority/ home authority partnerships

2.2.11 Control and investigation of cases and outbreaks of food related infectious disease procedure

The purpose of the control and investigation of outbreaks and food related infectious disease procedure is to ensure the control and investigation of notified and suspected cases and outbreaks of food related infectious disease. To support this, it is recommended that Competent Authorities ensure the procedure:

- covers the investigation of notifications of food related infectious disease
- is developed in association with all relevant organisations
- is developed in accordance with guidance
- requires all records relating to control and investigation of outbreaks and food related infectious disease to be retained for six years

2.2.12 IT security procedure

The purpose of the IT security procedure is to ensure that effective IT security measures are in place. To support this, it is recommended that Competent Authorities ensure the procedure(s) and/or arrangements:

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

2.2.13 Sampling policy

The purpose of the sampling policy is to set out the Competent Authority's approach to food sampling. To support this, it is recommended that Competent Authorities ensure the policy:

- is published and readily available to businesses and consumers
- sets out the Competent Authority's approach in specific situations such as:
  - surveillance
  - food monitoring
  - official controls
  - complaints
  - special investigations
  - national, regional, and local co-ordinated programmes
- covers all samples taken
- details the factors taken into account when formulating their sampling programme, including any national or local consumer issues that will influence the level of sampling to be undertaken
- outlines who will undertake the sampling

2.2.14 Enforcement policy

The purpose of the enforcement policy is to set out the Competent Authority's approach to enforcement, covering all areas of food law that they have a duty to enforce, including criteria for using all available enforcement options. To support this, it is recommended that Competent Authorities ensure the policy:

- is readily available to FBOs and consumers
- details the approach to enforcement, when and in what circumstances enforcement action is likely to be taken by the Competent Authority, with respect to the range of enforcement actions that are available
- details the approach to revisits, except where this is already documented in another policy or procedure required under the Code
- has regard to any advice and guidance issued by the FSA and any other relevant agency
- does not use the number of improvement notices served or legal processes, such as prosecutions, as an indicator of performance
- addresses circumstances where the Competent Authority is itself the FBO of an establishment, and that where any serious breach of food law is detected in such an establishment, it is brought to the attention of the Competent Authority's Chief Executive without delay

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

The FSA may issue communications to Competent Authorities on:

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

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

2.2.15 Complaints policy

The purpose of the complaints policy is to set out how complaints about food and food business establishments are handled. To support this, it is recommended that Competent Authorities ensure the policy leads to complaints received being investigated in accordance with the Code, relevant guidance and the Competent Authority's policies and procedures.

2.2.16 Contingency plan

The purpose of the contingency plan is to set out what the Competent Authority would do in an emergency. To support this, it is recommended that Competent Authorities ensure the plan:

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

2.2.17 Training programme

The purpose of the training programme is to ensure that authorised officers undertaking official controls and other official activities receive appropriate training. To support this, it is recommended that Competent Authorities ensure the programme:

- sets out how authorised officers undertaking official controls and other official activities will receive appropriate training and ongoing continuing professional development (CPD), to allow them to carry out their duties competently and which is appropriate to their level of authorisation
- sets out the process for reviewing CPD and training needs, so that authorised officers keep their areas of competence up to date
- includes the process for identifying additional training needs
- is informed by, and addresses, any areas identified where an authorised officer's competence falls short of that required to perform their current role or to extend it to new areas of activity

- includes training on subject matters set out in chapter 1 of annex II of Regulation (EU) 2017/625
- includes, where appropriate, training for authorised officers carrying out physical checks on products of animal origin (POAO) at Border Control Posts (BCPs) on the subject matters as set out in chapter 3
- provides how records of qualifications, training and on-going CPD are maintained

This training programme may be included within the authorisation procedure.

2.2.18 Service plan

2.2.18.1 Introduction

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

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

When developing a service plan, it is recommended that Competent Authorities make it clear what period the plan covers, and what arrangements have been put in place for the regular review and updating of the plan.

2.2.18.2 Format of service plan

Service plans are an expression of a Competent Authority's own commitment to the development of the food service. It is also used by the FSA to assess the Competent Authorities' delivery of the service. Due to this, it is recommended that Competent Authorities provide information about official control activities in a common format, set out in annex 1.

Service plans may also be of use to other Competent Authorities who will find analysis and comparison of their relative performance greatly facilitated by a common format.

Annex 1 provides a structure in terms of a common format with chapter and subject headings specified, and a general description of the content of each. However, there is no intention to remove Competent Authority flexibility to include additional items under specific headings.

It is recognised that Competent Authorities have had service plans for many years and may have corporate styles or templates that they wish to maintain. It is also recognised that some Competent Authorities undertake the planning and review processes at separate times and issue the results of the review as a separate document. Some include their plans for the food service as part of a larger plan of authority services. Where food service plans form part of broader corporate plans, it is recommended that the food details are separately identifiable in their planning documents.

Where an enforcement service is shared between authorities, it is recommended that the details set out in annex 1 are identifiable in the planning documents for each authority.

2.2.18.3 Development of the service plan

The purpose of the service plan is to set out how the Competent Authority intends to deliver and resource official controls and other official activities in its area in relation to food law that they have a duty to enforce. To support this, it is recommended that the plan:

- is subject to qualitative and quantitative performance reviews of delivery at least once per year, which is documented
- is tailored to suit the audience (for example a summary report for members), but also have a version that aligns with the common format in annex 1
- sets out how and at what level official controls will be provided, in accordance with the Code
- has regard to any advice issued by the FSA and other relevant agencies
- covers all stages of the food chain and sectors of the food industry, where relevant
- is readily available to FBOs and consumers
- is drafted in accordance with the guidance set out in annex 1, taking account of, and making reference to, where relevant, the following:
  - all food law enforcement issues (including import controls) and consider resource demands and availability (including any shortfall) to deliver the planned official control programme, including out of hours capacity and provision
  - how new food business establishments are identified and how they are to be included in the Competent Authority's planned official control programme
  - how the quality of the Competent Authority's service is assessed and monitored, including identification of database inaccuracies, review of annual targets, and identification of issues with consistency and competency
  - details of any variances in meeting the plan, from previous years, and how this is proposed to be addressed

  - a statement in relation to the Competent Authority's sampling policy, including the basis of the sampling programme
  - details how sampling/official control programmes and enforcement activities are developed and implemented
  - what local and/or regional intelligence sources have the Competent Authority considered when planning their official controls
  - details of the Competent Authority's plans for continuous improvement
  - details of what arrangements have been put in place for the regular review and updating of the plan
  - what, if any, grant money, available from the FSA, the Competent Authority has been allocated and used

The FSA may recommend that Competent Authorities review their service plan, for example, to accommodate the work of approved feasibility studies, pilots, or pathfinder projects. The FSA will communicate any relevant work that may impact on service plans to Competent Authorities so that they may be reviewed.

2.2.19 Official Controls Programme

The purpose of the official controls programme is to set out the Competent Authority's risk-based programme of official controls, which includes all food business establishments for which the Competent Authority has responsibility. To support this, it is recommended that the Competent Authority ensures the programme:

- includes all registered and approved food business establishments
- is based on the relevant risk rating schemes (food hygiene and food standards) determined in accordance with chapter 4 of the Code
- provides mechanisms for authorised officers to:
  - have regard to primary authorities' assured advice and advice of home authorities
  - have regard to inspection plans issued by a primary authority or home authority, where appropriate
- makes use of information supplied to them by FBOs in connection with the registration or application for approval of their food business establishments in order to determine when to carry out official controls

2.2.20 Sampling programme

The purpose of the sampling programme is to set out the details of the Competent Authority's risk-based food sampling activities. To support this, it is recommended that Competent Authorities ensure the programme:

- takes into account the main objectives of food sampling:
  - protecting health
  - detecting deceptive and fraudulent activities
  - compliance with labelling requirements
  - providing advice to FBOs

  - promoting fair trade and deterring bad practice
- is risk based and takes account of:
  - the number, type, size and intervention rating of food establishments in the area
  - the type of food produced in the area
  - the procedures adopted by the food business to ensure compliance and their history of compliance
  - the Competent Authority's home authority or originating authority responsibilities
  - the need to ensure that the provisions of food law are enforced
  - whether there are food manufacturers in the area and the degree of control and monitoring exercised by manufacturers for all potential faults
  - whether any distribution centres deliver food to a wide area
  - the type of food additives FBOs (for example, food manufacturers, and importers) use in the area
  - whether national sampling programmes highlight any food types which relate to specific premises in the area
  - national or regional imported food priorities/surveys and the UK's National Control Plan
  - emerging national and international concerns
  - local consumer and business concerns
  - the severity of the effect of any given fault with the food, including the likelihood of the occurrence of the fault, the consumption pattern applicable to the food, the degree and distribution and the stage in the production and distribution chain at which the problem can occur or could be more easily detected
- takes account of imported food, in particular:
  - any statutory requirements for sampling laid down in EU law, European Commission Decisions or Emergency Control Regulations
  - any agreed sampling programmes
  - any sampling required following a food alert, or relevant notification
  - information from any EU, regional liaison group, local or other sampling survey
  - any imported food where there is no known history or information on the product
  - local priorities, including consumer complaints relating to imported food
- is planned to avoid foods that are already being looked at on a wider basis, for example, those sampled as part of imported food controls at BCPs

2.3 Delegation of official controls and other official activities

2.3.1 Delegation to authorising officers

The power to authorise officers needs to be properly delegated to the authorising officer. It is recommended that Competent Authorities satisfy themselves powers have been appropriately delegated, and that this delegation has been recorded.

2.3.2 Delegation to other Competent Authorities

Competent Authorities may be able to use authorised officers from other Competent Authorities to carry out their official controls and/or other official activities using the provisions provided by article 2(1) of Regulation (EU) 2017/625.

It is also recommended that Competent Authorities seek advice from their legal teams before delegating any functions to another Competent Authority.

2.4 Local, regional, and national liaison

2.4.1 Liaison arrangements

The Code provides that Competent Authorities respond to requests from other Competent Authorities or the FSA for information or assistance. Examples of when Competent Authorities may request information or assistance may include:

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

Upon receipt of a request or referral, it is recommended that a Competent Authority take the following action:

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

2.4.2 Liaison with FSA

In Northern Ireland, district councils are designated as Competent Authorities to deliver official controls, and other official activities for food, on those matters that are not the remit of the FSA. Section 2.5.4 provides more detail on the division of responsibilities between Competent Authorities and the FSA.

Close collaboration and liaison between Competent Authorities, FSA and the Department of Agriculture, Environment and Rural Affairs (DAERA) is essential in establishments where both DAERA (on behalf of FSA) and Competent Authorities undertake official controls.

The Code provides that Competent Authorities liaise with the FSA in relation to establishments subject to approval by the FSA.

2.4.2.1 Escalating technical queries to the FSA or other Government Agency

The following approach for the escalation of queries has been endorsed by the Food Hygiene Focus Group and Food Standards and Information Group for Competent Authorities to follow before escalating a query to the FSA, which is to liaise:

- within your Competent Authority
- with the relevant regional subgroup or forum
- with your national Food Hygiene or Food Standards Focus Group representative by completing the referral template and emailing to LAengagement@food.gov.uk

The relevant group will form an opinion, however, if a consensus view is not achieved it will be referred to the FSA.

For consistency, it is also recommended that queries or requests are posted for information on the Knowledge Hub.

2.4.3 Liaison at points of entry

The Code provides that Competent Authorities with points of entry or external temporary storage facilities (ETSF) liaise with relevant local organisations. These organisations include, where appropriate:

- neighbouring Competent Authorities
- DAERA
- His Majesty's Revenue and Customs (HMRC)
- Border Force
- Convention on International Trade in Endangered Species teams
- UK Health Security Agency
- Food and Environment Research Agency
- port operator
- import agents
- Internal Temporary Storage Facilities operators
- ETSF operators
- Maritime and Coastguard Agency (MCA)
- Medicines Regulatory Group
- relevant primary authorities

2.4.4 Division of responsibilities between FSA and Competent Authorities

The FSA is responsible for the approval of slaughterhouses, cutting plants, game handling establishments, raw liquid milk processors and egg packing centres in Northern Ireland subject to approval under Regulation (EC) No 853/2004.

Any co-located cold store, re-wrapping/repacking activities, minced meat, meat preparations, mechanically separated meat activities or processing plant are also approved by the FSA. When not connected with the above FSA establishments, these activities are approved by the relevant Competent Authority.

FSA approved establishments are subject to official controls enforced and executed by DAERA Veterinary Public Health Programme (VPHP) (in slaughterhouses, cutting plants, and game handling establishments) and DAERA Agri-food Inspection Branch (AfIB) (in raw liquid milk processors and egg packing centres) on behalf of the FSA.

Competent Authorities are responsible for the delivery of official controls at the premises which they approve.

The term 'integrated establishment' is applied to FSA approved establishments in Northern Ireland that require hygiene official controls to be undertaken by both DAERA (on behalf of the FSA) and the Competent Authority within a common curtilage, for example, a cutting plant and a fishery products processor within the same FSA approved establishment.

DAERA (on behalf of the FSA) is also responsible for:

- delivery of dairy hygiene official controls on milk production holdings
- enforcement in relation to the matters regulated by regulation 29 of The Food Hygiene Regulations (Northern Ireland) 2006, in relation to raw milk intended for direct human consumption
- delivery of food hygiene official controls for egg producers and egg packing establishments

FSA is responsible for the authenticity, traceability and labelling of wine sector products and enforcement in the wholesale market and wine sector products produced in the UK (including vineyards and wineries).

Competent Authorities are responsible for enforcement action taken at unapproved establishments subject to approval including those operating as an unapproved slaughterhouse, game handling establishment or cutting plant.

2.4.5 Regional and local liaison groups

It is recommended that regional and local liaison groups:

- discuss matters of legal interpretation and consistency with colleagues in the appropriate regional or local food liaison group and the primary, home or originating authority if appropriate
- avoid taking unilateral decisions on interpretations without seeking the views of other Competent Authorities
- undertake regular liaison to ensure that the advice given by groups of primary or home authorities serving food businesses trading in the same sector of the industry is consistent
- request representation from a Competent Authority's Public Analyst and/or Food Examiner

- request representation from the FSA, Public Health Agency (PHA), the Consultant in Health Protection (CHP) and other experts or specialists as the need arises
- request representation from other delegated bodies

2.5 Registration of Food Business Establishments

Guidance on registration of food business establishments can be found in annex 2.

2.5.1 Freedom of Information and Data Protection

The Data Protection Act 2018 and the Freedom of Information Act 2000 would apply in relation to food business records. It is recommended that Competent Authorities ensure their data protection policies consider food business registrations and approvals, including their reasons for holding data and the supply of data to other agencies for the purposes of ensuring public health and the effective enforcement of food law.

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

2.5.2 Establishment record files

It is recommended that these records include:

- information on any special equipment, processes, or features undertaken by the business for their food activities
- copies of any correspondence with the business
- copies of food sample analysis/examination results
- a system for highlighting significant issues, including details of any non-compliance to be reviewed at future official controls
- in respect of establishments inspected for food hygiene purposes, an assessment of the businesses compliance with procedures based on Hazard Analysis Critical Control Points (HACCP) principles, where appropriate
- information on hygiene training undertaken and qualifications held by employees, including any training on the implementation and operation of the food safety management system
- information as to whether the business imports food and/or is the first destination inland after import
- in respect of premises inspected for food standards purposes:
  - the existence and assessment of any documented quality system
  - details of other businesses that produce or import for the business

2.5.3 Retention of records

The Code provides that records relating to food business establishments, including those that have ceased trading, are retained for at least six years, unless they are required for longer retention. Examples of reasons why records may be retained for longer include:

- where they are subject to litigation
- where they are subject to review by Local Government Ombudsman
- where document management policy of the Competent Authority specifies a longer period
- where the establishment's next intervention being due beyond the minimum six-year retention period, in which case it is recommended that records continue to be retained and include:
  - the information necessary to meet the Food Hygiene Rating Scheme (FHRS) data standard
  - the information necessary for the FSA to fulfil its duty to keep national lists
  - details on the type of activities undertaken by the business, including any special equipment, processes, or features, where relevant
  - details of any significant issues, including details of any non-compliance, to be reviewed at future official controls

2.5.3.1 Retention of HACCP plans

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

The primary concern with this recommendation was the retention of the plan's core elements. Retention of the critical control points from a business' HACCP plan, rather than the entire plan, is considered sufficient to ensure that authorised officers looked at the performance of a business over time and did not miss danger signs from previous official controls.

2.6 Approval of establishments

Guidance on the approval of food business establishments is provided in the Approval of Establishments: Guidance for District Councils in Northern Ireland.

2.6.1 Applications for Approval

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

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

2.6.2 Competent Authority files

To ensure consistency in the content and structure of files produced for establishments which require approval, it is recommended that Competent Authorities have a properly structured file, in hard copy or held electronically, containing all the relevant information about the establishment.

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

- the application form
- a plan(s) of the establishment indicating:
  - layout of the establishment
  - location of equipment
  - workflows for each product line
  - water distribution system within the establishment including all outlets and sampling points
  - drainage layout
  - pest control - baiting and/or trapping points within the establishment and external areas
- a synopsis of the establishment (no more than one side of an A4 sheet) which briefly describes what type of establishment it is, products produced, volume of product, type of trade, number of employees, approval number, what it is approved for, details of other businesses that produce or import for the business
- a record of decision making, for example on selected categories of approval and approval exemptions considerations, where applicable
- a planned programme of work(s) to achieve approval
- an approval notification document specifying:
  - details of activities to which the approval relates
  - approval number
  - classification
  - special hygiene direction(s)
  - any establishment-specific derogations that have been granted
  - any other conditions or limitations specified by the Competent Authority
- any arrangements acceptable to the Competent Authority
- all relevant information and documentation, including:
  - labels and commercial documents bearing the identification mark
  - letter indicating the Competent Authority's involvement in the planning and implementation of the establishment's hygiene training of staff
  - intervention reports in chronological order
  - correspondence with establishment in chronological order
  - copies of notices or other formal action taken, in chronological order
  - a copy of company's emergency recall and withdrawal plan and traceability system including names, telephone numbers, of key personnel within the company
- results of all samples taken by the Competent Authority
- location of any off-site facilities
- copies of any other documents that have been provided by, or copied at, the approved premises, including:
  - HACCP documentation

- supplier information
- product list
- process records
- management and key contact names and contact details
- photographs and digital images, as appropriate
- raw material, product and water sampling plans and test results*
- other sampling plans and results, for example, environmental sampling*

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

2.7 Primary Authority and Home Authority

2.7.1 Primary Authority Scheme

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

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

The principles of primary authority are set out in parts 1 and 2 of the Regulatory Enforcement and Sanctions Act (RESA) 2008 and links to relevant guidance are below:

- Primary Authority Statutory Guidance
- Guide for enforcement officers
- Guide for national regulators

The Primary Authority Register can be used to identify if businesses have a Primary Authority partnership.

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

2.7.2 Home Authority

The FSA endorses the Home Authority Principle, which is governed by a Joint Statement of Commitment, signed by the Office for Product Safety and Standards

(OPSS), the Chartered Trading Standards Institute (CTSI) and the Chartered Institute of Environmental Health (CIEH), in June 2011.

The Home Authority Principle seeks to maintain and support the essential elements of the regulatory landscape and to rationalise and streamline existing systems of professional support and network communication, enabling a coherent framework of business engagement to be developed.

Home Authorities operate in situations when a business does not have a Primary Authority partnership in place, but where there remains a clear need for regulatory activity in relation to that business to be coordinated.

The Home Authority Principle places emphasis on goods and services originating from a business based within a Competent Authorities own area, in an effort to regulate the business at source, thus giving rise to efficiencies in the regulatory system as a whole.

It is recommended that Competent Authorities considering giving advice or taking enforcement action in relation to food businesses that have a home authority, consider whether they need to contact the Home Authority before doing so.

2.8 Provision of discretionary services

Competent Authorities may charge for the provision of discretionary services[1], such as the provision of training or business advice, otherwise than for commercial purposes.

It is recommended that Competent Authorities providing these services ensure:

- they make readily available:
  - their fees and charges[2]
  - details of how their fees and charges were calculated and an explanation of whether compliance will affect fees and charges, where appropriate
  - what the main features of the service(s) are[3]
  - any terms and conditions applicable to the provision of the service[4]
  - details on how to complain about the service provided[5]
- their conflict-of-interest procedure and/or arrangements, sets out how authorised officers will remain free of conflicts of interest when delivering chargeable discretionary services
- they make clear wherever details of these services are provided, that other providers of these services are available

[1] Section 79(4)(a) of the Local Government Act (Northern Ireland) 2014
[2] Regulation 8(1)(l) of The Provision of Services Regulations 2009
[3] Regulation 8(1)(m) of The Provision of Services Regulations 2009
[4] Regulation 8(1)(i) of The Provision of Services Regulations 2009
[5] Article 5(1)(c) of Regulation (EU) 2017/625

- the FBO agrees to the provision of the service before it is provided, and is aware that it is voluntary
- they make clear to the FBO verbally, and in writing, if appropriate, that these services are separate to an official control or other official activities

Chapter 3 Authorisation, qualifications, and competency

3.1 Introduction

Chapter 3 deals with:

- the qualifications and competency of officers undertaking official controls, other official activities, and any other activities related to these, such as non-official controls
- provisions relating to officers' training in official controls and other official activities

3.2 Appointment of officers

Article 5(1)(e) of Regulation (EU) 2017/625 requires Competent Authorities to have, or have access to, a sufficient number of suitably qualified and experienced officers so that official controls and other official activities can be performed efficiently and effectively.

To support this, Competent Authorities may:

- establish regional or cross-regional arrangements so other Competent Authorities undertake official controls and/or official activities on behalf of the Competent Authority
- employ temporary staff or contractors

The advantage of regional or cross-regional arrangements is that they support resilience and sustainability with respect to knowledge transfer between and within Competent Authorities and regions.

3.2.1 Lead food officer

The Code provides for the appointment of one or more, suitably qualified and competent lead food officers.

To support this, Competent Authorities may appoint separate lead food officers with responsibility for food hygiene, food standards and/or food import controls and/or for specific tasks, for example:

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

Additionally, a Competent Authority's lead food officer may be employed by another Competent Authority, provided they are competent for the role and the activities they will be authorised to undertake.

The FSA can be notified of the lead food officer's name and contact details (telephone number and email address) by recording the information on the FSA's

communications platform. The details can also be updated on this platform if the lead food officer details change.

3.2.2 Authorisation of officers

3.2.2.1 Appropriate supervision

The Code provides that officers have appropriate supervision based on their experience, competency and qualifications held. This will mean that certain officers, such as those who are new to the Competent Authority or undertaking new activities, are subject to greater supervision than other officers.

For example, where an officer, who does not hold a suitable qualification, is initially authorised to undertake official controls at category E risk rated establishments, the outcome of the official controls they undertake and the risk rating provided may be reviewed by an officer, who holds a suitable qualification and is competent, to ensure it is appropriate.

3.2.2.2 Legislation

The Code provides that officers, based on the activities they undertake, are specifically authorised under all relevant legislation.

The Food Safety (Northern Ireland) Order 1991 allows for the authorisation of officers, in writing, either generally or specially to act in matters arising under the order or regulations made under it. However, some legislation, for example, The Food Hygiene Regulations (Northern Ireland) 2006 and The Official Feed and Food Controls Regulations (Northern Ireland) 2009, are not made under The Food Safety (Northern Ireland) Order 1991 and contain specific enforcement powers, which officers would need to be specifically authorised under, and referred to in authorisation documents, including officers' credentials.

3.2.3 Qualifications

The Code provides that where an officer does not hold a suitable qualification (as listed in sections 3.2.3.1, 3.2.3.2, and 3.2.3.3 of the Code) they can be authorised to undertake the activities, in table 1 below, if the officer can demonstrate that they are competent to undertake those activities.

To support Competent Authorities in determining whether officers are competent, table 1 also sets out the relevant activities within the Competency Standard.

Table 1: Relevant activities for officers who do not hold suitable qualification within the Competency Standard

Activity	Relevant activities within the Competency Standard
Sampling	• Activity A: Common activities • Activity C3: Sampling

Activity	Relevant activities within the Competency Standard
	• Sub-activity C3.1: Taking informal samples
Education, advice and coaching	• Activity A: Common activities • Activity C1: Education, advice and coaching
Information gathering, including initial desktop assessment of new food business establishments	• Activity A: Common activities
Gathering, processing and sharing intelligence	• Activity A: Common activities
Informal action	• Activity A: Common activities • Activity E1: Informal action

3.2.3.1 Qualifications with restrictions

The Code provides that where an officer holds a qualification with a restriction, their authorisation of legal powers and duties is restricted until the officer can demonstrate that they are competent to undertake the relevant restricted activities.

3.2.3.2 Qualifications with restrictions - food hygiene

To support Competent Authorities in determining whether officers are competent to undertake the restricted activities, table 2 sets out the relevant activities within the Competency Standard.

Table 2: Relevant activities within the Competency Standard for restricted activities

Restricted activity	Relevant activities within the Competency Standard
Undertake inspection of food to determine fitness	Activity A: Common activities. Activity C6: Assessing products, labelling and other information. Sub-activity C6.1: Assessing whether food products are safe and fit for human consumption.
Seize and detain food	Activity A: Common activities. Activity E2: Formal enforcement action. Sub-activity E2.3 Detaining, seizing and voluntary surrender of food.
Serve Remedial Action Notices (RANs)	Activity A: Common activities. Activity E2: Formal enforcement action.

Serve Hygiene Emergency Prohibition Notices (HEPN)	Activity A: Common activities. Activity E2: Formal enforcement action. Sub-activity E2.2: Prohibition procedures.

3.2.3.3 Equivalency of qualifications

The Code provides that where prospective officers hold qualifications which are not included in the list of suitable qualifications, including those obtained from non-UK countries, the Competent Authority is to ensure equivalency of those qualifications before authorising the officer.

In these circumstances, it is recommended that either the Competent Authority employer or prospective officer directly approach the relevant awarding bodies for an assessment of equivalence against the relevant suitable qualification (fees may be payable).

The relevant awarding bodies include:

- CIEH
- CTSI
- Institute of Food Science and Technology (IFST)
- Royal Environmental Health Institute of Scotland (REHIS)
- Scottish Food Safety Officers' Registration Board (SFSORB)

These bodies are to inform the FSA of any determination concerning the assessment of qualification equivalency.

Existing and prospective officers may also hold qualifications and/or experience obtained in a country outside the UK, which are of a substantially similar standard to UK qualifications and provide individuals with substantially the same knowledge and skills (competency). For example, an individual seeks employment in the UK as a Public Analyst, Food Examiner, or an authorised officer, having acquired relevant qualifications and work experience in their home country.

In these circumstances, non-UK qualifications and experience can be considered, and enquiries may be made with the relevant professional and/or awarding bodies if they have any questions about this area before confirming an appointment.

The equivalence of non-UK qualifications can also be determined by the UK National Information Centre for the recognition and evaluation of international qualifications and skills.

3.2.4 Competency

Competency recognises that an officer's authorisation can be extended as they gain knowledge and develop new skills.

The Code provides that, before being authorised, officers and lead food officers are to demonstrate that they are competent for the activities relevant to their role and those they will be authorised to undertake.

To support Competent Authorities in determining whether an officer is competent, the FSA has published a Competency Standard which sets out the knowledge and skills for relevant activities that officers may be authorised to undertake.

3.2.4.1 Competency assessment

The Code provides that competency is determined by lead officers through an appropriate assessment.

Officers, other than the lead food officer, may, if competent, assess competency and make recommendations to the lead food officer. However, the determination as to whether an officer is competent remains with the lead food officer.

Competent Authorities may use any of the following as evidence of how officers demonstrate that they are competent to undertake the activities relevant to their authorisation:

- academic and professional qualifications
- details of employment history, including functions undertaken, responsibility exercised, and experience gained
- details of official controls and other official activities carried out under the supervision of a competent officer
- successful completion of training courses, including short courses and e-learning, for example, on matters related to official controls, HACCP, or enforcement sanctions
- accompanied inspections/visits under the supervision of a competent officer
- having conducted a specific piece of work, for example, drafting of notices, production of witness statements, gathering evidence, building elements of a prosecution file, or conducting sampling to a specified protocol
- satisfactory performance of activities as part of internal performance appraisal/monitoring procedures
- doing any of the things suggested in section 3.3.1.2

3.2.4.2 Lead food officer competency assessment

The Code provides that the competency of lead food officers is determined through appropriate assessment.

The assessment of lead food officer competency may be undertaken by an appropriate manager, such as a service manager or senior officer responsible for the Competent Authority's food service.

The lead food officer competency assessment may also be undertaken by a competent lead food officer from another Competent Authority.

To support Competent Authorities in determining the competency of lead food officers, the Competency Standard provides competencies for activities they may be authorised to undertake in their role, including specific lead officer activities. These specific activities include:

- D1.3: Investigation, reporting and management of incidents and receipt of alerts
- F6.1: Developing, implementing, monitoring, and reviewing documented policies, procedures, and plans
- F6.2: Collation/overseeing and reporting data

The Code recognises that more than one person may perform the lead food officer role. Due to this, not all lead food officers may necessarily demonstrate the competencies for all of the above activities.

To provide further assurances in lead food officer competency assessments, it is recommended that lead food officers participate in inter-authority audit and peer review. This will help with the development of consistent approaches to competency assessment.

3.2.4.3 Officers moving from one Competent Authority to another

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

Additionally, when an officer has moved from one Competent Authority to another, it is recommended that the new Competent Authority provides a formal induction, including familiarisation of its policies and procedures.

3.3 Training and other Continuing Professional Development

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

Training materials and e-learning courses are available via the FSA's Communications platform and on Regulators' Companion.

Some Competent Authority training materials and imported food training materials are uploaded to Teams channels, where applicable. For access to these channels please contact the FSA.

E-learning courses are also available on the FSA website for specific topics, including: imported foods, imported food sampling and Official Fish Inspector training.

There is also Guidance for GB Standards on the Northern Ireland market on the enforcement of GB standards and food hygiene requirements, for certain retail agri-food goods entering Northern Ireland from GB via the Northern Ireland Retail Movement Scheme. This guidance also outlines the roles and responsibilities of Competent Authorities related to the operation of the Windsor Framework. Links to further information regarding the Windsor Framework are also available within the document.

3.3.1 Continuing Professional Development

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

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

3.3.1.1 Types of CPD

Regulation (EU) 2017/625 requires officers to receive training on subject matters set out in chapter 1 of annex II and on the obligations of the Competent Authority resulting from this regulation.

The Code provides that those carrying out official food controls and other official activities undertake a minimum of 20 hours CPD each year. A CPD year could be a calendar year or a rolling 12-month period.

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

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

Examples of training and CPD on subject matters set out in chapter 1 of annex II of Regulation (EU) 2017/625, may include, but are not limited to:

- risk rating consistency exercises
- different control techniques, such as inspection, verification, screening, targeted screening, sampling, laboratory analysis, testing, and diagnosis
- control procedures
- requirements of food law
- assessment of non-compliance with food law
- hazards in production, processing, and distribution of food
- different stages of production, processing and distribution and the possible risks to human health, and where appropriate for the health of animals and plants, the welfare of animals and the environment
- the evaluation of the application of HACCP procedures
- management systems such as quality assurance programmes that FBOs manage and their assessment insofar as these are relevant to food law requirements

- official certification systems
- contingency arrangements for emergencies
- legal proceedings and the implication of official controls
- examination of written, documentary material and other records, including those related to inter-laboratory comparative testing, accreditation, and risk assessment, which may be relevant to the assessment of compliance with food law; this may include financial and commercial aspects
- control procedures and requirements for food entering Northern Ireland
- any other area necessary to ensure that official controls are carried out in accordance with Regulation (EU) 2017/625

The remaining 10 hours may include non-food related matters to support officers and lead officers in maintaining, improving or broadening their competency. Examples of relevant training and CPD may include, but are not limited to:

- attending training courses/conferences not linked to official controls but supporting professional development, for example, those related to investigatory skills
- attendance at court
- undertaking relevant distance learning or e-learning activities, for example, those related to evidence gathering

3.3.1.2 Ways of attaining CPD

The examples below are all ways in which officers can attain CPD, and include, but are not limited to:

- attending relevant training courses, including distance learning or e-learning activities
- coaching from other experienced, competent officers
- reviewing case studies and literature
- attending conferences or meetings which involve an element of learning
- reading to understand relevant legal and regulatory frameworks
- maintaining or developing specialist skills
- shadowing an officer who has demonstrated the relevant competencies
- taking part in a Directorate-General for Health and Food Safety audit or fact-finding mission
- shadowing experienced (internal or external) colleagues to develop knowledge of a specialist process, such as cheese-making; meat products; shellfish/fishery products
- participation in scenario-based case studies, such as notice drafting, risk-rating
- authoring relevant articles for peer-reviewed journals/papers

- writing guidance on food law or other legislative requirements
- preparing and delivering presentations to colleagues or businesses on legislative requirements, particularly new changes to legislation
- appropriate discussions with colleagues and/or FBOs on legal requirements/enforcement action which involve an element of learning

3.3.1.3 Evidencing and recording CPD

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

The Code provides that a record is kept of training and CPD. These records could be used as part of their annual review of training and CPD needs. Such reviews may be combined, where appropriate, with annual appraisals.

It is recommended that training and CPD records include, as a minimum, the following information:

- date of activity
- type of activity/activity description
- hours spent on an activity
- copy of certification or countersignature from a lead food officer, or another officer who can demonstrate the relevant competencies for the stated activity which took place

Chapter 4 Delivery of official controls

4.1 Introduction

Chapter 4 deals with:

- the delivery of official controls, other official activities and activities related to these, such as non-official controls

4.2 Frequency of official controls

4.2.1 Food hygiene and food standards

Competent Authorities may decide whether it is appropriate for officers to cover food hygiene and food standards during a single visit of an establishment, even though an official control is not due under the relevant planned official control programme.

4.2.1.1 Sources of information and intelligence

The Code provides that officers consider information and intelligence supplied by third parties when determining intervention ratings, both for food hygiene and food standards. Examples of sources of information may include:

- other Competent Authorities
- Primary Authorities or Home Authorities
- third party audits
- other sources, such as trade bodies

Further guidance on the role of intelligence in the food standards delivery model is provided in the Food Standards Delivery Model Guide.

Chapter 5 provides guidance on the FSA's National Food Crime Unit (NFCU) and how to share information with them should any intelligence received indicate potential food fraud.

4.2.2 Food Hygiene Rating Scheme and the intervention rating scheme

The food hygiene intervention rating scheme, set out in the Code, is the basis of the FHRS, which is operated by all Competent Authorities in Northern Ireland responsible for undertaking official controls in relation to food hygiene. Guidance on this is given in the FHRS Statutory Guidance.

The elements of the food hygiene intervention rating scheme relevant to calculating the FHRS rating are:

- the level of (current) compliance with food hygiene and safety procedures
- the level of (current) compliance with structural requirements
- confidence in management/control procedures

Additional guidance on scoring each of the above three elements is provided in annex 3.

Regulation 5 on allergens in The Food Information Regulations 2014 relates to food labelling and information, and as these are food standards requirements, they should not form part of an FHRS assessment.

It is recommended that controls for any allergen-related cross-contamination, when preparing food specifically for consumers with a food allergy or intolerance, are assessed during a food hygiene official control. These controls ought to be part of a business' food safety management system and, in relation to the food hygiene intervention rating, only considered as part of confidence in management score. Such consideration would not be the overriding factor but rather contribute to the overall assessment of confidence in management.

4.2.2.1 Vulnerable risk groups

The food hygiene intervention rating scheme provides that an additional score of 22 is applied where establishments are involved in the production or service of high-risk foods intended specifically for consumption by consumers which are likely to include a vulnerable risk group of more than 20 persons.

The use of this additional score is considered on a case-by-case basis and is based on an officer's professional judgement as to whether high-risk foods are 'intended specifically' for a vulnerable risk group and whether it is for consumption by more than 20 persons.

In this context, 'vulnerable risk groups' are those that include people likely to be more susceptible to the effects of poor food hygiene such as those who are under 5 or over 65, and people who are sick or immuno-compromised.

A non-exhaustive list of establishments which could, depending on the circumstances, be considered within this category include hospitals, residential/nursing homes, overnight caring facilities, and children's nurseries/pre-school day care facilities.

Examples where this additional score would not be applied include:

- a restaurant, which, on occasion, serve a group of over 20 pensioners, as it is unlikely the business would be producing food specifically intended for a vulnerable risk group, so not included within this category
- a school, that serves the same lunch to all year groups, including those children under five, as it is unlikely that they are producing food specifically intended for a vulnerable risk group, so not included within this category
- a soft play centre designed for children aged from 1 to 10 years old, that serves the same food to all children, as it is unlikely that the business would be producing food specifically intended for a vulnerable risk group, so not included within this category

4.2.2.2 Food Safety Culture

FBOs are required to establish, maintain and provide evidence of an appropriate food safety culture in accordance with annex II of Regulation (EC) No 852/2004. This includes commitment of management and employees to food safety and hygiene,

provision of sufficient resources to operate in a hygienic and food safe way, all staff aware of the risks, effective internal communication within the food business and the ability of the leadership to engage with staff regarding food hygiene and safety performance and compliance. Implementation of food safety culture is to be commensurate with the nature and size of the food business.

The Code provides that Competent Authorities consider food safety culture within a food business when assessing and determining the appropriate confidence in management score. Additional descriptions have been included in annex 3 of the Practice Guidance.

Further information regarding assessment of food safety culture in food businesses is also available in Commission Notice (2022/C 355/01).

4.2.3 Initial official controls

4.2.3.1 Initial desktop assessment

The Code provides that, when undertaking initial desktop assessments of new food business establishments, information supplied by the FBO when registering, and any other information deemed relevant, can be used to determine the potential hazard (food hygiene) or likely level of inherent risk (food standards).

In relation to food hygiene, the 'potential hazard' relates to part 1 of the food hygiene scoring system, in annex 1 of the Code. The potential hazard score considers the:

- type of food and method of handling
- method of processing
- consumers at risk, including consideration of vulnerable risk groups

The scores from these three elements in part 1 of the food hygiene scoring system are added together to give the overall 'potential hazard' score.

In relation to food standards, further guidance on determining the likely level of inherent risk is provided in the Food Standards Delivery Model Guide.

To support the initial desktop assessment, Competent Authorities may also consider information collected through communication with the FBO, as well as other information or intelligence available, including a review of the business' online presence.

4.2.3.2 Deciding when to undertake the initial official control

The Code provides that initial official controls of new food businesses are planned so that those with a lower potential hazard (food hygiene) or lower inherent risk (food standards) do not cause undue delays to the delivery of initial and/or due official controls at higher risk and/or non-compliant establishments. This does not apply to establishments subject to approval under Regulation (EC) No 853/2004 or the requirements of Regulation (EU) No 210/2013 on the approval of establishments producing sprouts, which receive an initial on-site visit as soon as practicable.

If, as part of the initial desktop assessment, information is received which indicates potential non-compliance at an establishment, this information may be used to prioritise the initial official control at that establishment, even though this would not necessarily impact the establishment's potential hazard score (food hygiene) or inherent risk profile (food standards).

Competent Authorities may also consider undertaking an initial official control as a priority where the business is unable to trade until the official control has been undertaken. This could include, for example, where the business is unable to trade on a market without an initial official control being undertaken.

Additionally, where an establishment has registered 28 days before the commencement of operations, the initial official control may be delayed until operations within the establishment have begun.

4.2.3.3 Appropriate methods and techniques for initial official controls

The Code provides that, in relation to food hygiene, establishments receive a physical inspection or audit for their initial official control.

However, if an initial desktop assessment provides a potential hazard score between 5 and 29, and the establishment falls into any of the scenarios listed below, they can receive any method and technique of initial official control (individually or a combination thereof), whether undertaken physically or remotely:

- establishments which do not take or hold physical possession of food for resale to other businesses (for example, food brokers)
- establishments which are not generally recognised by consumers as being food businesses because the main business or activity is not food related
- certain establishments operating from private addresses

Further guidance on these types of establishment can be found in the FHRS Statutory Guidance and the Food Broker Guidance for Local Authorities.

