Food Law

Code of Practice (England)

(Issued April 2014)

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Presented to Parliament pursuant to section 40(1) of the Food Safety Act 1990, regulation 24(1) of the Food Safety and Hygiene (England) Regulations 2013 and regulation 6(1) of the Official Feed and Food Controls (England) Regulations 2009

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Preface

This Code of Practice is issued under section 40 of the Food Safety Act 1990 (the Act), regulation 26 of the Food Safety and Hygiene (England) Regulations 2013,[1] and regulation 6 of the Official Feed and Food Controls (England) Regulations 2009,[2] which empower the Secretary of State to issue codes of practice concerning the execution and enforcement of that legislation by Food Authorities. It relates to England only.

For the purposes of this Code the terms “enforcement authority”, “port health authority” and “Food Authority” are interchangeable, subject to the specific enforcement responsibilities.

Food Authorities are required under the legislation referred to above to have regard to this Code when discharging their duties.

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

In addition, the Food Standards Agency (the Agency) may, after consulting the Secretary of State, give a Food Authority a direction requiring them to take any specified steps in order to comply with this Code.

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

Food Authorities have statutory duties to enforce legislation relating to food, including the primary production of food.

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

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

The Agency may, from time to time, issue Practice Guidance for Food Authorities. Food Authorities should take account of such guidance, as well as any appropriate Guidance issued by the European Commission.

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1 SI 2013 No. 2996.
2 SI 2009 No. 3255.

Food Authorities must also have regard to the *Framework Agreement on Local Authority Food Law Enforcement* (the Framework Agreement),[3] which reflects the requirements of this Code. The Framework Agreement is also consistent with the principles of the Enforcement Concordat.[4]

Food Authorities are required to give due regard to the Regulators' Compliance Code in relation to their general approach to enforcement.[5]

Food Authorities should be aware that law relating to food is not necessarily made under the Food Safety Act 1990. Law that applies to food is also contained in and/or made under the Animal Health Act 1981, the European Communities Act 1972, the Consumer Protection Act 1987, the Trade Descriptions Act 1968, and directly under EC Regulations.

Food Authorities should also be aware that Article 8(5) of Regulation (EC) No. 852/2004 on the hygiene of foodstuffs (Regulation 852/2004) [6] stipulates that guides to good practice drawn up pursuant to Directive 93/43/EEC on the hygiene of foodstuffs[7] (known in the UK as “Industry Guides to Good Hygiene Practice”) shall continue to apply provided that they are compatible with its objectives.

In this Code, references to live bivalve molluscs also include live echinoderms, tunicates and marine gastropods, in line with Annex III, Section VII(1) of Regulation (EC) No. 853/2004 laying down specific hygiene rules for food of animal origin (Regulation 853/2004),[8] with the exception of the parts of this Code which deal with purification of live bivalve molluscs.

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

3 "Framework Agreement on Local Authority Food Law Enforcement”, published and updated by the Food Standards Agency, Aviation House, 125 Kingsway, London, WC2B 6NH, and available at: www.food.gov.uk.
4 “The Enforcement Concordat”, published by the Cabinet Office, Better Regulation Unit, 22 Whitehall, London, SW1A 2WH (available at: www.cabinetoffice.gov.uk).
5 A copy of the Code is available at: http://www.berr.gov.uk/files/file45019.pdf
6 Regulation (EC) No. 852/2004 on the hygiene of foodstuffs. Official Journal L226 25.6.2004, p3-21.
7 Council Directive 93/43/EEC on the hygiene of foodstuffs. Official Journal L175, 19.7.1993, p1-11. This has now been repealed.
8 Regulation (EC) No. 853/2004 laying down specific hygiene rules for food of animal origin. Official Journal L226, 25.6.2004, p22-82.

Section 1 - Administration

Chapter 1.1 - Inter-authority matters

1.1.1 Introduction

This Chapter deals with liaison arrangements between Food Authorities, and the division of enforcement responsibilities. It requires the timely exchange of information on food business establishment registration, the adoption, where possible, of the "Home Authority Principle", and the appropriate representation of Food Authorities in liaison groups. It also sets out ground-rules for the exercise of powers of entry by authorised officers in other Food Authorities' areas.

1.1.2 Liaison between two-tier Food Authorities

Lead food officers of District and County Council Food Authorities should ensure that effective day-to-day liaison arrangements between their respective authorities are in place, documented and operating satisfactorily.

It should be noted that in parts of England where there are two tiers of local government and both are Food Authorities, the Agency has not specified whether investigations and enforcement action in relation to primary production are undertaken at District or County level. However, it is anticipated that most of this work will be undertaken at County level and by Trading Standards Officers who are already active on farms in relation to enforcement of animal welfare and feed legislation.

1.1.3 Microbiological quality and contamination by micro-organisms or foreign matter

In the parts of England in which there are two tiers of local government and each tier is a Food Authority, District Council Food Authorities should investigate and take enforcement action in cases relating to the microbiological quality of food, contamination by micro-organisms and their toxins and contamination by foreign matter. The exception to this is where such contamination is found during an inspection of establishments at the level of primary production in which case Section 1.1.2 should apply as appropriate.

1.1.4 Composition, chemical contamination, adulteration and labelling

In the parts of England in which there are two tiers of local government and each tier is a Food Authority, County Council Food Authorities should investigate and take enforcement action in cases relating to chemical contamination.

However, in situations where the presence of chemical contaminants may pose an imminent risk to public health, the District Council Food Authority should investigate and take enforcement action, but should liaise closely with the County Council Food Authority. The exception to this is where chemical contamination is found during an inspection of establishments at the level of primary production, in which case Section 1.1.2 should apply as appropriate.

In cases where a clearly identified risk to health has been notified by means of a Food Alert issued by the Agency, either the District Council Food Authority, the County Council Food Authority or both may be required to investigate and take enforcement action - such responsibility will be defined in the Food Alert.

The County Council Food Authority may also be required to investigate and take enforcement action when a clearly identified risk to health has been notified by a Public Analyst as a result of sampling.

Medical and other expert advice, including advice from the Public Analyst or Food Examiner, should be sought in order to establish whether contamination by chemicals is likely to pose an imminent risk to health.

County Council Food Authorities should investigate and take enforcement action in cases that involve the adulteration, composition, advertisement, presentation and labelling of food, apart from:

the identification marking requirements at Annex II of Regulation 853/2004 which are enforced by District Council Food Authorities; and

the provisions of the Food Labelling Regulations 1996[9] relating to the sale of food after the “use by” date, and the removal or alteration of “best before” or “use by” dates which are enforced jointly by County and District Council Food Authorities.

1.1.5 Timely exchange of information on food business registration

District Council Authorities in two-tier Food Authority areas receiving initial registration information under Article 6(2) of Regulation 852/2004, should supply this information to the County Council Food Authority within 28 days of receipt.

District Council Authorities in two-tier Food Authority areas approving establishments subject to approval under Regulation 853/2004, either fully or conditionally, should inform the County Council Food Authority of a food business establishment’s approval or conditional approval within 28 days of the approval being granted.

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

[9] SI 1996 No. 1499, as amended.

It should be noted, however, that establishments at the level of primary production that have been registered with the Rural Payments Agency (RPA) prior to 1 December 2006 are considered registered for the purposes of Article 6(2) of Regulation 852/2004.

1.1.6 The Home Authority Principle

The Agency endorses the Home Authority Principle, which is jointly governed by the Trading Standards Institute (TSI), Chartered Institute of Environmental Health (CIEH) and Department for Business, Innovation and Skills (BIS) and Food Authorities should, where possible, adopt and implement its provisions.

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

Food Authorities considering giving advice or taking enforcement action in relation to food businesses which have a Home Authority should consider whether they need to contact the Home Authority before doing so. This would normally be necessary, for example, where the advice or enforcement action relates to centrally agreed policies or procedures of a food business. It might not be necessary, however, where such action relates to matters of an exclusively local nature.

1.1.7 Primary Authority

The principles of Primary Authority are set out in the Regulatory Enforcement and Sanctions Act 2008 (as amended), and is overseen by the Better Regulation Delivery Office on behalf of the Secretary of State for Business, Innovation and Skills. The Agency works closely with the Better Regulation Delivery Office in its work to support the delivery of Primary Authority for food regulations.

The scheme gives businesses the right to form a statutory partnership with one local authority, which then provides robust and reliable advice for other councils to take into account when carrying out inspections or dealing with non-compliance. A Primary Authority should support its partner business in complying with regulations by issuing assured advice, by coordinating enforcement action, and by developing an inspection plan.

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

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

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

1.1.8 Operating in other areas

A Food Authority should normally deal with matters arising within its area of jurisdiction. However, regulation 16(1)(b) of the Food Safety and Hygiene (England) Regulations in respect of food hygiene, and section 32(1)(b) of the Food Safety Act 1990 in respect of food standards, permit authorised officers from a Food Authority to exercise their powers of entry in another Food Authority's area insofar as food business establishments are concerned in order to ascertain whether there is, in those establishments, any evidence of contraventions of provisions of the Food Safety and Hygiene (England) Regulations or the EU Regulations they enforce, or of the Food Safety Act or regulations or orders made under it within their own Food Authority's area.

For food hygiene visits relating to primary production, officers can be authorised by more than one authority, and therefore conduct inspections on behalf of adjoining authorities.

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

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

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

1.1.9 Regional and Local Liaison Groups

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

Food Authorities should ensure that regional or local liaison groups include appropriate representation from each Food Authority in two-tier Food Authority areas, and from Food Examiners and Public Analysts. Representation from the Food Standards Agency, the Consultant in Communicable Disease

(CCDC)/Consultant in Public Health Medicine (Communicable Disease/Environmental Health) (CPHM (CD/EH)), and other experts or specialists should be considered as the need arises.

Matters of legal interpretation and consistency should be discussed with colleagues in the appropriate regional or local food liaison group and the home or originating authority if appropriate. Food Authorities should avoid taking unilateral decisions on interpretations without seeking the views of other Food Authorities or Local Government Association (LGA).

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

In areas where there are commercial shellfish harvesting activities, Food Authorities should refer to Section 5.3.2 for liaison arrangements (see also Section A.6.5 of the Practice Guidance).

Chapter 1.2 - Qualifications and experience

1.2.1 Introduction

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

It implements the qualification and training provisions of Regulation (EC) No. 882/2004 on official controls (Regulation 882/2004).[10]

This Chapter does not apply to staff who have only indirect managerial responsibility for the Food Authority's food law enforcement service such as Chief Executives, Directors, or Chief Officers, or to those employed in a support role such as administrative and legal staff.

If a Food Authority needs to engage expertise in an area listed in Chapter I of Annex II to Regulation 882/2004, it should ensure that any expert it engages has a recognised qualification and experience in the area for which the expertise is required.

1.2.2 General qualification and experience requirements

Food Authorities should set up and implement a documented procedure for the authorisation of officers.[11]

The Food Safety Act 1990 allows for the authorisation of officers, in writing, either generally or specially to act in matters arising under the Act or Regulations made under the Act. However, officers performing duties under the Food Safety and Hygiene (England) Regulations and the Official Feed and Food Controls (England) Regulations 2009, need to be separately authorised in writing to deal with matters arising under these implementing Regulations, e.g. issues under the "specified EU provisions". With regard to other specific food Regulations made under the European Communities Act 1972, where appropriate, relevant officers should be specially authorised for each of those Regulations.

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

- suitably qualified;
- experienced; and

[10] Regulation (EC) No. 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules. Official Journal L191, 28.5.2004, p1-52.
[11] See Chapter 2, Paragraph 5.1 of the Framework Agreement on Local Authority Food Law Enforcement.

- competent to carry out the range of tasks and duties they are required to perform.

This applies equally to those who are directly employed, to temporary staff, and to those employed by or as contractors.

There may be other qualifications that are equivalent to those specifically set out in this Code. The Agency should be approached to consider such cases.

Existing or prospective Food Authority officers may also have a range of qualifications, additional training and experience that together indicate their competence to undertake specific enforcement activities identified in this Code. In such cases the relevant professional and awarding bodies should be approached directly by either the existing Food Authority employer or prospective officer for an assessment of equivalence.

Nationals from other countries in the European Economic Area have a right under EU law to the recognition of qualifications and experience gained outside the UK. This situation may arise if an individual seeks employment in Great Britain as a Public Analyst, Food Examiner or food law enforcement officer, having acquired relevant qualifications and work experience in their home country. Food Authorities should accept suitable non-UK qualifications and experience in order to give effect to these EU rights. The equivalence of non-UK qualifications will be determined by organisations recognised by the, Innovation and Skills BIS for the purposes of Directive 89/48/EEC (the Mutual Recognition of Professional Qualifications).[12] Food Authorities should make enquiries with the relevant professional and awarding bodies if they have any doubts in this area before confirming an appointment.

1.2.3 New appointments

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

1.2.4 Training

Food Authorities should ensure that authorised officers receive relevant structured on-going training. Such training should explain new legislation and procedures and technological developments relevant to food businesses subject to their control.

The minimum on-going training should be 10 hours per year based on the principles of continuing professional development.

[12] Council Directive 89/48/EEC on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration . Official Journal L19, 24/01/1989, p16-23

Authorised officers engaged in on-farm food hygiene enforcement should receive a minimum of four hours per year on-going training in relation to these responsibilities. These four hours can be included within the minimum training required either in relation to food hygiene enforcement or feed hygiene enforcement or animal health.

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

The extent of the revision training will vary according to the previous experience of the officer and the period that the officer has not been undertaking food law enforcement duties. The minimum revision training should be 15 hours based on the principles of continuing professional development.

Officers that are newly qualified or are returning to food law enforcement duties after an absence of more than three years should be monitored for at least three months or for the duration of their revision training period, whichever is longer, unless food law enforcement duties are at the level of primary production only and are in addition to current on-farm experience in relation to animal welfare or feed hygiene legislation.

1.2.5 Training records

Food Authorities should keep copies of certificates of registration, qualifications and documents required by this Chapter and record on-going and revision training undertaken by their authorised officers, including contract and temporary staff.

1.2.6 Contracted or temporary staff

Food Authorities should be satisfied that contracted or temporary enforcement staff meet the qualification and experience requirements set out in Section 1.2.9 below that are relevant to the enforcement duties they are engaged to perform. This includes the training referred to above.

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

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

1.2.7 Sampling

Samples for microbiological examination or chemical analysis should be taken by authorised officers who are properly trained in the appropriate techniques and competent to carry out the duties assigned to them. Sampling in accordance with the

provisions of the Food Safety and Hygiene (England) Regulations 2013 or the Food Safety (Sampling and Qualifications) (England) Regulations 2013[13] and this Code of Practice should only be undertaken by officers meeting the relevant requirements described in Section 1.2.9 below.

The above requirements do not apply where no formal action would be taken following sampling.

1.2.8 Lead officers

The Food Authority should notify the Agency of the name(s) of their lead officer(s) and notify the Agency of changes.

1.2.8.1 Food hygiene and safety

Food Authorities with responsibility for food hygiene and safety at any stage in the food chain after primary production, and those associated operations listed in Annex 1 of Regulation 852/2004, should appoint a suitably qualified and experienced lead Environmental Health Officer to take lead operational and management responsibility for these matters. The officer appointed should meet the requirements set out in Section 1.2.9.1.1, and have a technical understanding of the food production processes carried out within the Food Authority's area. In addition to the lead officer, other appropriately authorised officers may inspect, and take any necessary enforcement action in respect of the establishments in which these processes are carried out.

Food Authorities with responsibility for the enforcement of food hygiene at the primary production level should appoint a suitably qualified lead officer to take lead operational and managerial responsibility in this area. Food Authorities can determine the most appropriate area for this representative to be based, whether this is in animal health, feed or food. The officer appointed should meet the requirements set out in Section 1.2.9.1.4 and, in addition, have specific training in the identification and analysis of hazards.

1.2.8.2 Food standards

Food Authorities with responsibility for food standards should appoint a suitably qualified and experienced lead officer who holds the qualifications stipulated in Section 1.2.9.2.2, and has a technical understanding of the food production processes used in the Food Authority's area, to take lead operational and management responsibility for these matters.

[13] SI 2013 No. 264.

1.2.9 Specific qualification and experience requirements

1.2.9.1 Section A: food hygiene and safety

1.2.9.1.1 Officers appointed to carry out food hygiene official controls

Officers authorised to undertake food hygiene and safety official controls, with the exception of sampling (see Section 1.2.7), should hold one of the qualifications, or equivalent qualifications (see Section 1.2.2), as set out in Section 1.2.9.1.4 and be competent to carry out these functions.

Officers who are inspecting food business operators' procedures based upon HACCP (hazard analysis critical control point) principles should also possess the competencies set out in Annex 2.

Officers authorised to undertake food hygiene and safety official controls of food business establishments should have a detailed knowledge of the following:

- the nature and types of food businesses in their area and the technology utilised by the businesses that is subject to official control by the officer;
- relevant food hygiene and safety legislation;
- requirements in Regulation 882/2004 on official controls for competent authorities with responsibility for enforcement of food law;
- this Code of Practice;
- the Practice Guidance accompanying this Code;
- the Food Authority's Enforcement Policy;
- UK and EU Guides to Good Practice;[14]
- relevant guidance issued by the Agency and by LGA; and
- relevant industry codes of practice

The following establishments should be inspected <u>only</u> by Environmental Health Officers or officers holding the Higher Certificate in Food Premises Inspection:
all establishments which attract a minimum intervention frequency of 12 months or less under the intervention rating scheme at Annex 5; and
all establishments that, under the intervention rating scheme at Annex 5, are in the "substantial" category of the Consumers at Risk section (A5.3, Part 1C).

Those who do not hold the required qualifications may assist qualified officers to carry out inspections.

1.2.9.1.2 Inspection of specialist or complex processes

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

[14] References to "Guides to Good Practice" in this Code mean Guides developed in accordance with Article 8 of Regulation 852/2004 and recognised as such by the Food Standards Agency.

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

1.2.9.1.3 Inspection of establishments subject to approval under Regulation 853/2004

Inspections for the purposes of the approval of establishments that are subject to approval under Regulation 853/2004 should only be undertaken by authorised officers of the Food Authority who have a detailed knowledge of enforcement in approved establishments.

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

1.2.9.1.4 Qualifications and awarding bodies - food hygiene

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

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

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

- EHRB;
- the Scottish Food Safety Officers' Registration Board (SFSORB); or
- the Institute of Food Science and Technology (IFST).

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

Primary production

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

Trading Standards Qualification Framework (TSQF) Awards which includes:

Diploma in Consumer Affairs and Trading Standards (DCATS) or Higher Diploma in Consumer Affairs and Trading Standards (HDCATS) with Food Standards and/or Agriculture and/or Animal Health and Welfare service delivery module;

Diploma in Trading Standards (DTS); or
Diploma in Consumer Affairs (DCA Part II) provided it includes the Food and Agriculture Paper, or its antecedents.

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- Quality Assurance qualification e.g. Lead Auditor or the Higher Diploma in Consumer Affairs and Trading Standards

or have equivalent professional experience, or undertake to achieve such qualifications, and are authorised to enforce all relevant legislation.

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

In addition, officers authorised to undertake food hygiene official controls on farms should have a detailed knowledge of the following:
the nature and types of primary production establishments in their area and the technology utilised by the business subject to official control by the officer; and relevant food hygiene and safety legislation.

1.2.9.1.5 Service of Hygiene Improvement Notices
(See also Chapter 3.2)

Hygiene Improvement Notices served under regulation 6 of the Food Safety and Hygiene (England) Regulations 2013 may only be signed by officers who have been authorised to do so by the Food Authority. To maintain a consistent approach, Food Authorities should arrange that these notices are signed only by qualified officers with experience in food law enforcement, who are properly trained and competent. These will be one of the following:

- Environmental Health Officers enforcing food hygiene or food processing regulations;
- holders of the Higher Certificate in Food Premises Inspection who are authorised to carry out food hygiene inspections;
- holders of the Ordinary Certificate in Food Premises Inspection in relation to the premises they are authorised to inspect (see Section 1.2.9.1.1);
- in relation to primary production, authorised officers having the qualifications and experience specified in 1.2.9.1.4, as appropriate.

The officer who signs the notice must have witnessed the contravention and be satisfied that it constitutes a breach of the Food Safety and Hygiene (England) Regulations 2013.

1.2.9.1.6 Service of Improvement Notices
(See also Chapter 3.2)

Improvement Notices served under section 10 of the Food Safety Act 1990 may only be signed by officers who have been authorised to do so by the Food Authority. To maintain a consistent approach, Food Authorities should arrange that these notices are signed only by qualified officers with experience in food law enforcement, who are properly trained and competent.

These will be one of the following:

- Environmental Health Officers enforcing food standards regulations;
- holders of the Higher Certificate in Food Premises Inspection who are authorised to carry out food standards inspections; or
- holders of the Ordinary Certificate in Food Premises Inspection in relation to the premises they are authorised to inspect (see Section 1.2.9.1.1).

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

1.2.9.1.7 Service of Hygiene Emergency Prohibition Notices/Emergency Prohibition Notices

(See also Chapter 3.3)

Hygiene Emergency Prohibition Notices served under regulation 8 of the Food Safety and Hygiene (England) Regulations 2013 or Emergency Prohibition Notices served under section 12 of the Food Safety Act 1990 should be signed only by Environmental Health Officers (see Section 1.2.9.1.4) who:

- have two years' post qualification experience in food safety matters;
- are currently involved in food law enforcement; and
- are properly trained, competent and duly authorised; or
- in relation to primary production, officers who are suitably qualified and experienced (see 1.2.9.1.4) and are properly trained, competent and duly authorised.

1.2.9.1.8 Service of Remedial Action Notices/Detention Notices

(See also Chapter 3.5)

Remedial Action Notices or Detention Notices served under regulation 9 or 10 respectively of the Food Safety and Hygiene (England) Regulations 2013 should be signed only by Environmental Health Officers (see Section 1.2.9.1.4) who:

- have two years' post qualification experience in food safety matters;
- are currently involved in food law enforcement;
- who are properly trained, competent and duly authorised.

1.2.9.2 Section B: food standards

1.2.9.2.1 Officers appointed to carry out food standards official controls

Officers authorised to undertake food standards official controls, with the exception of sampling (see Section 1.2.7), should hold one of the qualifications, or equivalent

qualifications (see Section 1.2.2) as set out in Section 1.2.9.2.2, and be competent to carry out the duties. Officers authorised to undertake such official controls in food business establishments should have a detailed knowledge of the following:

- the nature and types of food business in their area and the technology utilised in those establishments the officer is authorised to inspect;
- relevant food standards and marketing legislation;
- requirements in Regulation 882/2004 on official controls for competent authorities with responsibility for enforcement of food law;
- this Code of Practice;
- the Practice Guidance accompanying this Code;
- the Food Authority's Enforcement Policy;
- relevant guidance issued by the Agency and by LGA; and
- relevant industry codes of practice.

1.2.9.2.2 Qualifications and awarding bodies - food standards

For interventions in Establishments Rated B and C

- Trading Standards Qualification Framework (TSQF) Awards which includes:
- Certificate of Competence in Food Standards service delivery module;
- Core Skills Certificate in Consumer Affairs and Trading Standards with Food Standards service delivery module (CSCATS with Module Certificate in Food Standards);
- Or
- Diploma in Consumer Affairs (DCA): Certificate of Competence in Food and Agriculture.

For interventions in Establishments Rated A or B or C

- Certificate of Registration of EHRB, the EHRB or REHIS Diploma in Environmental Health (or its antecedents);
- Trading Standards Qualification Framework (TSQF) Awards which includes:
- Diploma in Consumer Affairs and Trading Standards (DCATS) or Higher Diploma in Consumer Affairs and Trading Standards (HDCATS) with Food service deliver module;
- Diploma in Trading Standards (DTS); or
- Diploma in Consumer Affairs (DCA Part II) provided it includes the Food and Agriculture Paper, or its antecedents.
- a Higher Certificate in Food Premises Inspection issued by EHRB or the IFST with an endorsement to include Food Standards Enforcement;
- The Higher Certificate in Food Standards Inspection issued by SFSORB

  PLUS
  Quality Assurance qualification e.g. Lead Auditor or the Higher Diploma in Consumer Affairs and Trading Standards, or equivalent professional experience and competency to enable them to assess quality assurance systems.

