

# **Food Law**

## **Code of Practice (England)**

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## **TABLE OF AMENDMENTS ISSUED**

Amendment Number	Signed	Date
Amendment No. 1	_____	_____
Amendment No. 2	_____	_____
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Amendment No. 5	_____	_____
Amendment No. 6	_____	_____
Amendment No. 7	_____	_____
Amendment No. 8	_____	_____
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Amendment No. 17	_____	_____
Amendment No. 18	_____	_____
Amendment No. 19	_____	_____
Amendment No. 20	_____	_____

Please sign and date to confirm replacement of relevant pages with amendments issued by the Agency.

## **PREFACE**

This Code of Practice is issued under Section 40 of the Food Safety Act 1990 (the Act), Regulation 24 of the Food Hygiene (England) Regulations 2006<sup>1</sup>, and Regulation 6 of the Official Feed and Food Controls (England) Regulations 2006<sup>2</sup> 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 that legislation to have regard to this Code when discharging their duties. This means, in effect, that Food Authorities must follow and implement the provisions of this Code that apply to them.

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. Regulation 5 of the Food Hygiene (England) Regulations 2006 set out the division of enforcement responsibilities between Food Authorities and the Agency.

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

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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<sup>1</sup> SI 2006 No. 14

<sup>2</sup> SI 2006 No. 15

Food Authorities must also have regard to the Framework Agreement on Local Authority Food Law Enforcement<sup>3</sup>, which reflects the requirements of this Code. The Framework Agreement is also consistent with the principles of the Enforcement Concordat<sup>4</sup>.

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 be aware that Article 8(5) of Regulation 852/2004<sup>5</sup> stipulates that guides to good practice drawn up pursuant to Directive 93/43/EEC (known in the UK as “Industry Guides to Good Hygiene Practice”) shall continue to apply after the entry into force of that Regulation, provided that they are compatible with its objectives.

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 853/2004<sup>6</sup>, with the exception of the parts of this Code which deal with purification of live bivalve molluscs.

References to chapters, paragraphs and annexes are to the relevant parts of this Code unless stated otherwise.

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

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<sup>3</sup> “The Framework Agreement on Local Authority Food Law Enforcement”, published and updated by The Agency, Aviation House, 125 Kingsway, London, WC2B 6NH, [www.food.gov.uk](http://www.food.gov.uk)

<sup>4</sup> “The Enforcement Concordat”, published by The Cabinet Office, Better Regulation Unit, 22 Whitehall, London, SW1A 2WH, [www.cabinetoffice.gov.uk](http://www.cabinetoffice.gov.uk)

<sup>5</sup> Regulation (EC) No. 852/2004 on the hygiene of foodstuffs

<sup>6</sup> Regulation (EC) No. 853/2004 laying down specific hygiene rules for food of animal origin

# **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 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.

### **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.

### **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.

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.

- In England, medical advice is available from the Area or Regional Director of Public 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 of the EU food hygiene regulations which are enforced by District Council Food Authorities;
- The provisions of the Food Labelling Regulations<sup>7</sup> 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: Registration / Approval Information**

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.

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.

### **1.1.6: Quick-Frozen Foodstuffs Regulations 1990<sup>8</sup>**

The purpose of these Regulations is to ensure the quality, rather than safety, of quick-frozen food and the primary responsibility for enforcement in two tier Food Authority areas therefore lies with County Council Food Authorities.

However, as District Council Food Authorities enforce other temperature control requirements, they should also enforce relevant parts of the Regulations including the verification of temperatures in stores, vehicles and at the point of sale (see Chapter 3.6).

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<sup>7</sup> SI 1996 No. 1499, as amended

<sup>8</sup> SI 1990 No. 2615, as amended



### **1.1.7: Co-ordination of Advice, Enforcement and the Home Authority Principle**

The Agency endorses the Local Authorities Co-ordinators of Regulatory Services (LACORS) Home Authority Principle and Food Authorities should where possible adopt and implement its provisions<sup>9</sup>.

A Food Authority that is unable to adopt, implement, or adhere to the Home Authority Principle must firstly discuss the matter with LACORS and, if the matter cannot be resolved, with the Agency.

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.

### **1.1.8: Operating in other areas**

A Food Authority should normally deal with matters arising in its area of jurisdiction. However, Regulation 14(1)(b) of the Food Hygiene (England) Regulations 2006 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 law breaking within their own Food Authority's area.