When determining the method and techniques of official control to use, including whether to undertake it physically or remotely, the Code provides that Competent Authorities consider whether the method and techniques:

- are effective and appropriate in the circumstances
- verify compliance with relevant food law
- enable validation of the desktop assessment

This provision does not apply:

- to establishments subject to approval under Regulation (EC) No 853/2004 or the requirements of Regulation (EU) No 210/2013 on the approval of establishments producing sprouts, which receive an initial on-site visit as soon as practicable
- when the Competent Authority is legally required to provide a food hygiene rating to an establishment

4.2.4 Due official controls

The Code provides that, based on the frequencies in the food hygiene and food standards scoring systems, official controls of existing businesses are undertaken within 28 days of their due date. The Code also provides that official controls at higher risk and/or non-compliant businesses, or those that are likely to be high-risk, take priority over official controls at those which are lower risk and/or compliant.

This means that Competent Authorities prioritise official controls, so that those due at higher risk and/or non-compliant establishments are undertaken before those which are lower risk and compliant. However, official controls at all establishments would be undertaken within 28 days of them being due.

It is recognised that there may be circumstances outside the control of the Competent Authority, such as seasonal business closures, which means that the due official control cannot be undertaken within 28 days of the due date. In these circumstances, it is recommended that Competent Authorities defer the due official control but undertake it as soon as possible.

4.2.5 Revision of food hygiene intervention ratings

The Code provides that Competent Authorities only revise the intervention rating of a food business establishment, for food hygiene, at the conclusion of a physical inspection or audit (full or partial), except at:

- establishments which do not take or hold physical possession of food for resale to other businesses
- establishments which are not generally recognised by consumers as being food businesses because the main business or activity is not food related
- certain establishments operating from private addresses

At these establishments Competent Authorities may revise the intervention rating of a food business establishment at the conclusion of an official control where appropriate and effective methods and techniques have been used.

This means that at establishments, which meet the above criteria, the intervention rating can be amended following any method and technique of official control, as long as the methods and techniques used are effective and appropriate in the circumstances, and sufficient information has been gathered to justify the revision.

For all other establishments, which do not meet the above criteria, the intervention risk rating can only be amended following a physical inspection or audit, whether full or partial. This would not preclude a Competent Authority from making use of the flexibilities in relation to the use of different methods and techniques in these establishments (as set out in section 4.3), but the intervention risk rating could not be revised where a method and technique other than a physical inspection or audit has been used. However, the date when the next intervention is due could be amended accordingly.

4.3 Methods and techniques of official controls

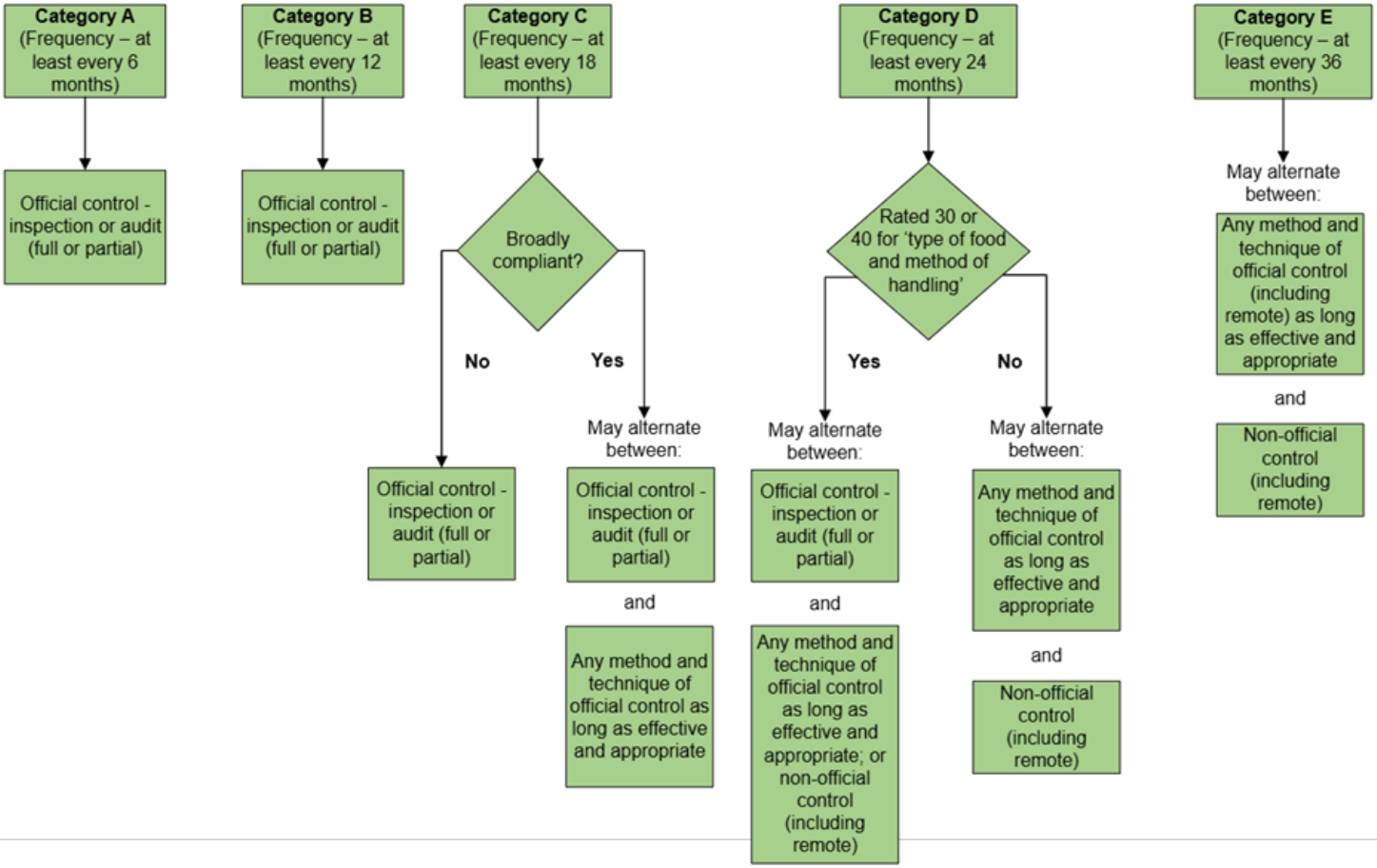
The Code provides that Competent Authorities when determining the methods and techniques to use consider a range of factors, including which would be most effective and appropriate in the circumstances. To support this, it is recommended that Competent Authorities take other relevant guidance, such as the FHRS Statutory Guidance, into account. Consideration of relevant guidance may determine the methods and techniques of official controls that are effective and appropriate in the circumstances.

The methods and techniques of official controls set out in the Code relate to undertaking initial and due official controls. This would not prevent other methods and techniques of official controls and non-official controls being undertaken at other times and being recorded against the establishment, such as, for the purpose of monitoring enforcement.

4.3.1 Food hygiene methods and techniques

The flowchart in figure 1 sets out the methods and techniques of official controls that are effective and appropriate based on the risk rating of an establishment, as provided in chapter 4 of the Code.

Figure 1 – Food hygiene methods and techniques flowchart for establishments (other than those subject to approval under Regulation (EC) No 853/2004, those subject to the requirements of Regulation (EU) No 210/2013 on the approval of establishments producing sprouts which should receive a physical inspection or audit (whether full or partial) irrespective of the intervention rating)



4.3.2 Remote official controls and non-official controls

The Code provides that, where appropriate, remote methods and techniques of official controls can be used, as long as they are effective and appropriate in the circumstances.

A remote official control is defined as an activity undertaken away from a food business establishment, that enables evidence to be gathered to verify the establishment's compliance with relevant food law. This could include:

- a desk-based examination of relevant documentation, which could include, for example reviewing completed survey responses, food safety management systems or monitoring records
- reviewing video and/or photographic evidence
- video conferencing
- examination of websites, which could include, for example, reviewing the food information provided and any claims made
- any other digital tools which enable compliance to be verified away from an establishment

The Code also provides that, where non-official controls can be used, they may be undertaken remotely. Examples of remote non-official controls could include:

- providing advice, education, and/or training using remote technology, such as webinars
- gathering information and intelligence about a business through remote technology

Further guidance on non-official controls is provided in section 4.5 of this guidance.

4.3.2.1 Questionnaires

Questionnaires, if sent by post or email, may be considered a remote activity.

If the purpose of the questionnaire is to gather up-to-date information on the establishment, and does not verify compliance, then it could be considered a non-official control.

Conversely, if the questionnaire enables Competent Authorities to verify an establishment's compliance with relevant food law, then it could be considered an official control.

For a questionnaire to verify compliance, it would need to provide Competent Authorities with objective evidence, such as a copy of a food safety management system or other records, which they can examine and consider, to check an establishment's compliance with applicable food law.

If a questionnaire does not enable Competent Authorities to verify compliance with applicable food law, the information they provide may be used to support and inform official controls. For example, information provided through a questionnaire may

inform the need for a partial inspection which could, depending on the risk rating of the establishment, be undertaken remotely.

4.3.3 Sampling, analysis and examination

Food sampling and subsequent analysis or examination performs an essential function by:

- providing intelligence and evidence on the safety and authenticity of food on the UK market
- supporting enforcement action to protect consumers
- enabling the FSA to meet its statutory obligations as a Central Competent Authority

The Food Hygiene Regulations (Northern Ireland) 2006, The Food Safety (Northern Ireland) Order 1991 and The Food Safety (Sampling and Qualifications) (Northern Ireland) Regulations 2013) provides a framework for Competent Authority sampling, which is carried out with a view to taking formal enforcement action if results are unsatisfactory.

In order to meet requirements for official controls under the Windsor Framework, Competent Authorities will need to ensure compliance with any additional requirements, regarding food samples, from UK and EU accreditation bodies (such as UKAS and INAB) and relevant ISO standards.

4.3.3.1 Procurement of samples

The Food Hygiene Regulations (Northern Ireland) 2006 and The Food Safety (Northern Ireland) Order 1991 provide that samples may be procured either by ‘purchasing’ or ‘taking’. The choice is at the discretion of the authorised officer, having regard to the policy of the Competent Authority.

Where the quantity or frequency of sampling gives rise to significant financial consequences for the owner of the food, the Competent Authority may offer an ex-gratia payment if samples are not purchased.

4.3.3.2 Avoiding contamination

The Code provides that contamination of samples is to be prevented. To support this, it is recommended that, when procuring samples, instruments and containers used are clean and dry. It is also advised that the use of cleaning and sterilising methods that might leave residues on instruments or containers (for example, alcohol) is avoided, as this could affect the results of the analysis or examination.

4.3.3.3 Continuity of evidence/traceability by Competent Authorities

The Code provides that continuity of evidence and traceability of samples is to be maintained and recorded at all stages, including the handling, storage and transport of the sample to the laboratory. To support this, it is advised that the following details are recorded at all stages:

- dates and times of transport

- identity of custodians
- date and time of receipt in the laboratory
- identity of the person receiving the sample
- sample details (for example, temperature, batch number)

4.3.3.4 Continuity of evidence/traceability at the laboratory

Food samples are normally dealt with in a food laboratory, while specimens, such as faecal specimens, may be dealt with in a clinical laboratory, operating independently of the Competent Authority.

It is recommended that the Public Analyst, Food Examiner or Clinical Microbiologist is made aware that the results of their analysis or examination may be used as evidence in Court, and they might have to give oral sworn testimony in court.

Other laboratory personnel might also be required to give evidence in a criminal prosecution in relation to the handling of food samples and faecal specimens and the testing and examination thereof. As such, it is recommended that individuals in laboratories are:

- reminded of the possibility of legal action, and in particular, the need to treat food samples and other specimens as evidence, to ensure the continuity of such evidence
- capable of making a sworn statement and providing sworn oral testimony on handling, testing and examination

Continuity preservation at the laboratory is vital so that there is certainty that the result relates to the sample/specimen submitted. It is recommended that full traceability in the laboratory is ensured, including recording the identity of everybody who has been involved in handling and examining the sample or specimen, and the action they took. To support this, it is advised that there is a system at the laboratory for logging the sample or specimen's arrival, and its storage, which is secure. For certain food samples, the temperature of transport may also need to be monitored and recorded on receipt at the laboratory.

4.3.3.5 Certificate issued by Public Analyst or Food Examiner

A Public Analyst or Food Examiner is required to give the officer who submitted the sample a certificate specifying the result[6].

It is recommended that Competent Authorities discuss with the Public Analyst or Food Examiner how these requirements are to be met, including the means by which results that indicate a significant risk to public health, or where legislative deadlines apply, such as water in poultry, can be notified without delay.

The Certificates of Analysis or Examination (as specified in schedule 3 of The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 2013) are

[6] Regulation 13(6) of The Food Hygiene Regulations (Northern Ireland) 2006 and article 30(6) of The Food Safety (Northern Ireland) Order 1991

available for formal samples on request from either a Public Analyst or Food Examiner.

The laboratory issuing the test report and Certificate of Analysis or Examination are required to use test methods that are accredited to ISO/IEC 17025:2017 (General requirements for the competence of testing and calibration laboratories standard)[7].

The test report and Certificate of Analysis or Examination are the only authoritative versions of the test results.

4.3.3.6 Requests for information from manufacturers or importers

The Code provides that Competent Authorities are to meet all reasonable requests from manufacturers or importers to provide information on the selection of the sample, sampling method and method of microbiological examination or chemical analysis. The reason for this is to enable the manufacturer or importer of the food to assess the result and/or repeat the examination or analysis.

4.3.3.7 Right to second opinion

Article 35(1) of Regulation (EU) 2017/625 requires Competent Authorities to ensure that operators, whose animals, or goods are subject to sampling, analysis, test, or diagnosis, in the context of official controls, have the right to a second expert opinion.

Guidance on submitting a sample for a second expert opinion and submitting a referee sample to the Government Chemist is available online.

4.3.3.8 Samples for analysis

The Code provides that the laboratory of the appointed public analyst is to be accredited for the purposes of analysis. Accredited laboratories appear on the list of official laboratories. Official laboratories based in Northern Ireland need to be accredited by both the UK Accreditation Service (UKAS) and an EU Accreditation body to deliver domestic and international testing and surveillance for both EU and GB markets.

4.3.3.9 Samples for analysis – division of samples

Regulation 7(1) of The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 2013 requires samples for analysis to be divided into three parts, unless:

- the sample consists of sealed containers and opening them would, in the opinion of the officer, impede a proper analysis
- the officer is of the opinion that division of the parts is not reasonably practicable or likely to impede a proper analysis

The resultant parts of the sample are referred to as final parts.

[7] Article 37(4) of Regulation (EU) 2017/625

Regulation 7(4) of The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 2013 allows for the sample to be submitted for analysis complete without division into three parts. Circumstances where this procedure may be used will depend on the analysis to be carried out, but could include the following:

- where there is insufficient product available to comply with the procedures in regulations 7(1) or 7(2) of The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 2013
- there is no way of storing a final part for further analysis, for example, when testing for previously frozen meat
- where foods are not pre-packed and not homogeneous, meaning it is difficult to divide the food into three parts, so that each part contains the same proportion of each ingredient, such as meat products with lumps of meat

Additionally, regulation 7(2) of The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 2013 provides that where the sample consists of unopened containers and opening them would, in the opinion of the authorised officer, impede proper analysis, the sample may be divided by putting containers into three lots, with each lot being treated as a final part.

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

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

Where any doubt exists as to how to sample a food, it is recommended that the Public Analyst is consulted.

4.3.3.10 Samples for analysis – sample quantity

The Code provides that the nature and quantity of any sample taken for analysis is such that, after it is divided into three parts, it would still be sufficient to enable the required analysis to be made.

The nature of the samples will depend on the purpose for which the analysis is being undertaken, and the quantity will vary according to the product and type of analysis to be carried out. It is recommended that the Public Analyst is consulted in case of doubt as to the quantity required.

The Code also provides that national sampling protocols are to be considered, where they exist. However, it is advised that some modification to the protocols may be necessary in the case of large consignments of imported foods.

4.3.3.11 Samples for analysis – containers for samples

Regulation 7(3) of The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 2013 provides that, if necessary, each part of the sample is placed in a suitable container and that each container is sealed.

To ensure the integrity of samples, it is recommended that samples of non-prepacked food or opened cans or packets, are placed in clean, dry, leak-proof containers such as:

- wide-mouth glass or food quality plastic jars
- stainless metal cans
- disposable food quality plastic bags

It is also recommended that samples of alcoholic drinks are placed in glass bottles.

These containers are then sealed securely after filling, so that they cannot leak or become contaminated during normal handling.

Where necessary, the samples may then be placed in a second container, such as a plastic bag, which is sealed in such a way as to ensure that the sample cannot be tampered with.

4.3.3.12 Samples for analysis – storage and transport of samples

The Code provides that parts of the sample are to be stored and transported appropriately to ensure their integrity.

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

Since retained final parts might need to be stored for several months, prior to submission to the Laboratory of the Government Chemist, it is important that they are appropriately stored.

Where doubt exists about suitable storage or transport arrangements for samples for analysis, it is recommended that the Public Analyst is consulted.

The Code also provides that the final part is submitted to the Public Analyst as soon as practicable after sampling. This is particularly important where tests are for substances which might deteriorate or change with time, for example, certain pesticides or sulphur dioxide.

4.3.3.13 Samples for analysis – notification of results

The Code provides that, if following the results, it is suspected that an offence is related to the manufacturer, they are to be informed of the results as soon as possible through the most effective means.

Notification through the most effective means may mean that notification is initially done by telephone, with the results then subsequently confirmed in writing.

The Code also provides that other relevant Competent Authorities are notified of the results as well. This could include the Competent Authority where the manufacturer is based, or the businesses primary or home authority (where relevant).

Other interested parties, such as the packer or, in the case of imported food, the importer, or their agent, may also be notified of the results.

4.3.3.14 Samples for examination

Regulation 13 of The Food Hygiene Regulations (Northern Ireland) 2006 requires samples procured under regulation 12 of those regulations, which an authorised officer considers should be examined, are to be submitted to a Food Examiner.

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

The Code provides that the laboratory of the Food Examiner is to be accredited for the purposes of examination. Accredited laboratories appear on the list of official laboratories. Official laboratories based in Northern Ireland need to be accredited by both the UK Accreditation Service (UKAS) and an EU Accreditation body in order to deliver domestic and international testing and surveillance for both EU and GB markets.

4.3.3.15 Samples for examination – organisation

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

4.3.3.16 Samples for examination – quantity of samples

The Code provides that the quantity of any sample procured is to be such as to enable a satisfactory examination to be made.

The quantity will vary according to circumstances but normally be at least 100 grams would be necessary.

It is recommended that the Food Examiner is consulted in case of doubt as to the quantity required.

4.3.3.17 Samples for examination – handling, transport, and storage

Regulation 9(a) of The Food Safety (Sampling and Qualifications) (Northern Ireland) Regulations 2013 provides that, if necessary, the sample is placed in a suitable container and that the container is sealed.

To ensure the integrity of the sample, it is recommended that samples of non-prepacked food, or from opened cans or packets of food, are first placed in sterile leak-proof containers, or disposable sterile plastic bags. Containers would then be sealed securely after filling, so that they cannot leak or become contaminated during normal handling.

It is recommended that containers which might be easily damaged, or that cannot themselves be made tamper-evident, are placed in a second container, such as a plastic bag, which is then sealed in such a way as to ensure that the sample cannot be tampered with.

The Code provides that a copy of the food label (if available) and any other relevant details are to be given to the Food Examiner when submitting the sample. Examples of relevant details could include food handling techniques and/or storage methods observed in respect of the food sampled.

The Code also provides that samples are to be handled, stored and transported appropriately to ensure their integrity.

To support this, it is recommended that advice is sought from the Food Examiner in case of doubt as to the handling, transport and/or storage of samples. Liaison with the Food Examiner, before samples are submitted to the laboratory, will ensure correct procedures are followed.

4.3.3.18 Samples for examination – notification of results

The Code provides that, if following the results, it is suspected that an offence is related to the manufacturer, they are also to be informed of the results as soon as possible through the most effective means.

Notification through the most effective means may mean notification is initially done by telephone, with results then subsequently confirmed in writing.

The Code also provides that other relevant Competent Authorities are notified of the results as well. This could include the Competent Authority where the manufacturer is based, or the businesses primary or home authority (where relevant).

Other interested parties, such as the packer or, in the case of imported food, the importer, or their agent, may also be notified of the results.

4.3.3.19 Faecal specimens

The Code provides that when investigating reported or suspected cases of foodborne illness and obtaining faecal specimens, the specimens are collected and transported to the laboratory as soon as possible after the onset of symptoms, with relevant individual's details included on the container and on any accompanying documentation.

It is important that faecal specimens are transported to the laboratory as soon as possible. The reason for this is that some important pathogens might not survive the pH changes that occur in stool specimens which are not promptly delivered to the

laboratory, even if transported in a refrigerated state. Liaison with the laboratory will help ensure that the specimens receive prompt attention on their arrival.

It is also recommended that officers have a supply of appropriate leak-proof containers.

4.3.3.20 Scientific investigation of food complaint samples

It is recommended that authorised officers consider whether food that is the subject of a complaint needs any scientific investigation. Advice may be sought from the Public Analyst and/or Food Examiner who will be able to advise on the form of scientific investigation, particularly where a combination of analysis and examination is required.

If the authorised officer decides that a food complaint sample requires analysis or examination, it would be sent to the Public Analyst or Food Examiner, as appropriate. If any other investigation is necessary, the food would be sent to a suitably qualified expert who is able to give evidence in the event of prosecution.

The subject of a complaint, or other interested parties, might ask for a food complaint sample to be made available to aid in internal investigations. It is recommended that the Competent Authority complies with any reasonable request provided it does not compromise the proper storage, analysis, examination, or evidential value of the sample.

4.3.4 Inspections

The Code provides that when undertaking official controls, such as inspections, officers use professional judgement to determine what activities are examined to provide assurances that the relevant requirements of food law are being met.

4.3.4.1 Food hygiene inspections

When undertaking food hygiene inspections, it is recommended that Competent Authorities ensure officers, where appropriate:

- establish whether food is being handled and produced hygienically, and is safe to eat, having regard to any subsequent processing
- assess the hazards posed by the activities of the business and the FBO's understanding of those hazards, including, where appropriate, a discussion regarding any hazards that have been identified by the officer, which are not covered by the business' systems
- in respect of primary production, establish that FBOs and their employees have an understanding of the hazards posed by the activities of the business, and assess and verify that preventative/corrective actions necessary to protect the safety of food entering the human food chain take place
- confirm that the FBO is carrying out their own controls and checks, based on HACCP principles (other than in the case of primary production) and these are being operated effectively with appropriate corrective action being taken where necessary, this may include:

  - a physical inspection to determine whether critical controls have been identified and whether the controls are in place
  - a discussion with any staff responsible for monitoring and corrective action at critical control points to confirm that control is effective
  - a discussion regarding any failure to implement or monitor any critical controls that have been identified by the business
- assess the efficacy of the controls in place to manage the risk of cross-contamination between ready-to-eat foods and foods requiring further processing
- assess the risk of the food business failing to meet food hygiene requirements
- assess compliance with the traceability requirements in article 18 of Regulation (EC) No 178/2002
- check the source and any health or identification marking of raw materials, and the identification marking and destination of finished products
- check compliance with product specific legislation
- recommend good food hygiene practices in accordance with relevant:
  - good practice guidance
  - recognised UK industry guides
  - industry codes of practice
  - sector specific codes
  - technical standards
- promote continued improvements in hygiene standards through the adoption of good practice
- draw the good food hygiene practices guidance (listed above) to the attention of FBOs

4.3.4.2 Food standards inspections

When undertaking food standards inspections, it is recommended that Competent Authorities ensure officers:

- consider the existence and effectiveness of management systems designed to ensure that food standards requirements are met and, where they exist, test their effectiveness
- assess compliance with composition, presentation, and food information requirements, including allergens, by examining advertisements, labels, descriptions, menus, claims, recipes, and other records
- assess compliance with the traceability requirements of article 18 of Regulation (EC) No 178/2002, as read with Regulation (EU) No 931/2011 on the traceability requirements for food of animal origin
- assess compliance with supplier specifications
- assess the risk of the food business failing to meet food standards requirements

- recommend good practice in accordance with relevant industry codes and other relevant technical standards

4.3.4.3 Concluding an inspection

The Code provides that officers discuss any non-compliances identified with the FBO or a representative. To support this, it is recommended that Competent Authorities ensure officers:

- on request, advise and discuss with the FBO the risk rating applied to the business
- consider whether further methods and techniques of official controls, or non-official controls, would be appropriate, for example education or training

4.4 Delivery of official controls and other official activities

Article 9 of Regulation (EU) 2017/625 requires official controls to be performed without prior notice, except where notice is necessary and duly justified for the control to be undertaken.

Examples where prior notification may be necessary and duly justified are, but not limited to:

- when the purpose of the official control is to see a specific process in operation, and that process cannot be seen without giving notice
- where the FBO or another person needs to be available, and they are not normally present
- where the nature of the official controls requires prior notification, for example, audit activities which go beyond the auditing of documentation that is readily available at the establishment
- when remote method and techniques are used, and the official control cannot be effectively undertaken without giving notice

It is recommended that officers exercise discretion when considering whether prior notification is necessary and duly justified, and that justification is recorded in accordance with the requirements of chapter 2 of the Code, guided by the overriding aim of ensuring compliance with food law.

4.4.1 Official controls of ships and aircraft

This section is intended to provide further guidance to enable officers to consider additional aspects relating to official controls of ships and aircraft. This section does not apply to:

- fishing vessels operating at the level of primary production
- vessels which are subject to approval under Regulation (EC) No 853/2004

4.4.1.1 General

The Food Hygiene Regulations (Northern Ireland) 2006 include any ship or aircraft in the definition of premises. However, schedule 4 of these regulations, which sets out specific temperature control requirements, does not apply to these means of

transport. The relevant temperature requirements for ships and aircraft are stated in chapter IV of annex II of Regulation (EC) No 852/2004.

4.4.1.2 Hazards

The types of hazards that may be present in the shipboard/aircraft environment could be considerably different to those that might be found in fixed premises. For example, it could include hazards resulting from the:

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

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

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

4.4.1.3 International catering waste

The disposal of international catering waste to landfill is regulated by the Animal By-Products (Enforcement) Regulations (Northern Ireland) 2015. Department for Environment, Food and Rural Affairs (Defra) has identified significant risks to animal health if this waste is not dealt with effectively at landfill.

4.4.1.4 Relevant information

The Code provides that Competent Authorities obtain all relevant information from other relevant parties. Examples of relevant information may include:

- food specifications/suppliers
- water sample results
- hazard analysis (HACCP)
- food temperature records
- food handler training records

4.4.1.5 Official controls and enforcement

In addition to the provisions of the Code in relation to undertaking official controls of ships and aircraft, it is recommended that reports of official control are also copied to any food safety advisers employed by the shipping operator or airline.

The Code also provides that when serving notices, in relation to ships and aircraft, officers contact the management company or the handling/shipping agent.

To support this, it is advised that when the service of notices is considered, officers are reminded that through case law, 'food business operator' does not necessarily mean 'owner', as it is the person who carries on the food business. It might be the company running a shipping operator or it could be a company hired to operate the food business. Authorised officers will need to establish who the food business operator is in each case.

4.4.1.6 Craft registered outside the UK

Communications with other countries outside the UK regarding incidents is done via the FSA. If the ship or aircraft is registered in a non-UK country, it is recommended that the FSA are provided with full details of the incident to allow it to be raised with Competent Authorities in the relevant country. Further guidance on reporting incidents is provided in chapter 5.

4.4.1.7 UK military ships and aircraft

The Code provides that only military aircraft used for 'air trooping' are included in official control programmes. Additionally, no food business activities take place on armed forces' yachts.

When undertaking official controls on UK military ships and aircraft, authorised officers are advised to:

- refer to chapter 6 in relation to security considerations, as military ships and aircraft are regarded as Group 3 premises
- give prior notification before a proposed visit
- report safety issues identified during the official control, which concern UK military ships and aircraft, to single service environmental health leads and the relevant primary authority
- consider the purpose of military ships and aircraft, and recognise that the galley design may have been constrained for operational reasons
- give due consideration to military policy, procedures, and practices
- take account of the relevant parts of Joint Service Publication 456 – Defence Catering Manual

4.4.1.8 Official controls of ships

Ships or other vessels comprise a wide number of different types and have a wide variety of food operations on board. Some vessels serve members of the public, for example, ferries and cruise ships, whereas others operate with a permanent or semi-

permanent crew on board and the food operation is purely for their own consumption.

In addition to the planned official control programme of land-based establishments, Competent Authorities also undertake official controls of vessels. Such official controls would normally be carried out whilst vessels are in port.

Official controls of vessels whilst at sea are not normally undertaken by officers of Competent Authorities. However, there might be circumstances when official controls can only be carried out when the factory vessels are moored offshore.

While a vessel can be approved by one Competent Authority, there is nothing to prevent an authorised officer of another Competent Authority from undertaking an official control of the vessel, as long as they are satisfied that:

- they have the appropriate legal authority
- they have contacted the Competent Authority that has approved the vessel
- the approving Competent Authority considers the official control to be necessary

Vessels engaged on international voyages require a Ship Sanitation Certificate under the International Health Regulations 2005, issued by the World Health Organization (WHO). Inspection for these certificates includes inspection of the food operations against a set of technical standards that are intended to apply globally (the WHO Technical Handbook), but the primary purpose of these is protection against diseases and conditions of public health concern.

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

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

4.4.1.9 Official controls of ships - decision to undertake controls and their frequency

The Code provides that the decision to undertake official controls of vessels for food safety purposes is based upon the following criteria:

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

When considering these questions, if the answer to both is yes:

- the vessel would be subject to an official control in a manner commensurate with inland food premises

- the frequency of official controls would be based on the intervention ratings set out in the Code
- the official control would be recorded on the Competent Authority's MIS and form part of their returns to the FSA

If the answer to either one of these questions is no:

- it will be the decision of each Competent Authority as to whether they deem an official control in relation to food safety appropriate, at any particular time, based upon the following criteria:
  - type and size of vessel, for example general cargo, passenger vessel, passenger ferries, cruise vessels
  - port of registration
  - age, condition and history of vessel
  - crew and passenger numbers, profile and turnover
  - vessels trading pattern, schedule and previous ports of call
  - confidence in food and water safety management systems
  - available documentation
  - recent significant reports of food related problems on the vessel
  - certificates from previous official controls and previous level of compliance - these could include inspection certificates issued by Competent Authorities outside the UK
- the official controls may be recorded on the Competent Authority's MIS and form part of their returns to the FSA

If the answer to both questions is no:

- it would not normally be appropriate to carry out official controls in relation to food safety
- inspections may still be carried out for ship sanitation purposes, as per the three scenarios set out in annex 2 of the WHO Technical Handbook, but would not form part of the Competent Authority's returns to the FSA

Visits to other vessels, such as training yachts, based at specific ports would be decided on the basis of number of vessels, local conditions and knowledge gained through previous official controls.

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

It is also recommended that shipping operators are made aware of their responsibilities in relation to providing information to the Competent Authorities.

4.4.1.10 Official controls of ships - undertaking official controls of vessels

The Code provides that when undertaking official controls of vessels, officers determine the scope of the food business activities taking place on the vessel and then use professional judgement to determine what activities are examined to provide assurances that the relevant requirements of food law are being met.

To support this, it is recommended that initial discussions with the ship's master, or representative, include consideration of any documentation that is available.

When undertaking official controls of vessels, authorised officers may consider the following:

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

When there is evidence or suspicion of non-compliance, officers may need to focus the official control to relevant parts of the vessel.

4.4.1.11 Official controls of ships - action on conclusion of the official control

The Code provides that following an official control the ship's owner, as well as other relevant Competent Authorities and agencies are notified of the outcome of the control.

The recipient Competent Authority uses this information to ensure that, if necessary, follow-up action is taken, and that official controls are not undertaken more than once a year, unless there is a clear justification for doing so.

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

4.4.1.12 Official controls of ships - liaison with the Maritime and Coastguard Agency

Contact is maintained with the MCA in accordance with the Memorandum of Understanding (MoU) between the Association of Port Health Authorities and the MCA.

Copies of relevant official control reports relating to food safety on ships are shared between Competent Authorities and the MCA, in accordance with the MoU.

If serious shortcomings relating to the existence of a health risk condition concerning food and water safety are identified whilst a vessel is in port (for example, there is a risk/imminent risk of injury to health as defined by regulation 7(2) and regulation 8(4) of The Food Hygiene Regulations (Northern Ireland) 2006, then it is advised that consideration is given to liaising with the MCA for the instigation of action to detain the vessel in accordance with procedures in the MoU. Such deficiencies would also be reported to the Competent Authority of the state of registration of the vessel.

4.4.1.13 Official controls of ships – Food Hygiene Rating Scheme

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

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

4.4.1.14 Official controls of ships - Primary Authority and Home Authority

If appointed, the primary or home authority for the shipping operator (other than for military ships, which is covered in section 4.4.1.7) is advised to ensure that all relevant documentation is made available for liaison with, and the information of, other relevant Competent Authorities.

4.4.1.15 Official controls of aircraft - preparation

The Code provides that Competent Authorities are to obtain relevant information about the airline and aircraft to determine whether to undertake an official control.

To support this, it is recommended that the following information is obtained:

- named contact and contact details for an airline to deal with enquiries - this might be a food safety advisor employed by the airline
- number of aircraft, their type and registration numbers, where appropriate
- routes flown – long haul, short haul, and countries of destination
- airline food safety policy/procedure documents or manual
- type of catering menus and the service of high-risk foods
- food handler (cabin staff) knowledge, which may include up-to-date guidance notes/explanatory sheets and/or training commensurate with the food handling activity covering:

  - personal hygiene
  - handling of food
  - cross-contamination issues arising from other duties
  - pest awareness
  - food temperature control (as required by annex II of Regulation (EC) No 852/2004) and monitoring
  - own health status and exclusion from work policy
- training records and standard of training, including re-training, when appropriate
- whether cabin crew prepare food on board the aircraft
- flight caterers, and/or nominated companies assembling and/or transporting meals to the aircraft, used by each airline
- in-flight menus – to assist in the assessment of whether high-risk foods are handled and/or prepared on board
- specifications in place with the caterer for the supply of food to aircraft and the accepted temperature for delivery, including for high-risk foods
- details of food and water safety arrangements when supplied to an aircraft in a non-UK location
- potable water supply, including details on:
  - the source
  - use of bowsers
  - cleaning/disinfection of storage tanks – with consideration as to frequency and effectiveness
- flights or routes with return catering including multiple sector catering, and from which airports
- pest control contract and monitoring
- cleaning contractor, with details of contracts, including cleaning schedules, and monitoring of the effectiveness of the cleaning regime
- reports of analysis/examination of food and potable water on aircraft by the airline
- any available reports of audits the airline undertakes of itself

Airlines are encouraged, where appropriate, to:

- adopt approved codes of practice, for example, the International Flight Services Association (IFSA) World Food Safety Guidelines
- develop in-house supplier and aircraft audits
- make any audit reports available to Competent Authorities

Such reports, where available, may form part of the Competent Authorities' initial checks, and consideration given to the IFSA guidelines.

4.4.1.16 Official controls of aircraft - decision to undertake official controls

The Code provides that the decision to board an aircraft is based on:

- any information provided by the airline
- confirmation of the authenticity of the information
- the receipt of any food or food hygiene related complaints from passengers or crew
- whether there have been reported outbreaks of foodborne illness affecting the crew of the aircraft

In many cases, it would not be necessary to undertake official controls of aircraft on a regular basis if sufficient information has been obtained from the airline and/or relevant home authority, which has been verified.

Initially authorised officers would satisfy themselves that any information provided by the airline regarding its food and water suppliers and supplies is satisfactory.

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

However, it is recommended that verification of on-board conditions and practices is undertaken on a regular basis by the most appropriate Competent Authority, with annual checks being made on the information provided by the airline concerning food hygiene issues.

The most appropriate Competent Authority to undertake these checks would either be the home authority for the airline, or the relevant enforcing Competent Authority if no home authority exists.

It is advised that checks undertaken confirm that:

- there have been no changes to in-flight caterers or the source of water supply
- the in-flight caterer's HACCP plan is being implemented on board
- systems are in place after food and drink has left the flight catering establishment to establish if risks of contamination (including microbiological, physical, chemical, and allergenic) are controlled up to the point of service to the passenger

4.4.1.17 Official controls of aircraft - undertaking official controls of aircraft

It is recommended that official controls are undertaken:

- before passenger's board the aircraft
- after the aircraft has been cleaned
- when food is on board
- when airline staff are able to provide assistance and information

However, this would not prevent official controls being undertaken at other times, as necessary.

Official controls of aircraft may also be undertaken at the maintenance base, taking account of any documentation such as, food supply specifications, cabin crew training and food temperature control, that is supplied by the airline or their primary authority.

The Code provides that, if flights are in transit, official controls are only undertaken if necessary. The reason for this is that delays to aircraft are costly, and unless there is an imminent risk to the health of passengers or crew aircraft, operations are not to be interrupted. Competent Authorities are advised to consider the practicalities of their official control programme and endeavour to work with the relevant crew/ground staff to avoid unnecessary difficulties, taking into account that the primary objective of an airline is the safety of the aircraft, passengers, and crew.

When it is necessary for an authorised officer to board an aircraft, it is advised that the actual time spent on board is as short as possible, as most standard operating procedures would be included within the airline's documentation.

The Code also provides that if documentary checks cause any concerns, the relevant head office and/or relevant Competent Authority, such as the airline's primary authority, are notified, and that increased surveillance is considered. Examples of the increased surveillance could include assessment of galley cleanliness or increased water sampling for analysis/examination.

Aircraft meals are mainly, but not exclusively, prepared prior to departure, some of which might be for return flights. Flight caterers or secondary food suppliers make details of meal ingredients available to their airline customers and relevant cabin crew will have access to this information so they can inform passengers who have allergies or food intolerances.

Where cabin crew do prepare food on board an aircraft, it is anticipated that their training would cover potential cross contamination issues related to their other duties on board, such as handling sick bags and cleaning lavatories in flight.

The Code provides that, when undertaking official controls on board aircraft, officers use professional judgement to determine what activities are examined to provide assurances that the relevant requirements of food law are being met.

To support this, when undertaking official controls on board aircraft, following a documentary check, authorised officers may consider/confirm the following matters:

- flight caterers – confirmation of the information obtained, regarding source of meals
- transport and loading of aircraft, including the means of temperature control of the food in the delivery vehicle
- food storage facilities on the aircraft, including the:
  - provision of insulated containers and/or icepacks
  - maximum stated time period until serving and/or re-heating

  - type of aircraft and whether it is intended for long or short haul flights
  - food served
- whether food is prepared on the aircraft and the facilities available for such operations, for example:
  - personal hygiene
  - avoidance of cross-contamination
  - provision of disposable gloves for certain duties and disinfectant wipes
- return flight meals, taking account of the shelf-life of the food
- temperature control (as required by annex II of Regulation (EC) No 852/2004) and monitoring during flights
- reheating/cooking
- pest control
- water supply – source and potability of water, cleanliness of tanks
- procedures for cleaning food handling areas, such as trolleys and carts
- food and water sampling

Further guidance is available on the Association of Port Health Authorities website.

Additionally, a template form for airlines (the 'Airline Food Safety Questionnaire') is available through the Port Health at Airport Group on the Knowledge Hub. This form may be adapted, where appropriate, as long as regard is also had to the Code.

4.4.1.18 Official controls of aircraft – primary or home authority

Where arrangements are in place, it is advised that the relevant primary or home authority provides relevant information to other Competent Authorities, when requested.

It is also recommended that the primary or home authority ensure that airlines are aware of their responsibilities in providing information.