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

1.2.9.2.3 Quality assurance systems

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

1.2.9.3 Section C: food hygiene and food standards

1.2.9.3.1 Inspection, detention and seizure of foodstuffs

(See also Chapter 3.4)

The inspection of food and any decision to detain or seize food through the application of section 9 of the Food Safety Act 1990 (including as directed by regulation 29 of the Food Safety and Hygiene (England) Regulations 2013) should only be taken by appropriately authorised officers. Such officers will be either:

- authorised Environmental Health Officers;
- holders of the Higher Certificate in Food Control – limited to food placed on the market;
- authorised Official Veterinarians;
- appropriately authorised Trading Standards Officers (see Section 3.4.3);

As regards official controls in relation to the import of food from third countries, regulation 31 of the Official Feed and Food Controls (England) Regulations 2009 provides the power to Food Authorities to take action under Articles 18 to 21 and 24(3) of Regulation 882/2004 if the conditions set out in those Articles are fulfilled. These Articles relate to the detention, destruction, special treatment, re–dispatch and other appropriate measures in respect of food imported from third countries.

1.2.10 Alternative enforcement strategies

(See also Section 4.1.5.2.4 and Annex 5, A5.2 (food hygiene) and A5.5 (food standards))

Officers undertaking alternative enforcement strategies are not required to meet the qualification requirements set out in this Chapter, but they should, however, be appropriately authorised. Any visits by such unqualified, but appropriately authorised, officers undertaken as part of an alternative strategy, must be confined to information collection and reporting back. The overall management of alternative enforcement strategies must remain in the hands of a food law enforcement officer qualified in accordance with this Chapter, and decisions to take other enforcement action and/or intervene further must also be made by such an officer.

1.2.11 Qualification requirements for interventions

In assessing who can carry out which type of intervention to undertake at a food establishment, the Food Authority should have regard to the following qualification requirements (please see Section 4.1.2 of the Practice Guidance for further details of intervention types).

Intervention type	Qualification level required to carry out the action
Inspections and audits	An appropriately qualified officer with experience in food law enforcement or, in relation to primary production, experience on-farm in relation to feed or animal health legislation - in accordance with Section 1.2.9 of this Code of Practice.
Verification and surveillance	An appropriately qualified officer with experience in food law enforcement - in accordance with Section 1.2.9 of this Code of Practice.
Sampling visits	An officer appointed in accordance with Section 1.2.7 (and, where appropriate, Section 1.2.9) of this Code of Practice.
Advice and education	An officer authorised in accordance with Section 1.2.10 of this Code of Practice.
Information/intelligence gathering	An officer authorised in accordance with Section 1.2.10 of this Code of Practice.

Chapter 1.3 - Conflicts of interest

1.3.1 Introduction

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

1.3.2 Avoiding potential conflicts of interest

Article 4(2) (b) of Regulation 882/2004 requires that staff carrying out official controls are free from any conflict of interest.

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

Officers should not provide their own services, e.g. training, in their own time within their Food Authority area.

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

Food Authorities and their officers should avoid promoting the Food Authority's services exclusively if other providers of those services exist in the area or the services offered by a particular organisation.

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

Where a Food Authority delegates enforcement to an independent third party (control body),[15] then that Authority must obtain proof that the control body is impartial and free from any conflict of interest as regard the tasks delegated to it.

1.3.3 Enforcement within local authority-run establishments

The Food Authority's food law Enforcement Policy (see Section 3.1.4) should detail the Food Authority's arrangements for ensuring compliance with food law in establishments where the Authority is itself the food business operator, and that steps are taken to ensure enforcement decisions are free from any conflict of interest.

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

[15] See Article 2(5) of Regulation 882/2004.

Contract caterers that operate within local authority establishments should be assessed in accordance with Annex 5 and the intervention frequency determined accordingly.

Chapter 1.4 - Food business establishment records

1.4.1 Introduction

This Chapter requires, in line with Article 31 of Regulation 882/2004, Food Authorities to maintain up-to-date lists of registered and approved food business establishments in their area, and confirms that this data may be divulged for the purposes of ensuring public health and the effective enforcement of food law.

1.4.2 Database of food business establishments

Food Authorities should maintain an up-to-date database of food business establishments which have been registered with them, and food business establishments which have been approved or conditionally approved by them. Food Authorities should liaise as necessary to ensure that information is made available to all authorities that require it in accordance with Section 1.1.5 (see also Chapter 4.5). The database should include a comprehensive record of:

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

In the parts of England in which there are two tiers of local government and each tier is a Food Authority, County Council Food Authorities should keep a database of information supplied to them by District Council Food Authorities in accordance with Section 1.1.5.

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

1.4.3 Access to information

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

Requests for information other than from the above bodies should also be handled with due regard to Freedom of Information and Data Protection legislation (see also

Section 1.4 of the Practice Guidance) and to Section 1.5.4 in connection with requests for information on registered food business establishments.

Chapter 1.5 - Registration of food business establishments

1.5.1 Introduction

Under Article 6(2) of Regulation 852/2004, food business operators must register their establishments (i.e. each separate unit of their food business) with the appropriate Food Authority, except establishments which:
are subject to approval under Regulation 853/2004 (see Section 5); or;
fall outside the scope of the Regulation 852/2004 (see Section 1.5.2).

Responsibility rests with Food Authorities for recording and maintaining details of food business establishments which have been registered with them under Regulation 852/2004 (see Chapter 1.4). This includes establishments producing raw milk intended for direct human consumption other than raw cows' milk, e.g. raw goats' drinking milk, sold at establishments registered with the Food Authority under regulation 5(4)(b) and Schedule 6, paragraphs 1 and 5 of the Food Safety and Hygiene (England) Regulations 2013. The Agency and not Food Authorities are responsible for the enforcement of Schedule 6 in respect of raw cows' drinking milk.

Articles 1(2) (c) of Regulation 852/2004 and Article 1(3) (c) of Regulation 853/2004 allow 'small quantities'[16] of direct sales of primary products to take place outwith the EU hygiene rules contained in those Regulations. National food safety rules have to be in place however, and in England the relevant food safety legislation applicable to such sales is Articles 14 and 19 of Regulation (EC) No 178/2002, as enforced by regulation 19(1) and Schedule 2 of the Food Safety and Hygiene (England) Regulations 2013..

For the registration of establishments at the level of primary production see Sections 1.5.3.1, 1.5.3.3 and 1.5.4.1.

1.5.2 Exemptions

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

In determining whether or not a particular establishment is subject to Regulation 852/2004 only (and is hence required to be registered), consideration should be given to whether the business concerned is a "food business" as defined in

[16] 'Small quantities' is not defined in EU legislation and it is not, therefore, possible to include a definition in our implementing regulations. Interpretation of the term is, therefore, a matter for guidance. For the purposes of considering the extent to which the provisions of Regulations 852/2004 and 853/2004 apply to raw drinking milk, the Agency suggests a small quantity should be considered to be of the order of a crate a day in total (24 pints, approximately 14 litres).

Regulation (EC) No. 178/2002 on general food law (Regulation 178/2002),[17] and to both Recital (9), and Article 1(2), of Regulation 852/2004 which set out the circumstances under which the Regulation, and hence the requirement to register under Article 6(2), would not apply (see Section 3.1.7).

1.5.3 Registration of new food business establishments

1.5.3.1 Applications for registration: general

Under Article 31(1) (a) of Regulation 882/2004 the competent authority is required to establish procedures for food business operators to follow when applying for the registration of their establishments. The following paragraphs set out these procedures.

It should be noted that in relation to primary production, a list of establishments registered with the RPA has been made available to local authorities. Establishments included on this list are not subject to a further registration requirement.

1.5.3.2 Time frame for registration

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

1.5.3.3 Registration form

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

Where a primary production establishment has not previously been registered (i.e. it does not appear on existing databases, either those already held by the Food Authority or on the RPA list - see Section 1.5.3.1 - a registration form should be made available to and completed by the food business operator as above.

1.5.3.4 Sites on which there is more than one food business establishment

1.5.3.4.1 Establishments under the control of the same food business operator

Sites will exist on which there are two or more food business establishments under the control of the same food business operator. For example, in the case of a shopping centre in which there are two or more food business establishments under

[17] Regulation (EC) No. 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety. Official Journal L31, 1.2.2002, p1-24.

the control of the same food business operator, such operators must ensure that each establishment under their control is registered separately. Food business operators should, therefore, complete a registration form for each separate establishment.

1.5.3.4.2 Establishments under the control of different food business operators

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

1.5.4 Lists of food business establishments

1.5.4.1 Requirements of Regulation 882/2004

Article 31(1) (b) of Regulation 882/2004 requires the appropriate competent authority to draw up a list of food establishments that have been registered and permits existing lists to be used for this purpose.

The register of food business establishments held by each Food Authority in accordance with the now revoked Food Premises (Registration) Regulations 1991, as amended, in the Authority's database (see Chapter 1.4) satisfies this requirement and may be carried forward. Food business operators will not, therefore, need to re-register food business establishments under their control which have already been registered with a Food Authority. Food Authorities must maintain their lists in accordance with the requirements of Article 31(1) (b) of Regulation 882/2004.

In relation to primary production, establishments included in the RPA list (see Section 1.5.3.1) or other databases already held by the Food Authority, are considered registered under Article 31 (1) (b) of Regulation 882/2004.

1.5.4.2 Separate list of registered food business establishments

Unitary Authorities and District Council Food Authorities should also ensure that a separate, up-to-date, list of food business establishments registered with them is available for inspection by the general public at all reasonable times. The list should contain the following information about each food business and should be consistent with the information held in the Food Authority's database:

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

These authorities may give or send a copy of their list or any entry on it to any person who makes a request for such information.

County Council Food Authorities should refer requests from the general public for information on registered food business establishments in their area to the relevant District Council Food Authority.

1.5.5 Action on receipt of completed registration form

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

Food Authorities should enter relevant information from the registration form on to the database (see Chapter 1.4) and lists (see Section 1.5.4) of registered food business establishments. The registration form should then be placed on a file prepared in respect of that food business establishment.

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

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

On receipt of a completed application form, Food Authorities should also give consideration to carrying out an inspection of the establishment in accordance with Section 4.1.3.2.

1.5.6 Registration certificates/confirmation of receipt

Certificates of Registration for food business establishments should not be issued to food business operators because of their potential to mislead consumers into believing that a food business establishment has “official approval”. Food Authorities may, however, choose to confirm safe receipt of registration forms and the entry of an establishment on to the list of registered food business establishments. Any such confirmation should remind the food business operator to advise the Food Authority of any subsequent changes to the business, in accordance with Article 6(2) of Regulation 852/2004 (see Section 1.5.7).

1.5.7 Changes to activities after registration

Under Article 6(2) of Regulation 852/2004, food business operators must ensure that the appropriate competent authority always has up-to-date information on their food

business establishments, and must notify the relevant competent authority of any significant changes of activities, or closure.

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

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

1.5.8 Moveable establishments

1.5.8.1 Ships, aircraft, trains and coaches

Although ocean-going ships, aircraft, trains and long-distance coaches are subject to the provisions of Regulation 852/2004, their movable nature generally means that there is little practical value in the registration of individual ships, aircraft, trains and coaches with the Food Authority in whose area they are based as they are not always present in that authority's area of jurisdiction. See enforcement approaches set out at Section 4.1.12 (trains and coaches) and Chapter 4.4 (ships and aircraft).

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

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

1.5.8.2 Vending machines

Vending machines are subject to the relevant provisions of Regulation 852/2004. However, there is little practical value in the registration of individual vending machines or the premises on which they are sited if the only food related activity on those premises relates solely to vending machines. However, distribution centres where food for stocking vending machines is stored and/or from which food is transported to vending machines for stocking should be registered with the relevant Food Authority. The delivery vehicles used for the transport of food for stocking vending machines should be covered in the interventions at such establishments.

1.5.8.3 Markets

In the case of vehicles and stalls (whether or not these stalls are provided by the controller of the market) used for transporting or preparing food or the sale of food to

consumers within the area of a market, the food business operator should register the establishment in which their stocks of food to be sold are ordinarily kept with the relevant Food Authority.

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

1.5.8.4 Movable establishments other than those which form part of a market operating within the area of a market

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

1.5.9 Non-registered establishments thought to be engaged in activities subject to Regulation 852/2004

In such circumstances the Food Authority should ask the food business operator to complete a registration form as soon as possible and should satisfy itself that the food business establishment is operating in compliance with the other provisions of Regulation 852/2004 as appropriate.

Regulation 852/2004 requires primary producers to notify the competent authority of establishments under their control with a view to those establishments being registered.

The details of the registration process for food business operators are detailed in Regulation 852/2004. Regulation 882/2004 requires competent authorities to have procedures in place so that this registration can take place.

The purpose of registration is to enable the competent authorities to have the business details available, from external sources if necessary, to ensure that businesses are subsequently subject to official controls.

Regulation 882/2004 states in Article 31(1) (b) that ‘where such a list already exists for other purposes, it may also be used for the purposes of this Regulation’. The option to use existing lists is also detailed in the Commission’s guidance document on the implementation of Regulation 852/2004 where specific examples of suitable alternative registration information sources are made e.g. environmental or animal health data. A list of primary production establishments registered with the RPA has been made available to local authorities. A new dedicated food hygiene registration system at primary production level is <u>not</u> therefore required.

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

Officers should be careful to ensure that:

- such establishments are subject to Regulation 852/2004; and
- such establishments are not subject to approval under Regulation 853/2004 (see Section 5).

Chapter 1.6 - Crown and police premises

1.6.1 Introduction

This Chapter concerns the approach to enforcement in Crown premises and in premises that are occupied by the police. It does not apply to premises that are occupied by the National Health Service (NHS) or NHS Trusts since these are not Crown premises. For information on military ships and aircraft refer to Chapter 4.4. Home Authority contacts for the Army, Royal Navy and Royal Air Force are given in Section 4.4.4.

1.6.2 Powers of entry (Food Safety and Hygiene (England) Regulations 2013)

The powers of entry under regulation 16 of the Food Safety and Hygiene (England) Regulations 2013 may be used in relation to Crown premises.

The Food Safety and Hygiene (England) Regulations 2013 do not contain the specific exemptions for certain members of the Royal Family or certain Royal residences afforded by the Food Safety Act 1990 (see Section 1.6.3 below). Food Authorities should use discretion when exercising their powers in respect of Crown premises.

In practice, Food Authorities should adopt the same approach to the enforcement of the Food Safety and Hygiene (England) Regulations 2013 in respect of Crown premises as they do in respect of the Food Safety Act 1990.

1.6.3 Powers of entry (Food Safety Act 1990)

The powers of entry under section 32 of the Food Safety Act 1990 may be used in respect of food standards issues, in relation to Crown premises (subject to exemptions for certain members of the Royal Family and certain Royal residences). However, a national security certificate may have been issued by a Secretary of State certifying that powers of entry under the Food Safety Act 1990 cannot be exercised. If an authorised officer seeks entry to Crown premises and is informed that such a certificate has been issued, the officer may ask to see the certificate or a copy of it.

1.6.4 Obtaining entry to Crown premises

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

Group 1 - includes premises situated on Crown land where there are normally no security implications, e.g. restaurants in museums or Royal Parks. These premises should be treated like any other food business.

Group 1 premises should normally be visited without prior arrangement.

Group 2 - includes premises with controlled entry but normally minimal security implications. Most government and police premises fall within this category. They are similar to many private businesses with security systems.

First visits to Group 2 premises should be by prior arrangement. Future visits may be unannounced, but arrangements for subsequent visits should be agreed at the first inspection and confirmed in writing.

Group 3 - includes premises where unannounced entry is not possible because of security implications and/or for the personal safety of the authorised officer, e.g. HM Forces, defence and national security establishments, prisons and remand centres, and parts of police premises that accommodate prisoners.

Group 3 premises should always be visited by prior arrangement with the appropriate contact at the establishment concerned, e.g. the defence establishment security officer, the commanding officer or nominated representative of an HM Forces establishment, the Governor of a prison service establishment, or the officer in charge of police premises. This will enable the authorised officer to obtain entry without undue delay. The contact may be reminded of the power of entry if an authorised officer considers that the suggested appointment is too far in advance.

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

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

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

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

An incident such as a food poisoning outbreak may require an authorised officer to visit premises at short notice even though prior notice would normally be required. A telephone notification that the officer is on the way is essential in Group 3 premises, and may save time in gaining entry to Group 2 premises. It should not normally be necessary in such circumstances to give more than the briefest notice of such a visit.

1.6.5 Conduct

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

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

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

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

1.6.6 Photographs

Before taking any photographs, making sketches or taking measurements on Group 3 premises, the authorised officer should discuss such matters with the escorting officer and take account of any requirements. Unless absolutely necessary to illustrate a possible contravention of the legislation, photographs on Group 3 premises should not include individuals. It should not be possible to identify any individual from any photograph taken within a prison or remand establishment.

1.6.7 Liaison with the Home Authority/the Agency

Food Authorities should report any difficulties encountered in the enforcement of food law in premises to which this Chapter applies to the appropriate Home Authority or, if there is no Home Authority, to the Agency.

Chapter 1.7 - Food incidents and hazards

1.7.1 Introduction

This Chapter deals with food incidents and food hazards that are first identified by Food Authorities.

A schematic representation of the process that Food Authorities should follow when dealing with a food incident or hazard is included at Annex 3.

1.7.2 Food incidents/food hazards

1.7.2.1 Food incident: definition

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

1.7.2.2 Food hazard: definition

A “food hazard” is a food incident involving a biological, chemical or physical agent in, or condition of, food with the potential to cause an adverse effect on the health or safety of consumers.

1.7.3 Documented procedure

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

1.7.4 Categories of food hazard

Food Authorities should categorise food hazards according to the following criteria:
A localised food hazard - one in which food is not distributed beyond the boundaries of the Food Authority and is not deemed to be a serious localised food hazard**;**
A serious localised food hazard - one in which food is not distributed beyond the boundaries of the Food Authority but which involves *E. coli* O157, other VTEC, *C. botulinum, Salmonella typhii or Salmonella paratyphi* or which the Food Authority considers significant because of, for example, the vulnerability of the population likely to be affected, the numbers involved or any deaths associated with the incident; and
A non-localised food hazard – one in which food is distributed beyond the boundaries of the Food Authority.

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

1.7.5 Deliberate contamination and malicious tampering

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

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

Food Authorities should contact the Food Standards Agency at the earliest opportunity if malicious tampering is suspected and hand over responsibility for dealing with such incidents to the police if requested by them to do so.

Food Authorities should co-operate fully with police investigations into incidents of malicious tampering and respect police requests for confidentiality whenever possible, although there may be occasions when the need to alert consumers to the existence of a food hazard outweighs the need to maintain confidentiality.

1.7.6 Food hazards associated with outbreaks of food-borne illness

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

Serious localised outbreaks should immediately be notified to the appropriate contacts at the Agency[18] and the HPA Communicable Disease Surveillance Centre (HPA CDSC).

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

1.7.7 Action by the Food Authority - food hazards

Once a food hazard has been identified, the Food Authority should immediately carry out an assessment to determine the likely scale, extent and severity of the risk to public health or safety of the hazard, involving other agencies as appropriate. These other agencies may include home, originating and neighbouring authorities, medical specialists, Food Examiners, Public Analysts and microbiologists.

[18] A list giving contact details is issued as a separate document and is available from the Food Incident Branch at the Agency, Room 715B, Aviation House, 125 Kingsway, London, WC2B 6NH (Tel: 020 7276 8448/8453).

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

The assessment should include the following:

- the nature of the hazard;
- the toxicity of the contaminant, the allergenicity of an undeclared ingredient/constituent, or the virulence and pathogenicity of the organism;
- the type of injury which might be caused by a physical contaminant;
- the population likely to be affected and its vulnerability;
- the likely quantity and distribution of the food in the food chain up to the point of consumption;
- the ability and willingness of the producer or distributor to implement an effective withdrawal of the product;
- the ability to identify accurately the affected batch(es) or lot(s);
- the accuracy and extent of records held by the producer or distributor;
- the likely effectiveness of any trade withdrawal at all stages of the food chain;
- the stage(s) at which the fault is likely to have occurred (for example in processing, packaging, handling, storage or distribution) and its likely significance to the problem;
- whether other products produced in the same establishment may have been affected;
- whether the food has been imported;
- whether any of the food has been exported;
- whether there are wider implications for others in the same industry or for establishments using similar processes in other food industries; and
- the possibility that the complaint or problem has been caused by a malicious act (see Section 1.7.5).

When a Food Authority becomes aware of a food hazard it should take action to protect public health and safety at the earliest opportunity, including, if necessary, detaining or seizing the food concerned if it is located within the Food Authority's area (see Chapter 3.4).

Food Authorities should also consider the use of other powers under the Food Safety and Hygiene (England) Regulations 2013 or the Food Safety Act 1990 as appropriate, relevant to the circumstances involved.

Localised food hazards should be dealt with locally by the Food Authority, in conjunction with other relevant agencies and need not be reported to the Agency.

Serious localised food hazards and **non-localised food hazards** should be notified by the Food Authority to the Agency and other relevant agencies at the

earliest opportunity and by the quickest available means,[19] and confirmed in writing using a copy of the incident report form at Annex 4. This form is also available on the Agency's website and can be submitted directly to the Food Incidents Team via the website.

However, where a Food Authority becomes aware that a food business operator in their area has withdrawn or recalled food from the market in accordance with Article 19 of Regulation 178/2002, due to non-compliance with the food safety requirements of that Regulation, the Food Authority should confirm that the Agency is also aware.

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

1.7.7.1 Localised food hazards - media relations

In the event of a localised food hazard, the Food Authority may issue a local press statement to alert the public to the hazard. The relevant food business operators should be consulted before the identity of a named business or branded food is discussed with, or released to, the media. Such media releases should be sent to the Agency without delay. The Food Authority should notify the Agency immediately if the food business operator raises objections to the release of such information.

1.7.8 Action by the Food Authority - food incidents

Food incidents that are contraventions of food law, but not food hazards should normally be resolved by the Food Authority and the food business operator, through the home or originating authority if appropriate.

[19] A list giving contact details is issued as a separate document and is available from the Food Incidents Branch at the Agency, Room 715B, Aviation House, 125 Kingsway, London WC2B 6NH (Tel: 020 7276 8448/8453).

Section 2 - Communication

Chapter 2.1 - Disclosure of information

2.1.1 Disclosure of information

(See also Chapter 1.4 of the Practice Guidance).

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

Chapter 2.2 - Food Alerts

2.2.1 Introduction

A "Food Alert for Action (FAFA)[20]" is a communication from the Agency to a Food Authority concerning a food hazard or other food incident, and a "Food Alert Update" should be read accordingly. . Where the Agency requires any actions/responses by the Food Authority, these will be clearly specified. The Agency may also issue information to Food Authorities on product recalls or withdrawals via its Product Recall/Withdrawal Information Notices.

Allergy Alerts are also issued by the Agency to quickly communicate allergen risks directly to the consumer. Food Authorities receive copies of these Allergy Alerts for information purposes only.

2.2.2 Responding to Food Alerts

Food Authorities should ensure that their documented procedure for dealing with food safety incidents[21] includes the effective response to Food Alerts issued by the Agency.

This documented procedure should be developed in consultation with:

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

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

- details, including contact details, of the Lead Officer for such matters;
- liaison arrangements between County Council and District Council officers in two-tier Food Authority areas;
- any arrangements for the reception of and response to Alerts received outside office hours;
- arrangements to ensure that Food Alerts and updates are brought to the attention of an officer with authority to initiate appropriate action without undue delay;
- arrangements for the liaison with other relevant bodies, including neighbouring Food Authorities, both within and outside normal office hours;
- arrangements to provide adequate staff resources to allow effective response to alerts; and

[20] Food Alerts were previously divided up into Food Alerts for Action (FAFA) and Food Alerts for Information (FAFI). From June 2010, FAFAs were retained, whilst FAFIs were replaced with Product Recall/Withdrawal Information Notices.