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

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<sup>9</sup> "The Home Authority Principle - Guidelines for Home Authorities", and LACORS Home Authority Principle Standards' Document are both available from LACORS: [www.lacors.gov.uk](http://www.lacors.gov.uk)

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<sup>10</sup>.

### **1.1.9: Regional and Local Liaison**

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 Meat Hygiene Service, the Dairy Hygiene Inspectorate, the CCDC<sup>11</sup>/CPHM (CD/EH)<sup>12</sup> 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 LACORS.

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. LACORS is able to facilitate the development of these liaison arrangements.

Food Authorities where there are commercial shellfish harvesting activities should refer to Paragraph 5.3.2 for liaison arrangements (see also Paragraph A.6.6 of the Practice Guidance).

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<sup>10</sup> *Walkers Snack Foods Ltd v Coventry City Council* (1998) 3 A11 ER 163 refers

<sup>11</sup> Consultant in Communicable Disease Control

<sup>12</sup> Consultant in Public Health Medicine (Communicable Disease/Environmental Health)

## **CHAPTER 1.2: QUALIFICATIONS AND EXPERIENCE**

### **1.2.1: Introduction**

This Chapter concerns the qualifications of authorised officers of Food Authorities who carry out inspections or other enforcement duties under food law.

It implements the qualification and training provisions of Regulation 882/2004<sup>13</sup>.

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<sup>14</sup> for the authorisation of officers. 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 Hygiene (England) Regulations 2006 and the Official Feed and Food Controls (England) Regulations 2006, need to be separately authorised in writing to deal with matters arising under these implementing Regulations, e.g. issues under the "specified community provisions". With regard to other specific food Regulations made under the European Communities Act 1972, where appropriate, relevant officers should be specially authorised for each of those Regulations.

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

- Suitably qualified;
- Experienced, and;
- 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.

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<sup>13</sup> 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

<sup>14</sup> See Chapter 2, Paragraph 5.1 of the Framework Agreement

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 Community 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 Community rights. The equivalence of non-UK qualifications will be determined by organisations recognised by the Department of Trade and Industry for the purposes of Directive 89/48/EEC<sup>15</sup> (The Mutual Recognition of Professional Qualifications). 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 inspection. The minimum ongoing training should be 10 hours per year based on the principles of continuing professional development.

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

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<sup>15</sup> 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 3 Years' Duration (The Mutual Recognition of Professional Qualifications)

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 3 years should be monitored for at least three months or for the duration of their revision training period, whichever is longer.

### **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 Paragraph 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 Hygiene (England) Regulations 2006 or the Food Safety (Sampling and Qualifications) Regulations 1990<sup>16</sup> and this Code of Practice should only be undertaken by officers meeting the relevant requirements described in Paragraph 1.2.9 below. These requirements do not apply where an adverse report following analysis/examination would not result in formal action.

### **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.

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<sup>16</sup> SI 1990 No. 2463

### **1.2.8.1: Food Hygiene and Safety**

Food Authorities with responsibility for food hygiene and safety 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 Paragraph 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.

### **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 Paragraph 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.

## **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 Inspections**

Officers authorised to undertake food hygiene and safety inspections should hold one of the qualifications, or equivalent qualifications (see Paragraph 1.2.2) as set out in Paragraph 1.2.9.1.4 and be competent to carry out the inspections.

Officers who are inspecting food business operators' procedures based upon HACCP principles should also possess the competencies set out in Annex 2.

Officers authorised to undertake food hygiene and safety inspections 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 the officer is required to inspect;
- 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<sup>17</sup>;
- Relevant guidance issued by the Agency and by LACORS;
- Relevant industry codes of practice<sup>18</sup>.

The following establishments should be inspected only by environmental health officers or officers holding the Higher Certificate in Food Premises Inspection:

- All establishments which attract a minimum primary inspection frequency of 12 months or less either (a) by virtue of being an establishment subject to approval under Regulation 853/2004 (see Paragraph 4.3.4) or (b) under the inspection rating scheme at Annex 5.
- All establishments that, under the inspection rating scheme at Annex 5, are in the “substantial” category of the Consumers at Risk section (A5.3.1.3).

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:

- 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;
- 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 subject to approval under Regulation 853/2004 may only be undertaken by authorised officers of the Food Authority who have a detailed knowledge of enforcement in approved establishments.