4.4.2 Requirement for food safety management procedures based on HACCP principles

Article 5 of Regulation (EC) No 852/2004 requires food businesses (except primary producers, unless they are approved for sprouts) to put in place, implement and maintain food safety management procedures based on HACCP principles.

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

4.4.2.1 HACCP flexibility

Article 5(4) of Regulation (EC) No 852/2004 provides that Competent Authorities, when considering procedures based on HACCP principles and the evidence required to demonstrate compliance, take account of the nature and size of the business.

Additionally, article 5(1) requires FBOs to establish documents and records commensurate with the nature and size of the food business.

Recital 15 of the regulation allows for a degree of flexibility in the application of these principles and implementation of such procedures, particularly in small businesses, where traditional HACCP might be difficult to apply. The reason for the flexibility is that, in certain food businesses, it is not possible to identify critical control points and that, in some cases, good hygienic practices can replace the monitoring of critical control points.

The European Commission has published a Commission Notice on the implementation of food safety management systems based on HACCP and flexibility in certain businesses. Commission guidance on flexibility, in particular, for traditional products/methods and other specific manufacturing, is also available on the Commission guidance platform.

4.4.2.2 Food safety management systems

Larger businesses and manufacturers may develop and use traditional HACCP systems. While for small businesses, such as caterers, the Safe Catering Pack (SCP) or the Safer Food Better Business (SFBB) approach may be considered suitable.

Small food manufacturers may fall between those businesses where a SCP or SFBB type approach is suitable and larger manufacturing businesses with technical competence on the traditional HACCP approach. To support small food manufacturing businesses, the FSA has developed MyHACCP, a free interactive web tool, that guides food businesses through the process of identifying food safety hazards and controls and the production of a documented food safety management system, based on HACCP principles. Guidance on using MyHACCP is also available.

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

4.4.2.3 Enforcement

Businesses are required to have in place effective food safety management systems.

However, some businesses may be making progress towards having effective food safety management systems in place. In these circumstances, for businesses that are not a threat to public health, it is anticipated that formal enforcement action is only taken where the business has been:

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

The graduated approach seeks to educate businesses and improve their standards in realisable steps. Guidance material may be broken down in such a way, that the

Competent Authority and business can agree how much progress is to have been made by their next visit.

Where fundamental skills are missing, it is recommended that Competent Authorities point businesses to appropriate sources where they can gain the necessary knowledge and skills, for example, signposting guidance materials, books, and courses.

4.5 Non-official controls

4.5.1 Advice, education, and coaching

The purpose of advice, education, and coaching is to provide guidance to businesses on achieving compliance with food law requirements and can be a key part of a Competent Authority's strategy to change behaviour and increase compliance in food businesses. The use of advice, education and coaching is encouraged whenever resources allow.

Advice, education and coaching may be delivered at the business establishment, remotely, or away from the food establishment, for example, through a business forum or seminar. Advice, education, and coaching may also be targeted at specific types of food businesses or around specific food safety topics.

4.6 Records of official controls and non-official controls

The Code provides that records of official controls include:

- details of the officer undertaking the official control
- Competent Authority details
- food business details
- details of official control undertaken
- administrative details

To support this, it is recommended that, in addition to the details provided for in section 4.6 of the Code, the following information is included in the written records under each of these headings:

- details of the officer undertaking the official control, including:
  - name and designation
  - contact details
- Competent Authority details, including:
  - Competent Authority name and address
  - contact details of lead food officer or appropriate manager in case of dispute
- food business details, including:
  - trading name(s) and address of the business, and registered address if different
  - name of the FBO/food business proprietor

  - type of business
- details of official control undertaken, including:
  - a description of the purpose of the official control
  - the control methods (methods and techniques) applied
  - specific food law under which the official control conducted
  - areas covered during the official control
  - documents and/or records examined
  - samples taken (where relevant)
  - key points discussed during the official control
  - the outcome of the official control and non-compliances identified, with a clear distinction between legal requirements and recommendations
  - where appropriate, action that the Competent Authority requires the FBO to take
  - timescales for addressing any non-compliances
  - where appropriate, the action to be taken by the Competent Authority
- administrative details, including:
  - name of person (or persons) seen and/or interviewed
  - date and time of official control
  - signature of the officer undertaking the official control

4.6.1 Communication with multi-site businesses

When undertaking official controls at multi-site food businesses, the existence of primary authority partnerships or home authority relationships are also considered, and communications with the business undertaken accordingly.

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

4.6.2 Template forms

The Code provides that officers use professional judgement to determine what activities, at food business establishments, are examined during an official control. It is not necessary to consider every aspect of a food business at every official control. For example, a supermarket's in-store bakery or restaurant operated by that supermarket might not always need to be included during an official control of the supermarket.

Forms, such as inspection forms, are intended to assist officers and businesses by introducing a structured approach to the official control process and is consistent with quality assurance practice.

4.7 Import controls

Significant volumes of food are routinely imported into Northern Ireland, and it is important that effective arrangements are in place for Competent Authorities to check imported food both at BCPs and inland. All Competent Authorities have responsibilities for imported food controls.

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

BCPs may be situated at seaports, airports, or international rail links, and are for POAO and certain high-risk FNAO from outside Northern Ireland.

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

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

Further details of the roles and responsibilities of Competent Authorities and other Government Agencies and Departments can be found in the FSA's Resource Pack for Imported Food Controls Resource Pack This resource pack also provides guidance for inland authorities on the effective monitoring of imported food.

Guidance is also available on the roles and responsibilities of Competent Authorities on food imported into Northern Ireland via NIRMS in chapter 4 of The Windsor Framework E-course.

4.7.1 Imported food procedures

The Code provides that official control programmes include imported food and considers all food businesses within their area that routinely import or sell food from outside the UK or the EU.

To support this, it is recommended that Competent Authorities do not only focus on food businesses that specialise in the supply of food to specific minority groups, but also other businesses that routinely import or sell food from outside the UK or the EU particularly those that are the first destination after import. Such premises are likely to include:

- specialist supermarkets/retailers
- manufacturers
- warehouses

4.7.1.1 Identifying and recording inland food importers

The Code provides that Competent Authorities identify and record details of all food businesses in their area which import food.

To help identify food importers, Competent Authorities may:

- use details from food premises registration forms
- conduct desktop exercises using information sources such as local knowledge, telephone directories or internet searches

Competent Authorities records may be refined further following visits to food business establishments, and/or communications with FBOs and other Competent Authorities.

4.7.1.2 Identifying imported food at points of entry

The Code provides that Competent Authorities with a point of entry are to be aware of the volume and nature of foods entering the port.

To identify imported food, Competent Authorities may:

- liaise with HMRC regarding food imported directly from outside Northern Ireland and the EU or via EU member States or ports under T1 arrangements (a transit declaration made to HMRC, with T1 signifying that those goods that are not in free circulation, meaning they are still subject to Customs control)
- liaise with Internal Temporary Storage Facilities (ITSF) operators to obtain copies of cargo manifests
- undertake random checks of ITSF
- utilise informal notification systems in co-operation with importers, their agents, or airlines and ITSF operators

4.7.1.3 Points of entry details

The Code provides that Competent Authorities with points of entry maintain up to date information about points of entry in their area.

To support this, it is recommended that Competent Authorities ensure details on the following are reviewed and updated regularly:

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

4.7.1.4 Nominated officer for imported food

To ensure effective communication with Competent Authorities that have a BCP, details of the nominated officer(s) for imported food matters are notified to the FSA's Trade, Imports and Exports Team, by e-mail to Importedfoodni@food.gov.uk.

The details to be provided include the name and contact details (telephone number and email address) of the nominated officer(s). It is also recommended that a general e-mail address for the Competent Authority is also provided.

If any details change, these can be notified using the same email address, and it is recommended that this is done as soon as practicable.

4.7.1.5 Data returns

The Code provides that Competent Authorities provide the FSA with such information or datasets as it may request.

In relation to imported food, this may relate to information:

- about the import of specific food or food products from certain countries
- required by the European Commission in connection with emerging animal/public health issues
- for inclusion in the Multi-Annual National Control Plan[8] or annual reports that the UK produces

4.7.2 Monitoring of consignments

The Code provides that, where BCPs are authorised for certain higher risk commodities, Competent Authorities have access to facilities where imported food inspection can be carried out.

It is also recommended that Competent Authorities consider whether their officers have access to secure areas under the Aviation and Maritime Security Act 1990. Information on this can be obtained from the port operator.

Competent Authorities with points of entry which are not designated to handle certain higher risk FNAO products subject to safeguard measures are advised to ensure relevant port operators, local HMRC, or agents/importers are aware of any restrictions. It is also advised that arrangements are in place to deal with any such consignments which arrive at the point of entry.

4.7.2.1 No permanent presence at points of entry

The Code provides that Competent Authorities carry out checks at points of entry where there is no permanent Competent Authority presence, and it is not considered to be a point of entry for food, at least once every three months.

To support this, it is recommended that Competent Authorities contact the following to ensure they have updated information on food being imported:

[8] Articles 110 and 111 of Regulation (EU) 2017/625

- the port operator
- other relevant agencies
- HMRC
- other commercial operators

This may include a visit or questionnaire being sent.

4.7.2.2 Records of consignments and examinations

The Code provides that, where available, information relating to the number and type of food consignments is maintained, together with relevant information on the checks made to determine compliance with legal requirements. The reason for this is to enable consignment traceability and effective internal monitoring.

Where information is recorded, it is advised that the level of detail about food examinations (including those undertaken at ETSF) and deferred examinations include:

- any identifying reference for the consignment examined
- country of origin
- information on the nature of the food
- information on the checks carried out and, where relevant, any enforcement action or sampling that has been undertaken
- the details of the agent and/or consignor/consignee

4.7.3 Food not of animal origin

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

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

FNAO import controls were harmonised by Regulation (EU) 2017/625 and Regulation (EU) 2019/1793 which sets out the FNAO products that are subject to increased levels of official controls.

The enforcement arrangements for these import provisions are provided by The Official Feed and Food Controls Regulations (Northern Ireland) 2009, and parallel legislation in Scotland, Wales, and England.

4.7.3.2 Other legislation

For certain areas, for example, contaminants, there are specific requirements for foods which can be applied at points of entry as well as inland. These requirements are implemented through separate legislation, but the powers to deal with non-conforming food at import are those contained in The Official Feed and Food Controls Regulations (Northern Ireland) 2009. Guidance on the contaminant's legislation is available.

4.7.3.3 Early warning system

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

- by predicting hazards (including Salmonella, mycotoxins, pesticide residues, and sulphites), for specific food and feed from specific third countries for inclusion in legislation, such as annex I of Regulation (EU) 2019/1793 or other safeguard measures
- alerts port and inland Competent Authorities to newly identified imported food issues, primarily FNAO but increasingly POAO

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

4.7.3.4 Third country pre-export checks

The Commission may grant reduced import checks on certain imported goods from third countries[9]. Such arrangements will be restricted to those countries where the Commission is satisfied that effective official controls are in place to carry out the appropriate pre-export checks immediately prior to export to the EU. Details of relevant products and third countries will be notified to Competent Authorities, as appropriate.

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

4.7.4 Liaison/referrals

The Code provides that, where points of entry identify situations where inland supervision of consignments is necessary and where checks at the point of entry reveal food safety or food standards concerns, they are referred to the appropriate inland Competent Authority.

Examples of the types of situations which may lead to a referral include where:

- a consignment of FNAO, which is subject to emergency controls or other restrictions, has been illegally imported, for example without being presented to the Competent Authority at the point of entry for the required checks to be carried out

[9] Articles 73(1), 73(2) and 74 of Regulation (EU) 2017/625

- the Competent Authority at the point of entry is aware that illegal imports of POAO might have been distributed
- checks on imported food reveal labelling issues which cannot be enforced at time of import
- examination under The Official Feed and Food Controls Regulations (Northern Ireland) 2009 has been deferred
- unsatisfactory test results are received for samples taken for routine surveillance but meanwhile the consignment has been released from the port
- analysis indicates that foods, such as nuts, are not suitable for human consumption but are referred for feed use
- 'higher risk' FNAO transferred under detention to an inland ETSF facility to be supervised pending the outcome of laboratory tests

The Code also provides that referrals to inland Competent Authorities may be made by the FSA in relation to illegally imported POAO. This information will normally be received by the FSA from DAERA or Border Force where they have intercepted illegal imports destined for commercial premises. Competent Authorities receiving these referrals are advised to provide feedback directly to DAERA or Border Force, where requested.

Chapter 5 Incidents, alerts, and food crime

5.1 Introduction

Chapter 5 deals with:

- food incidents, hazards, and alerts
- food fraud
- how Competent Authorities are expected to respond and liaise with other Competent Authorities, government departments, delegated bodies, FBOs, the FSA, other relevant agencies, EU Member States and countries outside the EU
- the FSA's NFCU

5.2 Managing food incidents and alerts

5.2.1 Food incidents contacts

Guidance on incidents, product withdrawals and recalls is available to Competent Authorities. Food incidents, where appropriate, can be reported by:

- emailing an incident report form to FSA.IncidentsNI@food.gov.uk
- telephone on 0330 332 7149

5.2.2 Action by the Competent Authority - responses to pre-incident contact by FSA

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

5.2.3 Food Incident notifications to the FSA

The Code provides that Competent Authorities notify the FSA as soon as they become aware of a:

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

On receipt of a notification of a serious localised hazard, the FSA may request for additional information to enable and inform a scientific risk assessment for development of risk management advice or for the publication of a timely FSA alert

notification. The Competent Authority should, where possible, respond to the FSA within two hours of this request.

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

5.2.4 Information received locally that may indicate a wider problem

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

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

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

5.2.5 Root Cause Analysis

The Code provides that Competent Authorities undertake root cause analysis when they become aware that an FBO has withdrawn or recalled food from the market.

The root cause analysis may identify the initiating cause, in a causal chain, which led to the withdrawal or recall; and also, the stage at which intervention could reasonably be implemented to mitigate risk and prevent future reoccurrence of the non-compliance.

A root cause analysis reporting form and e-learning course for FBOs are available on the FSA website.

5.3 Food Fraud and Food Crime

Food fraud is committed when food is deliberately placed on the market, for financial gain, with the intention of deceiving the consumer. Types of fraud include the sale of food, which is unfit and potentially harmful, and the deliberate misdescription of food.

Food crime is serious fraud and related criminality within the food supply chain. This might mean that the criminal activity has cross-regional, national, or international reach, that there is significant risk to public safety, or that there is a substantial financial loss to consumers or businesses or the public interest. Clearly the full extent and impact of food criminality may not be immediately apparent when information is received. The FSA's NFCU works with partners to protect consumers from serious criminal activity that impacts on the safety or authenticity of the food and drink they consume.

More details on the NFCU are available on the FSA website.

5.3.1 Reporting suspicions of food crime

Suspicions or information relating to food fraud or food crime in Northern Ireland should be shared with the FSA by:

- Emailing the FSA Food Fraud Liaison Officer (FFLO) investigations.ni@food.gov.uk and copying FSA.IncidentsNI@food.gov.uk referencing 'for the attention of the FFLO'; or
- by telephone 0330 332 7149 (and ask to speak with the Northern Ireland FFLO)

Requests for searches of the intelligence database should also be submitted through these avenues.

Competent Authorities and regulatory partners should provide food fraud or food crime information. Ideally this will be on a graded and assessed Intelligence Report (sometimes referred to as 3x5x2). If a 3x5x2 cannot be completed, such information should still be shared with the food fraud liaison officer by the most appropriate means and by the means of communication listed above.

Where necessary the FFLO can upskill the staff in Competent Authorities in identifying and recording intelligence.

5.3.2 Major Investigation and FSA support

Competent Authorities will be investigating food fraud offences under food legislative provisions. Some of the investigations will involve a multi-agency approach with other law enforcement partners. The FFLO will coordinate these investigations and provide specialist assistance where required. The FSA will also provide financial assistance to Competent Authorities where investigations are progressed to prosecution. All requests for investigation assistance should be made to the FFLO.

5.4 Liaison with EU Member States and countries outside the EU

As of the 1 January 2021, UK arrangements for communicating food safety and non-compliances to other countries have changed.

In Northern Ireland, the FSA, will continue to utilise the European Commission's Rapid Alert System for Food and Feed (RASFF) to communicate incidents to EU member states and third countries.

The FSA and Food Standards Scotland in Great Britain will use the International Food Safety Authorities Network (INFOSAN) to communicate incidents to countries outside of the UK.

5.4.1 The European Commission's Rapid Alert System for Food and Feed

The Rapid Alert System for Food and Feed (RASFF) is a network managed by the European Commission to facilitate communication between members of the network in responding rapidly to serious direct or indirect risks to human health relating to food and feed.

The RASFF allows Competent Authorities to exchange information about measures taken when responding to serious risks detected in relation to food or feed. This exchange of information helps RASFF Members to act more rapidly and in a coordinated way in response to a health threat caused by food or feed. Members consist of clearly identified contact points in the Commission, European Food Safety Authority (EFSA), European Free Trade Association (EFTA) Surveillance Authority (Norway, Liechtenstein, Iceland, and Switzerland) and the EU Member States. The legal basis for the network is laid down in Regulation (EC) No 178/2002 and Regulation (EU) 2019/1715.

5.4.2 Communications with EU Member States and countries outside the EU

All communications with countries outside the UK regarding incidents will be via the FSA or Food Standards Scotland (FSS).

Although the FSA still utilise the RASFF, it no longer has full access to the system. Instead, the FSA communicate international incidents to the European Commission using an Alert and Co-operation Notification (ACN) Template.

There has been no change to the incident reporting processes for inland authorities. An incident report form should be submitted to the FSA by email to: FSA.IncidentsNI@food.gov.uk.

Competent Authorities are no longer able to create a RASFF notification from the TRACES platform. Instead, they should complete the ACN template and submit it by email to the FSA (FSA.IncidentsNI@food.gov.uk) for validation and onward submission to the European Commission.

Imports with non-compliance issues that have been released inland by Competent Authorities with port health function and/or BCPs should continue to be managed via the business handling the goods and the associated importers as part of usual enforcement activities, to achieve compliance.

Authorities should notify the FSA where there is persistent non-compliance, widespread non-compliance or non-compliance presenting a safety risk.

Subsequent communications to enquiries from countries outside the UK should be sent via email to FSA.IncidentsNI@food.gov.uk.

Inland authorities investigating non-compliances involving distribution to or from an EU Member State should inform the FSA using the incident report form. The FSA will

then submit an Alert and Cooperation Notification form to the EC for follow up with implicated EU Member States.

The FSA may also pass non-compliance notifications from EU Member States relating to products originating in or distributed to Northern Ireland for follow up by competent authorities.

5.4.3 Disclosure of information to countries outside the UK

If circumstances arise where this is required, then confidentiality, data protection and human rights issues will need to be considered. The Competent Authority is to take account of the contents of its own publication scheme under the Freedom of Information Act 2000 and apply the law and general principles set out in relevant legislation and case law. This is best done at a local level, with local administrators consulting their own legal department.

Competent Authorities are to ensure that any release of information complies with national legislation including that relating to Freedom of Information and Data Protection laws.

5.4.4 Use of overseas evidence in criminal proceedings

Evidence can be obtained from other countries for use in criminal proceedings in the UK. The primary method of obtaining overseas evidence for use in UK criminal investigations/proceedings is through Mutual Legal Assistance (MLA).

The UK has entered into a number of international bilateral agreements in relation to MLA. The UK has also ratified the 1959 Convention on Mutual Legal Assistance in Criminal Matters. Additionally, the EU-UK Trade and Cooperation Agreement (TCA) includes provisions regarding MLA, which expand upon the provisions of the 1959 Convention.

Where the UK has entered into a bilateral agreement with another country in relation to MLA, the procedures laid down in that agreement are to be followed. The UK can provide MLA to any country in the world whether or not such an agreement is in place.

Requests for evidence from another country are called ‘International Letters of Request’ (ILOR) and UK requests are made in accordance with the Crime (International Co-Operation) Act 2003 (CICA 2003). Under domestic legislation, such requests need to be made by either a judicial authority or, in certain circumstances, a designated prosecuting authority.

A number of authorities have been designated by virtue of Designation Orders under CICA 2003, for example Crown Prosecutors. Requests may generally be sent directly to the appropriate overseas authority, however, there are circumstances where the request will need to be transmitted via a central authority. The primary central authority which deals with MLA for England, Wales and Northern Ireland is the UK Central Authority (UKCA).

The UKCA address is:

UK Central Authority
Public Safety Group
Home Office
6th Floor, Fry Building,
2 Marsham Street,
London
SW1P 4DF
Tel: 0207 035 4040
Email: UKCA-ILOR@homeoffice.gov.uk

Evidence obtained through MLA can only be used for the purposes it has been provided. Therefore, should a UK authority wish to use information already obtained for a different purpose, the sending country's further consent would need to be sought. Similarly, if the UK has received information from another country outside of the MLA process which it now wishes to use as evidence in proceedings, the sending states specific consent will be required to use the information in this way, and it may be necessary for an ILOR to be issued.

Further guidance regarding MLA can be found on the GOV.UK website or if there are specific enquiries contact should be made with UKCA.

5.5 National Food Crime Unit

The FSA's FFLO as a member of the NFCU works with partners to protect consumers from serious food / feed fraud and related criminality within the food and feed supply chain. Food crime can impact the safety or authenticity of food and drink, which is harmful to consumers, food businesses and the wider food industry.

Competent Authorities can investigate food fraud within the food supply chain. Intelligence from Competent Authorities enriches NFCU food crime intelligence assessments. The FFLO works with the NFCU's Outreach and Prevention team to provide a focal point for engagement with Competent Authorities as the Regional Intelligence Officers (RIO) for Northern Ireland, including supporting the dissemination of relevant intelligence to Competent Authorities.

The NFCU investigation command will investigate the most serious and complex cases of food fraud. When determining whether to commence or adopt an investigation, relevant factors which will be considered by NFCU will include the scale of offending, the degree of planning and co-ordination, the impact of the fraud across geographical regions and boundaries, and the financial loss and other harm to the public and industry.

More details on the NFCU are available on the FSA website.

Chapter 6 Enforcement

6.1 Introduction

Chapter 6 deals with:

- powers of entry
- actions available to Competent Authorities when dealing with suspected or established non-compliance
- approach to enforcement when dealing with established non-compliance

6.2 Powers of entry

6.2.1 Powers of Entry, Inspection and Seizure and the Human Rights Act 1998

The right to privacy and respect for personal property are key principles of the European Convention on Human Rights, which the Human Rights Act 1998 gives further effect to.

Powers of entry, inspection and seizure need to be fully and clearly justified before use because they could significantly interfere with the occupier's privacy, and consideration given as to whether the necessary objectives can be met by less intrusive means. It is recommended that authorised officers:

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

Examples of some food legislation which contain powers of entry can be found in table 3, below.

Table 3 – Examples of provisions containing powers of entry

Food legislation	Provisions
The Food Hygiene Regulations (Northern Ireland) 2006	Regulation 14 of these regulations permits an authorised officer to enter premises to undertake official controls.
The Official Feed and Food Controls Regulations (Northern Ireland) 2009	Regulation 17 of the regulations may be used by authorised officers to enter premises for the purpose of ascertaining whether there has been any contravention of the import provisions of these regulations in relation to food.
The Trade in Animals and Related Products Regulations (Northern Ireland) 2011	Regulation 33 of these regulations provides powers of entry to authorised officers for the purpose of enforcing the provisions of the regulations, including requirements on the importation of POAO.
The Food Safety (Northern Ireland) Order 1991	Article 33 of this order permits an authorised officer to enter premises to undertake official controls.

Where food legislation provides powers of entry, they generally enable authorised officers to take with them such other persons as they consider necessary, for example, article 33(5) of The Food Safety (Northern Ireland) Order 1991. This would include, for example, any officer assisting the authorised officer, or suitably qualified or skilled person. This could also include an expert in a particular field whose presence is needed to accurately identify the material sought or to advise where certain evidence is most likely to be found and how to appropriately deal with it. These provisions do not confer on the accompanying person any of the powers of an authorised officer, but they do give that person the right to be on the premises during the authorised officer's official control without the occupier's permission.

However, regulation 33 of The Trade in Animals and Related Products Regulations (Northern Ireland) 2011 limits the number of other persons that can accompany an authorised officer, up to a maximum of three.

Powers of entry may also provide an authorised officer with powers to seize and detain any records which the authorised officer has reason to believe may be required as evidence in proceedings, for example, article 33(6) of The Food Safety (Northern Ireland) Order 1991 and regulation 14(7) of The Food Hygiene Regulations (Northern Ireland) 2006.

6.2.2 Police and Criminal Evidence Act (PACE) Code B Notices

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

A PACE Code B Notice, which sets out the powers of authorised officers and rights of occupiers, is used in those circumstances where authorised officers are carrying out a directed search.

A directed search can be defined as looking for something predetermined as relevant to a suspected or alleged offence and may be appropriate as part of an ongoing investigation, for example, in response to a complaint where evidence of suspected offences may already exist.

Ultimately a decision to serve a PACE Code B Notice will depend on the individual circumstance of the matter under investigation. Authorised officers are recommended to seek further guidance from their Competent Authority's own legal counsel if further clarification is needed.

PACE Codes of Practice including PACE Code of Practice B can be found on the Department of Justice website.

6.3 Enforcement action

6.3.1 Hierarchy of enforcement

The primary objective of any enforcement action is to achieve compliance in the most effective way and the approach taken is to be in line with the 'hierarchy of enforcement'.

The Code provides that Competent Authorities take account of the full range of enforcement options, which would include:

- educating and providing advice to FBOs
- informal action
- detention and seizure
- Hygiene Improvement Notices/Improvement Notices
- Remedial Action Notices (RANs)
- Fixed Penalty Notices
- Hygiene Emergency Prohibition Notices/Emergency Prohibition Notices
- prosecution

6.3.2 Advice and education

The practice of giving advice, and communicating by letter about enforcement issues, are well-established approaches. Such measures are therefore encouraged whenever they are likely to secure compliance with the requirements of food law within a time that is reasonable in the circumstances.

6.3.3 Determining appropriate enforcement action

The Code provides factors to be considered when determining appropriate enforcement action. It is recommended that consideration is also given to:

- sensitivities around an issue, which could lead to:
  - loss of consumer confidence
  - economic loss to industry
- whether formal action is in the public interest
- the potential for non-compliant foods being distributed widely with large numbers of consumers affected
- an assessment of the FBOs willingness to undertake the work identified by the officer
- collaboration with the primary authority or home authority, if applicable
- the Code for Prosecutors

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

Having determined the appropriate method(s) of enforcement action, it is recommended that authorised officers be prepared to discuss advice, decisions and correspondence with the FBO.

6.4 Food hygiene and food standards notices

6.4.1 Introduction

This section provides information regarding the use of:

- Hygiene Improvement Notices
- Improvement Notices
- Fixed Monetary Penalty Notices
- Penalty Notices
- Enforcement Notices
- Prohibition Notices (served under The Wine Regulations (Northern Ireland) 2011)

6.4.2 When to use a notice

Provisions for the use of notices are set out in legislation and may be appropriate in any of the following circumstances, or a combination thereof, where:

- formal action is proportionate to the risk to public health
- there is a record of non-compliance with breaches of food legislation
- the authorised officer has reason to believe that an informal approach will not be successful

6.4.3 When to use Improvement Notices to enforce the Food Information Regulations (Northern Ireland) 2014

Regulation 12(1) of The Food Information Regulations (Northern Ireland) 2014 (FIR 2014) applies the provisions in article 9(1) of The Food Safety (Northern Ireland) Order 1991 to enable Improvement Notices to be served for a contravention of certain provisions of Regulation (EU) No 1169/2011 on the provision of food information to consumers (FIC) and other provisions of FIR 2014. For these purposes, article 9(1) of The Food Safety (Northern Ireland) Order 1991 has been modified by FIR 2014. Please see part 1 of schedule 4 of FIR 2014 for details of the modifications.

An Improvement Notice may be served on a person requiring the person to comply with the provisions specified in paragraph (1A) of the modified version of article 9(1) of The Food Safety (Northern Ireland) Order 1991 set out in part 1 of schedule 4 to FIR 2014. These are:

- the FIC provisions listed in schedule 5, (the main provisions of Regulation (EC) 1169/2011), except insofar as they relate to net quantity (article 9(1A) (a) to (c))
- the provisions in FIR 2014 listed in article 9(1A) (d). These relate to:
  - the national requirements for non-prepacked foods requiring meat QUID labelling for foods containing meat (regulation 7(1), (4) and (5))
  - food irradiation labelling (the provisions of regulation 8(1) and (3))
  - the national requirements under regulation 6 to provide the name of food for non-prepacked foods

6.4.4 When not to use a notice

Provisions for the use of notices are set out in legislation and the Code, and may not be appropriate in the following circumstances, where:

- the contravention may be a continuing one and a notice would only secure an improvement at one point in time, for example, personal cleanliness of staff
- in transient situations where swift enforcement action is needed, for example, a one-day festival or sporting event (a Hygiene Emergency Prohibition Notice may be more appropriate to achieve an immediate effect)
- there is a breach of good practice but no failure to comply with an appropriate regulation
- the legislation does not provide for a notice in that particular situation

In circumstances where the FBO would have no obligation to withdraw products under article 19 of Regulation (EC) No 178/2002, a notice cannot be used to require withdrawal.

6.4.5 Drafting of notices

It is recommended that notices are clear and easy to understand.

An authorised officer who has decided to serve a notice may need to consider whether a single notice with a single time limit is appropriate.

It may be possible to cite more than one non-compliance in a notice provided the:

- issues are of the same theme
- action required of the FBO can rectify all the failures cited on the notice
- time frames for compliance are all the same

Simplicity is often better and the FBO needs to be able to understand the notice. Any time frames for compliance need to reflect the escalation of each issue.

Using multiple notices, each with a different time limit, may be more appropriate where there are multiple contraventions. Separate notices with separate time limits may also be easier to handle if there is an appeal.

An appeal against a single notice concerning multiple contraventions would result in the suspension of the whole notice until the appeal had been dealt with. Additionally, if one contravention on the notice is complied with while others remain outstanding, there is a question about whether the notice has been complied with or not.

It is recommended that before a notice requiring structural work is issued, the authorised officer discusses and agrees the detail of any such work with the FBO or a person, acting on the FBO's behalf, who is in a position to authorise the work. However, the issuing of a notice is not to be unduly delayed if agreement cannot be reached, or a responsible person cannot be contacted.

It is the FBO's responsibility to obtain any necessary planning permission and/or building control approval to undertake building works to improve the structure of the establishment.

6.4.6 Works of equivalent effect

Where notices allow an FBO to carry out equivalent measures to those set out in the notice, for example, Improvement Notices, it is recommended that any equivalent measures are first discussed with the authorised officer who served the notice.

It is recommended that the Competent Authority respond in writing to any request from an FBO to vary the work, and any agreed alternative measures be confirmed in writing. Ultimately, it is for the FBO to decide how they will comply with the objectives of the legislation.

Disputes are advised to be considered by the Competent Authority's:

- lead food officer
- head of service
- another appropriate senior manager

Where notices do not state that works of equivalent effect may be taken, it is recommended that Competent Authorities still take into consideration any alternative measures suggested by the FBO to remedy the contravention.

6.4.7 Time limits

Improvement Notices are required to clearly state the time limit by which the measures are required to be completed, or the penalty paid. The time limit can vary depending on the type of notice being served.

Both The Food Hygiene Regulations (Northern Ireland) 2006 and The Food Safety (Northern Ireland) Order 1991 specify a minimum period of 14 days. Schedule 4 part I of the FIR 2014 sets out a modification to article 9(1) of The Food Safety (Northern Ireland) Order 1991 that removes the minimum 14-day requirement for compliance. This allows the notice to require immediate rectification to ensure that consumers are safeguarded where public safety is at risk through poor or incorrect labelling i.e., through the absence of or wrongly applied date marking.

As an appeal can be lodged against the time limit, it is advised that they be realistic, justifiable, and have regard to the extent and complexity of the measures required.

It is good practice to discuss and agree the time limit with the FBO or with a person acting on the FBO's behalf who is in a position to agree a time limit, before a notice is issued. The authorised officer may, however, set a time limit without such agreement if agreement cannot be reached or a responsible person cannot be contacted.

Factors to consider when setting a time limit include the:

- risk to public health
- nature of the problem

- availability of solutions

6.4.7.1 Extension of time limits

Although notices are to be complied with within the stipulated time limit, Competent Authorities may consider giving due regard to any genuine difficulties that may occur in achieving compliance by that deadline.

There are no specific provisions in the regulations to extend the time limit for compliance with a notice. However, it may be reasonable to allow an extension if the FBO has provided a genuine reason for needing more time. If the FBO requests an extension to the time limit specified in the notice, it is recommended this be made in writing and be received prior to the expiry of the notice.

Before issuing a new notice, consideration as to whether the conditions prevailing at the premises still warrant the issuing of another notice is required. If the authorised officer is satisfied that there is a genuine reason for an extension, it is recommended they record the reasons for their decision on the relevant establishment file. The existing notice is to be withdrawn, and a new notice issued reflecting the new time limit by which compliance is to be achieved.

It is recommended that the authorised officer never issue such a notice automatically. When deliberating a request for an extension, the authorised officer may consider whether the facts justify such an extension, taking account of:

- the reason for the request
- the remedy involved
- the risk to public health associated with the fault if an extension was granted
- past record of co-operation of the FBO
- any temporary action which the FBO proposes to take to rectify the non-compliance
- demonstrable evidence of steps taken to address the requirements contained in the notice

6.4.8 Methods of serving a notice

Notices are required to be served according to the requirements of the specific legislation, for example, Hygiene Improvement Notices are to be served in accordance with regulation 6 of The Food Hygiene Regulations (Northern Ireland) 2006.

Generally, notices can be served:

- by delivering it in person
- in the case of an incorporated company or body - by delivering it to their secretary or clerk at their registered or principal office, or by sending it in a prepaid letter addressed to them at that office
- in the case of any other person - by leaving it, or sending it in a prepaid letter addressed to them, at their usual or last known residence

It is important to identify the person (FBO) where possible. However, under some legislation, if it is not practicable after reasonable inquiry to identify the person to serve the notice on, the notice may be addressed to the ‘owner’ or ‘occupier’ and left at the named premises.

It is recommended that the authorised officer serving a notice ensures that the person who is responsible for taking action also receives a copy, especially when the local manager is not the FBO.

A notice can be served on a person outside of the Competent Authority area provided there is a contravention inside the Competent Authority area.

It is recommended that notices are served on the FBO by the authorised officer who signed the notice. However, notices may be served by a different authorised officer who is competent to explain the purpose of the notice and any steps to be taken and be able to deal with obstruction.

The document can be sent electronically to the operator/proprietor for information in advance of its formal service. However, a hard copy also needs to be provided for it to be properly served. It is recommended to record the time of service, even when the postal service is used, and to keep proof of postage.

6.4.9 Appeals

The legislation that provides for notices includes appeal mechanisms so that a person who is aggrieved by the service of a notice can appeal it.

All notices are required to clearly indicate that there is a right of appeal and provide details of how that appeal can be made, including the name and address of the relevant local court or body the appeal can be made to.

It is recommended that the recipient be asked to notify the Competent Authority if an appeal is lodged.

Although all notices can be appealed, the mechanisms for appeals differ, and authorised officers need to be aware of the different appeal mechanisms. An overview of these mechanisms can be found in table 4 below.

Table 4 – Appeals

Type of notice	Legislation	Appeal heard by	Time to appeal	Notice suspended until appeal heard?
Hygiene Improvement Notices	The Food Hygiene Regulations (Northern Ireland) 2006	Court of summary jurisdiction	1 month or time specified in notice, whichever is shorter	Yes
Improvement Notices	The Food Safety (Northern Ireland) Order 1991	Court of summary jurisdiction	28 days	Yes
Improvement Notices made under specific legislation	The Spirit Drinks Regulations 2008 The Scotch Whisky Regulations 2009	Magistrates' Court	28 days	No, unless Court directs otherwise
Warning Notices	The Wine Regulations (Northern Ireland) 2011	Person nominated by the FSA	28 days	No, unless person nominated decides otherwise
Enforcement Notices	The Wine Regulations (Northern Ireland) 2011	Person nominated by the FSA	28 days	No, unless person nominated decides otherwise
Prohibition Notices	The Wine Regulations (Northern Ireland) 2011	Person nominated by the FSA	28 days	No, unless person nominated decides otherwise

6.4.10 Other discussions with the Competent Authority

Although an FBO has a right to appeal against all notices, it is recommended that the Competent Authority be prepared to discuss the:

- notice and its requirements informally with the FBO, if they wish to do so
- requirements of any letter or other enforcement action

If an FBO raises that the requirements of a notice are inconsistent with the interpretation or practice of other Competent Authorities, it is recommended that the Competent Authority review and have regard to these views.

It is recommended that Competent Authorities have internal processes to consider requests for further discussion and make these arrangements known to FBOs.

Disputes are recommended to be referred to the lead food officer, or an appropriate senior manager nominated by the lead food officer to come to a decision.

6.4.11 Compensation

Generally, there is no provision for compensation in relation to notices issued by Competent Authorities. If a food business suffers financial loss as a result of a notice served in error, they may pursue compensation through a civil negligence claim against the Competent Authority. For example, an FBO who is unable to sell perishable food.

6.4.12 Compliance

It is recommended that the authorised officer who served the notice:

- liaise with the FBO and monitor the work being undertaken
- encourage the FBO to notify the authorised officer when the work has been completed
- confirm in writing to the FBO that the work has been satisfactorily completed

However, another authorised officer may monitor the work if the authorised officer who served the notice is unable to do so.

6.4.13 Enforcement

Non-compliance with notices may lead to criminal proceedings being brought by Competent Authorities.

Non-compliance with the following notices is a criminal offence:

- Hygiene Improvement Notices
- Improvement Notices
- Enforcement Notices
- Prohibition Notices

Non-compliance with the following notices, are not criminal offences, but a Competent Authority may take criminal proceedings for the matter specified in the notice:

- Penalty Notice
- Warning Notice

Before commencing criminal proceedings for these offences, the Competent Authority would consider its own enforcement policy and the Code for Prosecutors.

Legislation may also provide criminal sanctions for breaches where a notice could be used. For example, regulation 10 of The Food Information Regulations (Northern Ireland) 2014 provides criminal offences in relation to certain allergen labelling/information requirements. Authorised officers will have the choice of taking a criminal prosecution in relation to the contravention or serving a notice, or both.

When deciding whether to issue a notice, take a criminal prosecution or do both, considerations may include:

- the public health risk
- the evidence available
- the circumstances of the contravention
- what they believe is the most effective enforcement strategy

If a Penalty Notice or an Improvement Notice relating to novel foods is served, they prevent criminal proceedings from being initiated. If the FBO subsequently fails to comply with the notice, criminal proceedings may then be initiated.

6.4.14 Publication of notices

The Spirits Drinks Regulations 2008 and The Scotch Whisky Regulations 2009 provide that where an Improvement Notice is issued under these regulations, the Competent Authority will publicise that it has been issued, in such a manner as they see fit.

The Regulations also provide that the notice is not to be publicised:

- until the appeal period has elapsed
- until an appeal against the notice has been heard
- where the Competent Authority considers that it would be inappropriate to do so

If a Competent Authority decides against publicising a notice, it is recommended that they keep records of why that decision was taken.

6.4.15 Template notices

The Food Safety (Improvement and Prohibition - Prescribed Forms) Regulations (Northern Ireland) 1991 provide prescribed forms for enforcement notices issued under The Food Safety (Northern Ireland) Order 1991, for example, Improvement Notices under article 9 of the Order.

Other template notices can be found on the FSA's communications platform.

6.4.16 Other guidance

Further guidance on the drafting and use of Hygiene Improvement Notices has been issued by the Local Government Association (LGA) and can be found on the Knowledge Hub.

It is recommended that Competent Authorities discuss enforcement issues on a regional level or via the Knowledge Hub with other Competent Authorities to see if there is other established practice that could be taken into account. A Competent Authority, having followed the hierarchy approach, may look to seek an opinion from the National Food Hygiene Focus Group or the Food Standards and Information Focus Group, with queries submitted via the Northern Ireland Food Managers Group.