[21] See Chapter 2, Section 14, of the Framework Agreement on Local Authority Food law Enforcement.

- arrangements to provide adequate equipment, including access to Council Offices out of hours, to allow an effective response to be made.

2.2.3 Facilities for receiving Food Alerts and Updates

Food Authorities should have facilities to receive Food Alerts and Updates from the Agency by an electronic mail system that is acceptable to the Agency. Food Authorities should put in place systems to ensure that Food Alerts can be responded to outside normal working hours.

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

2.2.4 Out-of-hours services

Food Authorities must advise the Agency of emergency telephone numbers on which responsible officers may be contacted outside the Food Authority's normal office hours. Information on out-of-hours contacts must be provided in the manner and at the frequency required by the Agency. The Food Authority should also proactively advise the Agency of any changes to these details at the earliest opportunity.

2.2.5 Action by Food Authorities

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

2.2.6 Media relations - Food Alerts

Food Authorities wishing to enhance local publicity may, where permitted by the Agency, use a press release/media statement issued by the Agency as a basis for a local press release. In such cases, the Food Authority must ensure that the local statement is accurate, relevant and consistent with the Agency statement.

If Food Authorities wish to display Food Alerts on their websites they should ensure that any material from Agency Food Alerts or press/media releases is edited so as to specify what local action has been taken in response to the Alert. It should also include local contact information.

Chapter 2.3 - Agency communications and guidance

2.3.1 Introduction

This Chapter requires Food Authorities to take appropriate action on Agency guidance on the effective enforcement of food law.

2.3.2 Guidance issued to Food Authorities

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

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

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

2.3.3 Enforcement consistency

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

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

The Food Authority should have regard to centrally issued guidance, including that from LGA.

Chapter 2.4 - Information to be supplied to the Agency

2.4.1 Introduction

This Chapter deals with the information required by the Agency in relation to:

- food hazards;
- approvals and other matters under the EU food hygiene Regulations;
- matters relating to European liaison arrangements;
- lead officers;
- electronic mail addresses; and
- emergency telephone numbers.

2.4.2 Matters relating to food hazards

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

- serious localised food hazard;
- non-localised food hazard;
- serious localised outbreak of food-borne illness; and
- withdrawal or recall of food by a food business operator due to non-compliance with the food safety requirements of Regulation 178/2002 (Article 19).

2.4.3 Matters relating to product-specific establishments subject to approval under Regulation 853/2004

Food Authorities must notify the Agency:

- when an establishment has been approved or conditionally approved;
- where an approved establishment ceases activities that are the subject of the approval or conditional approval;
- where an approval or conditional approval has been withdrawn or suspended;
- where a live bivalve mollusc purification centre or modification to an existing centre is proposed (see Section 5.1.10);
- where they have designated a live bivalve mollusc relaying area (see Section 5.1.11) - the notification should include the relevant details of the area and any specified operating conditions; or
- where consideration is being given to the issue of a Closure Notice to restrict the harvesting of live bivalve molluscs (see Section 5.3.6).

2.4.4 Quality of live bivalve mollusc production and relaying areas

Food Authorities responsible for live bivalve mollusc production or relaying areas must notify the Agency where sample results suggest a significant variation in the quality of such areas (see Section 4.3.3.2).

2.4.5 Matters relating to the delegation of tasks related to official controls

Food Authorities responsible for the delegation of specific tasks to independent third parties (control bodies)[22] must provide the Agency with details of the control body and the tasks delegated to it.

2.4.6 Matters relating to liaison arrangements with other Member States

Food Authorities must notify the Agency whenever they become aware of a trans-border matter that should be referred directly to the Agency (see Section 2.5.2.1).

2.4.7 Lead officers

Food Authorities must notify the Agency of the name of their appointed lead officer who has operational and management responsibility for food hygiene and safety matters and/or for food standards matters, and notify any changes to these details (see Section 1.2.8).

2.4.8 Electronic mail addresses

Food Authorities must notify the Agency of their electronic mail address and notify any changes to these details (see Section 2.2.3).

[22] As defined in Article 2(5) of Regulation 882/2004.

Chapter 2.5 - Liaison with other Member States

2.5.1 Introduction

The Agency is the designated liaison body for the purposes of Article 35 of Regulation 882/2004 and, as such, is responsible for assisting and co-ordinating communication between competent authorities and the transmission and reception of requests for assistance. However, this does not preclude direct contacts, exchange of information or co-operation between the staff of food control authorities in different Member States.

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

Detailed provisions on administrative assistance and co-operation with other Member States are set out in Articles 34 to 38 of Regulation 882/2004.

2.5.2 Trans-border Issues

Trans-border matters fall into three broad categories:

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

2.5.2.1 A. Trans-border matters to be referred directly to the Agency

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

2.5.2.2 B. Trans-border matters reported to the Agency after liaison has taken place

- Any issue when, after investigation, liaison or inquiry, it appears that circumstances set out in Section 2.5.2.1 above apply.
- Cases involving enforcement authorities in other Member States where there is undue delay, equivocation or a refusal to undertake action which appears to be warranted.
- Circumstances in which it appears that elements of the national food law of one Member State conflicts with that of another.
- Any issue listed for information which, after investigation, liaison or enquiry, appears to have such implications or is of such a serious nature that the Agency should be informed of it.

2.5.2.3 C. Routine liaison between local food control authorities of Member States

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

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

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

2.5.3 Enquiries to other Member States

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

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

2.5.4 Enquiries from other Member States

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

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

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

2.5.5 Disclosure of information to other Member States

Article 7 of Regulation 882/2004 sets out the general requirements in respect of transparency and confidentiality. Detailed provisions on administrative assistance and co-operation with other Member States are set out in Articles 34 to 38 of Regulation 882/2004. Article 34 stipulates that Articles 35 to 40 of that Regulation, which deal with administrative assistance and co-operation between Member States "shall not prejudice national rules applicable to the release of documents which are the object of, or are related to, court proceedings, or rules aimed at the protection of natural or legal persons' commercial interests".

Food Authorities should therefore ensure that any release of information is compatible with national legislation including that relating to Data Protection and Freedom of Information (see also Chapter 1.4 of the Practice Guidance).

Section 3 - General enforcement

Chapter 3.1 - Approach to enforcement

3.1.1 Introduction

This Chapter:

- lists reference materials which Food Authorities should take account of;
- requires each Food Authority to document its Food Law Enforcement Policy and keep it up-to-date; and
- also requires that direct communication with multi-site food businesses should normally be with the head office unless the business has agreed other arrangements.

A clear distinction between statutory requirements and good practice must be made in all communications with food businesses. Where appropriate, decisions to prosecute should be taken at the earliest opportunity. Where, on the other hand, it is decided to adopt an informal approach, it should be explained to the food business operator what action is needed to secure compliance.

3.1.2 Enforcement Information

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

This includes:

- relevant legislation;
- this Code of Practice;
- UK Guides to Good Practice where appropriate;
- guidance issued by the Agency and LGA;
- relevant industry codes of practice; and
- appropriate technical literature.

3.1.3 Proportionality and consistency

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

Authorised officers should take account of the full range of enforcement options. This includes educating food business operators, giving advice, informal action, sampling, detaining and seizing food, serving Hygiene Improvement Notices/Improvement Notices, Hygiene Prohibition Procedures/Prohibition Procedures and prosecution procedures.

Except where circumstances indicate a significant risk, officers should operate a graduated and educative approach (*the hierarchy of enforcement*) starting at the bottom of the pyramid i.e. advice/education and informal action and only move to more formal action where the informal action does not achieve the desired effect. This should lessen the likelihood of a legal challenge.

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

- the Code for Crown Prosecutors;
- the Enforcement Concordat;
- the Food Authority's Enforcement Policy; and
- the Regulators Compliance Code.

3.1.4 Food Law Enforcement Policies

Each Food Authority should have an up-to-date, documented Food Law Enforcement Policy which is readily available to food business operators and consumers. [23]

The Policy should cover all areas of food law that the Food Authority has a duty to enforce and include criteria for the use of all the enforcement options that are available.

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

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

Authorised officers should implement their Food Authority's Food Law Enforcement Policy, which should reflect all the factors set out in Section 3.1.3.

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

In deciding the type of enforcement action to take, an authorised officer should have regard to:

- the nature of the breach and the history of compliance of the food business operator; or
- in the case of new businesses, an assessment of the food business operator's willingness to undertake the work identified by the officer.

[23] See Chapter 2, Paragraph 15.1 of the Framework Agreement on Local Authority Food Law Enforcement.

It is important that the full range of enforcement options remains open to an authorised officer. A Food Authority should not adopt policies where the number of (hygiene) improvement notices served or the number of other legal processes, such as prosecution or formal caution, is an indicator of performance.

3.1.5 Communication with multi-site food businesses

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

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

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

3.1.6 Mandatory requirements and advice

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

All correspondence should identify each contravention and the measures which, in the opinion of the officer, could be taken in order to secure compliance. Correspondence should contain an indication of the time scale suggested for achieving compliance.

Standard documents, circulars, booklets, and other publications issued by the Food Authority should be accurate and reflect current practice. Food Authorities should be prepared to discuss letters, circulars, etc. with any food business operator to whom they have been sent.

3.1.7 Use of Food Safety Act 1990 (as amended) and Regulations made under that Act or the European Communities Act 1972

Food Authorities should deal with food safety and food hygiene matters under the Food Safety and Hygiene (England) Regulations 2013; this includes those who handle food for sale or supply which, by virtue of Recital (9) and Article 1(2) of Regulation 852/2004, fall outside the scope of that Regulation remain subject to the provisions of Regulation 178/2002. An example would be enforcement action in respect of a one-off event, such as a wedding reception that resulted in an outbreak of food poisoning i.e. the sale or supply of unsafe food in contravention of Article 14(1) of Regulation 178/2002.

Food Authorities should deal with food standards matters under the Food Safety Act 1990. This again includes those who handle food for sale or supply which, by virtue of Recital (9) and Article 1(2) of Regulation 852/2004, fall outside the scope of that Regulation remain subject to the provisions of Regulation 178/2002.

3.1.8 Powers of entry, search and seizure: Human Rights Act 1998/Police and Criminal Evidence Act 1984 (PACE)

(See also Chapter 3.1 of the Practice Guidance)

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

Section 32(4) of the Food Safety Act 1990 and regulation 16(5) of the Food Safety and Hygiene (England) Regulations 2013 permit an authorised officer to take with them such other persons as they consider necessary. This would include, for example, any suitably qualified or skilled person, or an expert in a particular field whose presence is needed to help accurately identify the material sought or to advise where certain evidence is most likely to be found and how it should be dealt with. It does not give an authorised officer any right to force entry to search or seize property but it does give the *other person* the right to be on the premises during the search without the occupier's permission.

In all cases authorised officers should:

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

If the provisions of sections 15 and 16 of PACE, PACE Code of Practice B, the Food Safety Act 1990, the Food Safety and Hygiene (England) Regulations 2013 and this Code are not observed, evidence obtained from a search may be open to question.

3.1.9 Informal approach

An authorised officer who decides to adopt an informal approach in accordance with the Food Authority's Enforcement Policy to secure compliance with food law should, where appropriate, follow the procedures set out in the Home Authority Principle.

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

Correspondence should be treated as outlined in Section 3.1.6. This should be discussed and, if possible, agreed with the food business operator.

3.1.10 Prosecution

The decision to initiate a prosecution should be taken at the earliest opportunity.

Before deciding whether a prosecution should be taken, Food Authorities should consider a number of factors.

- Whether there is sufficient evidence (the test for which is set out in the Code for Crown Prosecutors).
- Of particular note are:
    - the likely cogency of any important witness, and their willingness to co-operate;
    - the alleged person or persons responsible have been identified;
    - any explanation offered by the suspect; and
    - the likelihood of the suspect being able to establish a defence - in particular a due diligence defence.
- Whether the public interest test has been satisfied (again, the test is set out in the Code for Crown Prosecutors). Prosecutors must note that unless the Evidential Test is satisfied, the Public Interest Test is irrelevant. If the evidence is not present, no amount of argument in favour of it being in the public interest will suffice to justify launching the prosecution, as the Prosecutor will already have decided that it is more likely than not that it will fail in Court on the available evidence.
- Using the hierarchy of enforcement structure, whether a prosecution is more appropriate as opposed to the use of, say, informal action or an enforcement notice. (Officers should be aware, however, that if a Hygiene Improvement Notice or similar is used, it too is a matter which can go before the Court, and the Officer should be able to justify his actions. The criteria below will be of assistance):
- That the Enforcement Policy has been adhered to.
- Whether any other action, such as issuing a caution in accordance with Home Office Circular 016/2008 [24] would be more appropriate.

Factors favouring prosecution include:

- the seriousness of the offence;
- the prevalence of that type of offence in the area in which it was committed (if the offence is not serious in itself); and
- the suspect's previous convictions or cautions.

There are various factors against prosecution including:

[24] Home Office Circular 016/2008 on the Cautioning of Offenders.

- the likelihood of a nominal penalty; and
- the offence was committed as a result of a genuine mistake or misunderstanding (this must be balanced against the seriousness of the offence).

It is important that the authorised officers brief their legal advisers fully on the public health aspect of the case in hand, including the public health basis for the legal requirements which have been breached, so that they can, in turn, impress upon the Court the seriousness of the charges.

Officers should explain the reason for bringing a prosecution and record that reason, which may later be referred to in open Court.

Chapter 3.2 - Hygiene Improvement Notices/Improvement Notices

3.2.1 Introduction

This Chapter deals with the use of Hygiene Improvement Notices under regulation 6 of the Food Safety and Hygiene (England) Regulations 2013. It then deals with the use of Improvement Notices under section 10 the Food Safety Act 1990.

A model form for use in connection with regulation 6 of the Food Safety and Hygiene (England) Regulations 2013 can be found at Annex 7. Food Authorities must continue to use the prescribed forms set out in the Food Safety (Improvement and Prohibition - Prescribed Forms) Regulations 1991[25] when using powers under section 10 of the Food Safety Act 1990.

3.2.2 Hygiene Improvement Notices (Food Safety and Hygiene (England) Regulations 2013, regulation 6)

(See also Section 1.2.9.1.5)

3.2.2.1 When to use Hygiene Improvement Notices

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

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

3.2.2.2 When Hygiene Improvement Notices are inappropriate

The Hygiene Improvement Notice procedure would be inappropriate in the following circumstances:

- where the contravention might be continuing, for example, personal cleanliness of staff, and a notice would only secure an improvement at one point in time;
- in transient situations, and it is considered that swift enforcement action is needed, for example, a one day festival or sporting event (a Hygiene Emergency Prohibition Notice would be the only formal remedy which would have immediate effect); and
- where there is a breach of good hygiene practice but no failure to comply with an appropriate regulation.

[25] SI 1991 No. 100.

3.2.3 Improvement Notices (Food Safety Act 1990, section 10)

(See also Section 1.2.9.1.6)

3.2.3.1 When to use Improvement Notices

Food Authorities should deal with breaches of the Food Safety and Hygiene (England) Regulations 2013 by using the enforcement powers provided by those Regulations (such as Hygiene Improvement Notices under regulation 6). However, where legislation such as the Fish Labelling Regulations 2013 is involved, they should issue an Improvement Notice under section 10 of the Food Safety Act 1990.

3.2.3.2 When Improvement Notices are not appropriate

The improvement notice procedure would be inappropriate where breaches exist in respect of food standards which pose a potential and imminent risk of injury to health and it is considered that swift enforcement action is needed. An Emergency Prohibition Notice would be the only formal remedy which would have immediate effect.

Chapter 3.3 - Prohibition Procedures

(See also Section 1.2.9.1.7)

3.3.1 Introduction

This Chapter deals with:

- the use of Hygiene Emergency Prohibition Procedures under regulation 8 of the Food Safety and Hygiene (England) Regulations 2013 and the associated Voluntary Closure Procedures;
- the Prohibition of Persons under regulation 7;
- the use of Emergency Prohibition Procedures under section 12 of the Food Safety Act 1990 and associated Voluntary Closure Procedures; and
- the Prohibition of Persons under section 11 of the Act.

Model forms for use in connection with regulations 7 and 8 of the Food Safety and Hygiene (England) Regulations 2013 can be found at Annex 7.

Food Authorities must continue to use the prescribed forms set out in the Food Safety (Improvement and Prohibition - Prescribed Forms) Regulations 1991 when using powers under sections 11 and 12 of the Food Safety Act 1990.

3.3.2 The Food Safety and Hygiene (England) Regulations 2013 procedures

3.3.2.1 When to use Hygiene Emergency Prohibition Notices (regulation 8)

Unless the use of Voluntary Procedures is more appropriate in the circumstances, Hygiene Emergency Prohibition Procedures should be used if an authorised officer has evidence that the health risk condition is fulfilled. If the appropriate evidence is found, a Hygiene Emergency Prohibition Notice may be served on the food business operator, followed by an application to a Magistrates' Court for a Hygiene Emergency Prohibition Order.

3.3.2.2 Health risk conditions where use of Hygiene Prohibition Procedures may be appropriate

The following paragraphs provide examples of circumstances that may show that the health risk condition exists as defined by regulation 7(2)/regulation 8(4) i.e. there is an imminent risk of injury to health, and where an authorised officer may therefore consider the use of such prohibition powers. These examples are in no way prescriptive or exhaustive and are for illustrative purposes only.

3.3.2.2.1 Health risk conditions where prohibition of premises may be appropriate

- Infestation by rats, mice, cockroaches, birds or other vermin, serious enough to result in the actual 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 food contamination.
- Drainage defects or flooding of the establishment, serious enough to result in the actual 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.

3.3.2.2.2 Health risk conditions where the prohibition of equipment may be appropriate

- Use of defective equipment, e.g. a pasteuriser incapable of achieving the required pasteurisation temperature.
- 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, slices and mincers 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.

3.3.2.2.3 Health risk conditions where prohibition of a process may be appropriate

- Serious risk of cross contamination.
- Failure to achieve sufficiently high processing temperatures.
- Operation outside critical control criteria, for example, incorrect pH of a product which may allow *Clostridium botulinum* to multiply.
- The use of a process for a product for which it is inappropriate.

3.3.2.3 Health risk condition no longer exists: Certificate (regulation 7(6) (a) and regulation 8(8))/health risk condition remains in existence: Certificate (regulation 7(7) (b) and regulation 8(9) (b

In respect of Hygiene Emergency Prohibition Notices and Hygiene Emergency Prohibition Orders, the Food Authority should issue a certificate to the food business operator within three days, if it is satisfied that the health risk condition no longer exists.

If the food business operator applies for such a certificate, the Food Authority must determine the position as soon as is reasonably practicable and within a period of no longer than fourteen days. If the Food Authority is satisfied that the health risk

condition no longer exists, it must issue a notice that determination to the food business operator and must do so within three days. If the Food Authority determines that the health risk condition remains in existence, it must issue a notice of that determination to the food business operator and should do so within three days.

3.3.2.4 Voluntary Procedures (food hygiene)

Voluntary Procedures to remove a health risk condition may be used, at the instigation of the food business operator, when the food business operator agrees that a health risk condition exists as defined by regulation 7(2)/regulation 8(4) i.e. there is an imminent risk of injury to health. An officer may suggest this option to the food business operator, but only when they are able to use regulation 8. If in doubt, the food business operator should be advised to take legal advice.

Any voluntary closure agreement should be confirmed in writing by the food business operator or manager and the authorised officer, with an undertaking by the food business operator or manager not to re-open without the officer's prior approval.

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

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

If the food business operator offers to close voluntarily, the officer should: consider whether there is a risk of the establishment being re-opened without the officer's knowledge and/or agreement (if this were to cause food poisoning, the Food Authority could be criticised for not having used statutory powers);

- recognise that there is no separate legal sanction against a food business operator who re-opens for business after offering to close, although enforcement action for the actual breaches e.g. unsafe food, similar processing as before, etc, remains available; and
- explain to the food business operator that, by making the offer to close, any right to compensation is lost.

3.3.2.5 Action when a Hygiene Prohibition Order has been made against a person (Regulation 7(4))

A Hygiene Prohibition Order issued by a Court can only be fully effective if other Food Authorities are notified, as the individual concerned may try to start a business in another area.

The Food Authority should notify the CIEH as soon as possible after a hygiene prohibition order is made against a person prohibited from running a food business, provided the order is not the subject of an appeal, and the period allowed for appeal has expired, supplying the following information:

- case number;
- court details;
- date of prohibition order;
- date(s) of offence;
- nature of offence(s);
- regulation/section number under which offence was made;
- penalties;
- name of food business operator or manager;
- name of the business;
- food business establishment address including post code;
- business type/main activity (e.g. catering, retail etc.); and
- details of assumed names.

3.3.2.6 Lifting of Hygiene Prohibition Orders against persons (regulation 7(6)(b) and regulation 7(8))

Hygiene Prohibition Orders against persons imposed under regulation 7(4) by a Court may only cease to have effect if, on an application by the food business operator, the Court gives such a direction, in accordance with the provisions at regulation 7(8). Note should be made that no application will be entertained within six months of the date of the order begin made.

The Food Authority should also notify CIEH at the earliest opportunity after they learn that a Hygiene Prohibition Order against a person has been lifted in their area.

3.3.3 Food Safety Act 1990 procedures

3.3.3.1 When to use Emergency Prohibition Procedures (section 12)

Unless the use of Voluntary Procedures is more appropriate in the circumstances, Emergency Prohibition Procedures should be used if an authorised officer has evidence of an imminent risk of injury to health. If the appropriate evidence is found, an Emergency Prohibition Notice may be served on the proprietor, followed by an application to a Magistrates' Court for an Emergency Prohibition Order.

3.3.3.2 Imminent risks of injury to health where the use of Emergency Prohibition Procedures may be appropriate

The following are examples of circumstances that may involve an imminent risk of injury to health and in which an authorised officer may therefore consider the use of prohibition powers. These examples are in no way prescriptive or exhaustive and are for illustrative purposes only.

- A process or treatment that introduces a teratogenic chemical (one that damages a developing foetus in the womb) into food, which may 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 may not manifest themselves until the effected child develops or a malignant tumour occur at some time in the future.

3.3.3.3 Voluntary Procedures (food standards)

Voluntary Procedures to remove an imminent risk of injury to health may be used, at the instigation of either the proprietor or the manager of the business, when the proprietor or manager of the business agrees that an imminent risk of injury to health exists. An officer may suggest this option to the proprietor or manager, but only when they are able to use section 12 of the Food Safety Act 1990. If in doubt, the proprietor or manager should be advised to take legal advice.

Any voluntary closure agreement should be confirmed in writing by the proprietor or manager and the authorised officer, with an undertaking by the proprietor or manager not to re-open without the officer's prior approval.

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

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

If the proprietor of a food business offers to close voluntarily, the officer should:
consider whether there is a risk of the establishment being re-opened without the officer's knowledge and/or agreement (if this were to cause food poisoning, the Food Authority could be criticised for not having used statutory powers);
recognise that there is no separate legal sanction against a proprietor who re-opens for business after offering to close, although enforcement action for the actual breaches e.g. unfit food, unclean establishment etc, remains available; and
explain to the proprietor that, by making the offer to close, any right to compensation if a Court subsequently declines to make an Emergency Prohibition Order is lost.

3.3.3.4 Action when a Prohibition Order has been made against a person (section 11(4))

A Prohibition Order issued by a Court can only be fully effective if other Food Authorities are notified, as the individual concerned may try to start a business in another area.

The Food Authority should notify the CIEH as soon as possible after a Prohibition Order is made against a person prohibited from running a food business, provided the order is not the subject of an appeal and the period allowed for appeal has expired, supplying the following information:

- case number;
- court details;

- date of prohibition order;
- date(s) of offence;
- nature of offence(s);
- regulation/section number under which offence was made;
- penalties;
- name of food business proprietor or manager;
- name of the business;
- food business establishment address including post code;
- business type/main activity (e.g. catering, retail etc.); and
- details of assumed names.