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<sup>17</sup> References to “Guides to Good Practice” in this Code mean Guides developed in accordance with Article 8 of Regulation 852/2004 and recognised by UK Government as such

<sup>18</sup> The Institute of Food Science and Technology (IFST) publishes a comprehensive list of Guides and industry codes of practice issued by a variety of bodies – “Listing of Codes of Practice Applicable to Foods”. Details of additional Guides and industry codes can be found in the IFST publication “Good Manufacturing Practice”

An authorised officer who has no previous experience of a particular process that is the subject of an approval application must be accompanied, during the inspection of that process, by an appropriately 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 the 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);
- 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.

#### **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 Hygiene (England) Regulations 2006 may only be signed by officers who have been authorised to do so by the Food Authority. To maintain a consistent approach, Food Authorities should arrange that these notices are signed only by qualified 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 Paragraph 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 Food Hygiene (England) Regulations 2006.

#### **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;
- Holders of the Ordinary Certificate in Food Premises Inspection in relation to the premises they are authorised to inspect (see Paragraph 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 under Regulation 8 of the Food Hygiene (England) Regulations 2006 or Emergency Prohibition Notices under Section 12 of the Food Safety Act 1990 should be signed only by environmental health officers (see Paragraph 1.2.9.1.4) who have two years' post qualification experience in food safety matters, are currently involved in food law enforcement and who 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 under Regulation 9 of the Food Hygiene (England) Regulations 2006 should be signed only by environmental health officers (see Paragraph 1.2.9.1.4) who have two years' post qualification experience in food safety matters, are currently involved in food law enforcement and 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 Inspections**

Officers authorised to undertake food standards inspections should hold one of the qualifications, or equivalent qualifications (see Paragraph 1.2.2) as set out in Paragraph 1.2.9.2.2, and be competent to carry out the duties.

Officers authorised to undertake such inspections 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 LACORS;
- Relevant industry codes of practice.

#### **1.2.9.2.2: Qualifications and Awarding Bodies – Food Standards**

- Diploma in Trading Standards (DTS) or its antecedents;
- Certificate of Registration of EHRB, the EHRB or REHIS Diploma in Environmental Health (or its antecedents);
- Diploma in Consumer Affairs (DCA) provided it includes the Food and Agriculture Paper of Part II, or its antecedents;
- A DCA Certificate of Competence in relation to Food and Agriculture issued by the TSI (or its antecedents);
- Food Certificate in Consumer Affairs and Trading Standards;
- Certificate of Competence in Food Standards;
- 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.

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 27 of the Food Hygiene (England) Regulations 2006) should only be taken by appropriately authorised officers. Such officers will be authorised environmental health officers and, where relevant, Official Veterinarians, appropriately authorised trading standards officers (see Paragraph 3.4.3) and, in respect of fresh meat only, officers qualified in accordance with the Authorised Officers (Meat Inspection) Regulations 1987<sup>19</sup>.

As regards official controls in relation to the import of food from third countries, Regulation 29 of the Official Feed and Food Controls (England) Regulations 2006 stipulates that, as well as the competent authority, relevant Food Authorities also have the power to take action under Articles 18 to 21 and 24(3) of Regulation 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 Paragraph 4.1.11 and Annex 5, Paragraphs A5.2.3 (food hygiene) and A5.4.4 (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.

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<sup>19</sup> SI 1987 No. 133

## **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.

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<sup>20</sup>) 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 Paragraph 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.

Contract caterers that operate within local authority establishments should be assessed in accordance with Annex 5 and be inspected accordingly.

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<sup>20</sup> See Article 2(5) of Regulation 882/2004

## **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 an up-to-date database of registered and approved food business establishments in their area, and confirm 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 Paragraph 1.1.5 (see also Chapter 4.5). The database should include a comprehensive record of:

- Food business establishments registered with the authority;
- Establishments that are the decision-making base of businesses for which the Food Authority acts as Home Authority for food matters;
- 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 Paragraph 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 HPA<sup>21</sup>, 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.

Requests for information other than from the above bodies should be handled with due regard to Freedom of Information and Data Protection legislation (see also Paragraph 1.4 of the Practice Guidance) and to Paragraph 1.5.4 in

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<sup>21</sup> Health Protection Agency

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 businesses) with the appropriate competent 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 Paragraph 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). These food business establishments will not include those carrying out only primary production activities (Regulation 5(1)(a) of the Food Hygiene (England) Regulations 2006 refers) with the exception of establishments producing raw milk intended for direct human consumption other than raw cows' milk (Regulation 5(4)(b) of the Food Hygiene (England) Regulations 2006 refers).