6.5 Remedial Action Notices

This section provides information regarding the use of Remedial Action Notices (RANs) in relation to any food business establishment under regulation 9 of The Food Hygiene Regulations (Northern Ireland) 2006.

The Code provides that Competent Authorities should seek to remedy non-compliance in establishments by a graduated approach to enforcement.

If an authorised officer considers it necessary to serve a RAN owing to the conditions or practices found, the authorised officer will need to also consider whether food at the establishment will need to be detained for the purposes of examination or seized. Further information relating to the seizing and detaining of food can be found below.

6.5.1 When to use a Remedial Action Notice

Regulation 9 of The Food Hygiene Regulations (Northern Ireland) 2006 provides for authorised officers to serve a RAN where it appears to them that the requirements of the "Hygiene Regulations", as defined by regulation 2 of the 2006 regulations, are being breached or an inspection under the "Hygiene Regulations" is being hampered. More specifically, this provision provides, through the service of a RAN:

- for the prohibition of the use of any equipment or any part of the establishment
- the imposition of conditions upon, or prohibiting, any process
- allows for the rate of an operation to be reduced or stopped completely

Circumstances which may lead to the issue of a RAN in respect of an establishment include:

- the failure of any equipment or part of an establishment to comply with the requirements of the "Hygiene Regulations" as defined by regulation 2 of The Food Hygiene Regulations (Northern Ireland) 2006
- the need to impose conditions upon or the prohibition of the carrying on of any process breaching the requirements of the regulations or hampering adequate health inspection in accordance with the regulations

- where the rate of operation of the business is detrimental to its ability to comply with the regulations

Such action must be proportionate to the risk to public health and where immediate action is required to ensure food safety. A RAN can be used if a continuing offence requires urgent action owing to a risk to food safety.

6.5.2 When not to use a Remedial Action Notice

RANs may not be appropriate in the following circumstances where:

- in the case of maintenance/structural problems that can be rectified as a non-urgent matter where informal action or a Hygiene Improvement Notice would be more appropriate
- the operation of an entire establishment needs to be prohibited, and the most appropriate course of action is the service of a Hygiene Emergency Prohibition Notice
- suspension or withdrawal of an approval on an establishment approved under Regulation (EC) No 853/2004 is required

6.5.3 Drafting of Remedial Action Notices

A RAN must be served as soon as practicable and state why it is being served i.e., the requirements of the hygiene regulations are not being met and/or that an inspection under the Hygiene Regulations is being hampered.

It must be clear and easy to understand from the notice:

- the grounds for serving the notice
- the measures (or equivalent measures) the recipient is required to take
- the actions required to remedy the situation

If the RAN is served under regulation 9 (1)(a) i.e., when requirements of the Hygiene Regulations are being breached, the notice must also specify the breach.

6.5.4 Withdrawal of a Remedial Action Notice

As soon as the authorised officer who served the RAN is satisfied that the action specified in the RAN has been taken, the notice must be withdrawn by means of a further notice in writing.

6.5.5 Appeals

Regulation 19 of The Food Hygiene Regulations (Northern Ireland) 2006 allows any person who is aggrieved by an authorised officer's decision to serve a RAN can appeal to the court of summary jurisdiction. The time limit for such an appeal is one month from when the authorised officer served the notice. The notice remains in force until the appeal decision is determined. The court may cancel or affirm the notice. If affirmed it may do so either in its original form or with modifications.

6.5.6 Template Forms

The following templates can be found on the FSA's communications platform:

- Remedial Action Notices
- Notice of Withdrawal of a Remedial Action Notice

6.6 Prohibition procedures

6.6.1 Introduction

This section provides information regarding the use of:

- hygiene emergency prohibition procedures and Hygiene Prohibition Orders, (HPOs) under regulations 7 and 8 of The Food Hygiene Regulations (Northern Ireland) 2006
- emergency prohibition procedures and Prohibition Orders (POs) under articles 10 and 11 of The Food Safety (Northern Ireland) Order 1991

6.6.2 Hygiene prohibition procedures and prohibition procedures

Hygiene Prohibition Orders (HPO)[10] and Prohibition Orders (PO)[11]are made by a Magistrates' Court, following the conviction of an FBO for an offence, and prohibit the use of:

- a process or treatment for the purposes of the business
- the premises or equipment for the purposes of the food business or any similar food business
- the premises or equipment for the purposes of any food business

The authorised officer may bring to the attention of the Court regulation 7 of The Food Hygiene Regulations (Northern Ireland) 2006 or article 10 of the Order so that an HPO/PO against a FBO may be considered.

The Court will make an order if it is satisfied that the premises, equipment, treatment and/or process fulfil the health risk condition.

The Court may also make an order prohibiting an FBO from managing any food business, or a particular type of food business provided the FBO has been convicted of an offence, and the Court thinks it appropriate in the circumstances of the case.

The sentencing guidelines covering food safety and hygiene offences include considering this prohibition as part of the sentencing process. Further information can be found on the Judiciary Northern Ireland website.

6.6.3 Hygiene emergency prohibition procedures and Emergency prohibition procedures

If the health risk condition is fulfilled in respect of a food business and there is an imminent risk of injury to health, an authorised officer may serve a Hygiene Emergency Prohibition Notice[12] (HEPN) or Emergency Prohibition Notice[13] (EPN) on

[10] Regulation 7 of The Food Hygiene Regulations (Northern Ireland) 2006
[11] Article 10 of The Food Safety (Northern Ireland) Order 1991
[12] Regulation 8 of The Food Hygiene Regulations (Northern Ireland) 2006
[13] Article 11 of The Food Safety (Northern Ireland) Order 1991

the FBO. Depending on the circumstances, the use of voluntary procedures may be more appropriate.

If the appropriate evidence is found, an HEPN/EPN may be served on the FBO, followed by an application to a Magistrates' Court for a Hygiene Emergency Prohibition Order (HEPO)/Emergency Prohibition Order (EPO).

The effect of the notice is the immediate closure of the premises, or to prevent the use of equipment, a process, or a treatment.

The HEPN/EPN legislation requires the authorised officer to apply to a Magistrates' Court for a HEPO/EPO within three days of an HEPN/EPN being served, the day of service of the notice being day one, or the HEPN/EPN ceases to have effect.

The HEPN/EPN legislation also requires the authorised officer to serve notice on the FBO at least one day (24 hours) before the day the authorised officer intends to make the application to Court.

There is no legal requirement for the application to be heard within the three days, but it is recommended that the Court be asked to list the application for hearing at the earliest opportunity. Compensation may be payable to the FBO for loss of business if the Court refuses to grant the order.

The burden of proof falls to the Competent Authority that made the application. An authorised officer would, using their professional judgement, decide whether a premises, process, treatment, a piece of equipment or its use involves an imminent risk of injury to health.

Once made, an HEPO/EPO supersedes an HEPN/EPN.

6.6.4 Health Risk Condition/Imminent Risk of Injury to Health

Prohibition and emergency prohibition procedures under The Food Hygiene Regulations (Northern Ireland) 2006 and The Food Safety (Northern Ireland) Order 1991 can only be used if the 'health risk condition' is fulfilled.

For prohibition procedures to be invoked, there needs to be a risk of injury to health, while in respect of emergency prohibition procedures there needs to be an imminent risk of injury to health.

In relation to an 'imminent risk of injury to health', the injury itself may occur sometime in the future, but it is essential to show that it could occur for the action to succeed. Not everyone exposed to the risk of injury would need to suffer the injury for it to be an imminent risk. It is the exposure to the risk of injury that enables action to be taken.

6.6.4.1 Health Risk Condition – HEPN/HEPO

In relation to food hygiene, the 'health risk condition' under The Food Hygiene Regulations (Northern Ireland) 2006 may exist if, for example:

- conditions in premises, or a defective process or treatment, carry a high risk of causing food borne infection

- the premises are in very poor structural condition
- poor equipment and/or poor maintenance or routine cleaning and/or serious accumulations of refuse, filth, or other extraneous matter, resulted in contamination of food or a significant risk of food contamination

Foods containing potentially harmful levels of pathogenic micro-organisms represent an imminent risk and may be detained (if further examination is needed) or seized. On inspection, an authorised officer may use Regulation 25 of The Food Hygiene Regulations (Northern Ireland) 2006 to certify if food has not been produced, processed or distributed in compliance with the Hygiene Regulations. The food will then be treated as having failed the food safety requirements and seized using the powers in article 8 of The Food Safety (Northern Ireland) Order 1991.

The process or treatment which exposed the food to this microbiological contamination would be dealt with under regulation 8 of The Food Hygiene Regulations (Northern Ireland) 2006, where appropriate.

6.6.4.2 Health Risk Condition – EPN/EPO

The 'health risk condition' applies specifically in the context of seeking either a PO under article 10 of The Food Safety (Northern Ireland) Order 1991 or an EPN/EPO for the purposes of article 11 of the Order.

The following are examples of circumstances that could involve an imminent risk of injury to health where an authorised officer may consider the use of prohibition powers:

- a process or treatment that introduces a teratogenic chemical (one that damages a developing foetus in the womb) into food, which might cause injury to the developing foetus, but the damage will not be apparent until the baby is born
- a process or treatment that introduces a genotoxic chemical (one that damages genes or chromosomes) into food, the effects of which might not manifest themselves until an affected child, as yet unborn, of a mother who has consumed the food, develops a malignant tumour sometime in the future

Foods containing potentially damaging levels of such chemicals represent an imminent risk and may be seized or detained under article 8 of The Food Safety (Northern Ireland) Order 1991. The process or treatment which exposed the food to this chemical contamination would be dealt with under article 11 of The Food Safety (Northern Ireland) Order 1991, where appropriate.

6.6.5 Criteria for action - hygiene prohibition procedures/prohibition procedures

The following sections provide examples of circumstances that may show that the health risk condition exists as defined by regulation 7(2) of The Food Hygiene Regulations (Northern Ireland) 2006 or article 10(2) of The Food Safety (Northern Ireland) Order 1991, i.e. there is an imminent risk of injury to health, and where an authorised officer may consider the use of prohibition powers. POs can only be made by the Courts.

6.6.5.1 Prohibition on use of premises

Health risk conditions where prohibition on use of premises may be appropriate include:

- infestation by rats, mice, cockroaches, birds, or other vermin, serious enough to result in the contamination of food or a significant risk of contamination
- very poor structural condition and poor equipment and/or poor maintenance, or routine cleaning and/or serious accumulations of refuse, filth, or other extraneous matter, resulting in the actual contamination of food or a significant risk of contamination
- drainage defects or flooding of the establishment, serious enough to result in the contamination of food, or a significant risk of food contamination
- premises or practices which seriously contravene food law and have been, or are implicated, in an outbreak of food poisoning
- any combination of the above, or the cumulative effect of contraventions which, taken together, represent the fulfilment of the health risk condition

6.6.5.2 Prohibition on use of equipment

Health risk conditions where the prohibition on use of equipment may be appropriate include:

- use of equipment for the processing of high-risk foods that has been inadequately cleaned or disinfected, or which is grossly contaminated and can no longer be properly cleaned
- dual use of complex equipment, such as vacuum packers for raw and ready-to-eat foods. However, dual use of less complex equipment such as weighing scales may be appropriate subject to the business being able to demonstrate that such equipment will be effectively cleaned and disinfected between use for raw and ready-to-eat foods
- use of storage facilities or transport vehicles for primary produce where the storage facilities or transport vehicles have been inadequately cleaned or disinfected

6.6.5.3 Prohibition on use of a process

Health risk conditions where prohibition on use of a process may be appropriate include:

- serious risk of cross contamination
- failure to achieve sufficiently high processing temperatures
- operation outside critical control criteria, for example, incorrect pH of a product which may allow Clostridium botulinum to multiply
- the use of a process for a product for which it is inappropriate

6.6.6 Seeking additional advice

Authorised officers may look to seek expert medical or other professional advice if a process or treatment is producing food that appears to contain chemicals or other

substances that might pose an imminent risk of injury to health, or where the process or treatment in question itself requires other specialist knowledge or expertise. The IFST maintains a Consultant Directory of experts in particular fields.

An authorised officer exercising a right of entry under regulation 14 of The Food Hygiene Regulations (Northern Ireland) 2006 or article 33 of The Food Safety (Northern Ireland) Order 1991can be accompanied by any other necessary persons, including experts.

If serving an HEPN/EPN, it is the authorised officer who needs to be satisfied that the health risk condition is fulfilled with respect to the food business.

6.6.7 Deferring immediate action

There may be circumstances where immediate closure is not necessary, even though there might be an imminent risk to health. For example, the condition of a retail food premises that might pose an imminent risk but would not necessarily warrant immediate closure if the condition was only discovered at the end of trading hours.

In such a case, the authorised officer may decide not to impose an emergency prohibition if the FBO undertook the necessary measures to clean the premises overnight.

The risk in such circumstances might be minimal, as the premises would not be open to the public. The authorised officer would be free to decide on the following morning whether the imminent risk still required action.

6.6.8 Prohibition of a person

When a FBO has been convicted of a relevant offence, the authorised officer may feel that it is appropriate to ask the Court to consider making a PO against the FBO, which prohibits the person from running a food business.

Such action may be appropriate for repeated offences such as failure to clean, failure to maintain equipment, blatant disregard for health risks, or putting health at risk by knowingly using unsafe food.

6.6.9 Court proceedings relating to prohibition procedures

6.6.9.1 Evidence required

The authorised officer will need to collect sufficient evidence to substantiate any proceedings in Court.

It is important that contemporaneous notes, including sketches and photographs, are taken during an official control as they may be used in evidence in Court. Samples of insects, dirt or other contaminants may also be useful.

An authorised officer’s notes made during or at the end of a visit to an establishment need to be accurate and factual, so that they may rely on them in Court.

Although authorised officers do not need to be accompanied by a witness, such as another officer, there may be occasions when visual reports from a third party are of particular relevance.

6.6.9.2 Application to the Court

It is recommended that the Competent Authority discuss formal action with its legal advisers and with the clerk of the local Magistrates' Court. It is also recommended that the Competent Authority clarify details of the local Court practice to try and resolve potential difficulties of obtaining Court time at short notice. This can be initiated by informal contact with the Magistrates' Clerk's Office to ensure that applications for EPOs and HEPOs are expedited.

As required by the HEPN/EPN legislation, the FBO is notified if an authorised officer intends to apply for an HEPO or EPO. A notice of application for the order needs to be served on the FBO, at the latest, on the day before the date of the application, giving details of the Court appearance.

6.6.9.3 Action to be taken prior to the hearing

It is recommended that the authorised officer organises monitoring of the premises between the service of the notice and the Court hearing. The authorised officer who served the notice need not necessarily carry out the monitoring, but it is recommended that they fully brief the relevant colleague of the risks and evidence gathered.

It is recommended that the premises be re-inspected shortly before the hearing (preferably the day before or on the day of the hearing itself) by the authorised officer who served the notice. If this is not possible, an authorised officer with relevant experience may carry out the re-inspection. The same is true if any contravention was found during the monitoring.

The purpose of the re-inspection is to gather evidence as to the current condition of the premises or equipment for the Court hearing. It is recommended that the authorised officer notes any changes that have taken place since the notice was served. For example, the circumstances which led to the service of the notice might have worsened, or other new circumstances may now also pose a risk to health.

If a HPO or PO[14] against a FBO is to be considered, it is important that suitable evidence is gathered to produce to the Court.

It is important that authorised officers brief their legal advisers fully on the public health aspect of the case in hand. This may include the public health basis for the legal requirements which have been breached. This allows them to advise the Court on the seriousness of the charges.

[14] Regulation 7 of The Food Hygiene Regulations (Northern Ireland) 2006 or article 10 of The Food Safety (Northern Ireland) Order 1991

6.6.9.4 Information to be given to the Court

Information that the Court may require includes:

- the state of the premises or equipment, both at the time of the offence and at the time the premises were re-inspected prior to the hearing
- any evidence that the FBO had been involved in offences elsewhere, which tended to show weaknesses in management

It is usual for those prosecuting to ascertain if there have been any previous convictions or cautions. If so, those prosecuting would obtain details for presentation to the Court in the event of the prosecution being successful. The details may also be used in evidence if the requirements of article 6 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004 concerning the defendant's bad character are met.

6.6.10 Service of prohibition notices and orders

6.6.10.1 Methods of serving the notice or order

It is recommended that every effort be made to serve Prohibition Notices and Orders made under The Food Hygiene Regulations (Northern Ireland) 2006 and The Food Safety (Northern Ireland) Order 1991 by delivering them by hand to the FBO, or to each of the operators/proprietors in the case of a partnership.

These notices and orders do not need to be served by the authorised officer who initiated the action. However, it is recommended that they be served by an authorised officer who is competent to explain the purpose of the order or notice, such as the necessary steps to be taken by the FBO and be able to deal with obstruction.

If a notice or order cannot be handed to the FBO in person, a copy of the document may be handed to whoever is responsible for complying with immediate closure or prohibition action, for example, the manager.

The FBO needs to be aware of the reasons for the imminent risk. Although this is included in the model HEPN and the prescribed EPN[15], the FBO may not understand what steps need to be taken to remove the imminent risk and so further explanation from the authorised officer may be necessary.

If the operator/proprietor is present in Court, the authorised officer can consult with the Justices' Clerk to check if it is possible to serve an order before the operator/proprietor leaves the Court.

The service of the notice or order on a number of partners can sometimes present difficulties, particularly when a partner is not in the UK at the time. As soon as the notice or order is properly served on any one of the partners it takes effect.

If it is not possible to serve the document by hand, then the authorised officer will need to serve the document by post. It is recommended to attain proof of posting

[15] Food Safety (Improvement and Prohibition-Prescribed Forms) Regulations (Northern Ireland) 1991

and, where able, proof of delivery. It is useful to record the time of service, even when the postal service is used.

The document can be sent electronically to the operator/proprietor for information in advance of its formal service. However, a hard copy also needs to be provided for it to be considered served.

Immediately after the document has been legally served, the prohibition becomes effective. This can relate to the use of the premises or equipment for the purposes of any food business, or a particular type of food business, or to a process or treatment. Following the service of a HPO or PO, the HEPN or EPN ceases to have effect.

6.6.10.2 Affixing the notice or order on the premises

After the making of an order or the serving of a notice, a copy of the order or notice needs to be clearly displayed on the premises. This applies under regulations 7 and 8 of The Food Hygiene Regulations (Northern Ireland) 2006 and articles 10 and 11 of The Food Safety (Northern Ireland) Order 1991.

The purpose of this is to inform the public and anyone that uses the premises that they have been closed. This may also relate to a process or piece of equipment prohibited from being used.

It is recommended that an authorised officer who is competent to explain the meaning and importance of the notice take this action. A witness need only accompany the authorised officer if required by the Competent Authority. The authorised officer who initiated the action does not need to be involved.

The authorised officer needs to affix a copy of the document to a conspicuous position on the premises[16]. It is recommended, where possible, this be inside the premises, in a position where it can clearly be seen and read from the outside, preferably on the inside of a front facing window.

If this is not possible, the authorised officer needs to use professional judgement as to the best placement. If needed, a second copy of the document can be placed outside of the premises ensuring that it is protected from the weather and vandalism.

6.6.11 Unauthorised removal or defacement of notices or orders

The Food Hygiene Regulations (Northern Ireland) 2006, nor The Food Safety (Northern Ireland) Order 1991, make any reference to defacing or removing a HPO, a HEPN, a HEPO, a PO, an EPN, or an EPO. Such action could be considered as obstruction under regulation 15 of The Food Hygiene Regulations (Northern Ireland) 2006, as removing or defacing a notice or order can be considered an act that ‘intentionally obstructs any person acting in the execution of the Hygiene Regulations’. Similarly, article 34 of The Food Safety (Northern Ireland) Order 1991 makes it an offence to intentionally obstruct any person acting in the execution of this Order.

[16] Regulations 7 and 8 of The Food Hygiene Regulations (Northern Ireland) 2006 and articles 10 and 11 of The Food Safety (Northern Ireland) Order 1991

6.6.12 Breach of a prohibition notice or order

Where a notice or order is breached, the following offences may apply:

- a person who knowingly contravenes a HPO or a PO is guilty of an offence under regulation 7(5) of The Food Hygiene Regulations (Northern Ireland) 2006 or article 10(5) of The Food Safety (Northern Ireland) Order 1991, respectively
- a person who knowingly contravenes a HEPN or HEPO or an EPN or EPO is guilty of an offence under regulation 8(5) or (6) of The Food Hygiene Regulations (Northern Ireland) 2006 or article 11(5) or (6) of The Food Safety (Northern Ireland) Order 1991, respectively

Where offences are identified, having regard to the Competent Authorities enforcement policy, these may be referred for prosecution.

An authorised officer can commence proceedings for the offence under the appropriate legislation by laying a draft summons before the Magistrates' Court which is subsequently served on the defendant requiring them to attend a first hearing to enter a plea.

If the authorised officer believes that there is sufficient evidence to show that the proprietor/FBO is unlikely to respond to a summons, an application could be made for a warrant rather than a summons. The Court will decide if the circumstances justify this action and can ask the authorised officer for their view as to whether to endorse the warrant with bail. The authorised officer will need to use their professional judgement and consider all relevant circumstances in their decision.

It is recommended that the Competent Authority make contingency arrangements with its legal department, so that in the event of the breach of a notice or order, there is no delay in making an application before the Court. It is recommended that Competent Authorities refer to their enforcement policy when deciding what action to take regarding the breach of notice or order.

6.6.13 Lifting a notice or order

6.6.13.1 Lifting prohibition notices and orders

An HPO, HEPN or HEPO, a PO or an EPN or EPO ceases to have effect once a Competent Authority is of the opinion the health risk condition has been removed and has issued a certificate[17].

The FBO needs to apply in writing to the Competent Authority for a certificate lifting a HPO, HEPN or HEPO, a PO or an EPN or EPO. It is recommended that on receiving such a request, the authorised officer re-inspect the premises and determine whether the notice or order can be lifted. The legislation requires this determination

[17] Regulation 7(7) or 8(8) of The Food Hygiene Regulations (Northern Ireland) 2006, or article 10(6) or 11(8) of The Food Safety (Northern Ireland) Order 1991, as appropriate

to be done as soon as possible or within 14 days of the request[18]. If the Competent Authority is of the opinion that the health risk condition has been removed, they issue the certificate within three days.

It is recommended that the decision on whether to issue the certificate or not be made by the authorised officer who initiated the action. If they are not available, the decision can be made by another authorised officer with the relevant competency.

The certificate can be sent electronically or communicated verbally, thus allowing the premises to re-open immediately. Model certificates can be found in the Food Safety (Improvement and Prohibition-Prescribed Forms) Regulations (Northern Ireland) 1991 or the FSA's communications platform.

If the authorised officer is of the opinion that the health risk condition has not been removed, arrangements are made for the Competent Authority to issue a notice[19] of continuing risk to health within three days. The Competent Authority is required to give reasons why it is not satisfied that the health risk condition has been removed. Model notices can be found in the Food Safety (Improvement and Prohibition-Prescribed Forms) Regulations (Northern Ireland) 1991 or the FSA's communications platform.

If an authorised officer conducts a further official control before the Court hearing and they are satisfied that the health risk condition no longer exists, the authorised officer may still wish to continue with the application to request the HEPO/EPO. The reason for this is that the hearing to request the HEPO/EPO may reduce the likelihood of a claim for compensation by the FBO.

A certificate lifting a HEPN or EPN can be issued before the application for a HEPO or EPO can be heard, but the operator/proprietor can still be prosecuted for the offence(s) against The Food Hygiene Regulations (Northern Ireland) 2006 or The Food Safety (Northern Ireland) Order 1991, as appropriate.

It is recommended that the Competent Authority ensures that the Court is informed in this situation.

6.6.13.2 Lifting of prohibition orders against persons

HPO or PO[20] against persons imposed by a Court can only cease to have effect if, on an application by the FBO or food business proprietor, the Court gives such a direction. No application will be entertained within six months of the date of the order being made.

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[18] Regulation 7(7) or 8(8) of The Food Hygiene Regulations (Northern Ireland) 2006, or article 10(6) or 11(8) of The Food Safety (Northern Ireland) Order 1991, as appropriate

[19] Regulation 7(7)(b) or 8(9)(b) of The Food Hygiene Regulations (Northern Ireland) 2006, or article 11(7)(b) or 11(9)(b) of The Food Safety (Northern Ireland) Order 1991, as appropriate

[20] Regulation 7(4) and 7(8) of The Food Hygiene Regulations (Northern Ireland) 2006 or article 10(4) and (8) of The Food Safety (Northern Ireland) Order 1991

6.6.13.3 Appeals – refusal to lift prohibition order

Regulation 19(1) of The Food Hygiene Regulations (Northern Ireland) 2006 and article 37 of The Food Safety (Northern Ireland) Order 1991 allow any person to appeal a Competent Authorities decision to refuse to issue a certificate or lift a prohibition notice or order by way of a complaint to the Magistrates' Court. The time limit for such an appeal is one month from the date when the Competent Authority served the notice of their refusal to lift the prohibition.

The recipient of a notice of continuing risk to health needs to clearly understand their right of appeal. To support this, it is recommended that the notice either includes, or is accompanied by, details of the right of appeal and the name and address of the relevant Magistrates' Court.

6.6.14 Compensation

The Competent Authority would need to compensate the FBO in respect of 'any loss' which is directly attributable to the wrongful service of the notice[21]. Any disputed question as to the right to or the amount of any compensation payable is to be determined by arbitration.

The Competent Authority can assess the amount of compensation due by considering the following aspects, where applicable:

- the length of time the process or treatment was halted, or the use of premises or equipment was prohibited and for what purpose
- loss of trade
- value of spoilt food
- loss of goodwill
- loss of wages
- how much of the damage to trade is reparable
- obligation of the operator/proprietor to mitigate their own loss

Alternatively, if the operator/proprietor of the business is agreeable, a loss adjuster may be used.

6.7 Detention and seizure

6.7.1 Introduction

This section provides information regarding the use of the detention/inspection and seizure powers under regulation 25 of The Food Hygiene Regulations (Northern Ireland) 2006 and/or article 8 of the Food Safety (Northern Ireland) Order 1991.

Information regarding Detention Notices which apply to approved premises can be found in section 6.11.4.

[21] Regulation 8(10) of The Food Hygiene Regulations (Northern Ireland) 2006 and article 11(10) of The Food Safety (Northern Ireland) Order 1991

6.7.2 Food which fails to comply with food safety requirements

Article 5 of The Food Safety (Northern Ireland) Order 1991 provides that food which is unsafe within the meaning of article 14 of Regulation (EC) No 178/2002, fails to comply with food safety requirements.

If food does not satisfy food safety requirements for reasons other than hygiene, article 8 of The Food Safety (Northern Ireland) Order 1991 is to be used.

Article 8 of the Order permits the service of a Detention of Food Notice to prevent the use of the food for human consumption. Competent Authorities need to use the forms set out in The Detention of Food (Prescribed Forms) Regulations (Northern Ireland) 1991 when using powers under article 8 of the Order.

6.7.2.1 Food hygiene

When food has not been produced, processed or distributed in compliance with the 'hygiene regulations'[22] an authorised officer may use regulation 25 of The Food Hygiene Regulations (Northern Ireland) 2006 to seize the food under article 8 of The Food Safety (Northern Ireland) Order 1991.

Following the certification required by regulation 25, the food is treated, for the purposes of article 8 of The Food Safety (Northern Ireland) Order 1991, as failing to comply with food safety requirements.

A model certificate for this purpose can be found on the FSA's communications platform.

6.7.2.2 Food standards

The following legislation gives specific powers of seizure and detention to Competent Authorities carrying out food standards controls:

- The Contaminants in Food Regulations (Northern Ireland) 2013
- The Eggs and Chicks Regulations (Northern Ireland) 2010
- The Food Irradiation Regulations (Northern Ireland) 2009
- The Genetically Modified Food Regulations (Northern Ireland) 2004
- The Tryptophan in Food Regulations (Northern Ireland) 2005
- The Scotch Whisky Regulations 2009
- The Spirit Drinks Regulations 2008
- The Food Additives, Flavourings, Enzymes and Extraction Solvents Regulations (Northern Ireland) 2013
- The Novel Foods Regulations (Northern Ireland) 2017

[22] Regulation 25 of The Food Hygiene Regulations (Northern Ireland) 2006

6.7.2.3 Presumption it is food

It is presumed under food law that all food is intended for human consumption until it is proved to the contrary.

Detention powers would not be used in relation to food that has already been clearly identified by a food business as not being intended for human consumption.

An authorised officer may assist or advise the person in charge of the food as appropriate. If there is any doubt about the food being used for human consumption, it is presumed that it is. If an FBO wished to argue for a contrary intention, then it is for the FBO to prove this.

6.7.3 Dealing with batches, lots, or consignments of food

Article 14(6) of Regulation (EC) No 178/2002 stipulates that where, 'any food which is unsafe is part of a batch, lot, or consignment of food of the same class or description, it shall be presumed that all the food in that batch, lot or consignment is also unsafe, unless following a detailed assessment there is no evidence that the rest of the batch, lot or consignment is unsafe'.

It is recommended that if a quantity of food of different types or batches is being detained, the authorised officer issue a separate Detention of Food Notice in respect of each type or batch.

When considering whether to seize or detain/inspect a batch, lot or consignment, the authorised officer may take account of the:

- evidence available
- nature of the contamination
- nature and condition of any container holding the food
- risk to health
- quantity of food involved in relation to any sampling which has been undertaken

The authorised officer will need to use professional judgement to decide whether to detain or seize the whole of the batch, lot, or consignment. Appropriate expert advice may be sought if necessary.

If a whole batch, lot or consignment is detained and it subsequently becomes clear that only part of the detained food is affected and needs to be seized, the remainder of the batch, lot or consignment may be released. The compensation provisions under article 8(7) of The Food Safety (Northern Ireland) Order 1991, may need to be considered if this course of action is taken.

6.7.4 Taking action without inspecting

The provisions of article 8 of The Food Safety (Northern Ireland) Order 1991 also apply to food that has not been inspected.

This could apply when the authorised officer has reasonable grounds to suspect that consumption of the food would be likely to cause foodborne or other communicable disease, or that it was otherwise so contaminated that it would not be reasonable for it to be consumed in that condition.

Information from another reliable source, for example, another Competent Authority, the Northern Ireland Public Health Laboratory, the CHP, or the FSA, can be sufficient to enable an authorised officer to act without inspecting.

An inspection of the food is not legally necessary in such situations, it might nonetheless be prudent, if only for identification purposes.

6.7.5 Detention of food

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

Authorised officers need to exercise careful judgement, and might need to seek expert advice, before using their powers to detain food pending further investigation.

Food that is suspected of causing food poisoning can often be readily identified, and the decision to detain can therefore be taken relatively easily.

6.7.5.1 Location of detention

Where the authorised officer has served a Detention of Food Notice, professional judgement will need to be used to determine whether the food is detained where it is or moved elsewhere.

If the authorised officer has any doubts about the security or physical care of the food, the Detention of Food Notice needs to specify a place to which the food is to be moved[23].

If food is to be removed to another Competent Authority's area, it is recommended that the authorised officer notify that Competent Authority and make any necessary arrangements for the food to be checked while it is being detained.

In all cases, but especially with highly perishable food, the authorised officer needs to act quickly at every stage and provide full information to those required to carry out analysis or examination of samples of the food.

Food that requires special storage conditions, such as refrigeration, might need to be moved elsewhere, in which case the decision to require the food to be moved would be discussed with the owner of the food.

If food is to be detained where it is found, the authorised officer needs to be satisfied that adequate arrangements can be made to ensure its security. It is recommended that the authorised officer organise periodic monitoring of the food throughout the period of detention.

[23] The Detention of Food (Prescribed Forms) Regulations (Northern Ireland) 1991

Before making such arrangements, regard would be given to the nature of the food, the quantity, any health hazard that it represents, and the ownership of the establishment where it is located. It is recommended that the authorised officer avoid leaving it in the charge of, or in an establishment owned by, any person who may be prosecuted for an offence under food law.

The decision to detain a whole batch, lot, or consignment needs careful consideration before a notice is served.

6.7.5.2 Detention of Food Notice

A Detention of Food Notice is required to be signed by the authorised officer who takes the decision to detain the food. Competent Authorities need to use the Detention of Food Notice set out in The Detention of Food (Prescribed Forms) Regulations (Northern Ireland) 1991.

6.7.5.3 Withdrawal of Detention of Food Notice

It is recommended that the authorised officer act as quickly as possible when evidence or information indicates that detained food can be released. A Withdrawal of Detention of Food Notice needs to be served as soon as reasonably practicable or within 21 days of the detention[24].

It is recommended that the decision to issue a Withdrawal of Detention of Food Notice is taken either by the authorised officer who originally issued the notice or initiated the action, or by another authorised officer with the relevant competence.

Serving a Withdrawal of Detention of Food Notice as soon as possible will prevent deterioration of the food and minimise the Competent Authority's exposure to compensation under article 8(7) of The Food Safety (Northern Ireland) Order 1991. The notice need not be served by the authorised officer who made the decision but can be served by any authorised officer.

Competent Authorities need to use the Withdrawal of Detention Notice set out in The Detention of Food (Prescribed Forms) Regulations (Northern Ireland) 1991.

6.7.6 Seizure of food

6.7.6.1 Arrangements for treatment or processing

When considering whether to seize food, authorised officers may consider whether the food in question can be treated or processed before consumption, and if so, whether the food, after treatment or processing, would satisfy food safety requirements. The mixing of food to reduce high levels of contaminants is not permitted by article 3 of Commission Regulation (EC) No 1881/2006.

Arrangements for the treatment or processing of food in these circumstances need to be:

- agreed by the authorised officer, and the owner or the person in control of the food

[24] Article 8(4) of The Food Safety (Northern Ireland) Order 1991

- subject to a written and signed undertaking

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

It is recommended that arrangements be made for that Competent Authority to take steps to ensure the processing or treatment is carried out, including the service of a Detention of Food Notice, if appropriate.

If the receiving Competent Authority is unable to accept responsibility for ensuring that the food is properly processed or treated, the arrangement would not proceed, unless there is no other way of rectifying the problem with the food product.

6.7.6.2 Seizure of food - Process

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

If evidence indicates that detained food requires seizing, the authorised officer is required to serve a Food Condemnation Warning Notice, warning of the intention to take the food before a Justice of the Peace and apply for its condemnation.

Food that has been seized is required to be dealt with by a Justice of the Peace[25] as soon as practicable and is recommended to take place within two days. If necessary, this timescale can be longer to ensure that parties can attend and be represented if they choose to do so. Highly perishable food needs to be dealt with by a Justice of the Peace at the earliest opportunity.

The person in charge of the food or the owner needs to be given the opportunity to be present and represented if they choose to do so when the food is dealt with by the Justice of the Peace. It is recommended that action is not delayed if the owner cannot be traced or contacted. The Food Safety (Northern Ireland) Order 1991 requires that anyone who may be liable to prosecution is entitled to attend the hearing. It is recommended that service of notice of the hearing be documented and retained to show the Court.

The authorised officer needs to ensure continuity of evidence. This needs to be done regardless of whether or not there may be a subsequent prosecution. The food is not to be left unsecured once it has been seized, as the authorised officer might be required to prove that the food produced before the Justice of the Peace is the food that was seized.

The food may only be left if the authorised officer is confident that it will not be moved, used for human consumption, or the evidence destroyed.

The fact that food had been condemned by a Justice of the Peace would be persuasive in any prosecution. However, this alone would not necessarily establish

[25] Article 8(5) of The Food Safety (Northern Ireland) Order 1991

an offence. It is still necessary for a case to be proved beyond reasonable doubt. In this respect, certificates of analysis or examination may be of value.

6.7.6.3 Food condemnation warning

The person in charge of the food needs to be given a Food Condemnation Warning Notice once the decision to seize food has been taken. This notification gives details of the time and place of the appearance before a Justice of the Peace. This notification is purely administrative and can therefore be signed by any authorised officer.

The authorised officer delivering the notification does not need to hold the same qualifications as the authorised officer who took the decision to detain or seize the food. However, the authorised officer needs to be sufficiently competent to explain the purpose of the notification and to deal with any obstruction.

Notification to the person in charge of the food, such as the owner of the food, can be by personal delivery, fax, telephone, e-mail, or other rapid means of communication.

This is especially important in cases of seizure because of the right conferred by article 8(5) of The Food Safety (Northern Ireland) Order 1991. This gives any person who might be liable to prosecution for selling or producing unsafe food the right to attend before a Justice of the Peace, to be heard and to call witnesses.

It is recommended that when food is seized, written notification of the seizure be issued as soon as possible and include details of the type and quantity of the food seized, including any distinguishing marks, codes or dates.

When the authorised officer intends to have the food dealt with by a Justice of the Peace, a Food Condemnation Warning Notice is required to be given to the person in charge of the food. It is recommended that the notification, where possible, also be given to the owner of the food if different from the person in charge.

Competent Authorities need to use the Food Condemnation Warning Notice set out in The Detention of Food (Prescribed Forms) Regulations (Northern Ireland) 1991.

6.7.7 Destruction or disposal of food

The Competent Authority is responsible for ensuring the destruction or appropriate disposal of food that has been condemned under article 8(6) of The Food Safety (Northern Ireland) Order 1991 or voluntarily surrendered.

It is recommended that Competent Authorities ensure arrangements are made for the food to be supervised until it can be dealt with in the appropriate manner. If there is likely to be some delay before destruction or disposal, the food could be disfigured to prevent any possibility of it being returned to the food chain.

In the case of destruction of food, the Competent Authority needs to have regard to the requirements of relevant waste disposal legislation. If total destruction is not possible, Competent Authorities need to ensure the food is disfigured to a level that

the food could never re-enter the food chain, for example, by flattening tin cans for disposal in a suitably licensed landfill site.

It is recommended that a copy of the waste transfer note is obtained and kept on file for any food that has been disposed of by a licensed waste disposal contractor under these arrangements.

6.8 Voluntary procedures

6.8.1 General requirements

Voluntary procedures may be used as an alternative to formal action and can be suggested by either an authorised officer or an FBO.

It is recommended that where voluntary procedures are used, Competent Authorities ensure:

- they consider the risks of the business not complying with the voluntary agreement, as there is no legal sanction against an FBO for not adhering to it, although formal enforcement action for these non-compliance(s) may remain available
- the circumstances would have permitted the authorised officer to take formal enforcement action if the voluntary arrangement was not agreed to
- the FBO agrees that there is a non-compliance
- the voluntary agreement is put in writing and signed by both the authorised officer and FBO
- the document clearly indicates that it is a voluntary agreement, ensuring a FBO is not misled into believing it is a formal notice
- the voluntary agreement sets out the non-compliance, including legislative references
- the voluntary agreement clearly states what the FBO is agreeing to (for example, prohibiting the use of a premises)
- the voluntary agreement makes clear there is no formal appeal nor right to compensation
- the FBO is advised to take legal advice prior to signing
- if the FBO is not present, any manager agreeing to the voluntary arrangements has the authority of the FBO to agree to such action

6.8.2 Voluntary prohibitions

Voluntary prohibitions are an undertaking by the FBO not to use the premises, equipment, process, or treatment set out in the voluntary agreement, as appropriate, to remove a health risk condition.

Voluntary prohibitions can be used when:

- an FBO agrees that a health risk condition exists (for example, there is an imminent risk of injury to health)

- the authorised officer would have been able to use an HEPN or EPN

When issuing a voluntary prohibition, the authorised officer needs to consider whether there is a risk of the continued use of the premises, equipment, process, or treatment, without the authorised officer's knowledge and/or agreement. If continued operation were to cause a food incident, the Competent Authority could be criticised for not having used statutory powers.

Where a voluntary prohibition is agreed to by the FBO, it is recommended that the written documentation include an undertaking by the FBO not to re-open or use the equipment, process or treatment without the authorised officer's prior approval.

It is recommended that the authorised officer ensures frequent checks are made on the establishment to ensure that they are adhering to this voluntary prohibition.