3.3.3.5 Lifting of Hygiene Prohibition Orders against persons (section 11(6)(b) and section 11(8))

Prohibition Orders against persons, imposed under section 11 by a Court may only cease to have effect if, on an application by the proprietor, the Court gives such a direction, in accordance with the provisions at section 11(8).

The Food Authority should also notify CIEH at the earliest opportunity after they learn that a Prohibition Order made against a person has been lifted in their area.

Chapter 3.4 - Seizure and detention

(See also Section 1.2.9.3.1)

3.4.1 Introduction

This Chapter describes the circumstances when the use of detention and seizure powers under section 9 of the Food Safety Act 1990, as amended, is appropriate including after food has been certified in accordance with regulation 29 of the Food Safety and Hygiene (England) Regulations 2013. It also covers the procedures for serving and withdrawal of notices, voluntary surrender, and the destruction or disposal of food.

Food Authorities must continue to use the forms set out in the Detention of Food (Prescribed Forms) Regulations 1990[26] when using powers under section 9 of the Food Safety Act 1990, including after food has been certified in accordance with regulation 29 of the Food Safety and Hygiene (England) Regulations 2013.

3.4.2 The Food Safety and Hygiene (England) Regulations 2013, regulation 29

When food has not been produced, processed or distributed in compliance with the "Hygiene Regulations" as defined in regulation 2 of the Food Safety and Hygiene (England) Regulations 2013, an authorised officer may use regulation 29 (see also regulation 25 in this regard) of those Regulations to seize the food by the use of section 9 of the Food Safety Act 1990. Following the certification required by regulation 29, the authorised officer should follow the advice set out in this Chapter in connection with the use of section 9 of the Food Safety Act 1990.

A model certificate to certify, where appropriate, that food has not been produced, processed or distributed in compliance with the "Hygiene Regulations" for use in connection with regulation 29 of the Food Safety and Hygiene (England) Regulations 2013 can be found at Annex 7.

3.4.3 Specific powers of seizure and detention for County Council Food Authorities

County Council Food Authorities have been given powers of seizure and detention under certain regulations. These regulations are listed in Section 3.4.4 of the Practice Guidance.

In addition, officers appropriately authorised under the Food Safety Act 1990 may seize and detain food when directed by the Agency by means of a Food Alert, or when a risk to health is identified through analysis and notified to the County Council Food Authority by a Public Analyst, provided they are satisfied that the statutory

[26] SI 1990 No. 2614.

thresholds set out in section 9, as appropriate, are met e.g. that in the case of detention it appears to them that the food fails to comply with food safety requirements.

3.4.4 Detention of food

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

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

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

In all cases, but especially with highly perishable food, the officer should act expeditiously at every stage and provide full information to those required to carry out analysis or examination of samples of the food.

If food is to be detained where it is found, the authorised officer should be satisfied that adequate arrangements can be made to ensure its security and prevent tampering. The officer should organise periodic monitoring of the food throughout the period of detention. Before making such arrangements, regard should be had to the nature of the food, the quantity, any health hazard that it represents, and the ownership of the establishment where it is located. The officer should generally avoid leaving it in the charge of, or in an establishment owned by, any person who may be prosecuted for an offence under food law.

3.4.5 Seizure of food

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

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

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

Arrangements should be made for that Food Authority to take steps to ensure the processing or treatment is carried out, including the service of a Detention of Food Notice if appropriate.

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

Unless the preceding paragraphs of this Section apply, or the use of Voluntary Procedures is more appropriate, food should be seized if an authorised officer has evidence that it does not satisfy food safety requirements.

If evidence indicates that food that has already been detained should be seized, the officer should serve a Food Condemnation Notification, warning of the intention to take the food before a Justice of the Peace and apply for its condemnation.

Food that has been seized should be dealt with by a Justice of the Peace as soon as is reasonably practicable, normally within two days, but if necessary longer to ensure that parties attend and be represented should they so choose. Highly perishable food should be dealt with by a Justice of the Peace at the earliest opportunity.

The person in charge of the food, or the owner should be given the opportunity of being present and represented should they so choose when the food is dealt with by the Justice of the Peace, although action should not be delayed if the owner cannot be traced or contacted. It is important the owner or the person who is in charge of the food has the opportunity of attending, and good service of notice of the hearing should be documented and retained to show the Court that was the case.

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

3.4.6 Notices of detention and seizure

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

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

A Food Condemnation Notification should be given to the person in charge of the food when the officer intends to have the food dealt with by a Justice of the Peace. The notification should, where possible also be given to the owner of the food.

3.4.7 Withdrawal of Detention of Food Notice

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

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

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

3.4.8 Dealing with batches, lots or consignments of food

Article 14(6) of Regulation 178/2002 stipulates that where “any food which is unsafe forms part of a batch, lot, or consignment of food of the same class or description, it shall be presumed that all the food in that batch, lot or consignment is also unsafe, unless following a detailed assessment there is no evidence that the rest of the batch, lot or consignment is unsafe”.

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

When considering whether to seize or detain a batch, lot or consignment, the authorised officer should take into account the following:

- the evidence available;
- the nature of the contamination;
- the nature and condition of any container holding the food;
- the risk to health; and
- the quantity of food involved in relation to any sampling which has been undertaken.

3.4.9 Voluntary Procedures

Voluntary Procedures to remove food that is not suitable for human consumption from the food chain may be used, either at the instigation of the owner of the food or at the suggestion of the authorised officer when the owner of the food agrees the food is not suitable for human consumption.

A receipt should be issued for food that is voluntarily surrendered to the Food Authority for destruction. The receipt should indicate that the food has been voluntarily surrendered to the Food Authority for destruction and be signed and counter-signed by the authorised officer and the person surrendering the food respectively.

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

If the Food Authority does not secure, as part of the voluntary surrender, an agreement by the owner to pay the reasonable expenses of destruction or disposal, then it may have to bear the expenses itself.

3.4.10 Destruction or disposal of food

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

The Food Authority should ensure the total destruction of the food by incineration or some other appropriate method, or if total destruction is not possible, such a degree of disfigurement that the food could never re-enter the food chain, e.g. by flattening tin cans for disposal in a suitably licensed landfill site, having regard to the requirements of relevant waste disposal legislation.

A copy of the waste transfer note must be obtained and kept on file for any food that has been disposed of by a licensed waste disposal contractor under these arrangements.

Chapter 3.5 - Remedial Action Notices/Detention Notices

3.5.1 Introduction

Powers to issue Remedial Action Notices and Detention Notices in respect of establishments subject to approval under Regulation 853/2004 are provided by regulation 9 and 10 respectively of the Food Safety and Hygiene (England) Regulations 2013. A model Remedial Action Notice, a model Detention Notice and a model Notice of withdrawal of a Remedial Action Notice/Detention Notice can be found at Annex 7.

3.5.2 Approach to enforcement

Authorised officers should seek to remedy non-compliance in establishments subject to approval under Regulation 853/2004 by a graduated approach to enforcement (see Section 3.1.3). When necessary, the Hygiene Improvement Notice provisions in regulation 6 should be considered (see Chapter 3.2). Authorised officers should consider these options before commencing any other enforcement action. However, Remedial Action Notices and/or Detention Notices as provided for by regulation 9 of these Regulations may be used, when appropriate.

3.5.3 Remedial Action Notices/Detention Notices

Regulation 9 provides for authorised officers to serve a Remedial Action Notice if any of the requirements of the “Hygiene Regulations”, as defined by regulation 2 of the Food Safety and Hygiene (England) Regulations 2013, are being breached or an inspection under the “Hygiene Regulations” is being hampered. More specifically, this provision provides, through the service of a Remedial Action Notice, for the prohibition of the use of any equipment or any part of the establishment, the imposition of conditions upon, or prohibiting, any process and also allows for the rate of an operation to be reduced or, stopped completely. Regulation contains the provision for the detention of any food, including the taking of samples for the purposes of examination, by the service of a Detention Notice.

Circumstances which may lead to the issue of a Remedial Action Notice in respect of an establishment include:

- the failure of any equipment or part of an establishment to comply with the requirements of the “Hygiene Regulations” as defined by regulation 2 of the Food Safety and Hygiene (England) Regulations 2013;
- the need to impose conditions upon or the prohibition of the carrying on of any process breaching the requirements of the Regulations or hampering adequate health inspection in accordance with the Regulations; and
- where the rate of operation of the business is detrimental to its ability to comply with the Regulations.

Circumstances which might lead to the issue of a Detention Notice include:

where there are indications or suspicions that food at an establishment is unsafe and therefore examination is necessary, including the taking of samples.

Such action should be proportionate to the risk to public health and where immediate action is required to ensure food safety. A Remedial Action Notice may be used if a continuing offence requires urgent action owing to a risk to food safety or when corrective measures have been ignored by the food business operator and there is a risk to public health.

As soon as the authorised officer is satisfied that the action specified in a Remedial Action Notice has been taken, the notice must be withdrawn by means of a further notice in writing. Similarly, in respect of a Food Detention Notice, if the authorised officer is satisfied that the food need no longer be detained, the relevant notice must also be withdrawn by means of a further notice in writing.

The use of Remedial Action Notices and Detention Notices is governed by regulation 9 and 10 of the Food Safety and Hygiene (England) Regulations 2013. If an authorised officer considers it necessary to serve a Remedial Action Notice owing to the conditions or practices found on the inspection of an establishment subject to approval under Regulation 853/2004, the officer should also consider whether food at the establishment should be detained for the purposes of examination by means of a Detention Notice under regulation 10 .

Chapter 3.6 - Temperature control requirements

3.6.1 Introduction

This Chapter concerns the enforcement of regulation 32 and Schedule 4 of the Food Safety and Hygiene (England) Regulations 2013 (the Regulations), which are concerned primarily with the safety of food that needs to be stored under chilled conditions.

3.6.2 General approach to temperature checks

Schedule 4 does not apply to any food business operation on ships and aircraft and those businesses to which Regulation 853/2004 applies. Where applicable, the Schedule requires certain types of perishable food to be maintained within specified temperature ranges. The purpose of checking the temperature of such foods for enforcement purposes is to establish whether these requirements are being met, taking account of any exemptions or tolerances that may apply.

Where appropriate, regard must be given to any relevant temperature requirements of Annex II of Regulation 852/2004.

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

Stage 1 - a check of any temperature monitoring equipment used by the business, including any logs or records derived from it, and verification of the accuracy of temperature monitoring equipment by air temperature measurement if necessary;
Stage 2 - measuring between-pack temperature of food without disturbing the state of the food or its individual packaging, although cases may be opened (non-destructive temperature checks); and
Stage 3 - measuring the temperature of the product itself (destructive testing).

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

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

If the temperature measured at “stage 2” gives the officer reasonable doubt that the relevant temperature requirements are being met, the officer should move on to “stage 3” and measure the temperature of the food itself.

“Stage 3” product testing (destructive) methods must always be used to produce evidence for prosecution.

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

3.6.3 Food that is warmer than prescribed chill holding temperature

When measuring the temperature of food itself, authorised officers should be aware that the Schedule allows the temperature of a food subject to chill holding temperatures, whilst it is for service or on display for sale, to rise above 8ºC for one period only of less than four hours (Schedule 4, paragraph 5(1) (b) and (c)).

The officer should be satisfied that the food business operator has measures in place, as appropriate, to ensure that the chill holding tolerance described above is not exceeded.

3.6.4 Food that is cooler than prescribed hot holding temperature

When measuring the temperature of food itself, authorised officers should be aware that the Schedule allows the temperature of a food subject to hot holding temperatures, whilst it is for service or on display for sale, to fall below 63ºC for one period only of less than 2 hours. (Schedule 4, paragraph 7(2) (a) and (b)).

The officer should be satisfied that the food business operator has measures in place, as appropriate, to ensure that the hot holding tolerance described above is not exceeded.

3.6.5 Temperature deviations resulting in a breach of regulation 32/Schedule 4 of the Food Safety and Hygiene (England) Regulations 2013

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

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

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 Safety and Hygiene (England) Regulations 2013, the officer should normally deal with the food under

regulation 29 of the Regulations (see also regulation 25 in this regard). Voluntary Procedures to remove food from the food chain may, however, be used in appropriate circumstances (see Section 3.4.9).

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 should use professional judgement to determine the most appropriate action in the circumstances. The food may still be fit for consumption, even if it has been maintained at temperatures higher than those specified in the Regulations beyond the time limits allowed.

Authorised officers should enquire into the history of the food, in particular to ascertain whether it could previously have been exposed to temperatures above 8ºC. Enforcement decisions should take account of the history of the food and whether it is consistent with food safety. Authorised officers may adopt an educative approach as the first step towards securing compliance, and discuss the requirements of the legislation with the food business operator to ensure they understand the controls, why they are needed, and how they can be achieved.

3.6.6 Checking and calibration of enforcement measuring thermometers etc.

(See also Section 3.6.5 of the Practice Guidance)

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

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

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

Chapter 3.7 - Import of food from third countries

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

Further specific guidance on imported food control is provided in the Practice Guidance at Annex 12.

Chapter 3.8 - Food safety and general food law

This Chapter deals with responsibilities in relation to Regulation 178/2002 on general food law. Food businesses have responsibility for ensuring food safety, the keeping of traceability records and withdrawal, recall and notification of unsafe food, for food export and presentation of food. The Food Safety and Hygiene (England) Regulations 2013 at regulation 19.1 creates offences for breaches of Regulation 178/2002. These are set out in the in Schedule 2 (specified EU provisions) of the Food Safety and Hygiene (England) Regulations 2013.

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

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

Guidance for food business operators on Regulation 178/2002 which is available at:
http://www.food.gov.uk/foodindustry/guidancenotes/foodguid/generalfoodlaw

Section 4 - Interventions

Chapter 4.1 - Interventions

4.1.1 Introduction

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

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

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

“Official controls” are defined at EU level at Article 2(1) of Regulation 882/2004. They are any form of control for the verification of compliance with food law.

Methods and techniques for carrying out tasks related to official controls are specified at Article 10 of Regulation 882/2004. These include monitoring, surveillance, verification, audit, inspection, and sampling and analysis.

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

Interventions that are official controls must provide sufficient information to Food Authorities to establish that food-related activities carried out at food establishments comply with food law. In line with the general obligations set out at Article 3 of Regulation 882/2004, they should be carried out at all stages of production, processing and distribution to establish whether the requirements of relevant food law are being met.

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

4.1.2 Interventions

Interventions that <u>are</u> official controls include:

- inspections;
- monitoring;
- surveillance;
- verification;
- audit; and
- sampling where the analysis/examination is to be carried out by an Official Laboratory (see Section 4.1.4).

Other interventions, i.e. those which do not constitute official controls include:

- education, advice and coaching provided at a food establishment; and
- information and intelligence gathering (including sampling where the analysis or examination is <u>not</u> to be carried out by an Official Laboratory).

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

4.1.2.1 Food standards interventions

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

Each Food Authority should document, maintain and implement a Food Standards Interventions Programme that includes all the establishments for which the Food Authority has food standards law enforcement responsibility. The programme should be based on the food standards intervention ratings that have been determined in accordance with Annex 5.

4.1.2.2 Food hygiene interventions

Regulation 852/2004 defines “food hygiene” as:

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

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

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

The programme should be based on the food hygiene intervention ratings that have been determined in accordance with Annex 5. The exception to this is for establishments at the level of primary production where the frequencies should be based on those contained in the Food Law Practice Guidance, and should make best use of locally held intelligence, including membership of a recognised farm assurance scheme.

4.1.2.3 Definitions

Article 2 of Regulation 882/2004 provides the following definitions of official controls:

‘Inspection’ means the examination of any aspect of feed, food, animal health and animal welfare in order to verify that such aspect(s) comply with the legal requirements of feed and food law and animal health and welfare rules.

‘Monitoring’ means conducting a planned sequence of observations or measurements with a view to obtaining an overview of the state of compliance with feed or food law, animal health and animal welfare rules.

‘Surveillance’ means a careful observation of one or more food businesses, or food business operators or their activities.

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

‘Audit’ means a systematic and independent examination to determine whether activities and related results comply with planned arrangements and whether these arrangements are implemented effectively and are suitable to achieve objectives.

‘Sampling for analysis’ means taking feed or food or any other substance (including from the environment) relevant to the production, processing and distribution of feed or food or to the health of animals, in order to verify through analysis compliance with feed or food law or animal health rules.

4.1.3 Inspections and audits

4.1.3.1 Carrying out an inspection or audit

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

- a full inspection, which is a check on compliance with legal requirements in accordance with elements set out in Section 4.2.2 of this Code. A full inspection will consider all aspects of a food business including structure, food safety management and management arrangements; or
- a partial inspection, which is an inspection that covers only certain elements of the inspection as laid down in Section 4.2.2 of this Code.

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

An audit may be carried out where a food business operator has put in place a documented food safety management system to address the requirements of Article 5 of Regulation 852/2004. Officers will require an awareness of the food safety management system operated by the business, in order to plan an appropriate audit.

An audit may include:

- audit of a complete food safety management system;
- audit of selected elements of a food safety management system, where the system is complex;
- audit of part of a system in relation to a particular product; or
- audit of certain organisational arrangements, for example, temperature monitoring.

Following an inspection, partial inspection, or audit, an officer should consider revising the intervention rating of the establishment in accordance with Annex 5.

4.1.3.2 Initial inspection of new food establishments

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

Food Authorities should make use of information supplied to them by food business operators in connection with the registration or application for approval of their food business establishments in accordance with Article 31 of Regulation 882/2004 (See Chapter 1.5 and Chapter 5.1 respectively), in order to determine when to carry out an initial inspection.

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

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

- establish the scope of the business and the relevant food law that applies to the operations taking place;

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

4.1.4 Samples

All samples which are sent to an Official Laboratory constitute official control samples. [27]

Chapter 6 provides the definition of "formal" samples which is relevant to any possible legal proceedings in the courts relating to the results of analysis/examination of samples.

4.1.5 Frequency of intervention at establishments

Intervention ratings determine:

- the interval that should elapse between one intervention at a food establishment and the next; and
- the priority of the next intervention at that establishment, relative to the other establishments in the Food Authority's planned intervention programme.

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

4.1.5.1: Primary production

In determining intervention frequencies at the level of primary production the Food Authority must make best possible use of evidence available. Examples of local or other intelligence, which the Food Authority may use to consider whether inspection is necessary, include:

- membership of a 'recognised' farm assurance scheme - see link below[28]:
- change of activity;
- track record of compliance;

[27] A list of Official Laboratories is available on the Food Standards Agency website at: http://www.food.gov.uk/enforcement/monitoring/foodlabs/foodcontrollabs

[28] http://www.food.gov.uk/foodindustry/regulation/hygleg/hygleginfo/primprodganda/

- intelligence generated by other statutory inspections;
- consumer and customer (industry) problems;
- surveillance information on problem products and products associated with food-borne illness; and
- other (to reflect local intelligence).

Inspections of primary production premises should be based on inspection frequencies contained within the Food Law Practice Guidance making best use of evidence to determine frequencies (see Section 4.1.5.2). It should be noted that there is not a requirement to make an initial visit to primary production premises prior to a premise's inclusion in an Interventions Programme.

A current list of approved assurance schemes is also available in the Practice Guidance accompanying this Code of Practice.

4.1.5.2 Establishments subject to Annex 5

Intervention programmes should be planned so that establishments receive an intervention no later than 28 days after the relevant date as detailed in Annex 5.4. In circumstances outside the control of the Food Authority such as seasonal business closures, Food Authorities have the discretion to defer an intervention (see also paragraph viii of A5.2 in Annex 5).

4.1.5.2.1 Establishments intervention rated category A or B for food hygiene or category A for food standards

The appropriate planned intervention for an establishment that has been given an intervention rating of A or B for food hygiene, or A for food standards, should be an inspection, partial inspection, or audit as defined in Section 4.1.1, which should be carried out at appropriate intervals in accordance with the prescribed frequencies specified in Annex 5.

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

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

Establishments that have been given an intervention rating of C for food hygiene or B for food standards should receive an intervention at appropriate intervals in accordance with the prescribed frequencies specified in Annex 5. Such interventions should consist of an inspection, partial inspection, or audit until such time as the establishment is considered by the Food Authority to be "broadly compliant" with relevant food law. Once broad compliance has been achieved, planned interventions may alternate between inspections, partial inspections, or audits and other official controls as defined in Section 4.1.2.3. This does not preclude Food Authorities from undertaking other additional interventions such as coaching or advisory visits.

For the purpose of this section “broadly compliant”, in respect of food hygiene, is defined as an establishment that has an intervention rating score of not more than 10 points under each of the following three parts of Annex 5, A5.2: Part 2: Level of (Current) Compliance - Hygiene and Level of (Current) Compliance – Structure; and Part 3: Confidence in Management.

For the purposes of this section, “broadly compliant”, in respect of food standards, is defined as an establishment that has an intervention rating score of not more than ten points under each of the following parts of Annex 5, A5.4: Part 2: Level of (Current) Compliance; and Part 3, Confidence in Management/Control Systems.

Where a Food Authority is using the Office of Fair Trading (OFT) risk-rating system for food standards (formerly the LGA system), “broadly compliant” is defined as an establishment that has a score of not more than 10 points for Confidence in Business’ Control System (the Local Element).

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

4.1.5.2.3 Establishments intervention rated category D for food hygiene

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

Food authorities are restricted in the type of official control for establishments that are category D, but are also rated 30 or 40 for “type of food and method of handling” within Annex 5. The official control for these establishments must be an Inspection, Partial Inspection or Audit. Food authorities can alternate between these types of official controls and other types of interventions.

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

Establishments that have been given an intervention rating of category E for food hygiene, or category C for food standards may be subject to an Alternative Enforcement Strategy (see Section 1.2.10 and Annex 5, Sections A5.2 (food hygiene) and A5.5 (food standards).

Should the establishment in question be subject to approval under Regulation 853/2004 the use of Alternative Enforcement Strategies is not an appropriate form of intervention. The intervention for such an establishment should be selected from those laid down in section 4.1.2.

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

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

4.1.5.2.5 Revising the intervention type and intervention rating

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

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

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

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

4.1.6 Notification of an intervention

Where possible, the intervention delivered at a food establishment should be undertaken without prior notification. The general principle about pre-notification of an intervention is set out in Regulation 882/2004 which states in Article 3(2) that

"Official controls shall be carried out without prior warning, except in cases such as audits where prior notification of the feed or food business operator is necessary. Official controls may also be carried out on an ad hoc basis".

There will, however, be circumstances when it is advantageous to give advance notice, particularly when the purpose of an intervention is to see a particular process

in operation. Authorised officers should exercise discretion in this area guided by the overriding aim of ensuring compliance with food legislation (see also Paragraph 1.6.4 of the Code of Practice on obtaining entry to Crown Premises).

4.1.7 Timing of interventions

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

- the hours of operation of the food establishment; and
- seasonal factors (where applicable).

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

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

4.1.8 Need to defer planned intervention

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

Such situations may include those where there is evidence that:

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

Where such a situation arises the Agency may (by means of a communication issued in accordance with Section 2.2.2) require Food Authorities to take specific action. Food Authorities are required to have regard to and to act on, any such communication.

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

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

4.1.9 Single-tier Food Authorities

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

4.1.10 Two-tier Food Authorities

District and County Council Food Authorities should ensure, with regard to interventions, that there is co-ordination and effective liaison between their respective authorities as appropriate, in accordance with Section 1.1.2.

4.1.11 Larger food establishments

Larger food business establishments may have smaller food business establishments on site under the control of different food business operators e.g. coffee shops. Such establishments are subject to separate registration (see Section 1.5.3.4.2) and hence separate interventions are required as appropriate. Food Authorities may, however, wish to co-ordinate their activities in such a way that they may carry out programmed interventions of these smaller establishments whilst they are on site to inspect the main food business establishment (or elements thereof).

4.1.12 Factory and fishing vessels - hygiene inspections

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

Inspections of factory, freezer or fishing vessels whilst at sea should not normally be undertaken by officers of Food Authorities. In the case of factory vessels, there may

be circumstances when inspections can only be carried out when the factory vessels are moored offshore.