### **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 Regulation 178/2002<sup>22</sup>, 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.

### **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.

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<sup>22</sup> 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

### **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.

### **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 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 the use of 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) will satisfy this requirement and may be carried forward. Food business operators will not, therefore, need to re-register food business establishments under their control which have already been registered with a Food Authority. From 1



January 2006, Food Authorities must maintain their lists in accordance with the requirements of 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:

1. Name of the food business
2. Address of the food business establishment
3. 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. However, requests for information on food business establishments which is not included in the list should be handled with due regard to Freedom of Information and Data Protection legislation (see also Chapter 1.4 of the Practice Guidance).

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 Paragraph 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 current 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 Paragraph 4.1.7.

### **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 Paragraph 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 Paragraph 4.1.5 (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.

### **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 inspection of 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 or Operate 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 (Other than Primary Production)**

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.

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;
- 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 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 Paragraph 4.4.4.

### **1.6.2: Powers of Entry (Food Hygiene (England) Regulations 2006)**

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

As there are no specific exemptions for certain members of the Royal Family or certain Royal residences as afforded by the Food Safety Act 1990 (see Paragraph 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 Hygiene (England) Regulations 2006 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 3 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 of Inspections**

Authorised officers should be aware of matters of confidentiality when inspecting 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 inspection is connected with the

investigation of an outbreak of foodborne disease and it is necessary, as part of the investigation, to inspect other areas.

Military activities should not be impeded or interrupted by an inspection.

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 / 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” occurs when a Food Authority or the Agency becomes aware that food or its labelling (e.g. in relation to the presence of undeclared allergens) fails or appears to fail to meet food law requirements. A food incident can be a relatively minor matter or a major food hazard.

#### 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.

#### 1.7.2.3: Documented Procedure

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

### 1.7.3: 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 typhi* or *Salmonella paratyphi* or which the Food Authority considers significant because of, for example, the vulnerability of the population likely to be affected, the numbers involved or any deaths associated with the incident;
- **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.

#### **1.7.4: 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 National Criminal Intelligence Service will be involved in the investigation.

Food Authorities should contact the 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.

#### **1.7.5: Food Hazards Associated With Outbreaks of Foodborne Illness**

If a food hazard has resulted in an outbreak of foodborne 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 HPA CDSC in England, the National Public Health Service in Wales, and the Agency<sup>23</sup>.

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.

#### **1.7.6: 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.

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<sup>23</sup> A list giving contact details is issued as a separate document and is available from the Food Incident Team 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;
- The possibility that the complaint or problem has been caused by a malicious act (see Paragraph 1.7.4).

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 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 Hygiene (England) Regulations 2006 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<sup>24</sup> 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 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: 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.

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<sup>24</sup> A list giving contact details is issued as a separate document and is available from the Food Incident Team 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: General**

(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” 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. A food alert or a food alert update may or may not require the Food Authority to take action and any action/responses required by the Agency will be clearly specified.

The Agency may also issue information to Food Authorities on product recalls or food incidents.

### **2.2.2: Responding to Food Alerts**

Food Authorities should ensure that their documented procedure for dealing with food safety incidents<sup>25</sup> 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;
- 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;

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<sup>25</sup> See Chapter 2, Section 14, of the Framework Agreement.

- Arrangements to provide adequate staff resources to allow effective response to alerts;
- 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 should advise the Agency of emergency telephone numbers on which responsible officers may be contacted outside the Food Authority's normal office hours and 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 Incident Team immediately.

### **2.2.6: Media Relations – Food Alerts**

Food Authorities wishing to enhance local publicity may, where specified 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 any advice issued by LACORS.

## **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 foodborne illness;
- Withdrawal 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 Paragraph 5.1.9);
- Where they have designated a live bivalve mollusc relaying area (see Paragraph 5.1.10). The notification should include the relevant details of the area and any specified operating conditions;
- Where consideration is being given to the issue of a Closure Notice to restrict the harvesting of live bivalve molluscs (see Paragraph 5.3.5).

#### **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 Paragraph 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<sup>26</sup>) 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 Paragraph 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 Paragraph 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 Paragraph 2.2.3).