6.8.3 Voluntary surrender/destruction

Voluntary surrender/destruction can be used to remove food that is not suitable for human consumption from the food chain. It can be used when the owner of the food agrees the food is not suitable for human consumption.

It is recommended that a receipt be issued for food that is voluntarily surrendered to the Competent Authority for destruction, which:

- confirms that the food has been voluntarily surrendered to the Competent Authority for destruction (with reasons)
- is signed and counter-signed by the authorised officer and the person surrendering the foo
- includes space for recording the time, place, and method of destruction of the food
- is retained by the Competent Authority

As part of the voluntary surrender, it is recommended that the Competent Authority secure an agreement by the owner to pay the reasonable expenses of destruction or disposal. If this is not done the Competent Authority will bear the expenses itself.

The use of voluntary procedures may also contribute to a defence in any subsequent prosecution. It could, for example, be argued that the food was not so contaminated that it had to be seized.

The fact that a Justice of the Peace had condemned food may be persuasive in any prosecution but would not necessarily establish an offence. It would still be necessary for a case to be proved beyond reasonable doubt.

6.9 Prosecution

6.9.1 Introduction

Before commencing prosecution proceedings for offences of food law, the Competent Authority needs to ensure that:

- it has considered its own enforcement policy and the Code for Prosecutors

- evidence of the non-compliance is obtained
- continuity of evidence is maintained

6.9.2 Time limit for prosecution

Where Competent Authorities decide to prosecute, they need to ensure that they commence proceedings within any timeframe as set out in the relevant legislation. For example, regulation 16 of The Food Hygiene Regulations (Northern Ireland) Order 2006 and article 35 of The Food Safety (Northern Ireland) Order 1991 provides that no prosecution shall begin after three years from the commission of the offence, or one year from its discovery by the prosecutor, whichever is the earlier.

6.10 Follow-up checks

Competent Authorities are required to take appropriate measures to ensure that the FBO remedies non-compliances and prevents further occurrences of such non-compliances[26].

Follow-up checks can be used to ensure non-compliances have been remedied. The Code outlines when follow-up checks are to be undertaken. Officers may also consider the:

- action(s) required following the earlier official control
- history of compliance
- FBO's attitude towards food safety
- date of the next official control

Appropriate measures to verify that compliance has been achieved may be undertaken physically or remotely and this could include actions such as:

- physical revisits to the food business
- reviewing information provided by the business remotely following an official control, for example, photographs and/or documentation
- sampling
- information/intelligence gathering

Authorised officers are to use their professional judgement when determining the timing of any follow-up check following the earlier official control, along with the frequency of follow-up check that may be required. The type of follow-up check(s), their timing and their frequency are to be reasonable, proportionate, risk-based and consistent.

6.11 Enforcement in establishments subject to approval

6.11.1 Introduction

In addition to the enforcement powers detailed above, authorised officers have other powers available to them under The Official Feed and Food Controls Regulations

[26] Article 138 of Regulation (EU) 2017/625

(Northern Ireland) 2009, in respect of establishments subject to approval under Regulation (EC) No 853/2004.

Powers to withdraw or suspend the approval or conditional approval of an establishment subject to approval under Regulation (EC) No 853/2004, are provided by article 138(2)(j) of Regulation (EU) 2017/625.

The immediate effect of the suspension or withdrawal of an establishment's approval is that the establishment cannot be used for any activities which would render it subject to approval under Regulation (EC) No 853/2004 or place POAO on the UK market.

When non-compliance is discovered in establishments (subject to approval under Regulation (EC) No 853/2004) the Competent Authority is recommended to explore other enforcement options to control the food hazards before considering suspension or withdrawal.

Non-compliance is not necessarily sufficient reason to justify the immediate suspension or withdrawal of an establishment's approval or conditional approval. Where appropriate, a reasonable opportunity may be allowed for the FBO to achieve compliance.

Detailed guidance regarding withdrawal and suspension of approval can be found in Approval of Establishments: Guidance for District Councils in Northern Ireland.

6.11.2 Notifications of suspension or withdrawal of approval or conditional approval

Under article 138(3) of Regulation (EU) 2017/625, the Competent Authority is required to notify the FBO in writing of its decision to suspend or withdraw an establishment's approval or conditional approval.

This notification would:

- give the reasons for the suspension or withdrawal[27]
- give the matters necessary to satisfy the requirements of the regulation
- make it clear that activities requiring approval cannot be undertaken
- inform the FBO of their right of appeal, against the decision, including information on the time limit[28], and provide the address of the court of summary jurisdiction where such an appeal can be made

Copies of notifications are to be retained on the Competent Authority's files. The Competent Authority is to notify the FSA when an establishment's approval or conditional approval has been suspended or withdrawn (see chapter 2)

[27] Article 138(3)(a) of Regulation (EU) 2017/625

[28] Regulation 12(3) of The Official Feed and Food Controls Regulations (Northern Ireland) 2009

6.11.3 Appeals against suspension or withdrawal of approval or conditional approval

The FBO has the right to appeal to a relevant Court against the decision to withdraw or suspend an approval or conditional approval. Rights of appeal are subject to regulation 12 of The Official Feed and Food Controls Regulations (Northern Ireland) 2009. The establishment cannot continue operating whilst an appeal is being determined. This time period runs from the date on which the notice of the decision is served on the relevant person, irrespective of whether it is a suspension or withdrawal.

6.11.4 Detention Notices

Regulation 9 The Food Hygiene Regulations (Northern Ireland) 2006 makes provision for the detention of any food for the purposes of examination, including the taking of samples, by the service of a Detention Notice.

A regulation 9 Detention Notice differs to a notice served under article 8 of The Food Safety (Northern Ireland) Order 1991. It can only be served in an establishment that is operating in a manner that requires approval or is approved.

Circumstances which could lead to the issuing of a Detention Notice include where there are indications or suspicions that food at an establishment is unsafe and therefore examination is necessary.

If the authorised officer is satisfied that the food no longer needs to be detained, the relevant notice is required to be withdrawn by means of a further notice in writing.

6.11.5 Template forms

The following templates can be found on the FSA's communications platform:

- Remedial Action Notice
- Detention Notice
- Withdrawal of a Remedial Action or Detention Notice

Model forms for the withdrawal or suspension of approval can also be found on the FSA's communication platform.

6.12 Enforcement regarding imported food

6.12.1 Enforcement powers for imported food not of animal origin

The Official Feed and Food Controls Regulations (Northern Ireland) 2009 provides the enforcement powers for Competent Authorities in carrying out official controls on FNAO from outside Northern Ireland, either at the point of entry or inland.

6.12.1.1 Detention

Where, for the purpose of examination at points of entry, or deferred examination at an ETSF, or other place of destination, an authorised officer has doubts about the compliance, identity or stated destination of a consignment, article 65 of Regulation (EU) 2017/625 and regulation 30 of The Official Feed and Food Controls Regulations

(Northern Ireland) 2009 allow the product to be detained pending the results of any examination associated with the official controls.

Regulation 31 of The Official Feed and Food Controls Regulations (Northern Ireland) 2009 provides a notice regarding detention, which means that the food is not to be removed from the place stated, until the authorised officer has properly considered the results of the examination. Guidance regarding this notice, including a template notice, can be found in the Inland Enforcement of Imported Food Controls Resource Pack.

Article 65 of Regulation (EU) 2017/625 and regulation 30 of The Official Feed and Food Controls Regulations (Northern Ireland) 2009 do not specify a time limit for examination and investigation of consignments. However, such examinations, and/or detention periods, are recommended to be completed as quickly as possible to avoid unreasonable disruption to the trade.

Where samples are submitted for analysis or examination, and the consignment is detained pending the results, it is recommended that Competent Authorities inform the analyst or examiner of that fact and ensure that the consignment is stored appropriately and securely.

It is also advised that the importer or the importer's agent is informed of the analysis/examination results as soon as possible and that they are given a copy of the certificate of analysis/examination.

Arrangements are required to be in place to ensure that detained food is stored appropriately, particularly to avoid contamination of other goods.

6.12.1.2 Food consignments which are injurious to human or animal health or are unsafe

Article 67 of Regulation (EU) 2017/625 requires that where official controls indicate that a consignment is injurious to human health or is unsafe, it is isolated or quarantined pending any further decision.

The Competent Authority need to retain the consignment under official detention pending its destruction, or it being subject to special treatment in accordance with article 71(1) and 71(2) of Regulation (EU) 2017/625.

Food which is to be destroyed or disposed of needs to be dealt with in such a manner as to ensure that there is no possibility of it re-entering the food chain. Copies of waste disposal notes are to be kept on file.

6.12.1.3 Food consignments not complying with food law

If it appears to an authorised officer upon inspection or examination of food, that a batch, lot, or consignment fails to comply with food law, regulation 31 of The Official Feed and Food Controls Regulations (Northern Ireland) 2009 allows, after having heard from the operator responsible for it, for the authorised officer to serve a notice requiring:

- destruction of the relevant consignment in accordance with article 67 of Regulation (EU) 2017/625
- the food be subjected to special treatment in accordance with article 71 of Regulation (EU) 2017/625
- re-dispatch of the food outside the EU in accordance with article 72 of Regulation (EU) 2017/625
- another use of the food for purposes other than those for which they were originally intended

In practice, the options specified in the notice will need to be drawn up after appropriate consultation with the person importing the food or their representative.

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

6.12.1.4 Special treatments

Special treatment can consist of:

- treatment or processing to bring food into line with the requirements of:
  - EU law
  - the third country to where it is to be re-dispatched
- treatment in any other suitable manner for purposes other than human or animal consumption

Where special treatment is permitted, liaison with any other relevant Competent Authorities is required to ensure the necessary processing has been carried out[29]. This process can also be used where a non-conforming product is being imported specifically for the purpose of undergoing treatment to comply with EU law.

Special treatment can include decontamination, where appropriate, but not dilution.

6.12.1.5 Re-dispatch of consignments

A consignment can only be re-dispatched outside the EU where the[30]:

- destination has been agreed with the operator responsible for the consignment
- operator has informed the Competent Authority for the third country of destination why it has been rejected for import into the EU
- where the third country of destination is not the third country of origin, the Competent Authority of the third country of destination (if not the third country of origin) has notified the relevant Northern Ireland Competent Authority of its willingness to accept the consignment

[29] Article 71(2)(b) of Regulation (EU) 2017/625
[30] Article 72 of Regulation (EU) 2017/625

The consignment is required to be officially detained pending re-dispatch.

6.12.1.6 Appeals against notices served under The Official Feed and Food Controls Regulations (Northern Ireland) 2009

The importer is to be given the Competent Authority's decision by way of a notice in writing.

There is a right of appeal against the Competent Authority's decision provided by regulation 32 of The Official Feed and Food Controls Regulations (Northern Ireland) 2009. Appeals against the notice are required to be made within one month of the notice being issued.

6.12.1.7 Other provisions

Imported food failing food safety requirements can also be subjected to The Food Safety (Northern Ireland) Order 1991 provisions to ensure appropriate action is taken, which include detention and seizure powers.

In deciding on the action to take, authorised officers need to have regard to:

- The Official Feed and Food Controls Regulations (Northern Ireland) 2009
- The Contaminants in Food Regulations (Northern Ireland) 2013
- any relevant Emergency Control Regulations, which might provide for specific detention powers and notice provisions in relation to certain foods

6.12.2 Enforcement powers for imported Products of Animal Origin

Where illegal imports of POAO are found inland in an area/premises outside Customs control, the local Competent Authorities for that area have responsibility for enforcement action.

Where an authorised officer wishes to detain any POAO found inland, in order to investigate further to establish its safety or compliance, voluntary co-operation might be sought in the first instance.

In situations where this is not possible, enforcement provisions are provided under The Trade in Animals and Related Products Regulations (Northern Ireland) 2011.

6.12.3 Further guidance

Further guidance on the enforcement provisions relating to imported food, including procedures, notices and forms, is available on the FSA's communications platform.

6.13 Crown establishments

6.13.1 Introduction

This section provides information regarding the approach to enforcement in Crown premises and in premises that are occupied by the police. It does not apply to premises that are occupied by the National Health Service (NHS) or NHS Trusts, since these are not Crown premises.

6.13.2 Powers of entry and interventions

6.13.2.1 The Food Safety (Northern Ireland) Order 1991

The powers of entry under article 33 of the Food Safety (Northern Ireland) Order 1991may be used in respect of food standards issues, in relation to police premises and most Crown premises (subject to exemptions for certain members of the Royal Family and certain Royal residences) to investigate complaints and to carry out official controls in the same way as they do in any other food business. Authorised officers therefore have the power to enter police premises and most Crown premises.

The provisions of The Food Safety (Northern Ireland) Order 1991 do not, however, apply to His Majesty the King or to the Duke of Cornwall personally, nor to premises occupied by them in their private capacities such as their private residences.

Additionally, a national security certificate may have been issued by a Secretary of State certifying that powers of entry under The Food Safety (Northern Ireland) Order 1991 cannot be exercised. If an authorised officer seeks entry to Crown premises and is informed that such a certificate has been issued, the authorised officer is entitled to see the certificate or a copy of it.

6.13.2.2 The Food Hygiene Regulations (Northern Ireland) 2006

The scope of The Food Hygiene Regulations (Northern Ireland) 2006 extends to police premises, Crown premises and to people in the public service of the Crown. Authorised officers therefore have power to enter police premises and Crown premises to investigate complaints and to carry out official controls in the same way as they do in any other food business.

The powers of entry under regulation 14 of The Food Hygiene Regulations (Northern Ireland) 2006 may be used in relation to Crown premises, as the regulations do not contain the specific exemptions for certain members of the Royal Family or certain Royal residences afforded by The Food Safety (Northern Ireland) Order 1991.

It is recommended that Competent Authorities use discretion when exercising their powers in respect of Crown premises, and in practice, look to adopt the same approach to the enforcement of The Food Hygiene Regulations (Northern Ireland) 2006 in respect of Crown premises as they do in respect of The Food Safety (Northern Ireland) Order 1991.

6.13.2.3 Conduct and frequency of official controls

Food businesses in Crown and police premises, other than temporary or field catering facilities at military training camps, are included in the Competent Authority's planned official control programme in accordance with the Code.

Permanent kitchens serving military training camps would receive official controls at times they are in use, within the bounds of security restrictions that will be dependent on the organisation using the facility at the time.

Mobile field kitchens are not to be subject to interventions by the Competent Authority.

6.13.3 Categories of Crown premises

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

Group 1 - includes premises situated on Crown land where there are normally no security implications, for example, restaurants in museums or Royal Parks. These premises are to be treated like any other food business.

Prior arrangement of an official control at a Group 1 premises is not normally required.

Group 2 - includes premises with controlled entry but normally minimal security implications. Most government and police premises fall within this category. They are similar to many private businesses with security systems.

First visits to Group 2 premises are to be by prior arrangement. Future visits may be unannounced, but arrangements for subsequent visits are recommended to be agreed at the first inspection and confirmed in writing.

Group 3 - includes premises where unannounced entry is not possible because of security implications and/or for the personal safety of the authorised officer, for example, HM Forces, defence and national security establishments, prisons and remand centres, and parts of police premises that accommodate prisoners.

Group 3 premises are always to be visited by prior arrangement with the appropriate contact at the establishment concerned, for example, the defence establishment security officer, the commanding officer or nominated representative of an HM Forces establishment, the Governor of a prison service establishment, or the officer in charge of police premises. This will enable the authorised officer to obtain entry without undue delay. The contact may be reminded of the power of entry if an authorised officer considers that the suggested appointment is too far in advance.

Authorised officers who have not been security cleared will be subject to visitor control procedures and escorted at all times. It is recommended that authorised officers carry an identity card that incorporates their photograph.

There may be times when it will not be possible for an official control to take place or continue in Group 3 premises. Any such reasonable restriction would not be regarded as obstruction.

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

If the Competent Authority is in doubt as to how to classify particular premises to which this section applies, it is recommended that they be treated as Group 3 premises and reviewed at a later stage, if necessary.

An incident such as a food poisoning outbreak may require an authorised officer to visit a premises at short notice even though prior notice would normally be required. A telephone notification that the authorised officer is on the way is essential in Group 3 premises and may save time in gaining entry to Group 2 premises. It is not normally necessary in such circumstances to give more than the briefest notice of such a visit.

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

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

Military activities are not to be impeded or interrupted by a visit.

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

6.13.3.1 Photographs

It is recommended that before taking any photographs, making sketches, or taking measurements on Group 3 premises, the authorised officer discuss such matters with the escorting officer and take account of any requirements.

Unless absolutely necessary to illustrate a possible contravention of the legislation, photographs on Group 3 premises are recommended not to include individuals. Additionally, if photographs are taken within a prison or remand establishment, they are to avoid identifying any individual.

6.13.4 Enforcement

6.13.4.1 The Food Safety (Northern Ireland) Order 1991

Article 49(2) of The Food Safety (Northern Ireland) Order 1991 states that the Crown is not criminally liable if it contravenes the Order or Regulations or Orders made under it. This means that the Crown cannot be prosecuted if it contravenes the Order.

A Competent Authority may, however, apply in the King’s Bench Division of the High Court, for a declaration that any act or omission of the Crown, which amounts to a contravention of The Food Safety (Northern Ireland) Order 1991 or regulations made under the Order, is unlawful.

The identity of the proprietor of the food business concerned needs to be carefully considered if the question of action under food law arises.

Contract caterers operating on Crown premises can be prosecuted as they are not subject to this exemption. Careful consideration also needs to be given to the question as to whose failure gave rise to the contravention.

Although contract caterers operating on Crown premises can be prosecuted, structural failures might be the responsibility of the Crown itself.

Any application under article 49(2) is to be addressed to the Secretary of State or Head of Department and sent to the Solicitor for the relevant Government Department.

The summons would be sent to the principal officer of a non-Departmental Government body.

6.13.4.2 The Food Hygiene Regulations (Northern Ireland) 2006

Unlike The Food Safety (Northern Ireland) Order 1991, The Food Hygiene Regulations (Northern Ireland) 2006 do not exempt the Crown if it contravenes the regulations. This means that the Crown can be prosecuted if it contravenes the regulations.

It is recommended that Competent Authorities use discretion when exercising their powers in respect of Crown premises and, in practice look to adopt the same approach to the enforcement of The Food Hygiene Regulations (Northern Ireland) 2006 in respect of Crown premises as they do in respect of The Food Safety (Northern Ireland) Order 1991.

6.13.4.3 Position of individual civil or government servants

Although the Crown is immune from prosecution under The Food Safety (Northern Ireland) Order 1991, individuals in the public service of the Crown can still be prosecuted in the same way as any other person.

Failure to comply with the provisions of food law might therefore expose an individual civil or government servant to the risk of prosecution.

It is recommended that Competent Authorities do not consider prosecuting an individual civil or government servant as a substitute for action against the Crown. Action would only be considered if the circumstances result in the prosecution of an individual in the case of any other business.

6.13.4.4 Statutory Notices

The service of an EPN does not itself make the recipient criminally liable. Such notices can therefore be served on the Crown where it is the FBO concerned.

EPN are to be served on the appropriate Secretary of State or Head of Department and copied to the Solicitor as described in section 6.13.4.

In order that such notices can be acted upon without undue delay, it is recommended that they also be copied to the person in charge of the premises concerned, for example, the Governor of a prison or the Commanding Officer of a military establishment.

Competent Authorities may apply in the normal way to a Magistrates' Court for an EPO on the whole or part of a Crown premises, or to prevent the operation of a

particular process or treatment or use of a piece of equipment in a business run by the Crown.

Although a Magistrates' Court can impose an EPO, it cannot impose a PO. A PO can only be made when there has been a conviction under relevant food law.

The FBO in Crown premises can appeal in the normal way to a Magistrates' Court against an Improvement Notice and can also appear to argue against the imposition of an EPO.

The Crown can also appeal against a refusal to issue a certificate lifting an EPO.

A Competent Authority can apply for a declaration in the High Court if a business run by the Crown fails to comply with an EPO.

6.13.4.5 Liaison with the Primary Authority/ the FSA

It is recommended that Competent Authorities report any difficulties encountered in the enforcement of food law in Crown premises to the appropriate primary authority, or, if there is no primary authority, or they are unable to assist, to the FSA.

Chapter 7 Matters relating to live bivalve molluscs (shellfish)

7.1 Introduction

Chapter 7 deals with:

- official controls and enforcement relating to live bivalve molluscs (LBMs) and aspects of:
  - Regulation (EC) No 852/2004 and 853/2004
  - Commission Regulation (EC) No 2073/2005
  - Commission Delegated Regulation (EU) 2019/624
  - Commission Implementing Regulation (EU) 2019/627 relating to live bivalve molluscs (LBMs)

The provisions relating to LBMs apply to live echinoderms, live tunicates, and live marine gastropods, except for the provisions on purification. The classification requirements do not apply to *Pectinidae* (scallops), live marine gastropods and *Holothuroidea* that are not filter feeders.

7.2 The local market exemption (small quantities)

Regulation (EC) No 853/2004 does not apply to the direct supply of small quantities of primary products to the final consumer or to local retail establishments directly supplying the final consumer. For LBMs, a small quantity equates to a total amount of not more than 25 tonnes harvested in a calendar year. The maximum harvested in a year can be made up of different species so long as neither the total allowance for each species nor the overall total is exceeded. Allowances are detailed in table 5.

Table 5 – Allowances for small quantities of LBMs

Species	Annual maximum amount
Cockles – *Cerastoderma edule*	25.0 tonnes
Oysters – *Ostrea edulis and Crassostrea gigas*	5.0 tonnes
King Scallops – *Pecten maximus*	5.0 tonnes
Queen Scallops – *Aequipecten opercularis*	10.0 tonnes
Mussels – *Mytilus spp.*	20.0 tonnes
Other LBM	10.0 tonnes
Marine Gastropods	20.0 tonnes

Although exempt from the detailed requirements of Regulation (EC) No 853/2004, harvesters supplying small quantities are required to comply with food safety and

traceability requirements[31]. The general traceability requirements for POAO in Regulation (EU) No 931/2011 also apply.

In order for harvesters of small quantities to meet food safety requirements, FBOs are to consider the risks associated with LBMs such as microbiological contamination, viral contamination, marine biotoxins and chemical contamination, and ensure that such risks are controlled.

These requirements do not apply to LBMs gathered for private domestic use and Competent Authorities may consider it reasonable to presume, unless there is an indication to the contrary, that individuals gathering small amounts of LBMs totaling less than 5 kg in a day are gathering for private domestic use. These levels are for 'whole' LBMs and include the weight of the shell. However, this does not prevent Competent Authorities from pursuing instances where there is a suspicion of fraudulent activity or where public health could be at risk.

7.3 Production and relaying areas

7.3.1 Classification and monitoring of production and relaying areas

It is the responsibility of the FSA to classify LBM production and relaying areas. Classification of these areas is provided following an application for classification (requested by the harvester and district council) and the area has met the relevant legal requirements and those in the FSA's Protocol for Classification of Shellfish Production Areas Northern Ireland This includes the completion of a sanitary survey (if necessary) and initial classification sampling.

A list of classified LBM production and relaying areas and sampling plans is published on the FSA website.

7.3.2 Transfer of seed live bivalve molluscs to classified production areas

Seed LBMs might be transferred from areas that are not classified as production areas for 'growing on' within a production area of any class. Such LBMs are to be genuine 'seed shellfish' (shellfish too small to be marketed). Transfer of seed LBMs are only to be carried out under the authorisation of DAERA Marine and Fisheries.

Transfers of 'seed shellfish' are permitted, provided they remain in the classified production area for a period of not less than six months before they are harvested for human consumption. It is restricted to the seeding of new areas or the re-seeding of existing classified production areas. If new areas are seeded, they are required to be classified before harvesting can take place. Harvesters are to inform the relevant Competent Authority if any such movements are contemplated.

7.4 Shellfish liaison arrangements

It is essential for the effective enforcement of the regulations and public health protection that adjoining Competent Authorities, maintain effective liaison arrangements.

[31] Articles 14 and 18 of Regulation (EC) No 178/2002

It is recommended that the representatives from each Competent Authority which have shellfish activities in their area participate in the FSA-led Shellfish Liaison Group. Competent Authorities should liaise with other relevant local and national organisations invited to attend the group by FSA including:

- DAERA (Marine and Fisheries)
- Northern Ireland Environment Agency (DAERA)
- NI Water
- official testing laboratories
- Loughs Agency

Shellfish gatherers and or fishermen may be invited to attend the shellfish liaison group meetings on occasions, at the discretion of the FSA.

The liaison group's functions may include:

- arrangements for registration documents for the movement of live shellfish
- arrangements for the issuing of Notice of Temporary Closure of Production Area (Closure Notices) covering waters from more than one Competent Authority area
- arrangements for the detention/recall of LBMs affected by any Closure Notice or where further processing is needed following temporary downgrade
- effective local notification procedures to advise interested parties of action taken under the regulations (where such notification is required by the regulations)
- arrangements for effective communication and sharing of information between various agencies and organisations to assist with identify/anticipating potential problems

7.4.1 Registration documents for the movement of LBMs and exemptions

The Code provides that unless exempt, each operator/gatherer of LBMs (including live *Pectinidae*, *Echinoderms*, live tunicates, live marine gastropods and *Holothuroidea*) to be placed on the market, is to provide a registration document identifying each batch that they harvest.

It is recommended that the registration document for the movement of LBMs is completed upon landing. The registration document is required to accompany the batch from the classified harvesting area (or in the case of *Pectinidae*, non-filter feeding gastropods and *Echinoderms* from the area of sea it is harvested) and between establishments, up to and including arrival of the batch at a relaying area, purification or dispatch centre or processing establishment[32].

Where a batch of LBMs is sent by an intermediary operator, a new registration document, filled in by the intermediary operator, must accompany the batch.

[32] Annex III, section VII, chapter I and IX of Regulation (EC) No 853/2004

Registration documents must contain the information prescribed in chapter 1 of Annex VII of Regulation (EC) 853/2004. A model registration document of live bivalve molluscs, live echinoderms, live tunicates and live marine gastropods is provided in chapter X of annex VII of Regulation (EC) 853/3004.

FBOs are required to keep copies of registration documents for each batch sent and received for at least twelve months after its dispatch or receipt, or a longer period as specified by the Competent Authority[33].

7.4.2 Examination of registration documents for the movement of LBMs

The Code provides that Competent Authorities carry out regular examinations of the use and completion of registration documents to verify accuracy. Examination of the documents can be carried out as part of the official control of gathers/operators, intermediary operators, dispatch or purification centres or processing establishments. However, checks can be made at any part of the traceability chain.

The registration document is required to include specific information and be legible.[34]. The date of receipt is also required to be recorded on the registration document by the FBO at the dispatch or purification centre, relaying area or processing establishment when the batch is received.

The same requirements apply to batches of *Pectinidae* and non-filter feeding gastropods harvested from outside classified production areas. Although the classification status of the production area (class A, B or C) is not appropriate, the location of the production area is to be described in as precise detail as is practicable or by a code number, for example, International Council for the Exploration of the Sea coordinates or Ordnance Survey grid references.

Competent Authorities are to be aware that registration documents for the movement of LBMs may be completed on behalf of the gatherer, for example, by an ‘agent’, providing all required information relating to the batch is appropriately completed. The supplying harvester(s) is required to be able to support the declaration made on the registration document by the ‘agent’. Competent Authorities may wish to consider amending their registration forms for the movement of LBMs to reflect this activity.

Competent Authorities are to also be aware of the commercial advantages of abusing the registration document procedure, for example, by suggesting that LBMs have been taken from waters with a superior microbiological quality.

7.4.3 Verifying and monitoring registration documents

It is not possible for Competent Authorities to monitor every landing in their area, or to detect abuse in the use of registration documents by concentrating resources on sampling only. Competent Authorities are advised to familiarise themselves with the commercial activities within ports in their local area and implement some degree of monitoring of landings of LBMs and other shellfish, for example, *Pectinidae*. This can

[33] Annex III, section VII, chapter I, paragraph 6 of Regulation (EC) No 853/2004
[34] Annex III, section VII, chapter I, paragraph 4 of Regulation (EC) No 853/2004

be achieved through effective and periodic liaison with other statutory inspectorates, such as DAERA (Marine and Fisheries), and the Loughs Agency.

It is within the remit of DAERA to track the movement of fishing vessels in their local waters and provide other vital information to help verify the information contained in registration documents and the activities of harvesters, for example, the seasonality of the harvesting, minimum landing sizes or checks on whether shellfish were harvested under the appropriate permissions/DAERA licences.

Competent Authorities are to ensure that establishments are only accepting shellfish with the appropriate registration documents for the movement of LBMs. It is recommended that Competent Authorities receiving shellfish from outside their Competent Authority area contact the issuing Competent Authority when inspecting registration documents for the movement of LBMs to verify details.

In addition to local liaison, it is recommended that Competent Authorities also have in place procedures to assist tracking and verifying the authenticity of registration documents they have issued. For example, the use of one or a combination of coloured carbon tear-offs and/or embossed Competent Authority stamps in conjunction with unique reference numbers on documents, to help ensure registration documents are not easily falsified. In some circumstances it may be prudent to limit the number of documents issued to each harvester or ask for sight of previously completed documents, to assist in effectively monitoring or tracking products for traceability and verification purposes.

In order to ensure efficiency of the verification process, it is recommended Competent Authorities include the details of the harvesters to whom registration documents have been issued and the production areas for which the harvester requires the registration documents.

7.5 Action following non-compliant official control sampling

7.5.1 Notice of Temporary Closure of Production Area (Closure Notices)

The Code provides that where FSA official control sampling results show that health standards for LBMs (*E. coli*, marine biotoxins or chemical contaminants) have not been met or that there may otherwise be a risk to human health, the Competent Authority must, following liaison and agreement with FSA:

- act promptly to temporarily close the classified production or relaying area concerned when determined appropriate by FSA
- immediately inform interested parties, such as producers, gatherers, intermediary operators and operators of purification centres or dispatch centres of any decision to close production areas or FSA's decision to reclassify the area

The Code provides that where a closure notice is used, they are to be issued quickly to inform interested parties. It is recommended that all known FBOs in the Competent Authority's area who either have registration documents already issued, or are exempt from the use of registration documents, are notified of the closure

notice and its effect. This might best be achieved by sending a copy of the closure notice to all known interested parties.

It is recommended that closure notices are prominently displayed where food businesses and casual gatherers harvesting LBM might reasonably be expected to see them.

A model notice of temporary closure of production area (live bivalve molluscs/shellfish) can be found on the FSA's communications platform.

Where a closure notice has been issued, it is recommended that a copy is forwarded to the FSA at Executive.Support@food.gov.uk.

Any person who contravenes or fails to comply with the closure would be committing an offence[35].

7.6 Reporting of illegal harvesting activity

It is an offence to place LBMs on the market that have been harvested from areas that are not classified, or which are unsuitable for food safety reasons. It is also illegal for food businesses to place on the market *Pectinidae* and non-filter feeding gastropods harvested from outside classified areas, unless they meet food safety requirements for microbiological criteria[36], marine biotoxins[37] or chemical contamination[38].

Competent Authorities are to monitor harvesting areas within their remit, including areas affected by Closure Notices, to ensure illegal harvesting does not occur. Where Competent Authorities become aware of such instances, they are advised to consider appropriate surveillance and follow-up enforcement.

It is recommended that Competent Authorities establish close working relationships with other local inspectorates, such as DAERA, Gangmasters and Labour Abuse Authority and other local regulators who might be able to assist in combating illegal harvesting, for example, through surveillance, notification of fishing activity in waters under restrictions or assistance in the verification of information in registration documents for the movement of LBMs.

All cases of illegal harvesting are to be reported to the FSA's FFLO (investigations.ni@food.gov.uk) and copying FSA.IncidentsNI@food.gov.uk referencing 'for the attention of the FFLO' or by telephone 0330 332 7149 (and ask to speak with the Northern Ireland FFLO).

Competent Authorities can also contact the FSA's FFLO for further advice on surveillance and enforcement.

[35] Regulation 17(1) of The Food Hygiene Regulations (Northern Ireland) 2006
[36] Commission Regulation (EC) No 2073/2005
[37] Regulation (EC) No 853/2004
[38] Commission Regulation (EU)2023/915

7.7 Standards for purification centres

Regulation (EC) No 853/2004 outlines the structural and hygiene requirements for purification centres.

Guidance for Local Authority Authorised Officers on the Inspection of Purification Systems for LBMs in England, Wales and Northern Ireland is available to assist Competent Authority official controls of purification establishments.

7.8 Shellfish identification marks

Competent Authorities may wish to periodically select a batch or consignment from a retail outlet or restaurant as part of the monitoring of the use of shellfish identification marks. Competent Authorities are recommended to trace the batch or consignment back through an auction hall, purification or dispatch centre or processing establishment, to the original gatherers to establish that records relating to the traceability of the batch and the identification mark are in order. Competent Authorities are recommended to co-operate with other Competent Authorities in any random check through the production and distribution chain.

Note: retailers are to retain the label/identification tags attached to the packaging of LBMs that are not in individual consumer-size packages for at least 60 days[39] after splitting up the contents to assist in tracing product in the event of a report of illness.

If any checks suggest that traceability documents, such as the registration documents for the movement of LBMs, identification marks or records, are not being used in accordance with the regulations, the Competent Authority is to carry out an investigation to establish where the procedures have not been properly observed. In such cases they are to also consider taking appropriate enforcement action and increasing the frequency of random checks through the distribution chain until they are satisfied that the appropriate procedures are being followed.

7.9 Template forms and additional guidance

The following template forms can be found on the FSA's communications platform:

- Model LBMs/Live Shellfish Registration Document

Further guidance regarding shellfish classification can be found on the FSA website.

[39] Annex III, section VII, chapter VII, paragraph 3 of Regulation (EC) No 853/2004

Chapter 8 Subject specific guidance

8.1 Introduction

Chapter 8 deals with matters relating to:

- fishery products
- meat
- raw milk and dairy products
- egg packing centres
- egg products and liquid eggs
- food for specific groups
- temperature control provisions
- bottled water
- food waste and animal by-products (ABP)
- distance selling/mail order

The FSA has produced detailed guidance regarding the Approval of Establishments: Guidance for District Councils in Northern Ireland and Primary production food hygiene inspection guidance which may be of assistance to authorised officers when dealing with some topics within this chapter.

8.2 Matters relating to fishery products

8.2.1 Introduction

This section provides specific guidance to Competent Authorities on the application and enforcement of the fishery products aspects of Regulation (EC) No 852/2004, Regulation (EC) No 853/2004 and Commission Implementing Regulation (EU) 2019/627.

8.2.2 Competent Authority

Competent Authorities are responsible for enforcement of the regulations at their local level, and therefore approve fishery products establishments, register certain markets and fishing vessels, and otherwise enforce the regulations.

8.2.3 Scope of approval

The provisions of Regulation (EC) No 853/2004 do not apply to retail unless expressly indicated. A retail establishment which supplies fishery products to the final consumer therefore does not need to be approved. Approval would, however, be required where operations are carried out to supply fishery products to other establishments unless that supply is to other retail establishments only and is a marginal, localised, and restricted activity.

Factory and freezer vessels, auctions and wholesale markets are required to have approval and be inspected at regular intervals to check for compliance with food

safety, hygiene, temperature controls and structural requirements and subject to Regulation (EC) No 853/2004, annex III, section VIII, chapters I and II.

8.2.4 Direct supply of small quantities of fish

The regulations do not apply to the direct supply of small quantities of fishery products (primary products) from the producer to the final consumer or to local retail establishments directly supplying the final consumer. For these purposes, a small amount is considered a total amount of not more than 25 tonnes of fishery products (not including LBMs) in a calendar year. While the regulations do not apply to this allowance, the supplier is to ensure that these products meet the food safety requirements for placing food on the market.

8.2.5 Conditions during and after landing

The EU Regulations require periodic inspection and checks on the fitness for human consumption of fishery products at the time of landing or before the first sale. Where fishery products are sold at a market associated with the landings, these inspections must take place in that auction hall or wholesale market. It is not normally necessary for inspections to be carried out at the time of landing. An organoleptic examination of the fishery products normally satisfies this requirement.

A Competent Authority can authorise the transfer of fishery products from the landing (ex-quay) into containers for immediate delivery to an approved establishment or auction or wholesale market for the checks to be carried out there. Deferring the checks to be carried out later in an auction or wholesale market normally does not require any special arrangements with the receiving Competent Authority.

Deferring checks to an approved establishment must, however, be subject to liaison and agreement with the receiving Competent Authority and have regard to the compliance record of the receiving establishment and confidence in its management. Authorisation of such deferred checks must be withdrawn if there is any suspicion of non-compliance with the requirements of the regulations. If an organoleptic examination raises doubt as to the freshness of the product, the Competent Authority can consider submitting the product for chemical analysis or microbiological examination.

With respect to the landing of fresh fish, checks required under the EU Hygiene Regulations are without prejudice to other checks that are required under UK marketing standards regulations by other statutory bodies. Authorised officers must, where necessary, liaise with other statutory inspectors, for example DAERA, to ensure that any enforcement action taken is appropriate.

8.2.6 Information on standards to be applied

Guidance on the requirements of EU Regulations relating to the Seafood industry can be obtained from Seafish. Competent Authorities can use the guidance as a reference in establishing a consistent approach to the requirements of the regulations. However, Competent Authorities should exercise caution and avoid using, in support of formal enforcement action, those parts of the Seafish guidance

that are directed towards the achievement of good industry practice and high-quality standards.

8.2.7 Template forms and additional guidance

Template forms are available on the FSA's communication platform.

Although the content of these documents is regarded as the minimum required, Competent Authorities may adapt them as necessary to meet local requirements.

Guidance on the requirements of UK law relating to the seafood industry can be obtained from Seafish.

8.3 Matters relating to meat

8.3.1 Meat - Approval of establishments

The FSA is responsible for approving establishments subject to veterinary control (such as slaughterhouses, cutting plants placing fresh meat on the market and game handling establishments) as well as any cold stores, re-wrapping/repacking, minced meat, meat preparations, mechanically separated meat activities or processing plants that are co-located with approved slaughterhouses, cutting plants or game handling establishments, or wholesale meat markets.

Competent Authorities are responsible for approving all other food premises handling POAO (except for co-located premises described above) and for registering establishments that are exempt from approval.

8.3.2 Enforcement in meat establishments

DAERA on behalf of the FSA is responsible for the delivery of official controls and enforcement in slaughterhouses, cutting plants placing fresh meat on the market and game handling establishments that require veterinary control.

8.3.2.1 Co-located establishments

DAERA on behalf of the FSA is responsible for hygiene enforcement for minced meat, meat preparations, mechanically separated meat activities, and in cold stores that are co-located with an approved slaughterhouse, cutting plant or game handling establishment.

8.3.2.2 Stand-alone establishments

Competent Authorities are responsible for enforcement in stand-alone establishments that produce meat products, minced meat, meat preparations and mechanically separated meat, and in establishments exempted from approval under Regulation (EC) No 853/2004.

8.3.2.3 Wild game

The FSA's Wild Game Guidance provides guidance on the legal requirements which apply to the handling, examination, preparation, storage, transport and supply of wild game and wild game meat for human consumption. This guidance also highlights any exemptions from Regulation (EC) No 853/2004 and Regulation (EC) No 852/2004.

8.3.3 Exemptions from approval

Articles 1 and 4 of Regulation (EC) No 853/2004 provide the relevant exemptions from the requirements for approval. These, along with all other approval exemptions can be found in the FSA's guidance Approval of Establishments: Guidance for District Councils in Northern Ireland.

8.3.3.1 On-farm slaughter and cutting of small quantities of poultry and lagomorphs

Regulation (EC) No 853/2004 does not apply to the direct supply, by the producer, of small quantities of meat from poultry (farmed birds except ratites) or lagomorphs (i.e. rabbits, hares, and rodents) slaughtered on the farm to the final consumer or to local retail establishments directly supplying such meat to the final consumer[40].

Which producers benefit from this exemption?