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

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

4.1.13 Inspection of moveable establishments/premises: trains and long distance coaches

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

For information on the inspection of ships and aircraft, see Chapter 4.4.

Chapter 4.2 - Inspections

4.2.1 Introduction

This Chapter describes how inspections should be carried out.

4.2.2 Inspections - general

Inspections should be based on the relevant inspection form, where one has been developed, for the business concerned.[29]

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

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

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

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

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

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

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

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

[29] It should be noted that an official form for food hygiene inspections at the level of primary production has not been proposed by the Agency, although authorities may develop their own as an aide to inspection.

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

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

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

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

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

4.2.3 Food hygiene inspections

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

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

- assess the risk of the enterprise failing to meet food hygiene requirements;
- assess the hazards posed by the activities of the business, the food business operator's understanding of those hazards, and the application of appropriate controls; having regard to the nature and size of the business;
- establish whether food is being handled and produced hygienically, having regard to subsequent processing;
- assess and verify appropriate procedures based on HACCP principles (where they are required by law) appropriate to the nature and size of the business, confirming that controls are in place and operating effectively, and that appropriate corrective action is taken when necessary, other than in respect of primary production;
- assess the efficacy of the controls in place to manage the risk of cross contamination between raw and ready-to-eat foods;
- in respect of primary production, establish that food business operators 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;
- establish whether food is being handled and produced hygienically, is safe to eat, and that relevant temperature controls are being observed;
- recommend good food hygiene practice in accordance with EU and UK Industry Guides, relevant sector specific codes, and other relevant technical

standards, and promote continued improvements in hygiene standards through the adoption of good practice;
- check the source and any health or identification marking of raw materials, and the identification marking and destination of finished products. Where deficiencies in health or identification marking are identified, officers should refer to and implement any relevant provisions of Chapters 1.7 and 2.4 of this Code and the Home Authority Principle, and consider using their powers under Regulation 29 of the Food Safety and Hygiene (England) Regulations 2013 (see also Regulation 25 in this regard) to remove affected products from the food chain; and
- in relation to retail and catering businesses that sell or use live bivalve molluscs, ensure that where parcels of live bivalve molluscs are split before sale to the ultimate consumer, that information on identification marks is retained for at least 60 days.

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

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

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

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

4.2.4 Food standards inspections - scope

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

In particular, an officer conducting a food standards inspection should:

- assess the risk of the enterprise failing to meet food standards requirements;

- consider the existence and effectiveness of management systems designed to ensure that food standards requirements are met and, where they exist, test their effectiveness;
- assess compliance with composition, presentation and labelling requirements by examining advertisements, labels, descriptions, menus, claims, recipes and other records;
- assess compliance with the traceability requirements of Article 18 of Regulation 178/2002 as read with Regulation 931/2011;
- assess compliance with supplier specifications; and
- recommend good practice in accordance with relevant industry codes and other relevant technical standards.

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

4.2.5 Enforcement action and revisits – food hygiene and food standards

Food businesses that fail to comply with significant statutory requirements must be subject to appropriate enforcement action and revisit(s)

Food Hygiene

Such businesses will be identified by an annex 5 compliance score of 15 or higher for hygiene and / or structure and / or a confidence in management / control procedures score of 20 or higher.

Food Standards

Such businesses will be identified by a level of (current) compliance score of 40 and / or a confidence in management / control systems score of 30

Revisits should focus on the contraventions identified at the programmed intervention and ensure that they have been remedied before deciding that no further action is required.

The timing of the revisit will be determined by the action taken as a result of the earlier intervention.

Such a revisit should, whenever practicable, be undertaken by the officer who undertook the original intervention.

The Food Authority's approach to revisits and enforcement actions should be part of its documented Food Service Plan or Enforcement Policy (see Section 3.1.4)

4.2.6 Clothing and equipment

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

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

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

Chapter 4.3 - Interventions at approved establishments: additional requirements

4.3.1 Introduction

This Chapter requires Food Authorities to identify food business establishments within their enforcement remit that are subject to approval under Regulation 853/2004, and ensure they are approved and subject to interventions as appropriate. It also sets out specific requirements on sampling at each inspection of a live bivalve mollusc dispatch or purification centre, and on following-up adverse sample results.

4.3.2 General requirements

Food Authorities should ensure that product-specific establishments in their area that are subject to approval under Regulation 853/2004 are identified and appropriately approved, as required by the relevant legislation and subjected to regular interventions.

4.3.3 Live bivalve molluscs

4.3.3.1 Examination of registration documents

Food Authorities should carry out regular examinations of registration documents to determine their accuracy. The examination of the documents and samples should normally be carried out as part of the inspection of dispatch or purification centres (see Section 5.3.3 of this Code and Section A.4.8 and Annex 4, Appendix 2 of the Practice Guidance).

4.3.3.2 Sampling as part of the inspection

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

If necessary, further sampling and laboratory tests should be undertaken in the relevant harvesting area, relaying area, dispatch or purification centre to establish the cause of the non-compliance and any corrective action which is needed.

Where necessary, Food Authorities should communicate test results which do not comply with the end product standard to neighbouring Food Authorities responsible for the relevant harvesting area, relaying area, or purification centre.

Food Authorities should also communicate the results of any samples of live bivalve molluscs to the operator of the centre from where the samples were procured. The Food Authority should also notify the Agency of the results of any samples that may indicate a significant variation in the quality of production areas or relaying areas.

4.3.4 Interventions at product-specific establishments subject to approval under Regulation 853/2004

The minimum number of food hygiene interventions at establishments subject to approval under Regulation 853/2004 should be conducted as necessary in accordance with Annex 5. The Food Authority shall keep the approval of establishments under review when carrying out official controls.

Chapter 4.4 - Inspection of ships and aircraft

4.4.1 Introduction

The Food Safety and Hygiene (England) Regulations 2013 includes any ship or aircraft in the definition of premises. However, Schedule 4 to these Regulations which sets out specific temperature control requirements does not, by virtue of paragraph 1(b), apply to these means of transport. The relevant temperature requirements in Annex II of Regulation 852/2004 do, however, apply.

In terms of the Food Safety (Ships and Aircraft) (England and Scotland) Order 2003, only paragraph (a) of Article 2(1) giving the definition of “the principal Hygiene and Temperature Control provisions” and paragraph 2(b) of the Schedule have been revoked. Hence, the definitions in this Order remain in food law for the application of the Food Safety Act 1990, where appropriate.

The range and variety of vessels, from cruise liners, passenger ferries and merchant ships to training yachts, is an important factor when planning inspection activities on board vessels. In respect of aircraft, primary consideration should be given to the origin of the food on board, including water and other drinks, and the transport to, and loading of, the aircraft.

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

4.4.2 Background and relationship to other inspections

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

A strategy for frequency of inspection should be adopted, based on knowledge about different types of craft, their origin and history (see also Section 4.4.5.5 in relation to ships). Before considering ship or aircraft inspection, all relevant information should be obtained from the Home Authority, shipping operator or airline, as appropriate. Inspections of, and visits to, ships and aircraft should be duly recorded in accordance with the Framework Agreement.

4.4.3 Enforcement issues

Authorised officers who require access to secure areas of ports or airports to undertake their duties will need clearance under the Aviation and Maritime Security Act 1990. Food Authorities should therefore make arrangements to obtain appropriate security clearance for their staff so that they have unrestricted access, subject to compliance with the normal security procedures of the facility concerned (see Section 4.4.4 regarding UK military craft).

Where a Home Authority agreement is in place, there is an obligation to inform TSI of the agreement and to follow the guidelines.

Food hygiene standards on ships and aircraft should meet the relevant requirements of Regulation 852/2004 including those in Chapters III to X and Annex II of that Regulation.

A Hygiene Improvement Notice or a Hygiene Emergency Prohibition Notice may be served under the Food Safety and Hygiene (England) Regulations 2013 in respect of an aircraft or ship that is registered in the United Kingdom. The conditions that must be met before such a notice can be served are the same as apply in relation to fixed premises.

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

An authorised officer may also serve a Hygiene Improvement Notice or Hygiene Emergency Prohibition Notice in relation to a foreign registered ship or aircraft. In such cases, the authorised officer should contact the UK office of the company or Handling Agent. If considered necessary, in respect of ships, the officer should also contact the Maritime and Coastguard Agency (MCA) at the earliest opportunity (see Section 4.4.5.4). Where there is no such UK office or Handling Agent, the Competent Authority in the country where the ship or aircraft is registered should be made aware of the defects found.

If the craft is registered in another Member State, the procedures set out in Chapter 2.5 on liaison with other Member States should be followed. Any difficulties should be discussed with the Agency.

If the craft is registered in a third country, the Agency should be given full details to allow the matter(s) to be raised with the competent authorities in the relevant country.

4.4.4 UK military ships and aircraft

Authorised officers should refer to Chapter 1.6 in relation to security considerations when visiting UK military ships and aircraft, which must be regarded as Group 3 premises. This requires prior notification before a proposed visit. Any food safety

issues found on inspection, which concern UK military ships and aircraft should be brought to the attention of single Service Environmental Health leads and the relevant Home Authority for the particular Service (see below for details). Authorised officers must bear in mind the ultimate purpose of military ships and aircraft, and that galley design may have been constrained for operational reasons. Military policy, procedures and practices should therefore be given due consideration.

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

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

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

	Primary Authority	Environmental Health Lead
Royal Navy	Portsmouth City Council ☎: (02392) 834253	SO2 Environmental Health Policy ☎: (02392) 625857
RAF	Wycombe District Council ☎: (01494) 421710	Command Environmental Health Officer ☎: (01494 494334)
Army	Rushmoor Borough Council ☎: (01252) 398398	SO1 Environmental Health Policy ☎: (01276) 412931

4.4.5 Ship inspections

4.4.5.1 Preparation

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

The officer should then be able to decide whether there is a need to carry out an inspection for food safety purposes. If no previous inspection certificate is available, and after taking other factors into account (see Section 4.4.5.5), the officer should decide whether an inspection is needed.

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

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

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

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

4.4.5.2 Inspection of the vessel

When there is an adverse certificate from a previous inspection, officers may need to carry out an inspection of the relevant parts of the vessel.

Items for consideration include:

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

4.4.5.3 Action on conclusion of the inspection

Following completion of the inspection, the findings should be discussed with the ship's Master or delegated representative, giving an indication of the expected timescale of any corrective actions found to be necessary. An inspection certificate[30] should also be prepared and given to the ship's Master before leaving the vessel. If it is not possible for a full certificate to be completed before the vessel's departure, this should be explained to the Master or his representative and forwarded to the Master at the first available opportunity. The ship's owner should also receive a copy. A further copy should be sent to the MCA at the earliest opportunity if serious shortcomings are found, and the Port Health Authority at the next intended port of call, if in UK and, if designated, the relevant Home Authority. This should be prior to any possible visit to the vessel at the subsequent port of call.

[30] The Ship Sanitation Control Certificate and the Ship Sanitation Control Exemption Certificate are available on the LGG website https://knowledgehub.local.gov.uk/.

4.4.5.4 Liaison with the Maritime and Coastguard Agency (MCA)

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

Should there be difficulties with serious shortcomings relating to the existence of a health risk condition (as defined by regulation 7(2)/regulation 8(4) i.e. there is a risk/imminent risk of injury to health) concerning food and water safety whilst a vessel is in port, consideration should be given to liaising with the MCA for the instigation of action to detain the vessel in accordance with procedures in the MoU. Such deficiencies should also be reported to the Competent Authority of the state of registration of the vessel (see Section 4.4.3).

4.4.5.5 Frequency of inspection

The frequency of inspection of vessels should be based on the use of the Ship Sanitation Certificates brought into effect by the International Health Regulations 2005 of the World Health Organization[31] and the Public Health (Ships) Regulations 1979, as amended by the Public Health (Ships) (Amendment) (England) Regulations 2007 and, the Public Health (Aircraft and Ships) (Amendment) (England).

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

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

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

- name and type of vessel, e.g. general cargo/passenger vessel, passenger ferries, cruise vessels;
- port of registration;
- age/condition/history of vessel;
- crew and passenger numbers/profile/"turnover";
- vessel's trading pattern/schedule/previous port(s) of call;

[31] Adopted by the fifty-eighth World Health Assembly on 23rd May 2005. reproduced at document A58/55 of the fifty-eighth World Health Assembly on the WHO website at: http://whqlibdoc.who.int/publications/2008/9789241580410_eng.pdf

- confidence in food and water safety management systems;
- available documentation;
- recent significant reports of food related problems on the vessel; and
- certificates from previous inspections - level of compliance (these could include inspection certificates issued by competent authorities in the EU or third countries.

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

4.4.6 Aircraft inspections

4.4.6.1 Preparation

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

The decision to board an aircraft should be based largely on any information provided by the airline; confirmation of the authenticity of the information, and the receipt of any food or food hygiene related complaints from passengers or crew. If such information (as outlined in Section 4.4.6.2) is satisfactory, there might be no need to board an aircraft, particularly if the information shows that specific types of aircraft and food safety practices meet requirements.

It is, however, essential to verify on-board conditions and practices at regular intervals by inspection. At least annual checks should be made on the information provided by the airline concerning food hygiene issues, either by the Home Authority, or in the absence of a Home Authority, by an authorised officer of the relevant enforcing Food Authority. Such checks should confirm, for example, that no changes have taken place to in-flight caterers, source of water supply, etc.

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

4.4.6.2 Information to be obtained to assist inspection procedures

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

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

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

The above information should assist an officer to assess the need to actually board a particular aircraft to carry out an inspection. In practice, taking account of Annex 5, and with the appropriate information obtained from the airline company and/or the relevant Home Authority, this might result in a visit to particular types of aircraft, providing high-risk meals once every eighteen months to two years, unless there are compelling reasons to undertake such visits in an intervening period.

4.4.6.3 Inspection of the aircraft

Cabin crew do occasionally prepare food on board an aircraft and should therefore be made aware in their training of possible cross contamination issues related to their other duties on board, such as handling sick bags and cleaning lavatories in flight. Inspections should normally be undertaken before passengers board the

aircraft, ideally after the aircraft has been cleaned, when food is on board, and when airline staff are able to provide assistance and information. Professional judgement should be applied and inspections might be undertaken at other times as necessary. Should there be any uncertainty as to the information provided by cabin staff, the relevant head office (or Home Authority) should be contacted for clarification.

4.4.6.4 Items for consideration in relation to food safety on aircraft

Following a documentary check, the following matters should be considered/confirmed, as listed in Section 4.4.6.2, when appropriate:

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

4.4.6.5 Action on conclusion of the inspection/contact with Home Authority

A report should be sent to the airline following an inspection, with copies to the relevant Home Authority where such an arrangement exists, in respect of UK registered aircraft. Where aircraft from a particular airline are checked and found to be in contravention of the applicable law, full details should be provided to allow adequate follow up, e.g. the type of aircraft; flight number; insufficient knowledge of food hygiene issues amongst the cabin crew, etc. See also Section 4.4.3 concerning reporting deficiencies to the country of registration of the aircraft, when appropriate.

Chapter 4.5 - Action following an intervention

4.5.1 Introduction

This Chapter sets out minimum standards of report writing and record keeping.

4.5.2 Reports following an official control

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

Where the official control was an inspection, partial inspection or audit, the information detailed in Annex 6 should be included in the report.
Reports may include other legislation covered during interventions at food establishments, e.g. health and safety at work, weights and measures etc, although matters relating to food law should be clearly differentiated from other law.

4.5.3 Establishment record files

The Food Authority's establishment record files,[32] which may be computer based, should be updated after each intervention and include:

- information on the size and scale of the business and its customer base;
- information on the type of food activities undertaken by the business, including any special equipment, processes or features;
- copies of any correspondence with the business, including documentation associated with approvals or authorisations; and
- copies of food sample analysis/examination results;
- a system of flagging for significant issues, including details of any non-compliance to be reviewed at future interventions;
- and in respect of establishments inspected for food hygiene purposes,
- an assessment of the business compliance with procedures based on HACCP principles where appropriate;
- information on hygiene training undertaken by employees; including any training on the implementation and operation of the food safety management system;

and in respect of premises inspected for food standards purposes:

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

[32] See Chapter 2, Paragraphs 16.1 and 16.2 of the Framework Agreement on Local Authority Food Law Enforcement.

4.5.4 Retention of records relating to interventions

Records relating to interventions should be retained in the establishment file for at least six years, unless required for longer retention because of litigation, Local Government Ombudsman review, the document management policy of the Food Authority, or instruction by the Agency.

Section 5 - Product-specific establishments

Chapter 5.1 - Product-specific establishments subject to approval under Regulation (EC) No. 853/2004

5.1.1 Introduction

This Chapter relates to the establishments subject to approval under Regulation 853/2004, in respect of which Food Authorities are responsible for enforcement.

5.1.2 Division of enforcement responsibilities

Responsibility rests with Food Authorities for the approval of, and enforcement in relation to, establishments subject to approval under Regulation 853/2004 in respect of which control does **not** fall to an Official Veterinarian. These "product-specific" establishments will be producing any, or any combination, of the following: minced meat; meat preparations; mechanically separated meat; meat products; live bivalve molluscs; fishery products; raw milk (other than raw cows‟ milk); dairy products; eggs (not primary production) and egg products; frogs legs and snails; rendered animal fats and greaves; treated stomachs; bladders and intestines; gelatine and collagen; and will include certain cold stores and certain wholesale markets. Food Authorities are also responsible for enforcement in respect of collection centres and tanneries supplying raw material for the production of gelatine or collagen intended for human consumption.

The Agency is responsible for the approval of establishments subject to approval under Regulation 853/2004 where control falls to an official veterinarian in accordance with Article 4(7) of Regulation 854/2004, and for enforcement in such establishments once approved. Such establishments are slaughterhouses, game handling establishments, and cutting plants placing fresh meat on the market. The Agency is also responsible for the approval of and enforcement in establishments co-located with these establishments in which minced meat, meat preparations, mechanically separated meat, meat products, rendered animal fats and greaves, treated stomachs, bladders and intestines, gelatine and/or collagen are **also** produced.

Where a slaughterhouse, game handling establishment or cutting plant is co-located with an establishment carrying out any other food business operation, to which either Regulation 852/2004 or Regulation 853/2004 applies, the Agency may on a case-by-case basis, with the agreement of the local authority, take over responsibility for enforcement in the co-located establishment, except were retail activity exists. This includes any other product of animal origin (OPOAO) and non-product of animal origin (non – POAO).

The Agency is also responsible for enforcement in relation to the matters regulated by Schedule 6 of the Food Safety and Hygiene (England) Regulations 2013, which applies in relation to raw cows‟ milk intended for direct human consumption.

5.1.3 Collection centres and tanneries supplying raw material for the production of gelatine or collagen intended for human consumption

Collection centres and tanneries may supply raw material for the production of gelatine and collagen intended for human consumption. They are not subject to the requirements of Regulation 852/2004, nor are they subject to approval under Regulation 853/2004. They will, however, need to be specifically authorised by the relevant Food Authority in accordance with Annex III, Section XIV, Chapter I (5) of Regulation 853/2004 (gelatine) and Section XV, Chapter I (5) of Regulation 853/2004 (collagen), and must also meet the other requirements of Annex III, Section XIV (gelatine) and Annex III, Section XV (collagen) of Regulation 853/2004.

5.1.4 Exemption of establishments from the requirements of Regulation 853/2004

5.1.4.1 Introduction

Article 1 of Regulation 853/2004 sets out the scope of that Regulation. The following paragraphs deal specifically with exemptions from the Regulation under Article 1(2) and under Article 1(5) (b) (ii). Additional guidance material is contained within section 5.1.1 of the Practice Guidance.

5.1.4.2 Article 1(2) of Regulation 853/2004: food containing both products of plant origin and processed products of animal origin

Article 1(2) of Regulation 853/2004 stipulates that “Unless expressly indicated to the contrary, this Regulation does not apply to food containing both products of plant origin and processed products of animal origin”.

Establishments engaged solely in the production of such food by assembling products of plant origin with processed products of animal origin which enter the establishment in that processed state, will not, therefore, be subject to Regulation 853/2004 and, as such, will not require approval. Food Authorities will need to consider the definitions of “processed products”, “unprocessed products” and “processing” in Article 2 of Regulation 852/2004 in this regard.

Food Authorities should be aware that establishments benefiting from this exemption would, in addition to compliance with Regulation 852/2004, need to comply with Article 1(2) of Regulation 853/2004 which requires such establishments to obtain the processed products of animal origin they use in compliance with Regulation 853/2004 (i.e. from approved establishments or non-approved establishments permitted to supply the establishment under the exemption described in Section 5.1.4.3 below), and that those products are handled in accordance with that Regulation.

5.1.4.3 Article 1(5) (b) (ii) of Regulation 853/2004: retail exemption

Article 1(5) (a) of Regulation 853/2004 stipulates that "Unless expressly indicated to the contrary, this Regulation shall not apply to retail". Article 1(5)(b) stipulates that "this Regulation shall apply to retail when operations are carried out with a view to the supply of food of animal origin to another establishment", but goes on, in sub-paragraphs (i) and (ii) to exclude certain activities from this requirement.

Retailers otherwise exempt from the requirements of Regulation 853/2004 may, by virtue of Article 5(b)(ii) of Regulation 853/2004, supply food of animal origin from the retail establishment to other retail establishments, but only if this is a marginal and localised and restricted activity. Guidance on such activity can be found in section 5.1.1 of the Practice Guidance.

5.1.5 Applications for approval: procedures/forms

Article 31(2) (a) of Regulation 882/2004 obliges competent authorities to establish procedures for food business operators to follow when applying for the approval of their establishments in accordance with Regulation 853/2004. Procedures for handling applications for approval are set out in Sections 5.1.6 *et seq.* below. Food Authorities should ensure that they, and food business operators, follow these procedures as appropriate. Any deviations from these procedures should be recorded and retained by the Food Authority and should, where possible, be agreed with the Food Authority beforehand.

An overview of the approval process is set out in a flow chart at section 5.1.1 of the Practice Guidance. A series of template forms is also provided at Annex 9 of the Practice Guidance to assist Food Authorities in the administration of approvals. Whilst the content of these documents should be regarded as the minimum required, Food Authorities may adapt them as necessary to meet local requirements.

5.1.6 Applications for approval: handling

Any application for approval from a food business operator should be dealt with promptly. In order to ensure consistency, Food Authorities should ask food business operators to submit applications for approval in the appropriate format as set out in Annex 9 of the Practice Guidance.

Applications for approval of establishments should only be accepted from food business operators that intend to engage in activities for which approval would be required in accordance with Regulation 853/2004. Under no circumstances should approval be granted to an establishment which is not subject to approval under Regulation 853/2004.

Food Authorities should ensure that the food business operator supplies all relevant information before an application for approval is determined. This information may be obtained from the food business operator in documentation supplied with the application or during the subsequent on-site visit to the establishment as required by

Article 31(2) (b) of Regulation 882/2004 (see Section 5.1.7). It is a matter for the Food Authority to decide at which stage of the application this information should be provided.

In considering applications for approval Food Authorities should ensure that they fully consider any exemption that may be available to the applicant afforded by Article 1 of Regulation 853/2004.

5.1.7 Determination of applications for approval

Before reaching a decision on an application for approval, the Food Authority should ensure that an on-site visit is made in accordance with Article 31(2) (b) of Regulation 882/2004. This should take the form of a inspection of the establishment (see Section 4.1.3), to verify that, where necessary, all systems, procedures and documentation meet the relevant requirements of Regulation 852/2004 and Regulation 853/2004. The inspection should be conducted in accordance with, and cover, all aspects of the relevant inspection form for the business concerned, and consider all issues identified by Regulation 853/2004, as requiring Food Authority consent. As per Article 31(2) of Regulation 882/2004 all the requirements of food law relevant to that business must be met.