#### **2.4.9: Emergency Telephone Numbers**

Food Authorities must notify the Agency of emergency telephone numbers for contact outside normal office hours and notify any changes to these details (see Paragraph 2.2.4).

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<sup>26</sup> As defined in Article 2(5) of Regulation 882/2004



## **CHAPTER 2.5: LIAISON WITH OTHER MEMBER STATES**

### **2.5.1: Introduction**

From 1 April 2006, 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 Authorities in different Member States.

Trans-border matters that may have policy implications, matters relating to outbreaks of foodborne disease 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:

- A. Trans-border matters that need to be referred directly to the Agency;
- B. Trans-border matters reported to the Agency after liaison has taken place;
- C. 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 different 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 Paragraph 2.5.2.1 above apply;
- Cases involving enforcement authorities in other EC Member States where there is undue delay, equivocation or a refusal to undertake action which appears to be warranted;
- 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 about relevant case law, regulation, compositional requirements and other food standards applicable in a particular Member State;
- 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;
- Notification of other faults and infringements unlikely to require UK action, but which are for note or action by the authority in another EC Member State.

### **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;
- 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 – 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 of which Food Authorities should take account. It requires each Food Authority to document its food law Enforcement Policy and keep it up-to-date. It 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 LACORS, relevant industry codes of practice, and appropriate technical literature.

#### **3.1.3: Reasonableness, Proportionality and Consistency**

Food Authorities should ensure that enforcement action taken by their authorised officers is reasonable, proportionate 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 starting at the bottom of the pyramid i.e. advice/education and informal action and only move to more formal action where the informal 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;

- Any relevant Codes of Practice issued under the Regulatory Reform Act 2001, and;
- The Food Authority's Enforcement Policy.

#### **3.1.4: Food Law Enforcement Policies**

Each Food Authority should have an up-to-date, documented food law Enforcement Policy<sup>27</sup> which is readily available to food business operators and consumers.

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 LACORS 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. feedingstuffs, 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 Paragraph 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.

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 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

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<sup>27</sup> See Chapter 2, Paragraph 15.1 of the Framework Agreement

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 the Act**

Food Authorities should deal with food hygiene matters under the Food Hygiene (England) Regulations 2006 and food standards matters under the Food Safety Act 1990. However, those who handle food for sale or supply who, 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 the Food Safety Act 1990 and Regulation 178/2002 and appropriately authorised officers may use enforcement powers under the Act and Regulations made under the Act to enforce in respect of such activities. An example would be enforcement action taken under the General Food Regulations 2004<sup>28</sup> (made under the Food Safety Act 1990) 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.

### **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.

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<sup>28</sup> SI 2004 No. 3279

Section 32(4) of Food Safety Act 1990 and Regulation 14(5) of the Food Hygiene (England) Regulations 2006 permit an authorised officer to take with them such other persons as they consider necessary. This would include, for example, any suitably qualified or skilled person or an expert in a particular field whose presence is needed to help accurately identify the material sought or to advise where certain evidence is most likely to be found and how it should be dealt with. It does not give an authorised officer any right to force entry to search or seize property but it does give them 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,
- 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 Hygiene (England) Regulations 2006 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 LACORS 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 Paragraph 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:

- The hierarchy of enforcement structure indicates that a prosecution is appropriate as opposed to use of, say, informal action or use of 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.
- The sufficiency of the 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;
- The likelihood of the suspect being able to establish a defence - in particular a due diligence defence;
- 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.

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);
- The suspect's previous convictions or cautions.

There are various factors against prosecution including:

- The likelihood of a nominal penalty;
- The offence was committed as a result of a genuine mistake or misunderstanding ( this must be balanced against the seriousness of the offence);
- Whether any other action, such as issuing a formal caution in accordance with Home Office Circular 30/1995<sup>29</sup> would be more appropriate.

However, 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

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<sup>29</sup> Home Office Circular 30/2005 on The Cautioning of Offenders



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, where possible, 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 Hygiene (England) Regulations 2006. It then deals with the use of Improvement Notices under Section 10 the Food Safety Act 1990<sup>30</sup>.

A model form for use in connection with Regulation 6 of the Food Hygiene (England) Regulations 2006 can be found at Annex 7. Food Authorities must continue to use the prescribed forms set out in the Food Safety (Improvement and Prohibition - Prescribed Forms) Regulations 1991<sup>31</sup> when using powers under Section 10 of the Food Safety Act 1990.