The exemption applies to producers of poultry or lagomorphs who slaughter their own animals on the farm of production, as long as only *small quantities* of meat are supplied.

The UK is interpreting 'small quantities' as:

- producers annually slaughtering under 10,000 birds or lagomorphs; or
- producers annually slaughtering over 10,000 birds or lagomorphs who are members of an appropriate assurance scheme and who either:
  - dry pluck by hand
  - slaughter for 40 days per year or less

The limit of 10,000 birds or lagomorphs in the first category may allow for some fluctuation in annual throughput around that level provided, it does not habitually exceed a combined limit of 10,000 a year.

Although there is no limit to the number of birds or lagomorphs that producers in the second category may slaughter, the FSA anticipates that the restrictions will limit production to relatively small quantities. In judging whether an assurance scheme is appropriate, it is recommended that regard be had as to whether the scheme has requirements that go beyond minimum legal requirements in relation to food safety and hygiene and whether it has independent verification arrangements. The FSA can advise in cases of doubt.

Where can the meat be sold?

Meat produced under this exemption may be supplied direct to:

- the final consumer
- direct to local retail establishments directly supplying such meat to the final consumer

[40] Article 1(3)(d) of Regulation (EC) No 853/2004

In the first category, direct supply to the final consumer includes mail order or internet sales, as long as the supply is direct to the consumer. Such supplies are not necessarily limited to meat in the form of fresh meat. They could be in the form of meat products or preparations.

In the second category, the supply is to be direct to local retail establishments (in the form of fresh meat, meat preparations or meat products) and could include the supply by the producer to restaurants or other catering establishments. The retail establishments supplied are to be local. 'Local' supply is interpreted as being the same as 'localised'. However, 'local' can be anywhere within the UK in the two weeks preceding:

- Christmas
- Easter
- Michaelmas (late September) - (for geese only)

What rules apply?

Regulation (EC) No 852/2004 applies to producers who benefit from this exemption. This includes, among other things, the requirement to register the establishment with the local Competent Authority, to maintain procedures based on HACCP principles and to comply with general hygiene and training requirements. The national rules in schedule 5 to The Food Hygiene Regulations (Northern Ireland) 2006 regarding labelling and record keeping also apply.

The labelling rules require that the meat bear a label or other marking clearly indicating the name and address of the farm where the bird or animal was slaughtered. This is in addition to any food information required by the Regulation (EU) No 1169/2011.

Schedule 5 of The Food Hygiene Regulations (Northern Ireland) 2006 requires the producer to keep a record in adequate form to show the number of birds and the number of lagomorphs received into, and the amounts of fresh meat dispatched from, the premises during each week. Such records, in order to be adequate, are recommended to at least record this information by species of animal slaughtered. The records are also to be retained for one year and be made available to an authorised officer of the local Competent Authority on request.

8.3.4 Meat products, minced meat, and meat preparations – Cutting of meat

Premises that cut meat exclusively for the manufacture of meat products, minced meat, meat preparations or mechanically separated meat, require approval in respect of their manufacturing activities and need to comply with the relevant requirements of annex III of Regulation (EC) No 853/2004 for red or white meat cutting plants, but will not need approval as cutting plants.

8.3.5 Home slaughter of livestock

Where slaughter of a livestock animal is carried out by its owner on their property for their own personal consumption or that of immediate members of their family living

there and the meat is not placed on the market (whether free of charge or not), such activity falls out of the scope of both Regulation (EC) No 852/2004 and Regulation (EC) No 853/2004. However, Regulation (EC) No 999/2001 applies wherever a Transmissible Spongiform Encephalopathies (TSE) susceptible animal is slaughtered (including home slaughter). This means that after the slaughter of cattle, sheep or goats, specified risk material (SRM) is required to be removed, stained, and disposed of in accordance with both Regulation (EC) No 999/2001 (as amended) and the animal by-products Regulation (EC) No 1069/2009. Animal welfare regulations also apply. A more detailed guide on home slaughter is available on the FSA website.

8.3.6 Less than thoroughly cooked burgers

In March 2017 a specific requirement for establishments supplying minced meat and/or meat preparations intended to be eaten less than thoroughly cooked (LTTC) to be approved by either the FSA or district councils was introduced. Specific approval of this activity is an important step in delivering a high level of public protection. A published list of establishments approved for this activity can be viewed. The list assists FBOs at catering establishments to identify approved producers of minced meat/ meat preparations which are suitable for use in the production of burgers intended to be LTTC.

There is guidance for food businesses and authorised officers on Less than thoroughly cooked beef burgers on the FSA website.

8.3.7 Halal food guidance

Guidance for food law enforcement officers on Halal food requirements can be found on the FSA's communications platform.

8.3.8 Transport of meat above temperature

Annex III, chapter VII, (3) of Regulation (EC) 853/2004 permits the transport of meat before reaching the required temperature. This is only under strict conditions and can include transport from approved slaughterhouses directly to butcher shops.

8.4 Matters relating to raw milk and dairy products

8.4.1 Introduction

This section provides specific guidance to Competent Authorities, with regard to raw milk and dairy products and clarifies enforcement responsibilities between DAERA (on behalf of the FSA) and Competent Authorities.

8.4.2 Enforcement

The FSA is responsible for approving raw liquid milk processing establishments subject to approval under Regulation (EC) No. 853/2004. DAERA AfIB undertakes hygiene official controls at raw liquid milk processing establishments on the FSA's behalf.

Any cold store, re-wrapping/repacking activities or other activities, subject to approval, co-located with an approved raw liquid milk processing establishment will

require to be approved by the FSA. FSA is responsible for the approval decision for other co-located activities at an FSA approved raw liquid milk processing establishment following a recommendation from the relevant district council. These establishments will be subject to joint food safety official controls by DAERA AfIB and district councils.

When not connected with FSA approved raw liquid milk processing establishments, dairy processing establishments and any associated cold stores or re-wrapping/repacking activities subject to approval are approved and subject to official controls by district councils.

DAERA AfIB, on behalf of the FSA, register and undertake official controls at milk production holdings, first commercial purchasers, milk distributors and raw liquid milk processing establishments exempt from approval under Regulation (EC) No 853/2004.

DAERA AfIB, on behalf of the FSA, is also responsible for enforcing hygiene and health warning labelling requirements of schedule 6 of The Food Hygiene Regulations (Northern Ireland) 2006 in respect of sales of raw drinking milk (RDM) intended for direct human consumption.

DAERA AfIB is responsible for controls under schedule 6 of The Food Hygiene Regulations (Northern Ireland) 2006 on the sales restrictions of raw cows' drinking milk (RCDM):

- ensuring that RCDM is only supplied from farms direct to consumers, at registered farmers markets or via distributors
- the management of the sampling programme to ensure adherence to standards for such milk set down in schedule 6

DAERA approved Veterinary Surgeons are responsible for carrying out official tests of dairy cattle herds for bovine tuberculosis (TB) and brucellosis, where appropriate, including annual TB testing of all cattle herds that produce raw drinking milk for direct human consumption.

District councils are the responsible Competent Authority for food standards requirements at dairy establishments including the general food labelling and durability marking of raw drinking milk (RDM) of all species.

8.4.3 FBOs selling RDM and cream intended for direct human consumption

There are no restrictions on sales routes of RDM from species other than cows' milk though the product is still required to comply with the food safety and traceability requirements set out in articles 14 and 18 of Regulation (EC) No 178/2002.

All RDM for direct consumption is also required to comply with the food safety criteria under Commission Regulation (EC) No 2073/2005 with respect to ready-to-eat foods and the legal safety and traceability requirements for food.

If district councils have concerns about the microbiological standard of RDM when it is offered for sale (such as. in a farm shop), they can carry out their own testing for

specific pathogens and take action under The Food Safety (Northern Ireland) Order 1991, if appropriate. It is recommended that close collaboration be maintained with DAERA AfIB in these circumstances.

District councils are requested to alert DAERA AfIB, as soon as possible if they become aware of sales of RCDM other than from the farm, registered farmers markets or via a distributor as permitted under the food hygiene regulations, or if they are alerted to unacceptable microbiological sample results taken from RDM.

Cattle herds that produce raw drinking milk for direct human consumption or the production of unpasteurised dairy products are required to be officially TB free and subject to annual testing for TB. Therefore, it is essential that district councils liaise closely with DAERA AfIB to maintain knowledge of local FBOs selling RDM and or supplying unpasteurised milk products.

8.4.4 Criteria and standards for raw milk

In the case of the standards laid down in annex III, section IX, chapter I, part 3 of Regulation (EC) No 853/2004 for plate counts and somatic cell counts, the regulations specify a minimum frequency of sampling by the producer or the first commercial purchaser. Authorised officers need to ensure that FBOs are carrying out the specified sampling programme. Authorised officers can check FBOs' records, and if they have concerns about the test results, consider random official checks to satisfy themselves that the required standards are being met.

8.4.5 Temperature requirements for milk used for the manufacture of dairy products

Annex III, section IX, chapter II, part 1, paragraph 1 of Regulation (EC) No 853/2004 stipulates that the acceptability of raw milk applies from the arrival of the milk at a processing establishment.

8.4.6 Heat treatment of raw milk or dairy products

Requirements for pasteurisation and ultra-heat treatment are set out in annex III, section IX, chapter II, part II of Regulation (EC) No 853/2004.

Paragraph 2 allows temperatures and times specified for treatment of raw milk to be exceeded for 'technological' reasons. These reasons will include cases where higher temperatures may be essential to the manufacture of certain products, for example, cheeses and instances over a weekend when establishments are unable to process milk within the specified period. Authorisation by the Competent Authority is required whenever it is anticipated that these times will be exceeded.

8.4.7 Phosphatase testing

Requirements for the determination of alkaline phosphatase activity in pasteurised cow's milk are set out in annex III, chapter II, of Commission Implementing Regulation (EU) 2019/627.

Alkaline phosphatase testing is not a suitable method to verify heat treatment of raw milk from non-bovine species or raw milk separated into different fractions before

being heat-treated in modern processing plants. Alternative options based on HACCP principles are available to food business operators to demonstrate to the Competent Authority the effectiveness of the heat treatment applied.

8.4.8 Labelling of cheeses made from raw milk

Cheeses made from raw milk which are sold pre-packaged are required to be labelled on the packaging as being 'made with raw milk' at point of sale. The legislation provides that 'labelling' includes any packaging, document, notice, label, ring, or collar accompanying or referring to such products.

Blocks of cheese on display at a delicatessen counter which it is intended will be cut into smaller portions for sale to the consumer are required to be labelled as 'made with raw milk' either by a label on the cheese or by a notice referring to it. However, such cheese once it is cut and wrapped and given to the consumer for purchase does not require to be labelled with the prescribed wording.

8.4.9 Officially tuberculosis free status and dairy hygiene legislation

8.4.9.1 Scope

This section provides information and advice for Competent Authorities who have dairy establishments in their area producing unpasteurised dairy products.

For the purpose of the Practice Guidance and for the purposes of dairy hygiene legislation, a herd is Officially Tuberculosis Free (OTF) if:

- all animals undergo a TB test with negative results annually, and
- there are no clinical signs or suspicion of TB infection in the herd

8.4.9.2 Introduction

TB is an infectious disease of humans and many animal species, caused by bacteria of the genus Mycobacterium. Most cases of human tuberculosis are caused by *Mycobacterium tuberculosis* (*M. tuberculosis*). TB in cattle is primarily caused by *Mycobacterium bovis* (*M. bovis*), which unlike *M. tuberculosis* has a very broad host range. DAERA is responsible for carrying out surveillance testing of dairy cattle herds for bovine tuberculosis (and brucellosis where appropriate) on a disease risk basis.

8.4.9.3 Competent Authority enforcement issues

Action to take on loss of OTF status of a dairy herd

When a dairy herd is placed under TB movement restrictions, for whatever reason, the DAERA Divisional Veterinary Office will send a notification to the herd owner, FSA and relevant district council. TB restrictions are imposed on the herd owner under The Tuberculosis Control Order (Northern Ireland) 1999 and this effectively suspends (or withdraws) the OTF status of that herd until further notice.

The notification includes the following information:

- milk from positive reactors at TB **must not** be sold for human consumption and **must** be kept out of the bulk tank

- FBO must notify their milk purchaser every time their herd is restricted, or reactors are detected in the herd
- reactors must be milked last and their milk disposed of immediately. The equipment that is used to milk these animals must be cleaned, by a full cleaning and disinfection routine, prior to being re-used
- milk from the rest of the herd (including inconclusive animals) can continue to be sold for human consumption provided it is **heat-treated**
- DAERA dairy hygiene inspectors will include checks to verify that milk from TB or brucellosis reactors has not gone into the bulk tank
- Reactor animals must be effectively isolated from the rest of the herd. Care must be taken when moving animals between isolation and milking to ensure that they do not come into contact with other animals in the herd.

Processors making unpasteurised dairy -based products are not to use milk from the affected herd and will only be able to continue their production of such products by obtaining an alternative source of supply from an OTF herd.

Competent Authorities are to notify FSA immediately if they become are of:

- milk from reactor animals is found to have entered the food chain after the loss of OTF status
- milk from the non-reactor animals in a non-OTF herd is found to have entered the food chain without heat treatment

Action to be taken on stocks of unpasteurised dairy products following loss of OTF status

For products made prior to the herd losing its OTF status, Competent Authorities should liaise with FSA who will conduct a risk assessment of the situation, which will assist in determining the action to be taken by the Competent Authority. If, as a result of the risk assessment, it is concluded that it is appropriate to withdraw or destroy such products, (voluntary) withdrawal/destruction procedures could be pursued. Authorised officers will have to decide on appropriate action based on the circumstances of individual cases. Factors to be taken into account in the risk assessment include:

- the reasons for the loss of OTF status. This can be due to the disclosure of TB test reactors, inconclusive reactors only, a slaughterhouse case, or an overdue TB test
- number of reactors identified. This would be the number of reactors in relation to the total herd size and number of cattle tested. A single or a low number of reactors in a large herd may represent a lower risk, since it may indicate that the infection has not had time to spread within the herd. A large number of reactors in any herd could indicate either a long term spread within the herd or multiple infections linked to a common source. Herds with larger number of reactors at the initial test are more likely to have additional reactors disclosed at the next test
- types of cattle reacting to the test. For example, maiden non-calved heifers or bullocks being non-milk-producing animals would be of less significance

- the number and location of any lesions found at postmortem examination (PME) and tissue culture results. If no TB lesions are found, or lesions are confined to one organ or one part of the body other than the mammary gland, the risk of TB bacilli being present in milk would be considered low. If TB lesions were found in the mammary gland or in more than one organ or part of the body in a lactating dairy cow, the risk of TB bacilli being present in milk would be considered significant. TB bacilli may be present in milk even in the absence of obvious udder disease when the disease has been distributed systemically. Following PME tissue samples are collected from a small subset of reactors, including those where no visible lesions were found in the absence of lesioned cattle. Tissue culture takes a minimum of 6 weeks to positively identify *M. bovis*, with approximately 10% of reactors with no visible lesions at PME and >90% of lesion reactors yielding a positive culture of *M. bovis*
- testing history of the individual herd. Aspects to consider include:
  - time elapsed since the last clear TB test
  - previous TB history of the herd
  - the reason for the test
- the baseline testing frequency for the civil parish. This provides an indication of whether the herd is in a high TB prevalence area. The local DAERA Divisional Veterinary Office (DVO) will provide expert opinion and judgement of the TB incidence in the locality
- general herd health and herd biosecurity. Consideration could also be given to:
  - milk somatic cell counts - higher cell counts may indicate a higher likelihood of TB organisms being present in the milk
  - animal trading record for the farm, highlighting numbers brought in, from where and their last TB test date (this is important because it can take a minimum of 6 weeks from the time of infection for an animal to react to the tuberculin test)
- type(s) of milk-based product and production process. For example, the use of bought in milk may make it more difficult to establish the necessary herd information. Consideration can be given to any scientific evidence, including that provided by the milk processors, that the production process may eliminate the pathogens and that TB organisms are absent from the product
- fresh milk products. The shelf life of the product may have been exceeded by the time the post-mortem report or tissue culture results are received
- size of the TB restricted herd. The likelihood, severity and duration of TB incidents tends to increase as herd size increases. Although this trend has been identified the effect is difficult to quantify and therefore the other factors detailed above are of greater significance for the risk assessment

Where there is evidence of active disease in an animal, it is likely that withdrawal of batches of the product produced before the date of TB testing would be appropriate as a precaution. The DAERA Veterinary Officer dealing with the TB incident is often

the person best placed to provide information and assist the Competent Authority with the risk assessment.

Regulation (EC) No 853/2004 does not prohibit the marketing of products manufactured before the removal of OTF status. If a voluntary solution cannot be agreed with the producer, authorised officers may consider enforcement action if they suspect that the products concerned fail to comply with food safety requirements as defined in article 14 of Regulation (EC) No 178/2002.

Action to take before OTF problems arise

All cattle herds in Northern Ireland are tuberculin tested annually. Competent Authorities should liaise and notify DAERA AfIB in relation to establishments or processors manufacturing unpasteurised dairy products and the sale of RCDM for human consumption to maintain knowledge of local FBOs selling RCDM and/or supplying unpasteurised dairy products. It is recommended that Competent Authorities advise manufacturers producing unpasteurised dairy products that the law requires that the milk they use only comes from herds classified as OTF. Authorised officers are to verify that those processors who buy in milk are able to produce evidence the milk they purchase only comes from OTF dairy herds. Competent Authorities can contact DAERA AfIB who will be able to supply further information about these issues.

8.4.9.4 Further contacts and information

If further advice is needed on the action to be taken on stocks of unpasteurised dairy products following the loss of OTF status, Competent Authorities can contact the FSA.

If more information is required on DAERA procedures concerning TB controls, Competent Authorities can contact the local DAERA DVO.

8.5 Matters relating to egg packing centres

8.5.1 Introduction

This section provides specific guidance to Competent Authorities for the enforcement of annex III, section X, chapters I and II of Regulation (EC) No 853/2004.

In addition to the relevant requirements of Regulation (EC) No 852/2004, this part of the aforementioned regulations lay down requirements for egg packing centres covering:

- hygiene and temperature requirements for the storage and transport of eggs
- the maximum time limit in which eggs are to be delivered to the consumer

8.5.2 Scope of the regulations

The regulations apply to establishments engaged in the following activities:

- egg packing centres – the grading, packing, handling, and storage of eggs
- wholesalers and retailers – the handling and storage of eggs

The production and collection of eggs at the producer's establishment are activities that take place at the primary production level.

Under the terms of the hygiene legislation, egg packing centres are not classed as primary producers, as they are engaged in activities one step removed from primary production. Therefore, in addition to the specific egg hygiene provisions contained in Regulation (EC) No 853/2004, egg-packing centres will be subject to the appropriate provisions of Regulation (EC) No 852/2004, including the article 5 HACCP requirements and the relevant chapters of annex II.

Egg packing centres will generally receive eggs from primary production units. From the packing centre, eggs will be distributed throughout the food distribution chain to wholesalers, retailers and the catering trade. Packing centres may be located on the same site as the production holding, but they might also be sourcing eggs from a number of different production sites and may even take bulk supplies of eggs from the wholesale market and repackage them into smaller containers. These practices are acceptable, however, DAERA AfIB is responsible for verifying that egg packing centres comply with the relevant requirements of the food hygiene regulations and general food law.

Egg wholesalers, while subject to the requirements of annex III, section X, chapter 1 of Regulation (EC) No 853/2004, may be classed as 'retail' as defined in article 3(7) of Regulation (EC) No 178/2002 and included in the retail exemption. However, if a wholesaler also carries out egg packing, then approval is required for the area of the establishments involved in packing eggs.

8.5.3 Specific hygiene requirements for shell eggs

The specific requirements set out in the regulations are:

- at the producer's establishment, and until sale to the consumer, eggs are to be kept clean, dry, free of extraneous odour, effectively protected from shocks and out of direct sunshine
- eggs are to be stored and transported at a temperature, preferably constant, that is best suited to assure optimal conservation of their hygiene properties
- eggs are to be delivered to the consumer within a maximum time limit of 28 days of laying

These specific requirements are self-explanatory save for the requirement to deliver eggs to the final consumer within 28 days from laying. It is not possible to determine the age of an egg directly and any legal requirement to provide the date of lay or the age of an egg is covered in egg marketing legislation. Eggs might be stamped with 'best before dates.' In the case of Class A eggs, it is a legal requirement[41] for a 'best before date' to be applied on all labels/packs. Given this information, if an authorised officer suspects eggs are being sold beyond the time limit required on food safety grounds, they are advised to examine documentation from the egg producer to determine the age of an egg. It is recommended that the authorised officer contact

[41] The Eggs and Chicks Regulations (Northern Ireland) 2010

the relevant Egg Inspector (EI), DAERA AfIB for further guidance and help in taking appropriate action.

For eggs produced by hens of the species *Gallus gallus*, the 'date of minimum durability' as defined in article 2(2)(r) of Regulation (EU) No 1169/2011 shall be fixed at not more than 28 days after laying. Where the period of laying is indicated, this date shall be determined from the first day of that period.

The Eggs and Chicks Regulations (Northern Ireland) 2010 cover most aspects of egg production, marking, transport, grading, packing and onward marketing.

The Registration of Establishments (Laying Hens) Regulations (Northern Ireland) 2003 require all laying hen establishments with 350 or more laying hens - whether from caged, barn, free range or organic egg-producing hens - to be registered with DAERA for egg marketing purposes. These regulations only relate to *Gallus gallus* hens.

The FSA is the Competent Authority responsible for food hygiene registration and official controls in these establishments. However, DAERA deliver these official controls on behalf of the FSA. This is in addition to the requirements laid down in Regulation (EC) No 852/2004 and Regulation (EC) No 853/2004 regarding registrations and approvals.

Producers are required to also register with DAERA if:

- they have 50 or more hens and any of the eggs are marketed at a local public market
- any of the eggs are marketed to registered packing centres

Note: if the eggs are supplied to shops, restaurants or bakeries, the producer will need to be approved and authorised as a packing centre in order to be permitted to grade them as Class A eggs.

Establishments that are registered with DAERA are allocated with a distinguishing number that is required to be stamped on all eggs graded as Class A.

8.5.4 Egg marketing

Egg producers, packing stations and wholesalers are also subject to egg quality and marketing regulations. These regulations are the responsibility of DAERA (AfIB). Inspections under these regulations are carried out by EIs.

8.6 Matters relating to egg products and liquid egg

8.6.1 Introduction

This section provides specific guidance to Competent Authorities on the enforcement of annex III, section X, chapter II of Regulation (EC) No 853/2004. This lays down the public health rules for the manufacture and placing on the market of egg products and liquid egg for human consumption.

The regulations lay down requirements for:

- establishments
- raw materials for the manufacture of egg products
- special hygiene requirements for the manufacture of egg products
- analytical specifications
- labelling and identification marking

8.6.2 Scope of the regulations

The regulations apply to establishments manufacturing egg products and liquid egg for human consumption, which include food businesses involved in the production of:

- processed products resulting from the processing of eggs, or various components or mixtures of eggs, or from the further processing of such processed products
- liquid egg for onward transportation to approved processing establishments

All establishments need to be approved if the regulations apply to them.

None of the requirements in annex III, section X, chapter II of Regulation (EC) No 853/2004 apply to retail, as defined by Regulation (EC) No 178/2002, so establishments such as bakers and caterers that process eggs and supply to the final consumer are not subject to any of the requirements of Regulation (EC) No 853/2004. However, there is a requirement under DAERA marketing legislation for caterers to only use Class A eggs, so eggs have to come from an approved egg packing establishment which meets the requirements in Regulation (EC) No 853/2004.

8.6.3 Types of approved premises

Premises requiring approval fall into two categories:

i. premises where egg products are manufactured and placed on the market, for example, where processing of raw eggs takes place

ii. premises where liquid egg is produced for later processing by an approved egg product manufacturer

Category (ii) exists because egg packing centres might prefer to break out eggs, including cracked eggs, to produce liquid egg rather than risk breakage before they are sent to a processing establishment described in category (i). Such approvals require that the eggs are broken out as soon as possible, in accordance with the FBO's HACCP-based procedures and the resulting liquid egg frozen or chilled for transport to another approved establishment. If chilled, the storage temperature is not to exceed 4°C and the storage period before processing is not to exceed 48 hours. An establishment approved for category (ii) only is required to comply with the same requirements for approval as egg product manufacturers in category (i). When notifying the FSA of approvals, Competent Authorities are advised to specify whether the approval is for (i) or (ii) and if the establishment is also a packing centre.

8.6.4 Dirty eggs

Eggs cannot be broken out unless they are clean and dry. Dirty eggs (non-Class A eggs) may be cleaned, but Competent Authorities are to ensure that any washing, drying and disinfecting of eggs is separated from all other operations of the business.

8.6.5 Centrifuging or crushing

The regulations prohibit the use of centrifuges or crushing to obtain egg contents or obtain egg whites from shells for human consumption. However, centrifuges can be used for the disposal of waste, and in such cases, the centrifuge is to be situated completely separately from other operations of the approved establishment. Authorised officers are to satisfy themselves that centrifuged material cannot contaminate egg products intended for human consumption. Waste material is to be denatured upon entry to the centrifuge, for example, by use of dye.

8.6.6 Labelling requirements

The general requirements for identification marking laid down in annex II, section I of Regulation (EC) No 853/2004 are to be complied with and are set out in 2.7.3 of the Code. However, there are additional specific requirements for egg products. Annex III, section X, chapter II, part V of Regulation (EC) No 853/2004 requires that consignments of egg products to be used as an ingredient in the manufacture of another product are to have a label giving the temperature at which the egg products are to be maintained and the period during which conservation may thus be assured. If the egg in question is liquid egg, then the label is to also state the words ‘non-pasteurised liquid egg’ - to be treated at place of destination’ and indicate the date and hour of breaking.

8.6.7 Pasteurisation and heat treatment

The regulations do not prescribe a time/temperature combination for the heat treatment of eggs, but they do require that the process eliminate microbiological hazards or reduce them to an acceptable level. Processing is not required for egg white intended for the manufacture of dried or crystallised albumen destined subsequently to undergo heat treatment.

Competent Authorities will need to be satisfied that the heat treatment process is sufficient to ensure a reduction in the level of micro-organisms in the egg product to any levels laid down in UK legislation on microbiological criteria.

Where a non-standard process is proposed, the onus is on the food business to show that adequate research has been carried out into its effectiveness. In establishments where heat processing takes place, Competent Authorities will need to establish that the operator of the heat process has an acceptable and appropriate level of expertise.

8.6.8 Analytical specifications

Annex III, section X, chapter II, part IV of Regulation (EC) No 853/2004 lays down analytical specifications that the end-product is not to exceed. Although there are no prescribed methods for testing for lactic or butyric acids, methods do exist. Where

such methods are used, consideration is to be given to the reliability of the results. Where samples are tested, the results are to be compared with the specified standards.

Authorised officers can help food businesses develop sampling plans which are not prescribed in the regulations.

8.6.9 Temperature control

The regulations require that products that have not been stabilised so as to be kept at room temperature, are to be cooled to not more than 4°C. Products for freezing are to be frozen immediately after processing.

8.6.10 Storage and transport

It is recommended that establishments keep eggs and egg products separate to avoid contamination. If separate rooms are not available, egg products may be stored in separate containers and areas.

Storage rooms are to be capable of maintaining any required temperature controls.

The regulations do not cover egg products that are stored in separate establishments such as depots or warehouses outside approved egg products establishments. Such storage is covered by Regulation (EC) No 852/2004.

8.7 Small quantities

8.7.1 Small quantities of primary products

Producers of small quantities of primary products, that are being supplied direct to the final consumer or local retail establishments directly supplying the final consumer, are exempt from legislative requirements in accordance with article 1(2) of Regulation (EC) No 852/2004 and article 1(3) of Regulation (EC) No 853/2004. These producers remain responsible for supplying safe food under The Food Safety (Northern Ireland) Order 1991 and Regulation (EC) No 178/2002.

In general terms, the notion of small quantities is broad enough to allow amongst other things:

- farmers to sell primary products directly to the final consumer, for example, farm gate sales or sales at local markets. This exemption also covers sales to local retail shops and local restaurants directly supplying the final consumer with the exception of RDM and eggs (see below)
- fishermen who harvest live shellfish products and fishery products such as crabs and lobsters to deliver directly to the final consumer or to local retail establishments directly supplying the final consumer

The expression ‘small quantities’ is not defined in the regulations - the FSA therefore suggests the following in table 6 as maximum amounts, which could be considered as a small quantity for individual POAO.

Table 6 – Table indicating small quantities of POAO

Products	Maximum amounts
Milk	Up to 24 pints of raw drinking milk per day (approximately 14 litres)
Eggs	Less than 360 eggs (that is less than one full case) per week Note: This exemption only applies to the producer supplying directly to the final consumer from the farm and farmers' markets and door-to-door. If the producer sells the eggs, for example, to local shops, restaurants or bakeries, they must first be graded as Class A; and therefore, the premises are required to also be approved and authorised as a packing centre for that activity.
Fishery products	Up to 25 tonnes in a calendar year
LBMs and marine gastropods	Collectively, up to 25 tonnes in a calendar year, but subject to maximum limits for individual species as set out below: Cockles - 25 tonnes Oysters - 5 tonnes King scallops - 5 tonnes Queen scallops - 10 tonnes Mussels - 20 tonnes All other LBMs - 10 tonnes Marine gastropods - 20 tonnes

8.8 Food for specific groups

8.8.1 Guidance

Regulation (EU) No 609/2013 establishes compositional and information requirements on food for specific groups, which include:

- infant formula and follow-on formula
- processed cereal-based foods and baby foods
- food for special medical purposes
- foods for total diet replacement for weight control

An information sheet is available on this legislation

Specific guidance is also available on Commission Delegated Regulation (EU) 2016/127 regarding infant formula and follow-on formula.

8.9 Temperature control provisions

8.9.1 Introduction

Temperature control requirements for food in Northern Ireland are set out in annex II, chapter IX, paragraphs (5) and (6) of Regulation (EC) No 852/2004. These requirements are given effect by regulation 27 and schedule 4 of The Food Hygiene Regulations (Northern Ireland) 2006.

Regulation 32 and schedule 4 do not apply in respect of any operation to which Regulation (EC) No 853/2004 applies.

In respect of circumstances exempted from the requirements of regulation 27 and schedule 4, and where food is required to be kept under temperature control for safety reasons, the general requirements of annex II of Regulation (EC) No 852/2004, would still apply, as appropriate, which include:

- chapter I, paragraph 2 (d)
- chapter III, paragraph 2(g)
- chapter IV, paragraph 7
- chapter V, paragraph (2)
- chapter IX, paragraphs (2), (5), (6) and (7)

8.9.2 General approach to temperature checks

Schedule 4 does not apply to any food business operation on ships and aircraft. Where applicable, the schedule requires certain types of perishable food to be maintained within specified temperature ranges. The purpose of checking the temperature of such foods for enforcement purposes is to establish whether these requirements are being met, taking account of any exemptions or tolerances that might apply.

Where appropriate, regard is to be given to any relevant temperature requirements of annex II of Regulation (EC) No 852/2004.

It is recommended that authorised officers adopt a staged approach to verifying compliance with the temperature requirements of the regulations as follows:

Stage 1 - Air temperature monitoring

Air temperature monitoring provides an indication of the performance of a refrigeration system over time and a single reading at any one time will not necessarily be an indication of product temperature. Air temperature monitoring records are an indication of temperature history, including defrost cycles, door openings and breakdowns. They are to be regarded as a guide to how a particular system is functioning.

Stage 2 – Between-pack testing

Non-destructive temperature measurement, or between-pack testing, can be used as the next step in the enforcement process. This is done with a pre-cooled flat-headed probe, suitable for measuring surface or between-pack temperatures.

It is important to ensure good thermal contact between the product and the probe when taking between-pack measurements. A total tolerance of +2.8ºC (0.8ºC as specified for instrument accuracy and 2ºC for the limitation of the methodology) can be allowed. Care is to be taken to allow time for the reading to stabilise, and to ensure that the temperature reading relates to the product, not the surrounding air, which can happen if the probe is not properly sandwiched between the packs. Testing is to be conducted with the minimum disturbance to the product or its temperature-controlled environment, particularly the airflow patterns in retail display cabinets. For products within an outer casing, it will be necessary to open the casing and insert the temperature probe between packs.

Not all packs or packaging materials are suitable for between-pack testing. Irregularly shaped packs where good thermal contact is not possible, packaging materials that act as an insulator and products in cartons or bubble packs where large air spaces exist are all examples where a between-pack temperature measurement may not be sufficiently accurate to give an indication of product temperature. In such instances it may be necessary to proceed directly to product testing temperature measurement.

Stage 3 - Product testing (destructive)

If a ‘stage 2’ temperature measurement has not been possible, or there is reasonable doubt after a ‘stage 2’ test about compliance with temperature requirements, it will be necessary to progress to product testing.

Sample preparation and temperature measurement are recommended to be undertaken with the sample in its temperature-controlled environment. If this is not possible, the sample can be removed to an appropriately refrigerated environment, provided the transfer does not prejudice product temperature. Any transfer is to take place prior to preparation of the sample. Transfer of products within the normal cold chain, for example, from a vehicle to a cold store, is acceptable.

When a ‘stage 3’ measurement is being carried out, inserting the temperature probe into the food might render the food unsaleable. In such circumstances, the authorised officer is recommended to consider purchasing the food in question.

The selection of items to be tested is at the discretion of the officer. However, if ‘stage 2’ testing has been carried out and there appears to be a breach of the relevant temperature requirements, it is not necessary to select large numbers of items for ‘stage 3’ testing.

In the first instance, items are to be taken for ‘stage 3’ testing from the warmest part of the refrigeration system. This can usually be identified using thermochromic (liquid crystal) strip temperature indicators. Although these do not give an accurate

temperature reading, they can provide a useful guide to relative temperature distribution within a refrigeration system.

General approach

If an authorised officer is satisfied after ‘stage 1’ or ‘stage 2’ that the relevant temperature requirements are being met, there is no need to move to the next stage or take any further action.

If there is no temperature monitoring system, or the officer has reasonable doubt about the information derived from the system where there is one, it is recommended that the officer carry out a ‘stage 2’ check.

If the temperature measured at ‘stage 2’ gives the authorised officer reasonable doubt that the relevant temperature requirements are being met, it is recommended that the officer move on to ‘stage 3’ and measure the temperature of the food itself.

‘Stage 3’ product testing methods are recommended to be used to produce evidence for formal enforcement action.

It is recommended that the FBO or manager, if present, be invited to witness temperature measurement. This is especially important when evidence is being gathered with a view to possible formal enforcement action.

8.9.3 Taking temperature measurements

The temperature of a product is not to be prejudiced by, for example, opening the doors in a vehicle too often or for too long, disturbing the air curtain in a chill cabinet or removing the food from a refrigerated environment for long periods.

Any opened cases or cartons are to be re-sealed and appropriately labelled or marked with the date and time of the inspection, the name of the person who opened it and the name of the Competent Authority. This is to show that the case or carton was opened for an official control and removes any suspicion of malicious tampering.

8.9.4 Tolerances

‘Stage 2’ temperature readings might be up to 2ºC warmer than the true product temperature, especially product with thick packaging. They might also be affected by recent movement of goods, defrost cycles or instrumental inaccuracy as described below.

Authorised officers are to use professional judgement in borderline cases to decide whether further ‘stage 2’ measurements are necessary before proceeding to ‘stage 3’.

8.9.5 Checking and calibration of enforcement measuring thermometers

Thermometers and other temperature measuring devices used for official controls and/or enforcement purposes are to be periodically tested and calibrated by a suitably accredited tester, for example, the instrument manufacturer or a United Kingdon Accreditation Service (UKAS) accredited laboratory or testing house, in

accordance with any recommendations of the manufacturer or supplier to ensure accuracy, integrity and reliability. A certificate of such calibration is to be obtained.

Competent Authorities are to also check devices for accuracy at regular intervals between each calibration, for example, against a reference thermometer used only for that purpose, to ensure they remain within relevant tolerances. Details of such checks are to be recorded, and these records retained in line with Competent Authority retention policies.

It is recommended that Competent Authorities ensure that temperature measurements used in evidence are taken with a thermometer or other measuring device that has a current certificate of calibration.

The accuracy of the thermometer or other temperature measuring device, and any detachable probes, are to be checked against a reference thermometer or calibrator that is certified to an appropriate standard, for example, National Physical Laboratory, and the result recorded before and after taking any temperature measurements that are likely to result in enforcement action.

The record of such a check is to be referenced to the instrument's certificate of calibration and include serial numbers of the instrument and any interchangeable probes.

If a reference thermometer is not available, the sensor can be checked in a wet ice mixture. In this case, the system is calibrated at 0ºC. The temperature of wet ice from distilled water is 0ºC. Drinking water with a salt content of 0.1% will only depress the melting point to -0.06ºC. Therefore, in most cases drinking water can be used to make the ice for the checking procedure. Ice is to be broken up into very small pieces, packed into a wide-necked vacuum flask, wetted with cold water and stirred. The sensor is to be placed at the centre of the flask at a depth of at least 5cm, agitated frequently and the temperature read after three minutes when stabilised. The read-out instrument can be checked separately using calibration attachments at two or three different temperatures. The combination of checking the system at 0ºC with that of checking the instrument is to ensure accuracy at higher temperatures.

8.9.6 Pre-cooling of instruments

The thermometer or other temperature measuring device and the penetration probe are to be pre-cooled before being used to measure product temperature to ensure that instruments are as close as possible to the temperature of the product being measured. Pre-cooling reduces the likelihood of a rise in product temperature due to the temperature of the probe and the action of making the hole and can usually be done by leaving the instruments and probe in the same temperature-controlled environment as the sample for approximately 10 minutes. Provided there is no significant rise in the temperature of the instrument or probe, subsequent measurements can be made after a much shorter pre-cooling period.

8.9.7 Preparation of samples for temperature measurement

Only temperature measuring probes that are specifically designed for the purpose are to be used to make a hole in the product. If the probe is not designed for this purpose, a separate pre-cooled product penetration implement is to be used. The diameter of the hole is to provide a close fit to that of the probe and its depth will depend on the type of product being tested (as described below).

8.9.8 Measurement of product temperature

Preparation of the product for testing and its temperature measurement is advised to take place with the product in its temperature-controlled environment. Measurement is as follows:

- where the product dimensions allow, insert the pre-cooled probe to a depth of at least 2.5cm from the nearest outside surface of the product
- where it is not possible, the probe is to be inserted to a minimum depth from the surface of at least 3 times the diameter of the probe. With some products, because of their small size, it is recommended that greater care be taken to avoid excessive rises in product temperature from unnecessary handling of the sample

Certain foods, because of their size or composition, cannot be penetrated satisfactorily to determine their internal temperature. In these cases, the internal temperature of the food package is advised to be determined by insertion of a suitable pre-cooled sharp-stemmed probe to the centre of the pack to measure the temperature in contact with the food.

It may not always be possible to determine the internal product temperature accurately, especially of fragile or open-textured products. The temperature of such products is to be measured by carefully removing the product from its packaging and firmly sandwiching a pre-cooled flat-headed probe between two items of product.

The temperature reading is not to be recorded until it has stabilised.

8.9.9 Equipment used for chilled product temperature measurement

Temperature measurement systems that are used for enforcement purposes are to meet the following requirements - the:

- system is to reach 90% of its final reading within 3 minutes
- system is to have an accuracy of +/-0.5ºC, or better when the sensor is measuring within the temperature range -20ºC to +30ºC
- accuracy does not change by more than +/-0.3ºC when the instrument is operated in temperatures of -20ºC to +30ºC
- instrument display is to be readable to at least 0.1ºC
- system is to be robust and shock proof
- temperature sensitive part of the system is to be constructed to facilitate good thermal contact with the food and be easily cleaned

A dry cell battery, not mains electricity, is to power the measuring instrument. The instrument is to incorporate a method of checking the battery voltage to indicate when replacement or re-charging is necessary. The design of the probe depends on the type of temperature measurement:

- for product tests: a robust rigid stem with a sharpened point suitable for insertion into the product and capable of being sterilised
- for between-pack tests: a flat head suitable for a between-pack measurement with good surface contact, low thermal mass and high thermal conductivity. If a suitable flat probe is not available, one can be constructed using a calibrated sensor crimped in the centre of a square (approximately 4cm long), or circle (approximately 4cm diameter) or a double layer of aluminium foil. Any inter-connecting cables are to be flexible between 0ºC and +30ºC

8.9.10 Food that is warmer than prescribed chill holding temperature

When measuring the temperature of food itself, authorised officers are to be aware that the regulations allow the temperature of a food subject to chill holding temperatures, whilst it is for service or on display for sale, to rise above 8ºC for one period only of less than four hours[42].