5.1.8 Conditional approval

Article 31(2) (d) of Regulation 882/2004 permits the granting of conditional approval to an establishment, following an on site visit, which does not fully comply with the requirements of food law, but only if the establishment meets all the infrastructure and equipment requirements (see also section 5.1.1 of the Practice Guidance).

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

If conditional approval is granted, a further visit must be carried out within three months of the conditional approval being granted in accordance with Article 31(2) (d) of Regulation 882/2004. This visit should be an inspection (see Section 4.1.3). In appropriate circumstances as set out in Article 31(2) (d) of Regulation 882/2004, conditional approval may be extended, but this is restricted to a maximum of six months from the date of the initial granting of conditional approval. Professional judgement should used in deciding whether it would be appropriate to extend conditional approval, on a case by case basis.

5.1.9 Product-specific establishments producing more than one type of product

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

There will be establishments where two or more products of animal origin subject to requirements of Regulation 853/2004 are applicable, e.g. an establishment producing both meat products and fishery products. In such cases the relevant provisions will apply to areas of the establishment where each type of product is produced. All relevant provisions of the Regulation will apply to those areas of the establishment where facilities are shared.

5.1.10 Live bivalve mollusc purification centres

Where an application for a proposed purification centre, or modification to an existing centre is received, a copy of the application must be sent to the Agency for consultation with the Centre for Environment, Fisheries and Aquaculture Science (Cefas).

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

5.1.11 Approval of bivalve mollusc relaying areas

It is the responsibility of the Agency to classify bivalve mollusc beds. A food business can apply to the Food Authority to have any suitable area classified as a relaying area. This area must fulfil the criteria necessary of the classification of bivalve mollusc beds. The procedure and criteria for the approval and classification of bivalve mollusc beds and relaying areas is set down in Annex II, Chapter II of Regulation 854/2004. Food Authorities should only designate relaying areas after consultation with the Agency. It should be noted that the live bivalve molluscs should, after relaying, be treated in accordance with the (A, B, or C) classification of the area in respect of placing on the market.

5.1.12 Approval number/identification mark

(See also Chapter 5.1 of the Practice Guidance)

A Food Authority must give an approval number to each food business establishment it approves, or conditionally approves, in accordance with Article 3(3) of Regulation 854/2004. This approval number should be a three digit number unique to that authority. The approval number should form part of an approval code consisting of the Food Authority's two-letter code followed by the approval number.

The approval code should be incorporated into an identification mark which approved establishments are required to apply to their products, as appropriate (see also Section 5.1.13). The requirements for the form of the identification mark are set out in Annex II, Section I B of Regulation 853/2004. A Food Authority should agree

an identification mark with each establishment it approves which (a) incorporates the approval code it has allocated and (b) meets the requirements of Annex II, Section I B of Regulation 853/2004.

5.1.13 Identification marking of food to which Regulation 853/2004 does not apply

Food Authorities should bear in mind that Annex II, Section 1, B 7 of Regulation 853/2004 stipulates that if an establishment manufactures both food to which Regulation 853/2004 applies and food to which it does not, the food business operator may apply the same identification mark to both types of food.

5.1.14 Refusal of approval and appeals - general

If an establishment does not fully meet the requirements of Regulation 853/2004, the Food Authority should consider whether conditional approval is appropriate in the circumstances (see Section 5.1.8).

When a Food Authority has decided to refuse an application for approval, it should notify the applicant in writing of the decision at the earliest opportunity. The Food Authority should also give the reasons for refusal in writing, the matters necessary to satisfy the requirements of the Regulation, and make it clear that activities requiring approval may not be undertaken unless approval or conditional approval is granted. Such notification should also make the food business operator aware of their right of appeal against the decision, and provide the address of the Magistrates' Court where such an appeal may be made.[33]

Food Authorities should bear in mind that 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 the Official Feed and Food Controls Regulations 2009 (as amended). From the date on which the notice of the decision is served on the relevant person the establishment cannot continue operating whilst the appeal is being determined

5.1.15 Notification of approval - general

Once approval, or conditional approval, has been granted, the Food Authority should notify the applicant in writing, of the nature and scope of the approval and any conditions or limitations that apply and the approval code[34] (see Section 5.1.12).

When full approval is granted following conditional approval, the Food Authority should notify the food business operator in writing.[35] Such a notification should also include details of the nature and scope of the approval any conditions or limitations

[33] A template form is provided at Annex 11, A.9.3 of the Practice Guidance.
[34] A template form is provided at Annex 11, A.9.2 of the Practice Guidance.
[35] A template form is provided at Annex 11, A.9.2 of the Practice Guidance.

that apply, and confirmation that the approval code allocated to the establishment may continue to be used.

The Food Authority should retain a copy of the above notifications on the relevant establishment file and ensure that the Agency is notified of the approval in accordance with Section 2.4.3.

5.1.16 Change of details or activities

Article 6(2) of Regulation 852/2004 requires food business operators to ensure that the relevant Competent Authority always has up-to-date information on establishments including significant changes in activities and closures of establishments. However, where this does not happen and a Food Authority becomes aware of any significant changes in, for example, the ownership, management or activities of approved establishment, they should carry out an inspection and take any necessary action.

Change of food business operator: The approval of an “establishment” applies to both the premises and the business operating at the premises. An approved establishment cannot change ownership. If a premises used as an approved establishment changes ownership, the new establishment will have to assessed and granted a new approval before it can operate. .

5.1.17 Non-approved establishments thought to be engaged in activities requiring approval

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

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

Chapter 5.2 - Enforcement options in product-specific establishments subject to approval under Regulation (EC) No. 853/2004

5.2.1 Introduction

In addition to the enforcement powers detailed in Section 3, authorised officers have other powers available to them under the Official Feed and Food Controls (England) Regulations 2009 in respect of product-specific establishments, subject to approval under Regulation 853/2004.

Powers to withdraw, or suspend, the approval or conditional approval of an establishment subject to approval under Regulation 853/2004, are provided by Article 31(2)(e) of Regulation 882/2004. Regulation 3(3)/ Schedule 5 of the Official Feed and Food Controls (England) Regulations 2009 designates Food Authorities as competent authorities for the purposes of Article 31 of Regulation 882/2004.

5.2.2 Suspension/withdrawal of approval or conditional approval - general

Food Authorities should bear in mind that the immediate effect of the suspension or withdrawal of an establishment's approval is such that the establishment may not be used for any activities which would render it subject to approval under Regulation 853/2004, or to place products of animal origin, manufactured in the European Union on the market**.**

On the discovery of non-compliance in establishments subject to approval under Regulation 853/2004, the Food Authority should, before considering suspension or withdrawal, explore other enforcement options to control the food hazards presented by the establishment.

Non-compliance should not necessarily be considered sufficient to justify the *immediate* suspension or withdrawal of an establishment's approval or conditional approval, and a reasonable opportunity to achieve compliance should be allowed where this is appropriate.

5.2.3 Suspension of approval or conditional approval

Food Authorities should only initiate procedures to suspend an establishment's approval or conditional approval if other enforcement options have been considered, and circumstances exist in accordance with Article 31(2) (e) of Regulation 882/2004. Food Authorities should request that any guarantee regarding future production made by a food business operator in accordance with this Article is made in writing, although Food Authorities should be aware that they cannot insist on this as no requirement exists in law to provide such guarantees in writing.

5.2.4 Withdrawal of approval or conditional approval

Food Authorities should only initiate procedures to withdraw an establishment's approval or conditional approval if other enforcement options have been considered, including suspension of the approval (see Section 5.2.3), and if circumstances exist in accordance with Article 31(2) (e) of Regulation 882/2004.

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

5.2.5 Notifications of suspension or withdrawal of approval or conditional approval

Under Article 54(3) (a) of Regulation 882/2004, the Food Authority must notify the food business operator in writing of its decision to suspend or withdraw an establishment's approval or conditional approval. The Food Authority should also give the reasons for the suspension or withdrawal in writing, the matters necessary to satisfy the requirements of the Regulation, and make it clear that activities requiring approval may not be undertaken. Such notification should also make the food business operator aware of their right of appeal against the decision and provide the address of the Magistrates' Court where such an appeal may be made.[36]

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

5.2.6 Appeals against suspension or withdrawal of approval or conditional approval

Food Authorities should bear in mind that 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 the Official Feed and Food Controls Regulations 2009 (as amended). From the date on which the notice of the decision is served on the relevant person the establishment cannot continue operating whilst the appeal is being determined

[36] A template form is provided at Annex 11, A.11.3 of the Practice Guidance.

Chapter 5.3 - Matters relating to live bivalve molluscs

5.3.1 Introduction

This Chapter deals with the establishment and maintenance of local shellfish liaison groups. It also deals with the need for registration documents or permanent transport authorisations, monthly checks on relaying areas, and the publication of information about prohibited areas.

5.3.2 Liaison arrangements

(See also Section A.4.6 of the Practice Guidance).

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

5.3.3 Registration documents: live bivalve molluscs

Under Regulation 853/2004, each gatherer of live bivalve molluscs (including pectinidae) to be placed on the market, requires a registration document (unless issued with a permanent transport authorisation) to identify each batch that they gather for its movement from the harvesting site. The movement could be either from the harvesting site (a classified bed) to the dispatch centre or relaying area, purification centre or processing centre. In the case of pectinidae harvested from unclassified areas, the movement could be from the harvesting grounds (described in as much detail as possible e.g. OS co-ordinates, lat/long, ICES reference) to the dispatch centre, processing establishment or fish auction.

Food Authorities should issue such registration documents to gatherers, including fishing vessels that harvest live bivalve molluscs (a model registration form can be found at Annex 4, Appendix 2 of the Practice Guidance). This should contain a unique code number and be given to the harvester or gatherer before they carry out harvesting. Food Authorities should provide registration documents on demand. Food Authorities may not make any charge for the issue of registration documents, nor may they unreasonably refuse to issue the documents to a gatherer. The Food Authorities should check registration documents when live bivalve molluscs come ashore.

Any Food Authority which issues registration documents should keep a record indicating the names and details of the persons to whom they were issued and the respective unique number(s), for at least 1 year.

Registration documents should be issued to gatherers who are harvesting within the area of another Food Authority only with the agreement of that other Food Authority.

To enable the system of documentation to be monitored the number of registration documents issued to a gatherer should be recorded.

Details of the requirements for Food Authorities to take microbiological samples can be found in Sections 4.3.3.1 and 4.3.3.2.

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

5.3.4 Permanent transport authorisations

A Food Authority may issue to gatherers a Permanent Transport Authorisation (PTA) as an alternative to separate movement documents when the gatherer also operates the purification centre, relaying area or processing establishment to which their harvested live bivalve molluscs are being delivered. However, all establishments operated by the gatherer must fall within the jurisdiction of the single Food Authority.

In deciding whether to issue a PTA a Food Authority should consider the requirements of Regulation 853/2004, Annex III, Section VII, Chapter 1, paragraph 7. In addition to these the history of an operator's compliance with relevant food safety legislation and the application of management control procedures should be an influencing factor in any decision.

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

5.3.5 Checks on relaying areas

Authorised officers should carry out checks at least every month in relaying areas to ensure that the relaying conditions specified by the Agency are being complied with. The conditions that must be observed when live bivalve molluscs are relayed in approved relaying areas are specified in Chapter II of Annex II to Regulation 854/2004.

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

5.3.6 Closure Notices (temporarily closing harvesting areas)

Annex II, Chapter II, Section C.1 of Regulation 854/2004 requires that, where sampling results show that health standards for molluscs are exceeded, or that there may otherwise be a risk to human health, the Food Authority must close the production area concerned to prevent the harvesting of live bivalve molluscs or, if appropriate, to reclassify the area in accordance with the Regulation.

Annex II, Chapter II, Section E(b) and (c) of Regulation 854/2004 respectively, require the Food Authority to inform interested parties, such as producers, gatherers, and operators of purification centres or dispatch centres, immediately of the closure of any area, and to act promptly to close, reclassify, or re-open production areas. When the closure of a production area is required, the Agency recommends that a Closure Notice should be used as the means to inform interested parties; a model Closure Notice can be found at Annex 9.

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

The Food Authority should ensure that Closure Notices, when used, are made quickly, and that all known food business operators in their district, who either have registration documents already issued, or have a permanent transport authorisation (issued by the Food Authority in accordance with Annex III, Section VII Chapter 1.7 of Regulation 853/2004), are notified of the Closure Notice and its effect. This may best be achieved by sending a copy of the Notice to all known interests. Additionally, the Food Authority should prominently display Closure Notices where food businesses harvesting shellfish might reasonably be expected to see them.

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

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

In the event a Food Authority decides not to use a Closure Notice to inform interested parties of a closure, it will need to satisfy itself that the means of communication chosen satisfies the legal requirements.

Under the terms of Regulation 19(1) of the Food Safety and Hygiene (England) Regulations 2013, it is an offence to contravene a specified EU provision.

Chapter 5.4 - Matters relating to fresh meat

5.4.1 Introduction

This Chapter relates to the division of enforcement responsibilities in relation to fresh meat.

5.4.2 Division of enforcement responsibilities

As stated in Section 5.1.2, the Agency is responsible for enforcement in relation to establishments approved under Regulation 853/2004, where control falls to an official veterinarian, in accordance with Article 4(7) of Regulation 854/2004. Such establishments are slaughterhouses, game handling establishments and cutting plants placing fresh meat on the market. The Agency is also responsible for establishments co-located with these establishments.

Food Authorities are responsible for enforcement in relation to:

- establishments newly subject to approval under Regulation 853/2004 until conditional or full approval is granted, or if approval is refused, by the Agency;
- establishments in which minced meat, meat preparations, mechanically separated meat, meat products, rendered animal fats and greaves, treated stomachs, bladders and intestines, gelatine and/or collagen are produced and that are not co-located with slaughterhouses, game handling establishments and cutting plants;
- the direct supply, by the producer, of small quantities of primary products to the final consumer (Article 1(3)(c) of Regulation 853/2004);
- on-farm slaughter and cutting of small quantities of poultry and lagomorphs (Regulation 853/2004); and
- hunters supplying small quantities of wild game or wild game meat directly to the final consumer or to local retail establishments directly supplying the final consumer (Article 1(3) (e) of Regulation 853/2004).

Further relevant material on matters relating to meat is contained in Annex 3 of the Practice Guidance.

Section 6 - Sampling and analysis

Chapter 6.1 - Sampling and analysis

6.1.1 Introduction

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

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

6.1.2 Sampling Policy and Sampling Programme[37]

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

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

Food Authorities should also prepare a Sampling Programme which details their intended food sampling priorities. The Programme should take account of the number, type and intervention ratings of the food businesses, and the type of food produced in the area, the Food Authority's originating or home authority responsibilities and the need to ensure that the provisions of food law are enforced. The Sampling Programme should not normally be published.

The Sampling Policy should commit the Food Authority to providing the resources necessary to carry out its food Sampling Programme.

[37] See Chapter 2, Paragraph 12.4 of the Framework Agreement on Local Authority Food Law Enforcement.

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

6.1.3 Requests for information from manufacturers or importers

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

6.1.4 Sampling - general

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

- samples of food that are the subject of complaint and are brought to the Food Authority by consumers or other agencies;
- samples of food that are submitted to the Public Analyst for monitoring or surveillance purposes alone, i.e. there is no intention at the time of sampling that any formal enforcement action will ensue from the result;
- samples of food procured in accordance with food law which are not taken for analysis or examination, e.g. samples submitted for the opinion of other experts e.g. pest identification etc;
- samples of food that are taken as evidence in their own right e.g. use-by dates; and
- samples that are taken under the provisions of regulations still in force that have their own detailed sampling provisions, and are listed in Schedule 1 to the Food Safety (Sampling and Qualifications) Regulations 2013..

6.1.5 Samples for analysis (Food Safety Act 1990, section 29)

All samples for analysis, taken under section 29 of the Food Safety Act 1990 in accordance with the Food Safety (Sampling and Qualifications) Regulations 2013 and with the requirements of this Code, should be submitted to the appointed Public Analyst at a laboratory accredited for the purposes of analysis, and which appears on the list of official food control laboratories.[38]

6.1.6 Division of samples for analysis

Unless the sample meets the criteria for submission for analysis without division into three parts (see Section 6.1.6.4. of the Practice Guidance), the formal sample should, as soon as possible, be divided into 3 representative parts. Subject to

[38] A list of UK official food control laboratories has been submitted to the European Commission and is published on the Agency's website www.food.gov.uk

regulation 7(4), regulation 7(1) of the Food Safety (Sampling and Qualifications) Regulations 2013, requires that the sample should be divided into 3 representative parts. The resultant parts of the sample are referred to in this Code as final parts. Where practicable, the division should be carried out in the establishment of the food business operator, who, if present, should be given the opportunity to observe the sampling and division before being invited to choose one of the parts for retention.

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

6.1.7 Notification of formal sampling activity (analysis)

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

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

6.1.8 Certificates of analysis

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

6.1.9 Notification of results (analysis)

Where a certificate of analysis indicating that the foodstuff does not comply with legal requirements has been received, the Food Authority should refer to and implement any relevant provisions of Chapters 1.7 and 2.4 and the Home Authority Principle (see Section 1.1.7)

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

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

6.1.10 Samples for examination (Food Safety and Hygiene (England) Regulations 2013, regulation 14)

All samples for examination, taken in accordance with regulation 14 of the Food Safety and Hygiene (England) Regulations 2013 and the requirements of this Code, should be submitted to the Food Examiner at a laboratory accredited for the purposes of examination, and which appears on the list of official food control laboratories.

In accordance with regulation 15(11) of the Food Safety and Hygiene (England) Regulations 2013, the Food Safety (Sampling and Qualifications) Regulations 2013 apply in relation to a sample procured by an authorised officer of a Food Authority under regulation 15 of the Food Safety and Hygiene (England) Regulations 2013, as if it were a sample procured by an authorised officer under section 29 of the Food Safety Act 1990.

6.1.11 Notification of formal sampling activity (examination)

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

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

6.1.12 Certificates of examination

In accordance with regulation 15(12) of the Food Safety and Hygiene (England) Regulations 2013 certificates of examination must be in the format set out in Schedule 3 to the Food Safety (Sampling and Qualifications) Regulations 2013 .

6.1.13 Notification of results (examination)

Where a certificate of examination indicating that the foodstuff does not comply with legal requirements has been received, the Food Authority should refer to, and implement any relevant provisions of Chapters 1.7 and 2.4 and the Home Authority Principle (see Section 1.1.7).

In accordance with regulation 10 of the Food Safety (Sampling and Qualifications) Regulations 2013 , a copy of the certificate of examination must be supplied, on request, to the owner of the food which has been examined. If the alleged offence is thought to be related to the manufacturer, they should be informed at the earliest opportunity by the fastest possible means (e.g. fax or telephone, subsequently

confirmed in writing), along with the relevant Food Authority. The packer or, in the case of imported food, the importer, or their agent, may also be notified.

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

Section 7 - Internal and Food Standards Agency monitoring

Chapter 7.1 - Monitoring of interventions

7.1.1 Introduction

This Chapter deals with the internal monitoring of interventions by the Food Authority of its own service delivery, and the monitoring of each Food Authority's intervention actions by the Agency.

7.1.2 Internal monitoring

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

7.1.2.1 Documented procedures

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

7.1.2.2 Monitoring system

The monitoring system should include measures to assess:

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

and in relation to food hygiene interventions:

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

7.1.3 Food Standards Agency monitoring of Food Authorities

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

Section 8 - Annexes

Annex 1 - Abbreviations

APHA	Association of Port Health Authorities
BIS	Department for Business, Innovation and Skills
CCDC	Consultant in Communicable Disease Control
CCP	Critical Control Point
Cefas	Centre for Environment, Fisheries and Aquaculture Science
CEN	The European Committee for Standardisation
CIEH	Chartered Institute of Environmental Health
CPHM (CD/EH)	Consultant in Public Health Medicine (Communicable Disease/Environmental Health)
DCA	Diploma in Consumer Affairs
DCATS	Diploma in Consumer Affairs and Trading Standards
DTS	Diploma in Trading Standards
E. coli O157	Escherichia coli O157
EEA	European Economic Area
EHRB	Environmental Health Registration Board
EU	European Union
FCATS	Foundation Certificate in Consumer Affairs and Trading Standards
FSA	Food Standards Agency
Framework Agreement	Framework Agreement on Local Authority Food Law Enforcement
HACCP	Hazard Analysis and Critical Control Point
HCATS	Higher Diploma in Consumer Affairs and Trading Standards
HPA	Health Protection Agency
HPA CDSC	HPA Communicable Disease Surveillance Centre
IFST	Institute of Food Science and Technology
LGA	Local Government Group Association
LAEMS	Local Authority Enforcement Monitoring System
MCA	Maritime and Coastguard Agency
MoU	Memorandum of Understanding
NHS	National Health Service
OFT	Office of Fair Trading
PARNUTS	Foodstuffs intended for particular nutritional uses
PTA	Permanent transport authorisation
RAF	Royal Air Force
RPA	Rural Payments Agency
REHIS	Royal Environmental Health Institute of Scotland
RN	Royal Navy
SFSORB	Scottish Food Safety Officers' Registration Board
SIMS	Ships Inspection Management System
TSI	Trading Standards Institute
UK	United Kingdom
UKAS	United Kingdom Accreditation Service
VTEC	Verocytotoxin-producing *Escherichia coli*

Annex 2 - HACCP evaluation competencies

Standards of competence for Food Authority officers in relation to procedures based on HACCP principles

With the exception of primary production, Food Authorities should satisfy themselves that staff engaged in the food hygiene inspection of food business establishments, involving the audit of procedures based on HACCP principles, are able to demonstrate the following competencies. This is in addition to holding the relevant qualification prescribed in Chapter 1.2 for the category of business to be inspected:

1. To identify, through the conduct of an audit, the need for improved food safety control in establishments having regard to the nature and size of the business.

   1.1 Assess the quality of food safety hazard identification in a food business.
   1.2 Assess the quality of critical control point (CCP) identification in a food business.
   1.3 Assess the suitability of controls in place and their monitoring at CCPs.
   1.4 Assess the verification and review by business operators of procedures based on HACCP principles.

2. To promote and support the implementation of procedures based on HACCP principles appropriate to the nature and size of the business.