### **3.2.2: Hygiene Improvement Notices (Food Hygiene (England) Regulations 2006, Regulation 6)**

(See also Paragraph 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:

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

#### **3.2.2.2: When Hygiene Improvement Notices are not Appropriate**

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

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

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<sup>30</sup> Reference should be made to LACORS Guidance on the Use of Improvement Notices

<sup>31</sup> SI 1991 No. 100

- Where there is a breach of good hygiene practice but no failure to comply with an appropriate regulation.

### **3.2.3: Improvement Notices (Food Safety Act 1990, Section 10)**

(See also Paragraph 1.2.9.1.6)

#### **3.2.3.1: When to Use Improvement Notices**

It is unlikely that there will be any circumstances from 1 January 2006 under which it would be appropriate to issue an improvement notice under Section 10 of the Food Safety Act 1990. Food Authorities should deal with hygiene matters using powers under the Food Hygiene (England) Regulations 2006 and, given the restrictions set out in Section 10(3) of the Act, it is highly unlikely any circumstances would exist under which it might be appropriate for an improvement notice to be issued for food standards matters (see also 3.2.3.2 below).

#### **3.2.3.2: When Improvement Notices are not Appropriate**

The improvement notice procedure would not be appropriate where breaches exist in respect of food standards which pose a potential and imminent risk of injury to health and it is considered that swift enforcement action is needed. An Emergency Prohibition Notice would be the only formal remedy which would have immediate effect.

## **CHAPTER 3.3: PROHIBITION PROCEDURES**

(See also Paragraph 1.2.9.1.7)

### **3.3.1: Introduction**

This Chapter deals first with the use of hygiene emergency prohibition procedures under Regulation 8 of the Food Hygiene (England) Regulations 2006 and the associated voluntary closure procedures and then the prohibition of persons under Regulation 7.

It then deals with the use of emergency prohibition procedures under Section 12 of the Food Safety Act 1990 and associated voluntary closure procedures, and then the prohibition of persons under Section 11 of the Act.

Model forms for use in connection with Regulations 7 and 8 of the Food Hygiene (England) Regulations 2006 can be found at Annex 7. Food Authorities must continue to use the prescribed forms set out in the Food Safety (Improvement and Prohibition - Prescribed Forms) Regulations 1991 when using powers under Sections 11 and 12 of the Food Safety Act 1990.

### **3.3.2: The Food Hygiene (England) Regulations 2006 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 as defined by Regulation 7(2) / Regulation 8(4) i.e. there is a risk / imminent risk of injury to health, and those in which 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.

#### **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 Prohibition Orders (excluding Hygiene Prohibition Orders against persons, imposed under Regulation 7(4) by a Court – see Paragraph 3.3.2.6, below), 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 of determination to the food business operator and should do so within three days. If the Food Authority determines that the health risk condition remains in existence, it must issue a notice of that determination to the food business operator and should do so within three days.

#### **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 a risk / 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;
- Explain to the food business operator that, by making the offer to close, any right to compensation if a Court subsequently declines to make an Hygiene Emergency Prohibition Order 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 Chartered Institute of Environmental Health (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)
- 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).

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 abnormal offspring 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 food business operator 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;
- Explain to the food business operator that, by making the offer to close, any right to compensation if a Court subsequently declines to make an Emergency Prohibition Order is lost.

### **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)
- 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 Paragraph 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 27 of the Food Hygiene (England) Regulations 2006. 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<sup>32</sup> when using powers under Section 9 of the Food Safety Act 1990, including after food has been certified in accordance with Regulation 27 of the Food Hygiene (England) Regulations 2006.

### **3.4.2: The Food Hygiene (England) Regulations 2006, Regulation 27**

When food has not been produced, processed or distributed in compliance with the “Hygiene Regulations” as defined in Regulation 2 of the Food Hygiene (England) Regulations 2006, an authorised officer may use Regulation 27 (see also Regulation 23 in this regard) of those Regulations to seize and detain the food by the use of Section 9 of the Food Safety Act 1990. Following the certification required by Regulation 27, the authorised officer should follow the advice set out in this Chapter in connection with the use 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 27 of the Food Hygiene (England) Regulations 2006 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 Paragraph 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.