The officer needs to be satisfied that the FBO has measures in place, as appropriate, to ensure that the chill holding tolerance described above is not exceeded.

8.9.11 Food that is cooler than prescribed hot holding temperature

When measuring the temperature of food itself, authorised officers are to be aware that the regulations allow the temperature of a food subject to hot holding temperatures, whilst it is for service or on display for sale, to fall below 63ºC for one period only of less than 2 hours[43].

The officer needs to be satisfied that the FBO has measures in place, as appropriate, to ensure that the hot holding tolerance described above is not exceeded.

8.9.12 Temperature deviations

Where the FBO suggests that specified temperatures have not been complied with[44] for unavoidable reasons, the authorised officer is to discuss the reasons with the FBO and, where possible, seek agreement on action to prevent any recurrence.

Authorised officers are advised to always ensure that any measures taken by the FBO with respect to food that has been exposed to temperatures in excess of, or

[42] Regulation 27 and schedule 4, paragraph 5 of The Food Hygiene Regulations (Northern Ireland) 2006

[43] Regulation 27 and schedule 4, paragraph 7 of The Food Hygiene Regulations (Northern Ireland) 2006

[44] Regulation 27 and schedule 4 of The Food Hygiene Regulations (Northern Ireland) 2006

below, those permitted by the regulations, are consistent with food safety and take appropriate action to remove such food from the food chain if necessary.

If the food itself is at a higher temperature than the prescribed chill holding temperature, or a lower temperature than the prescribed hot holding temperature, and the authorised officer is of the opinion that the food has not been produced, processed, or distributed in accordance with The Food Hygiene Regulations (Northern Ireland) 2006, the officer can deal with the food under regulation 25 of the regulations Voluntary procedures to remove food from the food chain may, however, be used in appropriate circumstances.

If food is at a higher temperature than 8ºC (chill holding) or below 63ºC (hot holding), but does not fail food safety requirements, the authorised officer is to use professional judgement to determine the most appropriate action in the circumstances. The food can still be fit for consumption even if it has been maintained at temperatures within this range.

It is recommended that authorised officers enquire into the history of the food, in particular to ascertain whether it could previously have been exposed to such temperatures. Enforcement decisions are to take account of the history of the food and whether it is consistent with food safety. Authorised officers can adopt an educative approach as the first step towards securing compliance and discuss the requirements of the legislation with the FBO to ensure they understand the controls, why they are needed and how they can be achieved. In considering the approach to take, it is recommended that authorised officers consider how likely it is that food may be being consistently placed on the market at these temperatures.

8.10 Bottled waters

8.10.1 Introduction

This section provides guidance on The Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2015.

8.10.2 Scope

The regulations control the exploitation and marketing of natural mineral waters, spring water and bottled drinking water.

8.10.3 Guidance

Guidance for Competent Authorities on their obligations under the regulations can be found in appendix 2 of the Northern Ireland Food Standards Reference Manual.

Industry related guidance on 'Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations in Wales and Northern Ireland' can be accessed on the FSA website.

8.10.3.1 Recognised Natural Mineral Waters (NMW)

The regulations require each natural mineral water source to be recognised by the Competent Authority for the area in which the source is located before water can be sold as "natural mineral water".

The most recent list of all recognised sources within the EU is available on the EC Website.

The updated list of NMW recognised in the UK can also be found on the GOV.UK website.

8.10.4 Windsor Framework

Under Windsor Framework arrangements, waters produced in Northern Ireland continue to meet all EU standards and have unfettered market access to the GB market under the United Kingdom Internal Market Act 2020.

The Windsor Framework allows GB standards for public health, marketing (including labelling) and organics to apply for pre-packed retail goods moved via the NIRMS and placed on the Northern Ireland market. Therefore, goods moving via this route containing GB standard waters can be placed on the Northern Ireland market.

8.11 Food waste and animal by-products

8.11.1 Introduction

This section provides guidance to Competent Authorities on the control of food waste and disposal of ABP.

For the purposes of the Practice Guidance, 'food waste' includes food material that is not fit or not intended for human consumption, although please note 'food waste' is often used to refer to surplus food that is being redistributed and so in those cases remains 'on the market' in food law terms.

Surplus food, where for commercial reasons the food is no longer intended for human consumption, which can include out of date, out of specification, surplus product or ingredients, or food in damaged packaging can be supplied for animal feed.

Many food businesses will be making efforts to reduce food waste and redistribute surplus food. The FSA supports surplus food redistribution where it can be done safely. A guidance document with helpful advice for any businesses redistributing surplus food titled Best practice on food date labelling and storage advice published in November 2017 by WRAP in collaboration with the FSA and Defra is available.

8.11.2 Catering waste

There are requirements[45] for FBOs regarding the disposal of food waste. These require FBOs to ensure that:

- there is no accumulation of waste
- waste is stored in suitable containers and are free of pests
- waste is disposed of hygienically and in an environmentally friendly way, in accordance with relevant legislation

[45] Annex II, chapter VI of Regulation (EC) No 852/2004

For FBOs operating from establishments to which the rules of annex II, chapter III of Regulation (EC) No 852/2004 apply, for example, B&Bs, stalls and temporary premises, paragraph 2(f) of chapter III requires adequate arrangements or facilities for the hygienic storage or disposal of waste to be available.

8.11.3 Official controls of food businesses

An official control of a food business, including those of mobile establishments/premises, ships, aircraft and trains, may include a check on the arrangements that the business has for the collection and disposal of food waste.

Checks may:

- include the arrangements in ports and airports for the collection and disposal of imported food waste from ships and aircraft
- verify that threats to human or animal health which can arise from the illegal disposal of food waste are effectively controlled by proper disposal in accordance with the requirements of the relevant legislation

8.11.4 Disposal of animal by-products

According to Regulation (EC) No 1069/2009, ABP means entire bodies or parts of animals, POAO or other products obtained from animals (includes eggs, milk and honey), which are not intended for human consumption including oocytes, embryos and semen[46]. Articles 8-10 of Regulation (EC) No 1069/2009 categories animal by-products into category 1, 2 and 3 materials.

Food material consisting of, or containing products, originating from animals becomes an ABP when the FBO determines that the product is no longer to be used for human consumption. Once this decision is made it is irreversible. The material then becomes a low risk (category 3) ABP. The origin and nature of this food material determines how it can be disposed of, or used, and the records required to be kept.

Where appropriate, official controls are recommended to include checks that FBOs ensure that their food safety management system includes a documented procedure for identification, labelling (category 1, 2 or 3), handling and disposal of such products. Containers used for collection of ABP need to be clearly labelled and easily distinguishable from containers used for collection of products destined for processing and subsequent human consumption. Articles 12-14 of Regulation (EC) No 1069/2009 set out requirements for the disposal of categories 1, 2 and 3 ABP.

It is recommended that checks also verify that these documented procedures are carried out accordingly at the premises by the FBO.

Guidance regarding ABP can also be found in the DAERA VPHP Manual for Official Controls.

[46] Article 3(1) of Regulation (EC) No 1069/2009

8.11.5 Animal feed – former foodstuffs and co-products

Former foodstuffs, which can also be described as surplus food, may, subject to ABP rules, be supplied for animal feed (including pet food) where for commercial reasons the food is no longer intended for human consumption. This can include out of date, out of specification, surplus product or ingredients, or food in damaged packaging.

Co-products of food processing may also be supplied for animal feed, for example, fruit pulp from the production of fruit juice and brewers' grains from the production of beer.

Former foodstuffs and co-products may be supplied direct to a farm or sent for further processing.

FBOs supplying former foodstuffs or co-products are also feed business operators. If they are aware that their products are destined for feed, they are required to register as a feed business with DAERA and ensure compliance with Regulation (EC) No 183/2005 (feed hygiene), Regulation (EC) No 767/2009 (marketing and use of feed including labelling) and Regulation (EC) No 178/2002 on the general principles and requirements of food law, including feed.

Where, during an official control of a food premises, it is identified that former foodstuffs or co-products are being supplied for animal feed, it is recommended that the authorised officer establish whether the business is registered as a feed business with DAERA. If the FBO is not registered as a feed business, or that cannot be established, DAERA is to be informed.

8.11.6 Animal feed – animal by-product controls

If former foodstuffs or co-products consist of, contain, or are contaminated with POAO, they become subject to ABP controls[47]. These products generally cannot be used for feed for farmed animals. Further information on disposing food and former foodstuffs is available at BSE feed controls. When an FBO makes the decision that food of animal origin or food that contain POAO is no longer for human consumption then the former foodstuff becomes an ABP and this decision cannot be reversed.

8.11.7 Animal feed – catering waste

Catering waste is any waste food (including used cooking oil) that comes from restaurants, catering sites, commercial or household kitchens. Catering waste is never to be sent for use as animal feed, including for pet food, due to the risk of cross-contamination with POAO, for example, milk. Processed catering waste, known as 'swill', is also banned from feeding to animals.

8.11.8 Major investigations

Competent Authorities might become aware of instances of apparent food fraud involving the misuse of food waste that could have potentially serious implications for

[47] The Animal By-Products (Enforcement) Regulations (Northern Ireland) 2013 and Regulation (EC) No 1069/2009

public or animal health, for example, unfit meat being diverted into the human food chain. See chapter 5 for advice on food crime.

The investigation of such cases might have serious resource implications for Competent Authorities, both in terms of time and other resources. Nevertheless, it is important that the very serious risks to human health and animal health, that such cases might involve, are brought to the attention of the relevant enforcement authority and investigated without delay and that all necessary steps are taken to deal with them thoroughly.

The resources required can impact on a Competent Authority's ability to carry out its routine official control and enforcement programme. If such circumstances arise, it is important that the Competent Authority contacts the FSA, by emailing executive.support@food.gov.uk, as soon as practicable.

The FSA and the Competent Authority will then be able to discuss options, including whether support might be available, or whether the Competent Authority's official control programme can be re-prioritised to ensure that inspections of higher-risk premises are maintained.

8.12 Distance selling/mail order

8.12.1 Introduction

This section provides guidance to Competent Authorities on the enforcement of food law in relation to the distance selling of food and information on other generic legal requirements that relate to distance selling.

For the purposes of the Practice Guidance, the distance selling of food' means the advertisement of food for sale directly to consumers where the subsequent sale or supply of the food to the consumer takes place without the simultaneous presence of the consumer. Examples of distance selling include the sale of food through internet websites, mail order transactions and telephone sales.

The enforcement issues for Competent Authorities that relate to the distance selling of food depend primarily on the location of the advertiser and/or seller. It is important to bear in mind that food bought via an internet website involves a sale whereby the seller could be located anywhere in the world.

Generic law regulating distance selling in the UK is set out in The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

The central UK Competent Authority with responsibility for these regulations is the Department of Enterprise, Trade and Investment.

8.12.2 Distance selling of food from the UK

The distance selling of food from the UK takes place when the advertisement of food for sale or the sale transaction itself takes place within the jurisdiction of the UK legal system, even if the purchaser is based overseas.

The distance selling of food from the UK is covered by relevant food law. Food that is sold by a distance selling method from the UK, and advertisements for such food, is therefore to comply with all relevant legal requirements.

Competent Authorities are:

- responsible for enforcing food law in relation to the distance selling of food from the UK, including food that is advertised or sold through UK-based internet sites
- to have appropriate means of monitoring the distance selling of food by businesses for which they act as home authority
- to include an assessment of relevant food hygiene, safety, advertising, compositional and labelling matters in programmed official controls of businesses involved in the distance selling of food from the UK in their areas

8.12.3 Distance selling of food from outside the UK

The distance selling of food from outside the UK takes place when the advertisement of food for sale or the sale transaction itself takes place outside the jurisdiction of the UK.

8.12.4 Other guidance

The FSA has published guidance on food sold online for local authorities.

A Guide to Good Hygiene Practice for the mail order food industry, developed in accordance with article 8 of Regulation (EC) No 852/2004, is also available.

8.13 Additional guidance notes to Competent Authorities

Additional guidance on a variety of food law matters is available on FSA's communications platform.

Glossary

Alkaline phosphatase (ALP)

In regard to phosphatase testing in milk ALP; is an intrinsic enzyme secreted by ruminants in their milk. The enzyme is denatured during pasteurisation of the milk, hence is used to determine the efficacy of milk being heat treated.

Animal By-Products (ABP)

Defined in article 3(1) of Regulation (EC) No 1069/2009 as 'entire bodies or parts of animals, products of animal origin or other products obtained from animals that are not intended for human consumption'.

Approved establishment

An establishment that has been approved pursuant to article 4 of Regulation (EC) No 853/2004 for handling, preparing and/or producing products of animal origin.

Approved Game Handling Establishment (AGHE)

An approved premise in accordance with the Regulation (EC) No 853/2004. Where a business is processing unlimited quantities of game meat from brought -in fur/in feather carcases and supplying it to retail and wholesale customers.

Audit

Has the meaning as defined by article 3(30) of Regulation (EU) 2017/625 to mean a systematic and independent examination to determine whether activities and related results comply with planned arrangements and whether these arrangements are implemented effectively, by the FBO, and are suitable to achieve objectives.

This includes planned partial or full audits:

- a 'full audit', is an examination of planned arrangements and whether they are implemented effectively and will consider all aspects of an FBO's operations
- a 'partial audit', is an audit that covers only certain aspects of an FBO's operation

Authorised officer

Means a person who is authorised by the Competent Authority, either generally or specifically, to act in relation to matters arising under food law.

Border Control Post (BCP)

Has the meaning defined in article 3(38) of Regulation (EU) 2017/625 to mean a place, and the facilities belonging to it, designated for the performance of official controls provided for in article 47(1) of Regulation (EU) 2017/625.

Chartered Institute of Environmental Health (CIEH)

A membership and awarding body for the environmental health sector.

Chartered Trading Standards Institute (CTSI)

CTSI represents Trading Standards professionals working in the UK and overseas - in local authorities, business and consumer sectors and central government.

Competency Standard

The FSA document which sets out the knowledge and skills for the effective delivery of official food and feed controls and other activities.

Competent Authority

Has the meaning as defined in article 3(3) of Regulation (EU) 2017/625 to mean the Competent Authority responsible for the performance of official controls and of other official activities, in accordance with that Regulation and the rules referred to in article 1(2).

Compliant

Conforming with the requirements of the law.

Conditional approval

Approval granted by a Competent Authority pursuant to article 148(4) of Regulation (EU) 2017/625 if it appears to a Competent Authority that an establishment meets all the infrastructure and equipment requirements. Conditional approval must not exceed a total of six months, with the exception of factory and freezer vessels, conditional approval must not exceed 12 months.

Confidence in Management (CIM)

The Confidence in Management score is part 3 of the Hygiene Rating Intervention Rating Scheme and is one of the risk factors considered under the Compliance Assessment for food standards. The Competent Authority assesses the business' food safety management/control procedures using their judgement on the likelihood of satisfactory compliance being maintained in the future. Factors that influence the Competent Authority's judgement include: the previous record of compliance with the FBO; knowledge on food safety and standards; attitude towards food standards and hygiene compliance and satisfactory food safety management procedures.

Consignment

Has the meaning as defined in article 3(37) of Regulation (EU) 2017/625 to mean a number of animals or quantity of goods covered by the same official certificate, official attestation, or any other document, conveyed by the same means of transport, and coming from the same territory a country outside the UK, and, except for goods subject to the rules referred to in point (g) of article 1(2) of Regulation (EU) 2017/625, being of the same type, class, or description.

Consultant in Health Protection (CHP)

A senior role within the Public Health Agency, health protection team who provides leadership, management and oversight of the health protection function, including the response to incidents and outbreaks.

Consultant in Public Health Medicine (CPHM)

The role of the CPHM in the case of a food poisoning outbreak is to determine if there is a true outbreak and initiate and coordinate any necessary action including the use of the local outbreak control plan. They also advise the person in charge of any immediate actions necessary to control the outbreak.

Continuing Professional Development (CPD)

How members of a profession maintain, improve, or broaden their knowledge and skills and develop the qualities required in their professional lives.

Control verification procedures

More commonly referred to as internal monitoring procedures, has the meaning as defined in article 3(6) of Regulation (EU) 2017/625 to mean the arrangements put in place and actions performed by the Competent Authorities for the purpose of ensuring that official controls and other official activities are consistent and effective.

Could

Is generally used to indicate those provisions which are for guidance only.

Critical Control Point (CCP)

Any step in a process in which hazards can be prevented, eliminated, or reduced to acceptable levels. Examples of critical control points include cooking, cooling, re-heating, and holding.

Department of Agriculture, Environment and Rural Affairs (DAERA)

The Department of Agriculture, Environment and Rural Affairs (DAERA) is a government department in the Northern Ireland Executive. DAERA has responsibility for food, farming, environmental, fisheries, forestry and sustainability policy and the development of the rural sector in Northern Ireland.

Detention Notice

A notice served on an FBO or duly authorised representative where detention of any animal or food for the purpose of examination (including the taking of samples) is required as specified in regulation 9(5) of The Food Hygiene Regulations (Northern Ireland) 2006.

District council

As defined by section 1 of the Local Government Act (Northern Ireland) 1972.

Documentary check

Has the meaning as defined in article 3(41) of Regulation (EU) 2017/625 to mean the examination of the official certificates, official attestations and other documents including documents of a commercial nature, which are required to accompany the consignment as provided for by the rules referred to in article 1(2), by article 56(1) or by implementing acts adopted in accordance with articles 77(3), 126(3), 128(1) and 129(1).

Domestic premises

A dwelling house or other building used principally, but not exclusively as a dwelling and its curtilage.

Early Warning System (EWS)

An emerging risk detection tool to predict hazards for specific food and feed.

Emergency Prohibition Order (EPO)

Has the meaning as defined by article 11 of The Food Safety (Northern Ireland) Order 1991 to mean if an authorised officer is satisfied the health risk is fulfilled, he may, by notice, serve on the proprietor of the business and impose the appropriate prohibition.

Environmental Health Registration Board (EHRB)

An awarding body in the UK which issued certificates of registration to those who had successfully completed an approved course of study in the subject of environmental health that included an accredited course, work based learning and professional examinations.

***Escherichia coli* O157 (*E. coli* O157)**

A VTEC strain that can cause illness in humans. Symptoms can range from mild gastroenteritis, severe bloody diarrhoea, and kidney damage.

Establishment

Has meaning as defined in article 2(1)(c) of Regulation (EC) No 852/2004 to mean any unit of a food business.

Evidence

Information or items which provide proof of an allegation.

Export

The action of sending a commodity outside the EU sanitary and phytosanitary (SPS) regulatory zone. The movement of Northern Ireland qualifying goods to GB are excluded from this definition.

Food alert

Communication from the FSA to a Competent Authority concerning a food hazard or other food incident, where specific actions/responses are required to be undertaken by the Competent Authority. A ‘Food Alert Update’ should be read accordingly.

Food business

Has the meaning as defined by article 3(2) of Regulation (EC) No 178/2002 to mean any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of production, processing, and distribution of food.

Food business operator (FBO)

Has the meaning as defined by article 3(3) of Regulation (EC) No 178/2002 to mean the natural or legal persons responsible for ensuring that the requirements of food law are met within the food business under their control.

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

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

Food crime

Serious fraud and related criminality within food supply chains (this also includes drink and animal feed).

Food Examiner

Any person who possesses the requisite qualifications to carry out examinations.

Food hazard

A biological, chemical, or physical agent in food capable of causing adverse effects to public health.

Food hygiene

The measures and conditions necessary to control hazards and to ensure fitness for human consumption of a foodstuff, taking into account its intended use as set out in Regulation (EC) No 852/2004.

Food Hygiene Intervention

An intervention that ensures food meets the requirements of food hygiene law, including:

- microbiological quality
- absence of pathogenic micro-organisms
- safety for consumption

Food Hygiene Rating Scheme (FHRS)

A scheme that applies to England, Wales and Northern Ireland designed to give information to the public on what each food business had achieved on their last food hygiene inspection carried out by the local authority, rated from 0 (urgent improvement necessary) to 5 (hygiene standards are very good).

Food incident

Any event where, based on the information available, there are concerns about actual or suspected threats to the safety, quality or integrity of food that could require intervention to protect consumers' interests.

Food for Specific Groups (FSG)

The Food Safety (Information and Compositional Requirements) (Northern Ireland) Regulations 2006 establishes compositional and information requirements for the following categories of food: infant formula and follow-on formula; processed cereal-based food and baby food; food for special medical purposes; total diet replacement for weight control.

Food Safety Culture

Food safety culture is the shared values, commitment, attitudes and behaviours within a food business, regarding food safety.

Food Standards Agency (FSA)

An independent, non-ministerial department, working across England, Wales and Northern Ireland, whose objectives are to protect public health from risks arising from the consumption of food and to protect the interests of consumers in relation to food.

Formal action

The taking of action against a food business operator as set out in the legislation including the service of a statutory notice to remedy non-compliance with legal requirements, and the institution of legal proceedings for breaches of legal requirements.

Formal notice

Means a notice as defined in the various Orders or statutory rules relating to food law.

Goods

Has the meaning as defined in article 3(11) of Regulation (EU) 2017/625, as: goods means all that is subject to one or more of the rules referred to in article 1(2), excluding animals;'
Article 1(2) of Regulation (EU) 2017/625 states: This Regulation shall apply to the official controls performed for the verification of compliance with the rules in the areas of:

- food and food safety, integrity and wholesomeness at any stage of production, processing and distribution of food, including rules aimed at ensuring fair practices in trade and protecting consumer interests and information, and the manufacture and use of materials and articles intended to come into contact with food
- deliberate release into the environment of Genetically Modified Organisms (GMOs) for the purpose of food and feed production

- feed and feed safety at any stage of production, processing and distribution of feed and the use of feed, including rules aimed at ensuring fair practices in trade and protecting consumer health, interests and information
- animal health requirements
- prevention and minimisation of risks to human and animal health arising from animal by-products and derived products
- welfare requirements for animals
- protective measures against pests of plants
- requirements for the placing on the market and use of plant protection products and the sustainable use of pesticides, with the exception of pesticides application equipment
- organic production and labelling of organic products
- use and labelling of protected designations of origin, protected geographical indications and traditional specialities guaranteed'

Hazard

Has the meaning as defined by article 3(14) of Regulation (EC) No 178/2002 to mean a biological, chemical, or physical agent in, or condition of, food or feed with the potential to cause an adverse health effect.

Hazard Analysis Critical Control Points (HACCP)

HACCP is a systematic preventive approach to food and feed safety from biological, chemical, and physical hazards in production processes, that can cause the finished product to be unsafe, and designs measurement to reduce these risks to a safe level.

Home Authority

Means the authority where the relevant decision-making base of an enterprise is located.

Hygiene

The measures and conditions necessary to control hazards and to ensure fitness for human consumption of a foodstuff considering its intended use.

Hygiene Emergency Prohibition Notice (HEPN)

A notice served by the authorised officer where there is an imminent risk of injury to health which prohibits the use of a process, treatment, premises, or equipment, as appropriate, as specified in regulation 8 of The Food Hygiene Regulations (Northern Ireland) 2006.

Hygiene Improvement Notice (HIN)

A notice served by the authorised officer on an FBO where they have failed to comply with the hygiene regulations as specified in regulation 6 of The Food Hygiene Regulations (Northern Ireland) 2006.

Hygiene Prohibition Order (HPO)

An order granted by the magistrate's court following the conviction of an FBO for an offence under The Food Hygiene Regulations (Northern Ireland) 2006 as specified in regulation 7 of those regulations.

Hygiene Regulations

As defined by regulation 2 of The Food Hygiene Regulations (Northern Ireland) 2006.

Import

The action of bringing in a commodity from a country outside the EU.

Improvement Notice

A notice served on an FBO by an authorised officer who has reasonable grounds for believing that the proprietor of a food business is failing to comply with any regulatory requirement, as specified in article 9 of The Food Safety (Northern Ireland) Order 1991.

Inspection

To mean the examination of any aspect of feed, food, animal health and animal welfare in order to verify that such aspect(s) complies with the legal requirements of feed and food law and animal health and welfare rules. This includes partial or full inspections:

- a 'full inspection', is a check on compliance with legal requirements and will consider all aspects of an FBOs operations
- a 'partial inspection', which is an inspection that covers only certain aspects of an FBOs operations

Institute of Food Science and Technology (IFST)

A professional body concerned with all aspects of food science and technology.

Intelligence

Information that has been evaluated to assess its relevance and reliability and verified where possible.

Intermediary operator

Has the meaning as defined in annex III, section VII, para. 1a, of Regulation (EC) No 852/2004 to mean a food business operator, including traders, other than the first supplier, with or without premises, who carries out its activities between production areas, relaying areas or any establishments.

Intervention

Regulatory actions taken by a government in order to affect or interfere with decisions made by individuals, groups, or organisations regarding social and economic matters. Interventions include official controls and other interventions such

as education, advice and coaching, information and intelligence gathering (including sampling where the analysis is not to be carried out by an Official Laboratory).

Investigation

The action taken by the Competent Authority to gather evidence where non-compliance is suspected.

Lead food officer (LFO)

The authorised lead food officer(s), appointed by the Competent Authority in relation to food, who demonstrates the relevant competencies.

Less than thoroughly cooked (LTTC) burgers

Burgers not thoroughly cooked, they contain pink meat in the middle.

Live bivalve molluscs (LBMs)

References to live bivalve molluscs also include live echinoderms, live tunicates, and live marine gastropods, in line with annex I, paragraph 2 of Regulation (EC) No 853/2004 laying down specific hygiene rules for food of animal origin (Regulation (EC) No 853/2004), except for parts of the Code which deal with purification of live bivalve molluscs.

Local Government Association (LGA)

The LGA are the national voice of local government, working with councils to support, promote and improve local government services.

Malicious tampering

For the purposes of the Practice Guidance, means the deliberate contamination of food by terrorist activity, or with a view to blackmail or extortion.

Maritime and Coastguard Agency (MCA)

The MCA is an executive agency of the Department of Transport working to prevent the loss of life on the coast and at sea. They also produce legislation and guidance on maritime matters and provide certification to seafarers.

May

On its own indicates an optional exercise of a power or function.

May not

Indicates a prohibition.

Memorandum of Understanding (MoU)

A written agreement on the exchange of information between two or more parties.

Minced Meat

Means boned meat that has been minced into fragments and contains less than 1 % salt.

Mobile establishment

Premises other than permanent premises, and ‘relevant moveable premises’ means moveable premises, used for the transport or preparation of food or the retail sale of food on five or more days, whether consecutive or not, in any period of five consecutive weeks.

Monitoring

To mean conducting a planned sequence of observations or measurements with a view to obtaining an overview of the state of compliance with food law.

Must

Is used to confirm an obligation.

National Food Crime Unit (NFCU)

The National Food Crime Unit provides a nationwide focus on enforcement against serious fraud and related criminality in food and feed supply chains.

National Health Service (NHS)

A government funded medical and health care service in the UK.

Non-compliance

A failure to comply with the one or more requirements of a food law.

Non-official controls

Any activity, which is not an official control or another official activity undertaken by the Competent Authority, that does not verify compliance with food law. The intention of the activity is to maintain contact with a food business establishment.

Northern Ireland Retail Movement Scheme (NIRMS)

NIRMS is the new UK internal trade scheme, established by The Windsor Framework, which enables the flow of pre-packed retail goods from GB to NI.

Official attestation

Has the meaning as defined by article 3(28) of Regulation (EU) 2017/625 to mean any label, mark or other form of attestation issued by the operators under the supervision, through dedicated official controls, of the Competent Authorities or by the Competent Authorities themselves, and providing assurance concerning compliance with one or more requirements laid down in this regulation or in the rules referred to in article 1(2) Regulation (EU) 2017/625.

Official certificate

Has the meaning as defined by article 3(27) of Regulation (EU) 2017/625 to mean a paper or electronic document signed by the certifying officer and providing assurance concerning compliance with one or more requirements laid down in the rules referred to in article 1(2) of Regulation (EU) 2017/625.

Official control

Has the meaning as defined by article 2(1) of Regulation (EU) 2017/625 to mean activities performed by the Competent Authorities, or by the delegated bodies or the natural persons to which certain official control tasks have been delegated in accordance with Regulation (EU) 2017/625 in order to verify compliance by the operators and that animals or goods meet the requirements laid down in the rules referred to in article 1(2) of Regulation (EU) 2017/625, including for the issuance of an official certificate or official attestation.

Official laboratory

A laboratory accredited for the purposes of analysis, and which appears on the list of official control laboratories.

Official Veterinarian

Has the meaning as defined in article 3(32) of Regulation (EU) 2017/625 to mean a veterinarian appointed by a Competent Authority, either as staff or otherwise, and appropriately qualified to perform official controls and other official activities in accordance with this Regulation and the relevant rules referred to in article 1(2) of Regulation (EU) 2017/625.

Originating authority

Means the authority in whose area final food production takes place.

Other official activities

Activities, other than official controls, which are performed by the Competent Authorities, or by the delegated bodies or the natural persons to which certain other official activities have been delegated in accordance with Regulation (EU) 2017/625. Including activities aimed at verifying the presence of animal diseases or pests of plants, preventing, or containing the spread of such animal diseases or pests of plants, eradicating those animal diseases or pests of plants, granting authorisations or approvals, and issuing official certificates or official attestations.

Outbreak

An incident in which two or more people experiencing a similar illness are linked in time or place, usually a foodborne disease and or infectious intestinal disease.

Penalty

The punishment imposed by a court on conviction for an offence under food legislation.

Physical check

Has the meaning as defined in article 3(43) of Regulation (EU) 2017/625 to mean check on animals or goods and, as appropriate, checks on packaging, the means of transport, labelling and temperature, the sampling for analysis, testing or diagnosis and any other check necessary to verify compliance with the rules referred to in article 1(2) of Regulation (EU) 2017/625.

Primary Authority

Has the meaning as defined in and set out in section 25 of the Regulatory Enforcement and Sanctions Act 2008 to mean in relation to a regulated person, a qualifying regulator for the exercise of the partnership functions in relation to that person as nominated by the Secretary of State, or in relation to a regulated group, a qualifying regulator for the exercise of the partnership functions in relation to the members of the group as nominated by the Secretary of State.

Primary production (Food)

The production, rearing or growing of primary products including harvesting, milking, and farmed animal production prior to slaughter. It also includes hunting and fishing and harvesting wild products as defined in article 3(17) of Regulation (EC) No 178/2002.

Prohibition Order (PO)

An order served by the Court imposing appropriate prohibitions to a food business when convicted of an offence under any regulations to which The Food Safety (Northern Ireland) Order 1991 apply, and where the Court is satisfied the health risk condition is fulfilled by that business.

Public Analyst

Scientists that ensure the safety and correct description of food by testing for compliance with legislation as specified in article 27 of The Food Safety (Northern Ireland) Order 1991 and regulation 4 of The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 2013.

Public Health Agency (PHA)

The Public Health Agency was established in 2009 under a major reform of health structures in Northern Ireland. Their aims are to protect and improve health and wellbeing and reduce health inequalities.

Rapid Alert System for Food and Feed (RASFF)

RASFF is a quick and effective tool for the exchange of information between Competent Authorities when risks to human health are detected in the food and feed chain and measures - such as withholding, recalling, seizure or rejection of the products concerned are taken. This quick exchange of information allows all members of the network to verify immediately whether they are also affected by the problem. Whenever the product is already on the market and should not be consumed, the authorities are then in a position to take all urgent measures, including giving direct information to the public, if necessary.

Raw cows' drinking milk (RCDM)

Cow's milk that has not been heat treated above 40°C (it is raw milk) and is intended for direct human consumption.

Readily available

Any documents that are required to be readily available means that both consumers and businesses can quickly and easily obtain them, either in electronic or hardcopy format.

Records

Means information preserved in writing or electronically/digitally.

Registering authority

The Competent Authority in whose area the FBO is located. In relation to a mobile establishment, the registering authority will be where it is ordinarily kept.

Remedial Action Notice (RAN)

A notice served by an authorised officer to an FBO where any of the requirements of the 'hygiene regulations', as defined by regulation 9 of The Food Hygiene Regulations (Northern Ireland) 2006, are being breached or an inspection under the hygiene regulations is being hampered.

Risk

The chance or probability that a person will be harmed or experience an adverse health effect if exposed to a hazard.

Safe Catering

Safe Catering is a food safety management guide for Northern Ireland. It helps catering businesses and retailers with a catering function to comply with food hygiene regulations.

Safety

The quality of averting or not causing injury, danger, or loss.

Safer food better business (SFBB)

Food safety management procedures and food hygiene regulations for small businesses.

Sampling

To mean taking feed or food or any other substance (including from the environment) relevant to the production, processing and distribution of feed or food or to the health of animals, in order to verify through analysis compliance with feed or food law or animal health rules.

Sanction

The provision within a statute to take punitive action for failure to comply with the provisions of the statute.

Scottish Food Safety Officers Registration Board (SFSORB)

A committee of the Royal Environmental Health Institute of Scotland, who determine the pre-registration academic standard to be attained by persons applying for the award of the Higher Certificate in Food Premises Inspection, the Ordinary Certificate in Food Premises Inspection, and the Higher Certificate in Food Standards Inspection qualifications.

Should

Is used to indicate statutory guidance.

Signed

Means having a signature affixed either in writing or by electronic means.

Standards

Rules or principles defined in food safety law that are used as the basis for judgment against.

Surveillance

To mean a careful observation of one or more food businesses, or FBOs or their activities in order to gather information.

Third country

A territory or country which is not an EU or European Economic Area (EEA) State.

Tuberculosis (TB)

An infectious disease usually caused by the Mycobacterium tuberculosis bacteria that mainly affects the lungs.

United Kingdom Accreditation Service (UKAS)

UK's National Accreditation Body, responsible for determining, in the public interest, the technical competence and integrity of organisations.

Validation

Means confirmation that requirements have been complied with.

Verification

To mean the checking, by examination and the consideration of objective evidence, whether specified requirements have been fulfilled.

Windsor Framework

The Windsor Framework is the international agreement between the UK and EU which, amongst other things, governs arrangements for the movement of food and feed goods into Northern Ireland.'

Writing

Has the meaning as defined by schedule 1 of the Interpretation Act (Northern Ireland) 1954 to mean typing, printing, lithography, photography, and other modes of representing or reproducing words in a visible form, and expressions referring to writing are construed accordingly.

Annex 1 Template service plan

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

2. Background	Details
2.1 Profile of the Competent Authority	• This section includes details of the population, size, and nature of the Competent Authority
2.2 Organisational structure	• A simple chart showing the council services and committee structure which shows where the food service fits in • The structure identifies the manager/s responsible for the delivery of official controls and the officer/s with specialist responsibility for food hygiene and/or food standards, if different, and the provision made for specialist services provided, for example, by public analysts and food examiners
2.3 Scope of the food service	• A brief statement that sets out the scope of the responsibilities and service provided • This identifies where areas of the food service are provided by another organisation, for example, contractors

2. Background	Details
	• Any other services that are delivered alongside the food service, for example, health and safety inspections, can be described here
2.4 Demands on the food service	• This section includes a brief outline of: • the establishment's profile • the number of approved or registered establishments in the Competent Authority's area • any specific local requirements associated with specialist or complex processes • the service delivery points used by the Competent Authority • the times at which the service is available from these points and any out of hours provisions • This section also enables the Competent Authority to describe any external factors that may impact on their service, for example: • the percentage of business owners whose first language is not English • the percentage of food establishments that are manufacturing foods • imported food responsibilities • seasonal activities
2.5 Regulation policy	• A brief reference statement to the Competent Authority's documented enforcement policy

3. Service delivery	Details
3.1 Official Controls at food establishments	• A statement in relation to the Competent Authority's policy on official and non-official controls, other official activities and how they will be selected in individual

3. Service delivery	Details
	cases, including details of the programme of official controls and other official activities at food establishments to be undertaken. This includes: • the establishment's profile • the numbers of official controls programmed • an estimation of the number of revisits that will be made • an estimation of resources required for example staffing • Details of any targeted official control activity that the Competent Authority intends to carry out, including any extra resources this may require; this could include specific project work • Identification of any priorities relating to nationally or locally driven outcomes, such as compliance with new legislation or improved compliance with existing legislation and other central government initiatives • Include, where appropriate, the arrangements the Competent Authority has made to ensure they have access to adequate appropriate expertise to enable competent inspection of any specialised processes identified in section 2
3.2 Food complaints	• A statement in relation to the Competent Authority's policy, regarding the investigation of food complaints, including an estimation based on previous years' trends of the likely demand on the service and an estimation of the resources required
3.3 Home authority and primary authority	• A statement in relation to: • the Competent Authority's policy on the Home Authority principle and, where applicable, primary authority, including an estimation of the resources required in relation to meeting and advising those businesses for whom it acts, developing inspection plans for those businesses for whom it is the primary authority, and responding to notifications and enquiries from other enforcing authorities

3. Service delivery	Details
	• how delivery will be resourced.
3.4 Advice to business	• A statement in relation to the Competent Authority's policy regarding advice to business (as part of the overall policy of interventions) including an estimation of the number of contacts from business and the resources necessary to provide the service • This section includes, where appropriate, any input the Competent Authority has to business partnerships or forums
3.5 Food sampling	• A statement in relation to the Competent Authority's sampling policy, including the basis of the sampling programme and an estimate of the numbers of samples that will be taken from establishments, or submitted, in relation to complaints, and any relevant resource allocation including staffing • Detail of the arrangements that the Authority has made for the analysis and/or examination of the samples
3.6 Food safety incidents	• A statement in relation to the Competent Authority's policy on handling food alerts, to confirm that it complies with the Code of Practice, including an estimation of the likely demand on the service and an estimation of the resources required
3.7 Liaison with other organisations	• The arrangements the Competent Authority has made to ensure that action taken in its area is consistent with those of neighbouring Competent Authorities, including: • any liaison the Competent Authority has with other Competent Authorities • any liaison, where appropriate, with OPSS • any arrangements with other official control bodies or government inspectorates to co-ordinate food controls • any representation on government working groups or committees • liaison with professional body working groups

3. Service delivery	Details
	• liaison and involvement/participation with relevant food liaison advisory groups and similar or related bodies • any formal liaison with voluntary groups and other public sector bodies • any formalised liaison with other services within the authority • any commitment to local/regional groups • an estimation of the resource allocation
3.8 Food safety and standards promotional work	• A statement of any food safety/standards promotional work, or information/intelligence gathering work, which the Competent Authority intends to carry out in the year and the measures it will use to evaluate its effectiveness, with an estimate of the resource allocation including staffing to undertake this work
3.9 Control and investigation of outbreaks and food related infectious disease	• A statement in relation to the Competent Authority's policy on the investigation of food poisoning notifications and outbreak control, including an estimation based on previous years' trends of likely demand on the service and an estimation of the resources required

4. Resources	Details
4.1 Financial allocation	• This section sets out the overall level of expenditure involved in providing the service and examine the trend of growth or reduction in real terms, including details in relation to: • non-fixed costs including staffing • travel and subsistence • equipment, including investment in IT • sampling budgets and

4. Resources	Details
	• financial provision made by the Competent Authority for any legal action necessary, as part of their enforcement function
4.2 Staffing allocation	• A statement of: • the number of posts required to deliver the service • the number of staff working on food law enforcement and related matters (in terms of full-time equivalents), which distinguishes qualified staff from support staff • These figures are expressed in terms of levels of competency with reference to the Code, including support staff
4.3 Staff development plan	• A statement in relation to any relevant ongoing training, including that to be provided in-house and externally for authorised and trainee officers in the year ahead

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

6. Review	Information required
6.1 Review against the service plan	• This section sets out the process for reviewing and reporting delivery of the service plan, including: • information on the previous year's performance against the service plan; and • any specified performance targets and performance standards and targeted outcomes
6.2 Identification of any variation from the service plan	• This section identifies where the Competent Authority was at variance from their service plan and, where appropriate, the reasons for that variance • Additional work carried out by the Competent Authority in other areas of enforcement may have achieved the same objective, and if so, clearly identified in this part of the plan
6.3 Areas of improvement	• This section sets out Competent Authority plans for any relevant improvement or service development identified as necessary by the review or the quality assessment

Annex 2 Registration

A2.1 Registration of food establishments

A2.1.1 Who is a food business operator?