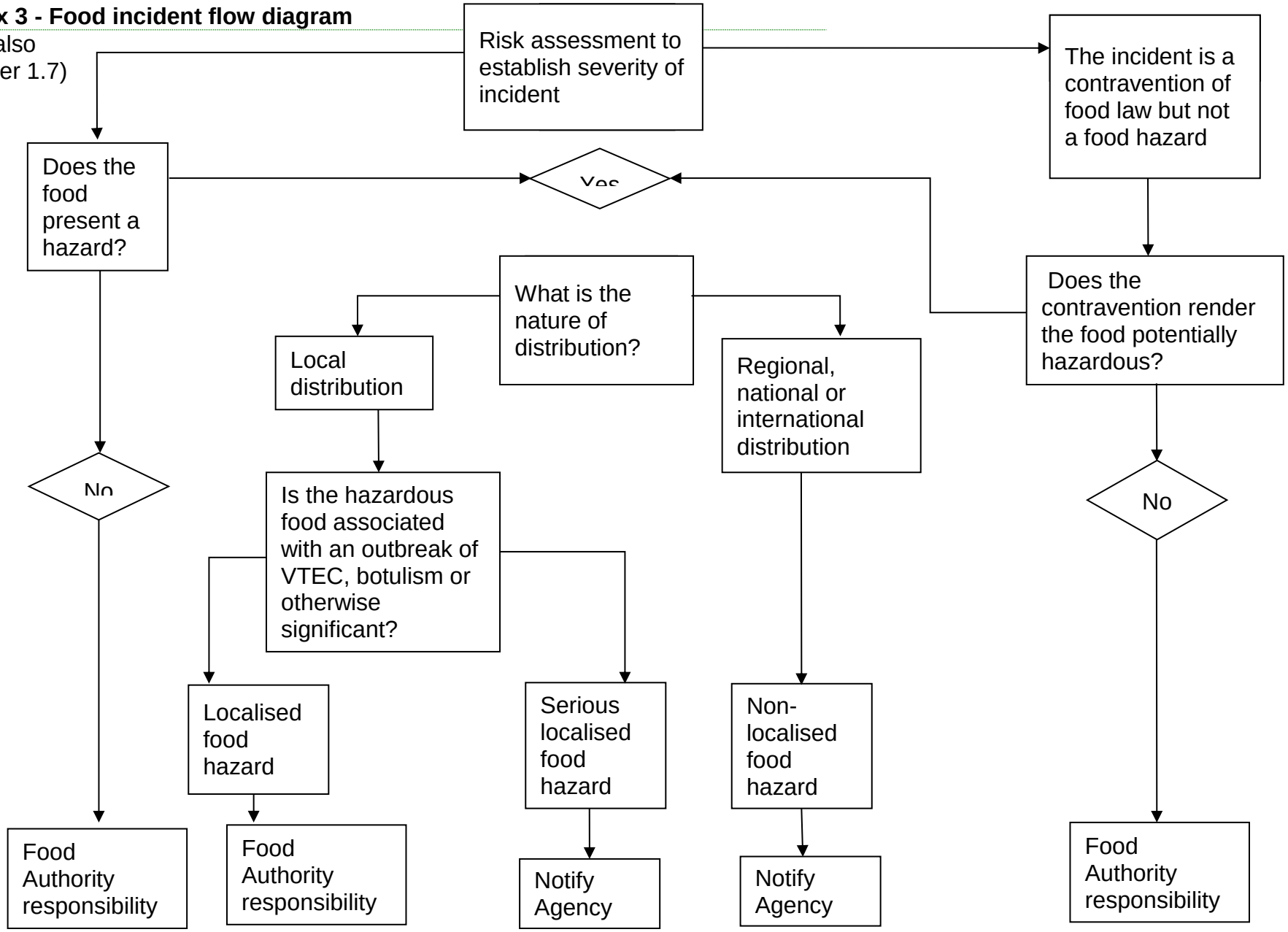
   2.1 Explain the principles of hazard analysis to food business operators or managers in terms appropriate to the nature and size of the business.
   2.2 Specify targets for improved control of food safety hazards.
   2.3 Provide advice on carrying out hazard analysis and implementing controls in terms appropriate to the nature and size of the business.
   2.4 Explain where appropriate, the relationship between HACCP systems (based on Codex) and other procedures based on HACCP principles.

3. To secure compliance with procedures based upon HACCP principles as required in legislation, appropriate to the nature and size of the business.

   3.1 Explain the legal requirements in relation to procedures based on HACCP principles.
   3.2 Secure progress towards compliance by discussion and persuasion.
   3.3 Secure compliance by the issue of notices. Secure compliance through the courts (and gather and preserve evidence in a form usable in court).

Annex 3 - Food incident flow diagram

(See also Chapter 1.7)



Annex 4 – Food incident report form (Food Authorities)

Food Standards Agency
food.gov.uk

FOOD INCIDENT REPORT FORM

TO BE COMPLETED BY THE INVESTIGATING OFFICER/REPRESENTATIVE AND FAXED TO THE AGENCY ON: 020 7276 8446 (Tel: 020 7276 8448/8453)

1 Reporting Food Authority's name and address:

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

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

4. Initial information received by:

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

6. Method (telephone/fax/letter/other):

7. Brief description of incident:

8. Type of contamination:

9. Description of product

Type of Product:

Product Name:

Brand Name:

Batch Code/s:

Description of Packaging:

Pack Size:

Durability Date/s or Code/s:

Country of Origin:

UK Importer/Distributor (including contact details):

Manufacturer (including contact details):

10. Has clinical illness occurred?

Details (type of illness, symptoms, numbers of consumers affected etc):

11. Full details of distribution (including EU and Third Countries) e.g. quantities/areas, and when the particular product/batch in question was first placed on the market:

12. Is the manufacturer/retailer/supplier aware of the incident, if so what are their proposals for dealing with it?

13. Assessment of hazard (please circle):

Local	**Retail**
Regional	**Catering**
Manufacture	**National**
International	**Import/Export**

14. Other relevant contact details (e.g. home and/or originating authority/CCDC/HPA/other)
Name:

Address, telephone and fax numbers, e-mail address:

15. Has any enforcement action already been taken? For example, have samples been taken for examination or analysis, or detention notices served, or food seized? Please fax any laboratory reports or detention notices etc to the FSA with this form, or as soon as possible thereafter.

16. Has there been media interest? Yes/No

If there has been a press release please fax to the FSA with this form.

17. Any additional information: Please attach additional pages if necessary.

Signed:

Date:

Job Title:

Annex 5 - Food establishment intervention rating schemes

A5.1 Introduction

This Annex deals with the food hygiene and food standards intervention ratings, and minimum frequencies for interventions at food establishments.

The Annex does not apply to primary production establishments or animal feed establishments

A5.2 Food hygiene intervention rating scheme

Basic principles

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

The scheme incorporates an option for alternative enforcement strategies for “low-risk” establishments, in which the inherent hazards are not significant by virtue of their trading activities or the number of consumers they supply (see A5.3 part1 C).

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

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

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

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

Food authorities must ensure that interventions for higher risk businesses or those that are likely to be high risk always take priority over interventions for low risk businesses. Food authorities should ensure that enforcement action and re-visits are undertaken in accordance with 4.2.5 of the Code of Practice.

Planned interventions should normally be completed by the due date as determined by the intervention rating, and in any case no more than 28 days after that date,

apart from circumstances outside the control of the food authority such as seasonal business closures.

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

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

Low-risk activities (category E establishments)

"Low-risk" establishments should be subject to an alternative enforcement strategy or intervention, at least once during any three year period.

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

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

A5.3 Food hygiene scoring system

Part 1: The potential hazard

Three factors determine the potential hazard:

A. Type of food and method of handling

Score	Guidance on the scoring system
40	Manufacturers of high-risk food, wholesalers and packers who re-wrap or re-pack high-risk foods. In this context, high-risk foods may be regarded as foods which support the growth of micro-organisms, and are ready to eat without further treatment that would destroy pathogenic micro-organisms or their toxins.
30	Preparation, cooking or handling of open high-risk foods by caterers and retailers, except caterers that prepare less than 20 meals on a single day (see below).
10	Preparation, cooking or handling by small caterers of open high-risk foods but serve less than 20 meals on a single day ; Handling of pre-packed high-risk foods; Other wholesalers and distributors not included in the categories above; Manufacture or packing of foods other than high-risk; Establishments involved in the filleting, salting of fish for retail sale to final consumer.
5	Retail handling of foods other than high-risk, and other ambient shelf stable products. Any other businesses not included in the categories above.

Score:	

B. Method of processing

Establishments that undertake a specific method of processing (including those that extend the shelf life of the product) that has the potential to increase the risk to public health beyond that of the normal cooking or storage should be given an additional score under this section. However, it may only be allocated once, i.e. the maximum score under this section is 20.

Score	Guidance on the scoring system
20	Below is a non-exhaustive list of processing types that should be allocated an additional score of 20. Authorised officers will need to make a judgement regarding additional processing types not listed below. • Canning or other aseptic packing of low-acid foods; • Vacuum and sous-vide packing; • Manufacture of cook/chill food, i.e. cooked and prepared meals or foods which may be eaten cold or after reheating. (The simple reheating of cook-chill meals is excluded from the scope of this paragraph.); • Fermentation of meats e.g. to produce salamis and other fermented sausages; • Air drying e.g. dried hams, biltong, jerky; • Freeze drying; • Addition of salt and/ or other preserving agents; • The cooking and cooling of meat products prior to service e.g. production of hams by retailers, including butchers; • Establishments that manufacture, prepare, or serve high risk uncooked or lightly cooked ready to eat food of animal origin, whose nature poses a residual microbiological food safety hazard. This is intended to include caterers/manufacturers producing foods such as steak tartare and other raw meat dishes, fish and meat carpaccio, types of sushi or sashimi, ceviche, and burgers intended to be eaten rare or undercooked through controlled procedures.
0	Any other case not included above.

Score:	

C. Consumers at risk

This factor is intended to reflect the number of consumers likely to be at risk and the potential geographical extent of any incident if there is a failure of food hygiene and safety procedures.

Score	Guidance on the scoring system
15	Food businesses involved in either the manufacture, distribution, packing or wrapping operations of food which is supplied nationally or internationally.
10	Businesses serving a substantial number of customers, including a significant proportion from outside the local area, e.g. superstore, hypermarket, airport caterer, motorway service area caterer; Manufacturers not included in the category above.
5	Businesses, most of whose customers are likely to be living, staying or working in the local area, e.g. high street or corner shop, high street supermarket, or high street restaurant.
0	Businesses typically supplying less than 20 consumers each day.

Score:	

PLUS

An **additional** score of 22 (in addition to the score above) should be included for Establishments involved in the production or service of food intended specifically for consumption by consumers which are likely to include a vulnerable risk group of more than 20 persons.

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

Score	Guidance on the scoring system
22	Production and/or service of high-risk foods in establishments where the ultimate consumers of the product produced includes a vulnerable risk group of more than 20 persons.
0	Any other case not included above.

Score:	

Part 2: Level of (current) compliance

The food hygiene and safety procedures (including food handling practices and procedures, and temperature control), and the structure of the establishment (including cleanliness, layout, condition of structure, lighting, ventilation, facilities etc.), should be assessed **separately** using the scoring system below.

The score should reflect compliance observed during the inspection according to the guidance set out below.

In circumstances where the failure to comply involves both elements of the establishment's structure and procedures, this non-compliance should be reflected in the scores awarded for both the 'hygiene' and 'structural' factors.

Score	Guidance on the scoring system
25	Almost total non-compliance with statutory obligations.
20	General failure to satisfy statutory obligations – standards generally low.
15	Some major non-compliance with statutory obligations – more work required to prevent fall in standards.
10	Some non-compliance with statutory obligations and industry codes of recommended practice. Standards are being maintained or improved.
5	High standard of compliance with statutory obligations, industry codes of recommended practice, and minor contraventions of food hygiene regulations.
0	High standard of compliance with statutory obligations and industry codes of recommended practice; conforms to accepted good practices in the trade.

Score - hygiene:	

Score – structural:	

Part 3: Confidence in management/control procedures

The Confidence in Management score should assess whether a business' food safety management/control procedures are appropriate, with the identification of the correct hazards and controls, whilst the assessment of the level of current compliance achieved as a result of practices being carried out should be considered as part of the compliance with food hygiene and safety procedures element in Part 2.

Where management has an effective food safety management system in place which is well understood by the workforce, they should achieve a good standard in Part 2, and consequently a low score for that risk factor.

Confidence in management is not meant to reconsider this aspect. It is to elicit a judgement on the likelihood of satisfactory compliance being maintained in the future.

Assessment of "Management" may include two elements; corporate management (any company-wide systems and processes for food controls) and local management (implementation by local management of corporate systems and separate branch or "in store" systems and processes).

Where the establishment has a Primary Authority, the Primary Authority may assess and indicate an indicative score for Confidence in Management based on corporate management systems being properly implemented. Officers should not attempt to reassess the corporate management element but should consider the score based upon the degree of local implementation by local management.

The confidence in management / control procedures score is not solely about documented procedures and their implementation. Factors that will influence the officer's judgement include:

- the "track record" of the company, its willingness to act on previous advice and enforcement, and the complaint history;
- the attitude of the present management towards hygiene and food safety; and
- hygiene and food safety knowledge, including hazard analysis/HACCP and the control of critical points;
- satisfactory food safety management based procedures;
- Participation in relevant assurance schemes which address applicable legislation

In determining 'satisfactory' in respect of HACCP based procedures, officers should consider, based on the principle of proportionality, the need for a permanent procedure or procedures based on HACCP principles, i.e. commensurate with the nature and size of the food business. In some food businesses there are not critical control points and in some cases good hygiene practices can replace the monitoring of critical control points. The requirement for businesses to retain records also needs to be flexible in order to avoid undue burdens for very small businesses.

Score	Guidance on the scoring system
30	Poor track record of compliance. Little or no technical knowledge. Little or no appreciation of hazards, risk or quality control. No food safety management procedures. Manager does not recognise or accept the need for food safety and hygiene controls.
20	Significantly varying record of compliance. Poor appreciation of hazards and control measures. No food safety management procedures. Some reluctance in recognising or accepting the need for food safety and hygiene control procedures.
10	Satisfactory record of compliance. Access to relevant technical advice source and/or guides to good practice or assurance scheme. Understanding of significant hazards and control measures in place. Making satisfactory progress towards documented food safety management procedures commensurate with type of business. Note: “Making progress” can only be considered appropriate once. If at the next intervention the food safety management procedures are not satisfactory the score of 10 is not appropriate.
5	Good record of compliance. Technical advice available in-house or access to, and use of, technical advice from a Primary Authority, trade associations and/or from Guides to Good Practice or assurance scheme. Effective management control of Hazards. Having effective self-checks with satisfactory documented food safety management procedures commensurate with type of business. Audit by Food Authority confirms general compliance with procedures.
0	Excellent record of compliance. Access to technical advice, or manager knowledgeable and competent. Proactive and ability of self-regulation. Has satisfactory documented food safety management procedures commensurate with type of business, which may be subject to external audit process. Audit by Food Authority confirms compliance with documented procedures with few/minor non-conformities not identified as critical control points.

Score:	

PLUS

An **additional** score of 20 (in addition to the score above) should be included where there is a significant risk:

- of food being contaminated with *Clostridium botulinum* and the micro-organism surviving any processing and multiplying; or

- of ready-to-eat food being or becoming contaminated with micro-organisms or their toxins that are pathogenic to humans, e.g. *E. coli* O157 *or* other VTEC, *Salmonella* sp.; *Bacillus cereus*.

In this context, significant risk means the probability that an incident is likely to occur. The following matters should be considered when assessing this factor:

- the potential for contamination or cross-contamination by the specified micro-organisms;
- the likelihood of survival and growth of the specified micro-organisms;
- the existence of procedures based on HACCP principles and confidence in their implementation, including documentation and records of monitoring of controls;
- the extent and relevance of training undertaken by managers, supervisors and food handlers; and
- whether intervention by the Food Authority is necessary to reduce the probability of an incident occurring.

The additional score must only be applied on a case-by-case basis, must not be applied generically to whole categories of food business establishments, and must be removed at the next inspection if the significant risk no longer exists.

The additional score must also be consistent with the baseline assessment of Confidence in Management/Control Systems. If confidence in management is assessed as 0 or 5, and there is also assessed to be a significant risk of contamination of food with one of the specified micro-organisms, then one of the assessments cannot be correct, and each should be reviewed. Establishments should not pose a significant risk if there is high or moderate Confidence in Management/Control Systems.

Score	Guidance on the scoring system
20	Significant risk of food being contaminated with *Cl. botulinum*, and the organism surviving any processing and multiplying; or Significant risk of ready-to-eat food being contaminated with micro-organisms or their toxins that are pathogenic to humans.
0	Any other case not included above.

Score:	

Inspection Rating:									Total:	

A5.4 Food hygiene minimum intervention frequencies

Category	Score	Minimum intervention frequency
A	92 or higher	At least every six months
B	72 to 91	At least every 12 months
C	52 to 71	At least every 18 months
D	31 to 51	at least every 24 months
E	0 to 30	A programme of alternative enforcement strategies or interventions every three years

Establishments rated as low-risk (30 or less) need not be included in the planned inspection programme; if not included they must be subject to an alternative enforcement strategy at least once in every 3 years.

A5.5 Food standards intervention rating scheme

Basic principles

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

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

The scheme incorporates an option for alternative enforcement strategies other than inspections for “low-risk” businesses in which the inherent hazards are not significant by virtue of their trading activities or the number of consumers they supply (see below).

Alternatively, where the food authority is responsible only for food standards enforcement, or where food hygiene and food standards enforcement is carried out by separate departments within the same food authority, e.g. Environmental Health and Trading Standards, the food standards risk assessment may be based on the National Trading Standards Board (NTSB) guidance on risk assessment for trading standards. Where assessments are based on the NTSB scheme, the intervention frequency for food standards purposes should not be less than would have been the case under this scheme.

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

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

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

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

Food authorities must ensure that interventions for higher risk businesses or those that are likely to be high risk always take priority over interventions for low risk businesses. Food authorities should ensure that enforcement action and re-visits are undertaken in accordance with 4.2.5 of the Code of Practice.

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

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

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

Low-risk activities (category C establishments)

"Low-risk" establishments should be subject to an alternative enforcement strategy or intervention, at least once during any five year period.

Food authorities that decide to subject "low-risk" establishments to alternative enforcement strategies must set out their strategies for maintaining surveillance of such establishments in their Food Service Plan and/or Enforcement Policy.

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

A5.6 Food standards scoring system

Part 1: The potential hazard

A. Risk to consumers and/or other businesses

This factor considers the potential adverse effect on consumers, and the consequences for other businesses, should the business not comply with food standards legislation. Adverse effects on consumers include safety and economic prejudice. Consequences for other businesses include the economic effects of unfair trading.

Score	Guidance on the scoring system
30	Manufacturers of PARNUTS[1] foods; Manufacturers or packers of high value foods, or high volume foods where there is an incentive for fraudulent adulteration; Manufacturers of foods that contain a wide range of additives; Businesses that make nutrition, nutrient content, or health claims on pre-packed food labels or in advertising. Food businesses including manufacturers and importers which handle imported foods or food ingredients which may be subject to increased risk of chemical contamination
20	Manufacturers or packers of foods that are subject to statutory compositional standards.
10	Local businesses that use in-store produced labels, window displays, chalk boards, menus etc, e.g. butchers, bakers, health food shops, restaurants, takeaways, caterers supplying more than 10 meals per day, and businesses using claims for marketing advantage.
0	Caterers supplying not more than 10 meals per day, e.g. bed and breakfast; Any business not included in the categories above.

Score:	

B. Extent to which the activities of the business affect any hazard

This factor considers the type of activities that the food business undertakes, the need for those activities to be closely monitored and controlled, and their potential effectiveness in maintaining compliance with food standards legislation. Consider whether the business produces, labels, or advertises products to which food standards law applies. If the business produces its own products, consider the monitoring and control of recipes and ingredients.

The scores below provide examples of food businesses to which a particular score could apply.

Score	Guidance on the scoring system
30	Food manufacturers, processors, importers handling a wide range of goods.
20	Local businesses that label loose goods on display, and/or undertake pre-packing for direct sale.
10	Non-manufacturing retail/catering selling only from their own establishment.
0	Any business not included in the categories above.

Score:	

[1] Directive 2009/39/EC

C. Ease of compliance

This factor considers the volume and complexity of food standards law that applies to the business, and with which it has a responsibility to ensure compliance. Consider the range and complexity of products, processes and services including the consistency of raw materials. Consider the difficulty of the task for the food business operator including how easy it is to recognise a hazard.

Score	Guidance on the scoring system
30	Manufacturer, packer or importer of a wide range of products.
20	Manufacturer, packer or importer of a limited range of products.
10	Retailers who apply descriptions to food such as butchers, bakers and delicatessens; Caterers with complex menus.
0	Any business not included in the categories above.

Score:	

D. Consumers at Risk

This factor considers the number of consumers likely to be at risk if the business fails to comply with food standards legislation.

Score	Guidance on the scoring system
20	Manufacturers, producers and packers of food that is distributed nationally or internationally.
10	Businesses whose trade extends beyond the local area, e.g. regional supermarket/hypermarket; small-scale local manufacturer.
5	Businesses supplying the local area, e.g. high street or corner shop; local supermarket, local restaurant.
0	Businesses supplying less than 30 consumers each day. Any other business not included in the categories above.

Score:	

Part 2: Level of (current) compliance

This factor considers the level of compliance observed during the inspection. Adherence to relevant UK or EU Industry Guides to Good Practice and other similar guidance e.g. FSA, Food Advisory Committee and LGA should be considered.

Score	Guidance on the scoring system
40	General failure to satisfy statutory obligations. Standards generally low.
10	A typical business with some minor non-compliance with statutory obligations.
0	High standard of compliance with statutory obligations and industry codes of recommended practice, conforms to relevant trade good practice.

Score:	

Part 3: Confidence in management/control systems

The actual performance of management is scored in Part 2 on the basis of the results achieved and observed. A management that achieves good food standards performance, well understood by the workforce, should achieve a good standard in Part 2, and consequently a low score for that factor.

Confidence in Management is not meant to reconsider this aspect. It is to elicit a judgement on the likelihood of satisfactory compliance being maintained in the future.

Factors that will influence the inspector's judgement include:

- The "track record" of the company, its willingness to act on previous advice and enforcement, and the complaint history;
- The attitude of the present management towards food standards legislation, and the existence or otherwise of relevant home or originating authority arrangements; internal or external technical knowledge on food standards matters available to the company;
- The presence of quality systems, including supplier assessments and performance monitoring, appropriate to the size of the business and the risks involved, with clearly defined responsibilities for managing risk; and for small businesses, consider the checks appropriate to that business.

Score	Guidance on the scoring system
30	Little or no technical knowledge. Little or no appreciation of hazards or quality control. No food standards management system. Disproportionate number of justifiable complaints since the last inspection.
20	Staff have a basic understanding of relevant food law. May not have a food standards management system. At least one justifiable complaint since the last inspection.
10	Score of 10 or better in Part 2. Staff demonstrate awareness of relevant food law and necessary controls. Appropriate food standards

	management system. Smaller businesses may have minimal documented system. At least one justifiable complaint since the last inspection.
0	Technical advice available. Subject to internal audit/checks. Good food standards management system, documented records of critical checks and supplier checks, which may be subject to third party audit. Evidence of compliance with documented management system with few/minor non-conformities. No justifiable complaints since the last inspection.

Score:	

A5.7 Food standards inspection frequencies

Category	Score	Minimum intervention frequency
A	101 to 180	At least every 12 months
B	46 to 100	At least every 24 months
C	0 to 45	Alternative enforcement strategy or intervention every five years

Establishments rated as low-risk (45 or less) need not be included in the planned inspection programme but must be subject to an alternative enforcement strategy at least once in every 5 years.

Annex 6 - Food business establishment/food premises intervention report

A report containing the following information must be provided to the food business operator/food business proprietor following each intervention. The information may be provided as a separate report or may be included as part of a letter from the Food Authority.

Trading name and address of the business, and registered address if different:

Name of the food business operator/food business proprietor:

Type of business:

Name(s) of person(s) seen and/or interviewed:

Date and time of inspection:

Specific food law under which intervention conducted:

Areas inspected/audited (to be specified):

Documents and/or other records examined (to be specified):

Samples taken (to be specified):

Key points discussed during the visit (to be specified):

Action to be taken by the Food Authority (to be specified):

Signed by:

Name in capitals:

Designation of inspecting officer:

Contact details of inspecting officer:

Contact details of senior officer in case of dispute:

Date:

Food Authority name and address:

Annex 7 - Model forms for use in connection with the Food Safety and Hygiene (England) Regulations 2013

Model forms which may be used by authorised officers in connection with the Food Safety and Hygiene (England) Regulations 2013 are provided from A7.1 to A7.18, as summarised in the following table.