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

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

A2.1.2 Requirement to register a food business establishment

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

FBOs are advised to submit a registration of a food establishment at least 28 days before the business starts trading or the food operations commence.

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

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

If registration relates to a business that includes more than one mobile unit, details of all mobile units that the FBO own would be required. Details would include:

- registration/identification numbers
- identifying features
- types of facilities
- food types

A2.1.3 Channels of registration

It will be necessary for FBOs, when registering, to provide Competent Authorities with full details of the activities undertaken at the establishment(s) under their control.

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

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

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

A2.1.4 Use of Information from other sources

Where information about the address of the establishment and the activity carried out is already available from other sources, that information may be used for registration purposes[48].

A2.1.5 Fishing vessels

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

A2.2 Exemptions from registration

A2.2.1 Degree of organisation and continuity of activities

Establishments undertaking food activities that do not involve a certain degree of organisation and a continuity of activities[49] do not meet the definition of a food business establishment, so fall outside the scope of Regulation (EC) No 852/2004. The European Commission guidance on the implementation of certain provisions of Regulation (EC) No 852/2004 on the hygiene of foodstuffs states that, 'somebody who handles, prepares, stores or serves food occasionally and on a small scale cannot be considered as an 'undertaking'.

When making a judgement about these two elements, it is recommended that Competent Authorities do not consider continuity and organisation in isolation, they are to take all relevant factors into consideration. For example, if an activity occurs only once or only low risk food is handled, it does not necessarily mean it is exempt from registration.

[48] Article 10(2) of Regulation (EU) 2017/625
[49] Recital 9 of Regulation (EC) No 852/2004

Although some establishments and/or activities may be exempt from registration requirements, they do, however, remain subject to certain provisions of The Food Safety (Northern Ireland) Order 1991 and Regulation (EC) No 178/2002.

A2.2.2 Approved establishments

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

A2.2.3 Other exemptions

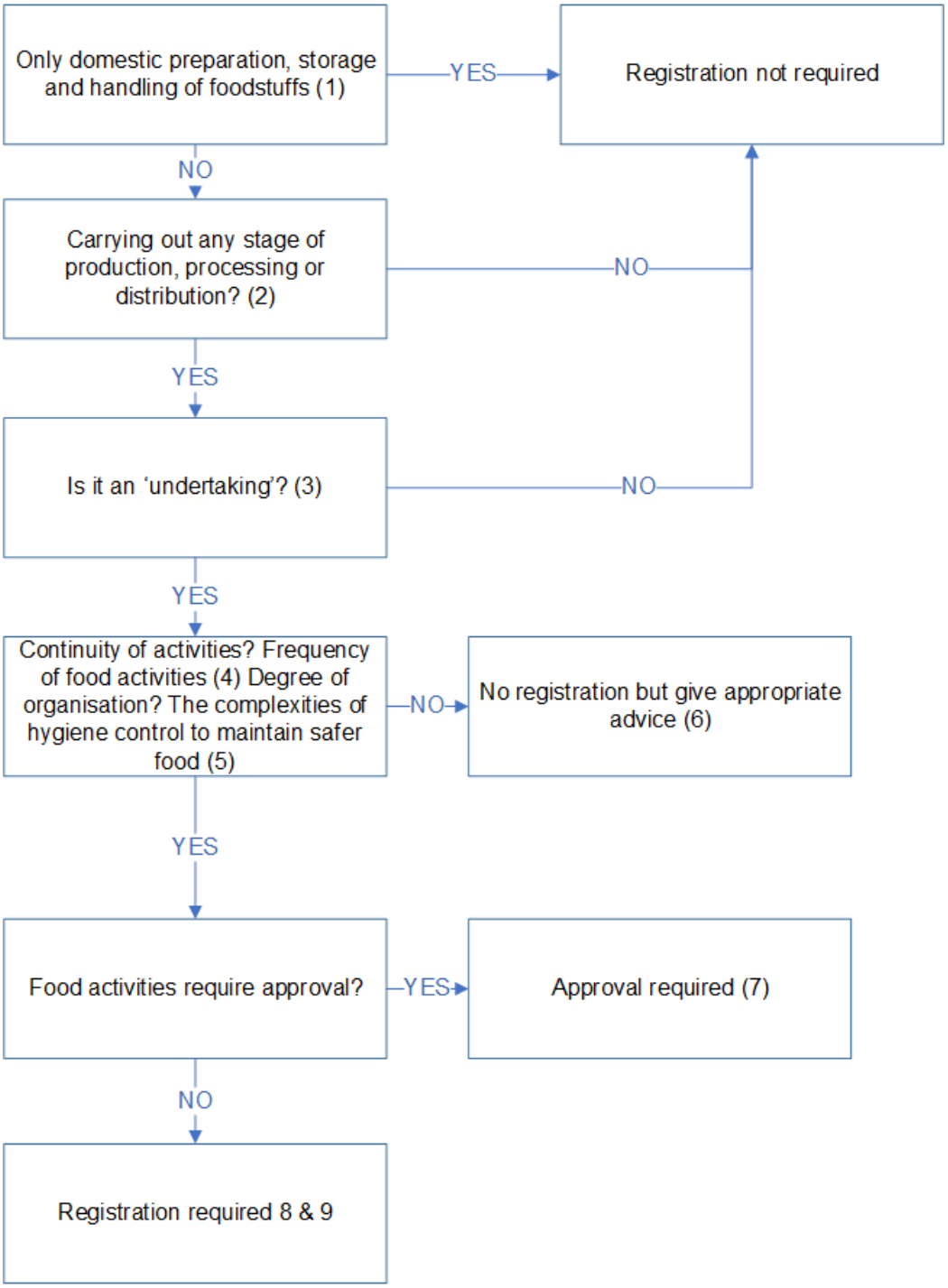
Article 1(2) of Regulation (EC) No 852/2004 set out the circumstances under which the requirement to register under article 6(2), would not apply, namely:

- primary production for private domestic use
- the domestic preparation, handling, or storage of food for private domestic consumption
- collection centres and tanneries which fall within the definition of food business only because they handle raw material for the production of gelatine or collagen

A2.2.4 Registration flow chart

Figure 2 provides a decision tree to help determine which food activities require registration with the Competent Authority.

Figure 2



Explanatory notes:

- Community Regulations do not apply to primary production for private domestic use or to the domestic preparation, handling, or storage of food for private domestic consumption[50].
- This means any stage, including import, from and including the primary production of a food, up to and including its storage, transport, sale, or supply to the final consumer[51].
- When considering undertaking it is recommended that Competent Authorities take account of the scale of the food business operation.
- Continuity of activities – operations that are one off event may be considered as not having continuity of activity.
- Degree of organisation[52] – The FSA's view is that the foodstuffs, their risk and the nature of the event are considered when deciding how much any given operation can be said to be organised.
- Competent Authorities advise that if food operations change, they are contacted to check whether registration is subsequently required.
- Approvals guidance is available on the FSA's communications platform.
- Guidance and online registration can be found on the FSA website.

A2.2.5 Action on receipt of a completed registration

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

For Competent Authorities on the RaFB service the date of receipt will be recorded automatically by the system.

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

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

[50] Article 1(3) of Regulation (EC) No 178/2002 and article 1(2)(b) of Regulation No 852/2004
[51] Article 3(16) of Regulation (EC) No 178/2002
[52] Recital 9 of Regulation (EC) No 852/2004

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

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

On receipt of a completed application form, Competent Authorities carry out an initial official control, if required, having regard to chapter 4 of the Code.

A2.2.6 Acknowledgement of registration

It is recommended that Competent Authorities acknowledge receipt of a submitted food business registration, and that this confirmation includes a reminder to the FBO to advise the Competent Authority of any subsequent changes to the business, in accordance with article 6(2) of Regulation (EC) No 852/2004.

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

A2.2.7 Changes to food establishment operations

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

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

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

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

A2.2.8 Change of ownership following registration

Competent Authorities may come across changes of ownership during interventions at food business establishments. The FBO by virtue of article 6(2) of Regulation (EC) No 852/2004 is required to notify the Competent Authority of any significant changes, which includes change of ownership. Not complying with this requirement is an offence under regulation 17 of The Food Hygiene Regulations (Northern Ireland) 2006.

The table below outlines circumstances in which changes of ownership have been identified and therefore a new registration form would need to be completed by the FBO.

Table 7 – Change of FBO scenarios – when a new registration is required.

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

Existing FBO (as stated in registration document)	Change of FBO (assuming no other changes to the business)	Comments	New registration required?
Sole trader, Partnership, or Incorporated Company	Bankruptcy, insolvency or in liquidation (wound up/dissolved)		Not applicable

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

Competent Authorities need to determine if anything in practice has changed at the food business establishment or if there is solely an administrative change and determine if a new risk rating intervention is appropriate. It is recommended that decisions are made on a case-by-case basis as to whether a new registration would prompt an intervention and subsequent risk rating.

A2.3 Multisite and satellite operations

A2.3.1 Single registration for multiple linked establishments

There are circumstances where a single registration, under the same FBO, is permissible for what is considered to be a single food business operating at multiple sites. In these circumstances, authorised officers may prefer to consider separate sites and/or locations as part of one establishment for the purposes of registration under article 6 of Regulation (EC) No 852/2004 and therefore one intervention rating in accordance with chapter 4.

In these situations, it would need to be made clear to the FBO that non-compliance at one site may result in the downgrading of the overall rating (both intervention and FHRS ratings) of the entire operation.

This flexibility has the effect of extending the retail exemption from approval for smaller food businesses where the production of POAO based products and the retail element (meaning the place or point of supply to the final consumer) are not at the same ‘site’, but there is a strong association between sites, to the extent that all sites are essentially operating as one business. It can also apply to operations where none of the sites would require approval but could reduce the need for multiple registrations.

This flexibility may only be applied where the main focus of the wider establishment’s activities is that of a retail business, that is when the supply of food is direct to the final consumer.

It is recommended that Competent Authorities consider such businesses on a case-by-case basis to ensure that the operation meets the criteria of a single food business establishment and satisfy the following criteria:

- all sites covered by the flexibility are under the control of the same food business operator
- one food safety management system covers all sites and the operations undertaken at those sites
- all of the sites covered by the flexibility are located within close enough proximity that they can be considered part of one establishment that is subject to one set of official controls, meaning that when due an inspection, all sites must be covered by that inspection as they are all part of one establishment. For this reason, it is recommended that the flexibility is only applied to establishments within the same Competent Authority area

Where one or more of the criteria laid out above cannot be met, the flexibility cannot be applied, and each site would be registered or approved in the normal way.

Where the main activity of the establishment is the supply of POAO to other businesses, refer to the Approval of Establishments: Guidance for District Councils in Northern Ireland.

A2.3.2 Enforcement and oversight of multi-sites operating under a single registration

Due to the practicalities of an officer maintaining the necessary ongoing oversight and assessment of such set-ups operating under one registration, it is recommended that this flexibility is only applied to establishments within the same Competent Authority area.

This flexibility is discretionary and will require authorised officers to assess on a case-by-case basis whether a business meets the single food establishment criteria. It is recommended that a record of the assessment and the supporting reasons are recorded on the relevant establishment files.

The FBO has the option not to adopt this arrangement and make a request to the Competent Authority for separate registration and/or approval of each site.

A2.3.3 Examples of when single food establishment registration may apply

These examples are in no way prescriptive or exhaustive and are for illustrative purposes only.

Example 1 - Catering for satellite sites

A catering establishment or ‘hub kitchen’ that doesn’t have a servery on site but prepares food to be transported to one or more local retail outlets, or ‘satellite kitchens’ operated by the same FBO, to be served directly to the final consumer

with no onward distribution. Providing all the hub and satellite kitchens are covered by the same food safety management system and all satellite kitchens are in close enough proximity to be covered by the same official control, they can be registered as one establishment.

Example 2 - Supply to retail outlet

A small manufacturing unit which produces speciality cheese to sell in its nearby high street deli shop. The same FBO operates both sites, which is retail to the final consumer. The FBO has developed a food safety management system for the speciality cheese, which flows from production through to service at the deli (retail outlet). Given there is one FBO and one food safety management system, providing the manufacturing unit and retail shop were in close enough proximity to be covered by the same official control, they can be registered as one establishment.

Note: If the flexibility is not applied, the manufacturing unit would need to be considered for approval. Please refer to Approval of Establishments: Guidance for District Councils in Northern Ireland for further advice.

Example 3 - Multi-units on the same site

- Motorway services: Several non-branded food retail units at a motorway service station, including a coffee shop, snack bar, and a restaurant that are all operated by one FBO. All food supplied to the units is prepared in a central kitchen located on site or bought in through the company's approved supplier list. One food safety management system covers all units
- Motorway services: A branded coffee chain which has a main coffee shop, plus two fixed smaller satellite units inside the service station and a mobile vehicle which operates at the service station site. All are operated by the same FBO and operate under the same food safety management system
- Superstore: A large supermarket which supplies its own on-site petrol station with pre-packed food. Transfer, storage and display of food at the petrol station are accounted for in the food safety management system for the store and both are operated by the same FBO

A2.3.4 Examples of when single food establishment registration may not apply

Example 1 - Catering for satellite sites

A catering company manufactures a variety of foods and supplies to two restaurants. Although the same FBO operates both restaurants, further food production activities take place at each restaurant requiring each site to have a

separate food safety management system to adequately manage on site risks. As all sites are not operating under a single food safety management system, the criteria are not met, and the flexibility cannot be applied.

Example 2 - Supply to retail outlet

A bakery supplies freshly baked food products such as meat pies to various retail outlets located in different LA areas. The producing bakery and all retail outlets are operated by the same FBO, and one food safety management system is in place across all sites. While one FBO and one food safety management system is in place, the sites are not close enough in proximity to be considered as a single food business establishment that can be covered by the same official control intervention. Therefore, the flexibility cannot be applied.

A2.4 Movable food business establishments

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

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

A2.4.1 Ships and vessels

FBOs are required to register vessels under their control that meet the definition of a food business establishment unless they require approval (such as freezer and factory and reefer vessels). This includes:

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

If the vessel routinely calls at more than one UK port, the ‘registering authority’ is usually the Competent Authority where the vessel has its ‘home port’ as a registered vessel with the RSS and licensed by DAERA.

A2.4.2 Aircraft

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

A2.4.3 Trains and coaches

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

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

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

A2.4.4 Markets

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

A2.5 Mobile food establishments

The following sections refer to food establishments that have the mobility to trade in more than one location, other than those movable food establishments described in section A2.12.

A2.5.1 Registration requirements

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

Once registered, it is recommended that the FBO is not asked to register with any other Competent Authority in whose area it trades.

A2.5.2 Competent Authority responsibilities

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

It is recommended that the Competent Authority undertaking the official control contacts the registering Competent Authority before any intervention to:

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

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

To ensure consistency and to avoid the establishments receiving an excessive number of official controls, the Competent Authority undertaking the official control would provide the registering Competent Authority with information relating to official control(s) undertaken on mobile establishments operating in their area.

It is recommended that details of official controls and enforcement action are passed to the registering Competent Authority as soon as possible. The registering Competent Authority would take account of the information supplied when revising the establishments risk rating, in accordance with chapter 4 of the Code, and be recorded on the Competent Authorities database of food establishments.

A2.5.3 Mobile food business with multiple units

Where a food business operates more than one mobile establishment, it is recommended that Competent Authorities consider whether it is appropriate to register the business as one single establishment or register each individual mobile establishment, taking into account the criteria in section A2.11.1. Only when all three criteria are met, is a single food business registration appropriate.

A2.5.4 Risk rating of mobile establishments

Competent Authorities risk rate mobile establishments registered with them when they are due and do so based on their own official controls and a consideration of information provided by other Competent Authorities who have undertaken appropriate official controls. Where possible, the risk rating would be based on official controls that include observations of the business in operation.

A2.6 Other types of establishments

A2.6.1 Food businesses operating out of domestic premises such as home caterers and B&Bs

The domestic preparation, handling or storage of food which is to be placed on the market (whether free of charge or not) and which meets the definition of a ‘food

business', is subject to registration requirements and would need to be registered with the Competent Authority where the undertaking takes place.

A2.6.2 Domiciliary care/assisted living care

Food business registration will apply where it is considered that the care service operations fall within the legal definition of a 'food business'. If registration is required, then the establishment itself would need to be registered even if some operations carried out do not need to form part of the registration, for example, in the scenario where a residential home has both clients who carry out domestic preparation and food handlers that prepare food on others behalf.

A2.6.3 Food banks

Food banks run by community volunteers, if they meet the definition of a food business, require registration, and need to comply with food law proportionately. Some food banks may be exempt from registration if they do not meet the definition of an 'undertaking' given in recital 9 of Regulation (EC) No 852/2004 and article 3(2) of Regulation (EC) No 178/2002.

A2.6.4 Food brokers

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

While they may arrange for the movement of food between suppliers or to retailers, they do not necessarily handle the food or even store it on their establishment (which may effectively be an office). Provided they meet the definition of 'food business' and 'FBO', then the registration requirement applies, and they would need to be registered with the Competent Authority where the food broker is located. In respect of POAO, article 3 of Regulation (EU) No 931/2011 on traceability requirements for food of animal origin, places a duty on the FBO, including food brokers, to be able to identify and provide specific traceability information to the Competent Authority.

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

A2.6.5 Internet sales

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

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

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

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

A2.6.6 Temporary food business establishments

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

Competent Authorities would need to prioritise initial official controls of these businesses based on risk and in accordance with their service plan and official control programme.

A2.6.7 Vending machines

Vending machines are subject to the relevant provisions of annex II of Regulation (EC) No 852/2004. The FSA does not see practical value in the registration of individual vending machines or the establishment on which they are sited if the only food related activity on those establishments relates solely to vending machines for low-risk products. It is anticipated that, for higher risk products, Competent Authorities would consider the risks and take appropriate action.

However, distribution centres where food for stocking vending machines is stored and/or from which food is transported to vending machines for stocking would need to be registered with the relevant Competent Authority. The delivery vehicles used for the transport of food for stocking vending machines would be covered in the official controls at such establishments.

A2.6.8 Non-commercial establishments

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

Annex 3 Guidance on parts two and three of food hygiene intervention rating scheme

Note: the text in bold in the table below highlights where the guidance goes beyond the requirements of the applicable legislation.

A3.1 Level of (current) compliance - food hygiene and safety procedures

Score	Description in Food Law Code of Practice	Description of what the score might be expected to look like in practice
25	Almost total non-compliance with statutory obligations.	• Evidence of almost total non-compliance with legal requirements • Imminent and serious risks to health identified • Very poor food hygiene practices, serious food contamination risks, inadequate temperature control for high-risk foods and major improvement needed in all areas • Almost total non-compliance in food hygiene and safety procedures (for example, evidence of actual cross-contamination, food kept out of temperature control, fridge not operating at correct temperature) • Failure to apply any of the control measures required to prevent cross-contamination • Almost total non-compliance with requirements for safe food preparation, cooking, re-heating, cooling, or storage of food identified • Evidence of almost total non-compliance with the compliance elements of industry guides to good hygiene practice (that have been recognised by the FSA) on food handling practices and procedures, staff personal hygiene and temperature control • Follow-up action by the Competent Authority in accordance with its enforcement policy, but may include: – prohibition procedures, where there is imminent risk – ongoing formal enforcement action – re-visits within a short timescale to secure compliance • Follow-up action identified for food business operator: – immediate and significant action required in respect of all serious risks.

Score	Description in Food Law Code of Practice	Description of what the score might be expected to look like in practice
		– address all other matters within stipulated timescale
20	General failure to satisfy statutory obligations – standards generally low.	• Evidence of major and widespread non-compliance with legal requirements in relation to food hygiene and safety procedures • Widespread and significant risks identified • Poor standard of hygienic food handling, temperature control and staff personal hygiene and major improvements required • Inadequate implementation of many of the control measures required to prevent cross-contamination • Major and widespread non-compliance with requirements for safe food preparation, cooking, re-heating, cooling, or storage of food identified (for example, inadequate cooking times) • Evidence of major and widespread non-compliance with the compliance elements of industry guides to good hygiene practice (that have been recognised by the FSA) on food handling practices and procedures, staff personal hygiene and temperature control • Follow-up action by the Competent Authority in accordance with its enforcement policy, but may include: – formal enforcement action – prohibition procedures, where control measures required to prevent cross-contamination are not in place – re-visiting the establishment to secure compliance • Follow-up action identified for food business operator: – address all identified non-compliances as a matter of urgency within stipulated timescale

Score	Description in Food Law Code of Practice	Description of what the score might be expected to look like in practice
15	Some major non-compliance with statutory obligations – more work required to prevent fall in standards.	• Evidence of some major non-compliance with legal requirements in relation to food hygiene and safety procedures • Some significant risks identified • Examples of non-compliance may include poor stock rotation or poor personal hygiene • Inadequate implementation of some of the control measures required to prevent cross-contamination • Some major non-compliance with requirements for safe food preparation, cooking, re-heating, cooling, or storage of food identified • Evidence of some major non-compliance with the compliance elements of industry guides to good hygiene practice (that have been recognised by the FSA) on food handling practices and procedures, staff personal hygiene and temperature control • Follow-up action by the Competent Authority in accordance with its enforcement policy, but may include: – a warning letter – formal enforcement, including prohibition procedures where control measures required to prevent cross-contamination are not in place – re-visiting the establishment to secure compliance • Follow-up action identified for food business operator: – address all identified non- compliances within stipulated timescale
10	Some non-compliance with statutory obligations and industry codes of recommended practice that are not considered significant in	• Evidence of some non-compliances that are not significant in terms of risk (but may become significant if not addressed) • Overall, generally satisfactory standard of compliance with legal requirements

Score	Description in Food Law Code of Practice	Description of what the score might be expected to look like in practice
	terms of risk (but may become significant if not addressed). Standards are being maintained or improved.	• Not likely to put consumers at unacceptable risk in relation to hygienic food handling, temperature control and staff personal hygiene but may do so if non-compliances not addressed • Standards being maintained or improving • Some lapses in food hygiene and safety procedures identified (for example, high-risk food held under refrigeration generally below 8°C but some evidence of rising above such as when busy, some lapses in monitoring of critical control points) • Adequate control measures in place to prevent cross-contamination • Generally satisfactory food preparation, cooking, re-heating, cooling, and storage of food demonstrated but some lapses may be evident over short periods • Evidence of generally satisfactory compliance with the compliance elements of industry guides to good hygiene practice (that have been recognised by the FSA) on food handling practices and procedures, staff personal hygiene and temperature control • Follow-up action by the Competent Authority in accordance with its enforcement policy, but may include: – informal action, for example, a report of official control or letter identifying issues • Establishment unlikely to be a priority for a re-visit • Follow-up action identified for food business operator: – to address issues in relation to food handling practices and procedures, staff personal hygiene or temperature control, as although not critical to food safety or likely to put consumers at unacceptable risk, they may do so if action is not taken

Score	Description in Food Law Code of Practice	Description of what the score might be expected to look like in practice
5	Good standard of compliance with statutory obligations and industry codes of recommended practice with only minor contraventions.	• Evidence of good compliance with legal requirements, with only some minor non-compliances that are not critical to food safety • Only minor lapses in food hygiene and safety procedures (for example, some protective clothing not very clean and needs cleaning) • All necessary control measures in place to prevent cross-contamination • Safe food preparation, cooking, re-heating, cooling, and storage of food demonstrated • Evidence of good compliance with the compliance elements of industry guides to good hygiene practice (that have been recognised by the FSA) on food handling practices and procedures, staff personal hygiene and temperature control • No follow-up action by Competent Authority, apart from report of official control being provided to the food business operator • No re-visit necessary before next due official control • Follow up action identified for food business operator: – minor action to address issues which are not critical to food safety in relation to food handling practices and procedures, staff personal hygiene or temperature control

Score	Description in Food Law Code of Practice	Description of what the score might be expected to look like in practice
0	High standard of compliance with statutory obligations and industry codes of recommended practice, conforms to accepted good practices in the trade.	• Evidence of meeting legal requirements **or exceeding legal requirements** • All necessary control measures in place to prevent cross-contamination • Safe food preparation, cooking, re-heating, cooling, and storage of food demonstrated • Evidence of meeting or exceeding good practices in the trade and/or good practice requirements included in industry guides to good hygiene practice (that have been recognised by the FSA) in relation to food handling practices and procedures, staff personal hygiene, or temperature control • No follow-up action by Competent Authority, apart from report of official control being provided to the food business operator • No re-visit necessary before next due official control • No follow-up action for food business operator in relation to food handling practices and procedures, staff personal hygiene, or temperature control

A3.2 Level of (current) compliance – structure of the establishment

Score	Description in Food Law Code of Practice	Description of what the score might be expected to look like in practice
25	Almost total non-compliance with statutory obligations.	• Evidence of almost total non-compliance with legal requirements • Imminent and serious risks to health identified • Dirty establishment and equipment, major structural problems • Insufficient space in which to operate safely • Almost total non-compliance with structural requirements (for example, problems with hot water supply or problems with drainage, absence of essential wash hand basin or sink, dirty establishment with old food debris on floors, dirt engrained on work surfaces) • Evidence of widespread pest infestation or totally unsatisfactory waste disposal provision • Almost total non-compliance with the compliance elements of industry guides to good hygiene practice (that have been recognised by the FSA) in relation to structural requirements • Follow-up action by the Competent Authority in accordance with its enforcement policy, but may include: – prohibition procedures, where there is imminent risk – formal enforcement action – re-visits within a short timescale to secure compliance • Follow-up action identified for food business operator: – immediate and significant action required in respect of all serious risks – address all other matters in relation to structural requirements including cleanliness, layout, condition of structure, lighting, ventilation, facilities within stipulated timescale

Score	Description in Food Law Code of Practice	Description of what the score might be expected to look like in practice
20	General failure to satisfy statutory obligations – standards generally low.	• Evidence of major and widespread non-compliance with legal requirements • Widespread and significant risks identified • Poor standard of structural and equipment cleaning, poorly maintained and in poor repair • Not all appropriate hand and equipment washing facilities provided • Poor design layout, that is likely to lead to cross-contamination and to food safety being compromised • Major and widespread non-compliance with structural requirements (for example, some structural disrepair or poor work surfaces, inadequate number of wash hand basins or sinks, accumulations of dirt) • Evidence of pest infestation or inadequate waste disposal provision • Evidence of major and widespread non-compliance with the compliance elements of industry guides to good hygiene practice (that have been recognised by the FSA) in relation to structural requirements • Follow-up action by the Competent Authority in accordance with its enforcement policy, but may include: – formal enforcement action – re-visiting the establishment to secure compliance • Follow-up action identified for food business operator: – address all identified non-compliances in relation to structural requirements including cleanliness, layout, condition of structure, lighting, ventilation, facilities, as a matter of urgency within stipulated timescale
15	Some major non-compliance with statutory obligations –	• Evidence of some major non-compliance with legal requirements

Score	Description in Food Law Code of Practice	Description of what the score might be expected to look like in practice
	more work required to prevent fall in standards.	• Some significant risks identified • Significant improvements needed in standard of structure, equipment cleaning, maintenance and repair, or hand and equipment washing facilities • Poor design layout potentially leading to cross-contamination and to food safety being compromised • Major non-compliance with structural requirements (for example, may be some damaged work surfaces, some significant dirt) • Evidence of current pest activity or inadequate waste disposal provision • Evidence of some major non-compliance with the compliance elements of industry guides to good hygiene practice (that have been recognised by the FSA) in relation to structural requirements • Follow-up action by the Competent Authority in accordance with its enforcement policy, but may include: – a warning letter – formal enforcement – re-visiting the establishment to secure compliance • Follow-up action identified for food business operator: – address all identified non-compliances, in relation to structural requirements including cleanliness, layout, condition of structure, lighting, ventilation, and hand and equipment washing facilities, within stipulated timescale
10	Some non-compliance with statutory obligations and industry codes of recommended practice that are not considered significant in	• Evidence of some non-compliances that are not significant in terms of risk (but may become significant if not addressed) • Overall, generally satisfactory standard of compliance with legal requirements

Score	Description in Food Law Code of Practice	Description of what the score might be expected to look like in practice
	terms of risk (but may become significant if not addressed). Standards are being maintained or improved.	• Not likely to put consumers at unacceptable risk but may do so if non-compliances not addressed • Generally satisfactory standard of structural and equipment cleaning. Fairly well maintained and in reasonable repair • Appropriate facilities provided with some issues of non-compliance • Standards being maintained or improving • Some repairs may be required (for example, some cracked and missing wall tiles near to a food preparation surface, evidence of food contact surfaces being thoroughly cleaned but some areas where cleaning inadequate and needs to be improved) • Evidence of satisfactory pest control (for example, there may be minor pest proofing required but no evidence of current pest activity) • Evidence of satisfactory waste disposal provision (for example, tidy, lidded bins and adequate collection arrangements) • Evidence of generally satisfactory compliance with the compliance elements of industry guides to good hygiene practice (that have been recognised by the FSA) in relation to structural requirements • Follow-up action by the Competent Authority in accordance with its enforcement policy, but may include: – informal action, for example, a report of official control or letter identifying issues – Establishment unlikely to be a priority for a re-visit • Follow-up action identified for food business operator:

Score	Description in Food Law Code of Practice	Description of what the score might be expected to look like in practice
		– to address issues in relation to structural requirements including cleanliness, layout, condition of structure, lighting, ventilation, and facilities, as although not critical to food safety, they may become so if action is not taken
5	Good standard of compliance with statutory obligations and industry codes of recommended practice with only minor contraventions.	• Evidence of good compliance with legal requirements, with only some minor non- compliances that are not critical to food safety • Only minor repairs required (for example, a few cracked wall tiles in a non-critical area, a minor lapse in cleaning of a hard to reach/inaccessible area) • Evidence of adequate pest control and waste disposal provision • Evidence of good compliance with compliance elements of industry guides to good hygiene practice (that have been recognised by the FSA) in relation to structural requirements • No follow-up action by Competent Authority, apart from report of official control provided to the food business operator • No re-visit necessary before next due official control • Follow up action identified for food business operator: – minor action to address issues which are not critical to food safety in relation to structural requirements, including cleanliness, layout, condition of structure, lighting, ventilation, facilities
0	High standard of compliance with statutory obligations and industry codes of recommended practice; conforms to accepted good practices in the trade.	• Evidence of meeting legal requirements or exceeding legal requirements • No repairs required and no potential improvements identified, or robust procedures in place for ongoing rectification of minor repairs • Premises and equipment clean and in good condition • Evidence of effective pest control and waste disposal provision

Score	Description in Food Law Code of Practice	Description of what the score might be expected to look like in practice
		• Evidence of meeting or exceeding good practices in the trade and/or good practice requirements included in industry guides to good hygiene practice (that have been recognised by the FSA) in relation to structural requirements • No follow-up action by Competent Authority, apart from report of official control provided to the food business operator • No re-visit necessary before next due official control • No follow-up action for food business operator in relation to structural requirements including cleanliness, layout, condition of structure, lighting, ventilation, facilities

A3.3 Confidence in management/control procedures

Score	Description in Food Law Code of Practice	Description of what the score might be expected to look like in practice
30	Poor track record of compliance. Little or no food safety knowledge and understanding. Little or no appreciation of hazards, risks, or quality control. No food safety management procedures. Does not recognise or accept the need for food safety and hygiene controls. Very poor food safety culture.	• No evidence of appropriate food safety management/documented procedures for size and nature of the business, taking into account the flexibilities provided by article 5 of Regulation (EC) No 852/2004 • Significant hazards not understood and no effective controls in place • Major improvements in food safety procedures/implementation of controls required • No or totally inadequate food safety management procedures • Staff not suitably supervised, instructed and/or trained in food hygiene and no appreciation of food hazards, risks, or controls • Appropriate staff not adequately trained in application of HACCP principles • Poor track record, may be some evidence of previous problems • Lack of management presence within the business with no delegation of responsibility for food safety • Very poor or no engagement, by management, with staff on food safety • Follow-up action by the Competent Authority in accordance with its enforcement policy, but may include: – prohibition procedures where there is imminent risk – ongoing formal enforcement action – re-visits within a short timescale to secure compliance • Follow-up action identified for food business operator: – immediate and significant action required in respect of all serious risks

Score	Description in Food Law Code of Practice	Description of what the score might be expected to look like in practice
		– address all other matters in relation to development of food safety management/procedures, supervision, instruction, and training, within stipulated timescale
20	Significantly varying record of compliance. Insufficient food safety knowledge and understanding. Poor appreciation of hazards, risks, and control measures. No food safety management procedures or unsatisfactory progress in terms of developing, documenting, and implementing food safety management procedures, commensurate with type of business, since the last intervention rating. Some reluctance in recognising or accepting the need for food safety and hygiene control procedures. Poor food safety culture	• Food safety management/documented procedures inappropriate or inadequate for size and nature of the business taking into account the flexibilities provided by article 5 of Regulation (EC) No 852/2004; or little or no progress made in developing, documenting, and implementing food safety management procedures, commensurate with type of business, since the last intervention rating • Significant hazards not fully understood and not all controls in place • Significant improvements in food safety procedures/implementation of controls required • Some staff not suitably supervised, instructed and/or trained in food hygiene • Appropriate staff not adequately trained in application of HACCP principles • Varying track record, may be some evidence of previous problems • Demonstration that poor food hygiene practices by staff remain unchallenged by management, and feedback not being provided with regards to hygiene behaviours • Poor engagement with staff by management, on food safety risks, for example, employee suggestions/input offered but not considered by management and not actively encouraged • Follow-up action by the Competent Authority in accordance with its enforcement policy, but may include: – formal enforcement action – re-visiting the establishment to secure compliance

Score	Description in Food Law Code of Practice	Description of what the score might be expected to look like in practice
		• Follow-up action identified for food business operator: – address all identified non-compliances in relation to development of food safety management/procedures, supervision, instruction, and training, as a matter of urgency within stipulated timescale
10	Satisfactory record of compliance. Access to relevant food safety advice source and/or Guides to Good Practice or assurance schemes commensurate with type of business. Understanding of significant hazards and control measures in place. Has implemented satisfactory food safety management procedures or is making satisfactory progress towards documented food safety management procedures commensurate with type of business. Officers will need to ensure that a business is demonstrating it is actually 'making satisfactory progress' towards food safety management procedures. A	• Generally satisfactory food safety controls in place and appropriate for size and nature of the business, or making satisfactory progress, taking into account the flexibilities provided by article 5 of Regulation (EC) No 852/2004 • All significant hazards understood and controls in place • Generally, food safety management procedures satisfactorily cover all activities, but some further development/completion needed • Food safety management records appropriate for size and nature of business and are generally maintained, but with some deficiencies/gaps identified • Staff generally suitably supervised, instructed and/or trained in food hygiene but there may be some minor issues, for example, not all staff fully aware • Appropriate staff adequately trained in application of HACCP principles • Satisfactory track record, but new businesses or those existing businesses where there has been a change in circumstances (for example, a change in management) would not be penalised on track record where they have food safety management procedures in place. This might include existing businesses with a good previous track record but with some minor recent lapses • Management challenging staff, on food hygiene practices which fail to comply with regulations on occasions • Some evidence of management enabling employee engagement on food safety risks

Score	Description in Food Law Code of Practice	Description of what the score might be expected to look like in practice
	score of 10 can be awarded for more than one intervention cycle if: • the previous non-compliances have been addressed but different non-compliances have arisen; and • the overall risk has not increased. Satisfactory food safety culture	• Some evidence of food hygiene practices being developed with staff involvement • Follow-up action by the Competent Authority in accordance with its enforcement policy, but may include: – informal action, for example, a report of official control or letter identifying issues establishment unlikely to be a priority for a re-visit • Follow-up action identified for food business operator: – to address issues in relation to development and completion of documented procedures which are commensurate with the size and nature of the business, as although not critical to food safety, and not likely to put consumers at unacceptable risk, they may do so if action is not taken
5	Good record of compliance. Food safety advice available in-house or access to, and use of, technical advice from a primary or home Authority, trade associations and/or from Guides to Good Practice or assurance scheme commensurate with type of business. Effective management control of hazards. Having effective self-checks with satisfactory documented food safety management	• Food safety management/procedures in place and appropriate for size and nature of the business, taking into account the flexibilities provided by article 5 of Regulation (EC) No 852/2004 • Hazards understood, properly controlled, managed, and reviewed with supporting evidence • Food safety management procedures adequately cover all activities • Food safety management records appropriate for size and nature of business are generally maintained – but some minor deficiencies/gaps • Food safety advice available in-house or access to, and use of, technical advice from a Primary Authority or Home Authority, trade association, assurance scheme, or other sources such as an authorised officer from a Competent Authority and/or from guides to good practice • Staff suitably supervised, instructed and/or trained in food hygiene with good general staff knowledge and new staff receiving induction training

Score	Description in Food Law Code of Practice	Description of what the score might be expected to look like in practice
	procedures commensurate with type of business. Audit by Competent Authority confirms general compliance with procedures with minor non- conformities not identified as critical to food safety. Positive food safety culture	• Appropriate staff adequately trained in application of HACCP principles • Management setting a good example and supporting and encouraging food hygiene behaviours from their staff • Management challenging staff on poor food hygiene practices which fail to comply with regulations • Good evidence of management enabling employee engagement on food safety risks and good practices being developed with staff confident their views will be considered • Evidence of staff being encouraged to report examples of poor food hygiene practice to ensure compliance • Good track record, but new businesses or those existing businesses where there has been a change in circumstances (for example, a change in management) would not be penalised on track record where they have food safety management procedures in place • No follow-up action by Competent Authority, apart from report of official control provided to food business operator • No re-visit necessary before next due official control • Follow-up action identified for food business operator: – minor action to address issues which are not critical to food safety in relation to food safety management system, for example, minor record keeping issues that are being dealt with by management
0	Excellent record of compliance. Food safety advice available in-house or access to, and use	• Food safety management/procedures in place and appropriate for size and nature of the business, taking into account the flexibilities provided by article 5 of Regulation (EC) No 852/2004 • External audit of food safety management procedures

Score	Description in Food Law Code of Practice	Description of what the score might be expected to look like in practice
	of, technical advice from a primary authority or home authority, trade associations and/or from Guides to Good Practice or assurance schemes commensurate with type of business. Food Business Operator/ Manager knowledgeable and competent. Has effective self-checks with satisfactory documented food safety management procedures commensurate with type of business and may have external audit processes in place. Strong food safety culture Audit by Competent Authority confirms good compliance with food safety procedures.	• Hazards understood, properly controlled, managed, and reviewed with supporting evidence • Food safety management procedures adequately cover all activities • Food safety management records appropriate for size and nature of business are maintained • Access to food safety advice within organisation • All staff suitably supervised, instructed and/or trained in food hygiene • Appropriate staff trained in application of HACCP principles • Staff views on how to improve food hygiene actively sought by management as well as suggestions for improvement and being receptive to these • Staff confidence in reporting food hygiene issues and trust in management to respond positively • Management providing very good communication of food safety matters to staff and ensuring to involve them when resolving issues • Excellent track record, but new businesses or those existing businesses where there has been a change in circumstances (for example, a change in management) would not be penalised on track record where they have food safety management procedures in place • No follow-up action by Competent Authority, apart from report of official control provided to food business operator • No re-visit necessary before next due official control • No follow-up action identified for food business operator in relation to food safety management procedures