Location	Model form	For use In connection with:
A7.1/A7.2	Hygiene Improvement Notice	regulation 6
A7.3/A7.4	Hygiene Emergency Prohibition Notice	regulation 8
A7.5/A7.6	Notice of Intention to apply for a Hygiene Emergency Prohibition Order	regulation 8
A7.7/A7.8	Remedial Action Notice	regulation 9
A7.9/A7.10	Detention Notice	regulation 10
A7.11/A7.12	Notice of withdrawal of Remedial Action Notice/Detention Notice	regulation 9 or 10
A7.13/A7.14	Certificate that health risk condition no longer exists	regulation 7 and regulation 8
A7.15/A7.16	Notice of determination that health risk condition remains in existence	regulation 7 and regulation 8
A7.17/A7.18	Certificate that food has not been produced, processed or distributed in compliance with the Hygiene Regulations	regulation 29

A7.1 Model form 1 - Hygiene Improvement Notice

Authority: _____

The Food Safety and Hygiene (England) Regulations 2013 – Regulation 6

HYGIENE IMPROVEMENT NOTICE

Reference Number: _____

1. To: _____ (Food Business Operator)

   At: _____

   _____ (Address of Food Business Operator)

2. I have reasonable grounds for believing that you are failing to comply with the Hygiene Regulations because:

   _____

   _____

   [Officer to insert grounds for believing that the Hygiene Regulations are being breached]

   in connection with your food business _____

   _____ (Name of Food Business)

   at: _____

   _____ (Address of Food Business)

   The matters which constitute your failure to comply are:

   _____

   _____

   _____

   [Officer to insert provision(s) of the Hygiene Regulations which is/are being breached and why]

3. In my opinion, the following measure(s) are needed for you to comply with the Hygiene Regulations:

   _____

   _____

4. The measure or measures that will achieve the same effect must be taken by:

   _____ (date)

5. It is an offence not to comply with this hygiene improvement notice by the date stated.

Signed: _____ (Authorised Officer)

Name in capitals: _____

Date: _____

Address: _____

_____

Tel: _____ Fax: _____

E-mail: _____

Please read the notes overleaf carefully. If you are not sure of your rights or the implications of this notice, you may want to seek legal advice.

A7.2 Model form 1 - Hygiene Improvement Notice (reverse)

NOTES

In the opinion of the authorised officer you are not complying with the Hygiene Regulations as described in paragraph 2 of the notice. The work needed in the officer's opinion to put matters right is described and it must be finished by the date set.

You are responsible for ensuring that the work is carried out within the period specified, which must be at least 14 days from the date of the notice.

You have a right to carry out work that will achieve the same effect as that described in the notice. If you think that there is another equally effective way of complying with the law, you should first discuss it with the officer.

YOUR RIGHT OF APPEAL

In accordance with Regulation 22 of the Food Safety and Hygiene (England) Regulations 2013, if you disagree with all or part of this notice, you can appeal to the Magistrates' Court. You must appeal within one calendar month of the date of the notice or the period ending with the date stated in paragraph 4 of the notice, whichever ends earlier.

If you decide to appeal, the time set out in the notice is suspended and you do not have to carry out the work described until the appeal is heard. However, if you are not complying with the Regulations mentioned in the notice, you may still be prosecuted for failure to comply with those Regulations.

When the appeal is heard, the Magistrates' Court may confirm, cancel or vary the notice.

WARNING

FAILURE TO COMPLY WITH THIS NOTICE IS AN OFFENCE

Offenders are liable to be fined and/or imprisoned for up to 2 years.

A7.3 Model form 2 - Hygiene Emergency Prohibition Notice

Authority: _____

The Food Safety and Hygiene (England) Regulations 2013 – Regulation 8

HYGIENE EMERGENCY PROHIBITION NOTICE

Reference Number: _____

1. To: ..... (Food Business Operator)

   At: .....

   ..... (Address of Food Business Operator)

2.* I am satisfied that the health risk condition is fulfilled with respect to:

   _____ (Name of Food Business)

   at: .....

   ..... (Address of Food Business)

   Because: _____

   _____

   _____

   (* See Note 1 overleaf)

   YOU MUST NOT USE IT FOR THE PURPOSES OF [THIS] [ANY] [THIS OR ANY SIMILAR]† FOOD BUSINESS.

   [† Officer to delete as appropriate]

Signed: ..... (Authorised Officer)

Name in capitals: .....

Date: .....

Address: .....

.....

Tel: ..... Fax: _____

E-mail: .....

Please read the notes overleaf carefully. If you are not sure of your rights or the implications of this notice, you may want to seek legal advice.

A7.4 Model form 2 - Hygiene Emergency Prohibition Notice (reverse)

NOTES

When you receive this notice you must IMMEDIATELY stop using the premises, process, treatment or equipment described by the officer in paragraph 2 of the notice and located at the address stated.

Within 3 days of service of this notice, the authority must apply to a Magistrates' Court for an order confirming the prohibition. You will be told the date of the hearing which you are entitled to attend and at which you may call witnesses if you wish.

If you believe that you have acted to remove the health risk condition, you may apply in writing to the authority for a certificate of satisfaction which, if granted, would allow you to use the premises, process, treatment or equipment again. You can do this even if the court hearing has not taken place.

You are not allowed to use the premises, process, treatment or equipment for the purpose specified in paragraph 2 of the notice (see Regulation 7(3) of the Food Safety and Hygiene (England) Regulations 2013) as applied by Regulation 8(4)) until
a court decides you may do so; or
the authority issues you with a certificate as in paragraph 3 above; or
3 days have passed since the service of the notice and the authority has not applied to the court as in paragraph 2 above; or
the authority abandons the application.

A copy of this notice must, by law, be fixed on the premises. It is an offence (under Section 1 of the Criminal Damage Act 1971) to deface it.

COMPENSATION: If the authority does not apply to the Magistrates' Court, for an order confirming its action within 3 days of the date of service of this notice, you will be entitled to compensation for any losses you have suffered because you could not use the premises, process, treatment or equipment because you were complying with this notice. You will also be entitled to such compensation if the Magistrates' Court, decide at the hearing that the health risk condition was not fulfilled with respect to the food business at the time when the notice was served.

WARNING

ANYONE WHO CONTRAVENES THIS NOTICE IS GUILTY OF AN OFFENCE

Offenders are liable to be fined and/or imprisoned for up to 2 years.

A7.5 Model form 3 - Notice of intention to apply for a Hygiene Emergency Prohibition Order

Authority: _____

The Food Safety and Hygiene (England) Regulations 2013 – Regulation 8

NOTICE OF INTENTION TO APPLY FOR HYGIENE EMERGENCY PROHIBITION ORDER

Reference Number: _____

1. To: _____ (Food Business Operator)

   At: _____

   _____ (Address of Food Business Operator)

2. You are the food business operator of the food business at:

   _____

   _____

   _____

3. I give notice that I shall be applying to the Magistrates' Court sitting at

   _____

   on: _____ (Date)*

   at: _____ (Time)*

   [*Officer to insert if known]

   for a Hygiene Emergency Prohibition Order because: _____

   _____

   _____

   [Officer to state reason why the order is being sought in respect of the premises, process, treatment or equipment]

4. If an order is made by the court you will not be able to use the [premises] [process] [treatment] [equipment]† described:

   _____

   _____

   _____

   for the purpose of [this] [any] [this or any similar]† food business.

   [† Officer to delete as appropriate]

Signed: _____ (Authorised Officer)

Name in capitals: _____

Date: _____

Address: _____

_____

Tel: _____ Fax: _____

E-mail: _____

Please read the notes overleaf carefully. If you are not sure of your rights or the implications of this notice, you may want to seek legal advice.

A7.6 Model form 3 - Notice of intention to apply for a Hygiene Emergency Prohibition Order (reverse)

NOTES

This notice tells you that the authority intends to apply to the Magistrates' Court for a Hygiene Emergency Prohibition Order which, if granted, would mean that you could not use the premises, process, treatment or equipment described for the purposes specified in paragraph 3 of the notice (see Regulation 7(3) of the Food Safety and Hygiene (England) Regulations 2013 as applied by Regulation 8(4)).

The court will consider the evidence from the authority as to why they believe the health risk condition is fulfilled from the operation of your food business or part of it. You may bring your own evidence and witnesses to put before the court and you may choose to be represented by a lawyer.

If the court is satisfied by the authority's evidence that the health risk condition is fulfilled, then an order will be made stating what you may not do. The order will be served on you by the authority. A copy of it must be fixed by the authority in a conspicuous position on your premises and it is an offence to deface it (section 1 of the Criminal Damage Act 1971).

In accordance with Regulation 23 of the Food Safety and Hygiene (England) Regulations 2013, you have the right to appeal to the Crown Court against the decision of the Magistrates' Court if you think that it is wrong.

The making of an order does not mean you are guilty of an offence but the authority may seek to prosecute you for offences under the Food Safety and Hygiene (England) Regulations 2013 or associated Regulations.

If you have been issued with a Hygiene Emergency Prohibition Notice from the authority, you will know what steps should be taken to remove the health risk condition.

If the court is not satisfied by the authority's evidence and an order is not issued, then you will be entitled to continue your business. If the authority has already issued you with a Hygiene Emergency Prohibition Notice and you have suffered loss because you have complied with it, then you will also be entitled to compensation from the authority.

A7.7 Model form 4 - Remedial Action Notice

Authority: _____

The Food Safety and Hygiene (England) Regulations 2013 –
Regulation 9
REMEDIAL ACTION NOTICE
(Establishments subject to approval under Article 4(2) of Regulation (EC) No. 853/2004)

Reference Number: _____

1. To: _____

   (Food Business Operator or a Duly Authorised Representative)

   At: _____

   _____

   (Address of Food Business Operator or a Duly Authorised Representative)

   Name of food business: .....

   Address of food business: .....

   _____

2. In my opinion:
   The Hygiene Regulations are being breached*
   Inspection under the Hygiene Regulations is being hampered*

   because: _____

   _____

   _____

   [Officer to insert which provision(s) of the Hygiene Regulations is/are being breached and why]
   [* Officer to delete as appropriate]

3. This notice requires you to:
   Cease use of the following rooms/areas/items of equipment*
   Observe the conditions imposed on the following process*
   Cease the following process*
   Reduce the rate of operation to the rate stated*
   Stop the following operation(s) completely*
   [* Officer to delete as appropriate]

   _____

   _____

   _____

   _____

4. The action required to remedy the situation is as follows:

   _____

   _____

   .....

Signed: ..... (Authorised Officer)

Name in capitals: .....

Date: .....

Address: .....

.....

Tel: ..... Fax: .....

E-mail: .....

It is an offence under Regulation 9(5) not to comply with this notice.

Please read the notes overleaf carefully. If you are not sure of your rights or the implications of this notice, you may want to seek legal advice.

A7.8 Model form 4 - Remedial Action Notice (reverse)

NOTES

The authorised officer is satisfied that the requirements of the Hygiene Regulations are not being met and/or that an inspection under the Hygiene Regulations is being hampered for the reasons given.

When an authorised officer is satisfied that relevant action has been taken or any inspection by an authorised officer will not be hampered this notice will be withdrawn by means of a further notice in writing.

YOUR RIGHT OF APPEAL

In accordance with Regulation 22 of the Food Safety and Hygiene (England) Regulations 2013, you are entitled to appeal against this notice. If you want to do so, you should apply to the Magistrates' Court, within one calendar month of the date on which this notice is served on you.

This notice remains in effect even if you are appealing against the terms of this notice.

WARNING

FAILURE TO COMPLY WITH THIS NOTICE IS AN OFFENCE

Offenders are liable to be fined and/or imprisonment for up to 2 years.

A7.10 Model form 5 - Detention Notice

Authority: .....

The Food Safety and Hygiene (England) Regulations 2013 – Regulation 10

DETENTION NOTICE
(Establishments subject to approval under Article 4(2) of Regulation (EC) No. 853/2004)

1. To: .....
(Food Business Operator or a Duly Authorised Representative)

At: .....

.....
(Address of Food Business Operator or a Duly Authorised Representative)

Name of food business: .....

Address of food business: .....

2. The following food is being detained for the purposes of examination:

Description: .....

Quantity: .....

Identification Marks/Health Marks: .....

3. This food is not to be used.

4. The food is being detained for the purposes of examination.

5. The food must not be removed from: .....

(Name/address of food business where food is to remain)

6. You will be informed in writing as soon as the Authorised Officer is satisfied as to the result of the examination. The notice will then either be withdrawn and the food released, or the food will be seized to be dealt with by a Justice of the Peace, who may condemn the food and order its destruction. You may choose to voluntary surrender the food at any time.

Signed: ..... (Authorised Officer)

Name in capitals: .....

Date: .....

Address: .....

.....

Tel: ..... Fax: .....

E-mail: .....

Please read the notes overleaf carefully. If you are not sure of your rights or the implications of this notice, you may want to seek legal advice.

A7.10 Model form 5 - Detention Notice (Reverse)

NOTES

The authorised officer has, by means of this notice, required the detention of the food specified for the purposes of examination.

The food must remain where it is. If it is moved it may only be moved to the place stated in paragraph 5 of this notice.

If an authorised officer is satisfied that the food need no longer be detained this notice will be withdrawn by means of a further notice in writing.

If, for some reason, you need to move the food after receiving this notice, you should contact the officer at the address given.

WARNING

FAILURE TO COMPLY WITH THIS NOTICE IS AN OFFENCE

Offenders are liable to be fined and/or imprisonment for up to 2 years.

A7.11 Model form 6 – Notice of withdrawal of Remedial Action Notice/Detention Notice

Authority: .....

The Food Safety and Hygiene (England) Regulations 2013 - Regulation 9 or 10

NOTICE OF WITHDRAWAL OF A REMEDIAL ACTION NOTICE/DETENTION NOTICE* (Establishments subject to approval under Article 4(2) of Regulation (EC) No. 853/2004)

1. To: .....

(Food Business Operator or a Duly Authorised Representative)

At: .....

.....

(Address of Food Business Operator or a Duly Authorised Representative)

Name of food business: .....

Address of food business: .....

---

2. The authorised officer is satisfied that the action specified in the Remedial Action Notice reference number …… served on you on ……(date) has been taken. That Remedial Action Notice is hereby withdrawn.*

3. The authorised officer is satisfied that the food specified in the Detention Notice reference number …… served on you on ……(date) need no longer be detained. That Detention Notice is hereby withdrawn.*

[* Officer to delete as appropriate]

Signed: ..... (Authorised Officer)

Name in capitals: .....

Date: .....

Address: .....

.....

Tel: ..... Fax: .....

E-mail: .....

Please read the notes overleaf carefully. If you are not sure of your rights or the implications of this notice, you may want to seek legal advice.

A7.12 Model form 6 - Notice of withdrawal of a Remedial Action Notice/Detention Notice (reverse)

NOTES

The authorised officer is now satisfied that the action specified in the Remedial Action Notice has been taken and/or that the food specified in the Detention Notice need no longer be detained.

The relevant notice/notices is/are now withdrawn.

A7.13 Model form 7 - Certificate that health risk condition no longer exists

Authority: _____

The Food Safety and Hygiene (England) Regulations 2013 – Regulations 7 and 8

CERTIFICATE THAT THE HEALTH RISK CONDITION NO LONGER EXISTS

1. To: ..... (Food Business Operator)

   At: .....

   ..... (Address of Food Business Operator)

   Name of food business: .....

   Address of food business:

2. The enforcement authority certifies that it is satisfied that you have taken sufficient measures to secure that the health risk condition described in the:

   Hygiene Prohibition Order*

   Hygiene Emergency Prohibition Notice*

   Hygiene Emergency Prohibition Order*

   [* Officer to delete as appropriate]

   served on you on …… (date) is no longer fulfilled with respect to the food business.

Signed: ..... (Authorised Officer)

Name in capitals: .....

Date: .....

Address: .....

.....

Tel: ..... Fax: _____

E-mail: .....

THIS CERTIFICATE MEANS THAT YOU MAY NOW USE THE PREMISES, PROCESS, TREATMENT OR EQUIPMENT AGAIN.

Please read the notes overleaf carefully. If you are not sure of your rights or the implications of this certificate, you may want to seek legal advice.

A7.14 Model form 7 - Certificate that health risk condition no longer exists (reverse)

NOTES

The enforcement authority is now satisfied that the health risk condition no longer exists in respect of the circumstances that caused the enforcement authority to issue you with a Hygiene Emergency Prohibition Notice or the court to impose a Hygiene Prohibition Order or Hygiene Emergency Prohibition Order.

The relevant notice or order is now lifted and you may use the premises, process, treatment or equipment again.

A7.15 Model form 8 – Notice of determination that health risk condition remains in existence

Authority: .....

The Food Safety and Hygiene (England) Regulations 2013 – Regulations 7 and 8

NOTICE OF DETERMINATION THAT THE HEALTH RISK CONDITION REMAINS IN EXISTENCE

1. To: _____ (Food Business Operator)

   At: _____

   _____ (Address of Food Business Operator)

   Name of food business: .....

   Address of food business: .....

2. The enforcement authority has determined that it is NOT satisfied that you have taken sufficient measures to remove the health risk condition described in the:

   Hygiene Prohibition Order*

   Hygiene Emergency Prohibition Notice*

   Hygiene Emergency Prohibition Order*

   [* Officer to delete as appropriate]

   served on you on …… (date) and is satisfied that the health risk condition remains fulfilled with respect to the food business.

3. The enforcement authority is not satisfied because

   _____

   _____

   _____

Signed: ..... (Authorised Officer)

Name in capitals: .....

Date: .....

Address: .....

.....

Tel: ..... Fax: .....

E-mail: .....

THIS NOTICE MEANS THAT YOU MAY NOT USE THE PREMISES, PROCESS, TREATMENT OR EQUIPMENT UNTIL THE ENFORCEMENT AUTHORITY NOTIFIES THAT YOU MAY DO SO.

Please read the notes overleaf carefully. If you are not sure of your rights or the implications of this notice, you may want to seek legal advice.

A7.16 Model form 8 - Notice of determination that health risk condition remains in existence (reverse)

NOTES

The enforcement authority is not satisfied that the health risk condition no longer exists in respect of the circumstances that caused the enforcement authority to issue you with a Hygiene Emergency Prohibition Notice or the court to impose a Hygiene Prohibition Order or Hygiene Emergency Prohibition Order.

You still cannot use the premises, process, treatment or equipment in question for the purposes described in the Hygiene Emergency Prohibition Notice, Hygiene Prohibition Order or Hygiene Emergency Prohibition Order even if you are appealing against the terms of this notice.

In accordance with Regulation 22 of the Food Safety and Hygiene (England) Regulations 2013, you are entitled to appeal against the decision of the authority to refuse to issue a certificate of satisfaction under Regulation 7(6) or Regulation 8(8). If you want to do so, you should apply to the Magistrates' Court, within one calendar month of the date on which this notice is served on you.

As soon as you think that the health risk condition has been removed because of actions you have taken, you may apply in writing to the authority for a certificate of satisfaction which, if granted, would allow you to use the premises, process, treatment or equipment again. If a Hygiene Emergency Prohibition Notice has been issued, you can do this even if the court hearing has not taken place.

WARNING

FAILURE TO COMPLY WITH THE ORIGINAL NOTICE OR ORDER IS AN OFFENCE

Offenders are liable to be fined and/or imprisonment for up to 2 years.

A7.17 Model form 9 - Certificate that food has not been produced, processed or distributed in compliance with the Hygiene Regulations

Authority: _____

The Food Safety and Hygiene (England) Regulations 2013 – Regulation 29

CERTIFICATE THAT FOOD HAS NOT BEEN PRODUCED, PROCESSED OR DISTRIBUTED IN COMPLIANCE WITH THE HYGIENE REGULATIONS

1. To: _____ (Food Business Operator)

   At: _____

   _____ (Address of Food Business Operator)

   Name of food business: _____

   Address of food business: _____

2. Following an inspection, authorised officer certifies that the following food:

   _____

   _____

   _____

   has not been produced, processed or distributed in compliance with the Hygiene Regulations, as outlined below:

   _____

   _____

   _____

   The above food shall therefore be treated for the purposes of section 9 of the Food Safety Act 1990 as failing to comply with food safety requirements.

Signed: _____ (Authorised Officer)

Name in capitals: _____

Date: _____

Address: _____

_____

Tel: _____ Fax: _____

E-mail: _____

Please read the notes overleaf carefully. If you are not sure of your rights or the implications of this certificate, you may want to seek legal advice.

A7.18 Model form 9 – Certificate that food has not been produced, processed or distributed in compliance with the Hygiene Regulations (reverse)

NOTES

The authorised officer has certified that the food detailed has not been produced, processed, or distributed in compliance with the Hygiene Regulations for the reasons given.

The food shall therefore be treated for the purposes of section 9 of the Food Safety Act 1990 as failing to comply with food safety requirements.

Annex 8 - Model application form for the registration of a food business establishment

APPLICATION FOR THE REGISTRATION OF A FOOD BUSINESS ESTABLISHMENT

(Regulation (EC) No. 852/2004 on the hygiene of foodstuffs, Article 6(2))

This form should be completed by food business operators in respect of new food business establishments and received by the relevant Food Authority 28 days before commencing food operations. On the basis of the activities carried out, certain food business establishments are required to be **approved** rather than **registered**. If you are unsure whether any aspect of your food operations would require your establishment to be approved, please contact [insert name of Food Authority] for guidance.

1. **Address of establishment** _____
(or address at which moveable establishment is kept)
_____ **Post code** _____

2. **Trading name of food busineness** _____**Telephone no.** _____

3. **Full Name of food business operator(s)** _____
(or Limited company where relevant)

4. **Head Office address of food business operator** _____
(where different from address of establishment)
_____**Post code** _____

Telephone no. _____ **E-mail** _____

5. **Type of food activity** (Please tick ALL the boxes that apply):

Staff restaurant/canteen/kitchen	□	Hospital/residential home/school	□
Retailer (including farm shop)	□	Distribution/warehousing	□
Restaurant/café/snack bar	□	Food manufacturing/processing	□
Market/ Market stall	□	Importer	□
Takeaway	□	Catering	□
Hotel/pub/guest house	□	Packer	□
Private house used for a food business	□	Moveable establishment e.g. ice cream van	□
Wholesale/cash and carry	□	Primary producer - livestock	□
Food Broker	□	Primary producer - arable	□

Other (please give details):

_____

6. **If this is a new business, the date you intend to open** _____

Signature of food business operator _____

Date: _____

Name: _____
(BLOCK CAPITALS)

AFTER THIS FORM HAS BEEN SUBMITTED, FOOD BUSINESS OPERATORS MUST NOTIFY ANY SIGNIFICANT CHANGE IN ACTIVITIES TO THE ACTIVITIES STATED ABOVE (INCLUDING CLOSURE) TO THE FOOD AUTHORITY AND SHOULD DO SO WITHIN 28 DAYS OF THE CHANGE(S) HAPPENING.

Annex 9 - Model notice of temporary closure of production area(s) (live bivalve molluscs/shellfish)

NOTICE OF TEMPORARY CLOSURE OF PRODUCTION AREA(S)

Regulation (EC) No. 854/2004 of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption

Food Safety and Hygiene (England) Regulations 2013 S.I. 20013/2996

Pursuant to the power conferred on it by Article 6 of, and paragraph C of Chapter II of Annex II to the above EC Regulation, being satisfied that [the results of sampling show that the health standards for molluscs are exceeded] [there may be a risk to human health][2] –

As Competent Authority for the purposes of the above EC provision by virtue of regulation 4 of the Food Safety and Hygiene (England) Regulations 2013 S.I. 2013/2996 –

[Insert authority] has temporarily closed the production area identified in the Schedule to this notice for the production of [insert list of all affected species] by food business operators until further notice.[3]

Signed: Dated this [ ] day of [ ] 201[ ]

_____

[Insert official position of signatory]
On behalf of the [insert authority]

SCHEDULE

Area[s] in which the production of [insert list of all species affected] by food business operators is prohibited by reason of this order:-

(a) [Insert area]
(b) [Insert area]

Food business operators must not collect the affected animals from this area by any method, it is unsuitable for their production for health reasons and has been temporarily closed. For a food business operator to collect affected animals from the area that is temporarily closed amounts to the commission of a criminal offence under regulation 19 of the Food Safety and Hygiene (England) Regulations 2013 S.I. 2013/2996. On conviction a fine or imprisonment for a term of up to two years or both may be imposed.

---

[2] Recent analysis of samples taken by [insert authority] from the affected area has shown that [insert animals] are affected by [insert problem].

[3] [insert authority] will continue to take samples for analysis and keep its decision to close the area under review. To check the current status of the area you may contact [insert authority] by [insert preferred method of contact, e.g. telephone no.]

[PRIVATE INDIVIDUALS ARE STRONGLY ADVISED NOT TO GATHER [insert description of affected animals] FOR THEIR OWN CONSUMPTION FROM THE AFFECTED PRODUCTION AREA. THERE MAY BE A RISK TO HUMAN HEALTH IN DOING SO.]

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