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<sup>32</sup> SI 1990 No. 2614

### **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 or information 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 2 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 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 may 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;
- 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 of the Food Hygiene (England) Regulations 2006. 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 paragraph 3.1.3). When necessary, the Hygiene Improvement Notice provisions in Regulation 6 or the Hygiene Prohibition Procedures in Regulation 8 of the Food Hygiene (England) Regulations 2006, should be used (see Chapters 3.2 and 3.3). 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 Hygiene (England) Regulations 2006, are being breached or an inspection under the Hygiene Regulations is being hampered. More specifically, this provision provides, through the service of a Remedial Action Notice, for the prohibition of the use of any equipment or any part of the establishment, the imposition of conditions upon, or prohibiting, any process and also allows for the rate of an operation to be reduced or, stopped completely. Regulation 9 also includes 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 Hygiene (England) Regulations 2006;
- The need to impose conditions upon or the prohibition of the carrying on of any process breaching the requirements of the Regulations or hampering adequate health inspection in accordance with the Regulations;
- Where the rate of operation of the business is detrimental to its ability to comply with the Regulations;

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 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 a further notice in writing.

The use of Remedial Action Notices and Detention Notices is governed by Regulation 9 of the Food Hygiene (England) Regulations 2006. 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 9.



## **CHAPTER 3.6: TEMPERATURE CONTROL REQUIREMENTS**

### **3.6.1: Introduction**

This Chapter concerns the enforcement of Regulation 30 and Schedule 4 of the Food Hygiene (England) Regulations 2006 (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);

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 8°C for one period only of less than 4 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 63°C 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 30 / Schedule 4 of the Food Hygiene (England) Regulations 2006**

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 Hygiene (England) Regulations 2006 the officer should normally deal with the food under Regulation 27 of the Regulations (see also Regulation 23 in this regard). Voluntary procedures to remove food from the food chain may, however, be used in appropriate circumstances (see Paragraph 3.4.9).

If food is at a higher temperature than 8°C (chill holding) or below 63°C (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 8°C. 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 Paragraph 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: QUICK FROZEN FOODSTUFFS

### 3.7.1: Introduction

This Chapter concerns enforcement of the Quick-frozen Foodstuffs Regulations 1990<sup>33</sup>, as amended, (the Regulations), which implement Directives 89/108/EEC<sup>34</sup>, 92/1/EEC<sup>35</sup> and 92/2/EEC<sup>36</sup> in Great Britain.

Food is not subject to the Regulations unless it is specifically labelled or described as “quick-frozen”.

The decision whether to describe food as “quick-frozen” is a matter for the manufacturer. Food authorities cannot apply the requirements of the Regulations to food that is not labelled or described as “quick-frozen”.

### 3.7.2: Legislative Changes

Commission Directive 92/1/EEC has been repealed and replaced by the directly applicable Commission Regulation 37/2005<sup>37</sup>. Necessary amendments to the Quick-Frozen Foodstuffs Regulations 1990 are still under consideration. Once these have been decided, consequent amendments to this chapter will be necessary.

There are three main points of difference between Directive 92/1/EEC and Regulation 37/2005. First, in the case of transport there is no longer a requirement for competent authorities to approve the temperature measuring instruments used. Also, from 1 January 2006 all measuring instruments, used in transport, warehousing, or storage of quick-frozen foodstuffs must comply with the relevant CEN standards<sup>38</sup>. Finally, from 1 January 2006 the legislation will apply to rail transport for the first time.

It is important to note, however, that there are significant transitional provisions. Measuring instruments installed up to 31 December 2005, which meet the legislative requirements at the time, can continue to be used until 31 December 2009.

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<sup>33</sup> As amended, SI 1990 No. 2615

<sup>34</sup> Council Directive 89/108/EEC of 21 December 1988 on the approximation of the laws of the Member States relating to quick-frozen foodstuffs for human consumption

<sup>35</sup> Commission Directive 92/1/EEC of 13 January 1992 on the monitoring of temperatures in the means of transport, warehousing and storage of quick-frozen foodstuffs intended for human consumption

<sup>36</sup> Commission Directive 92/2/EEC of 13 January 1992 laying down the sampling procedure and the Community method of analysis for the official control of the temperatures of quick-frozen foods intended for human consumption

<sup>37</sup> Commission Regulation (EC) No 37/2005 of 12 January 2005 on the monitoring of temperatures in the means of transport, warehousing and storage of quick-frozen foodstuffs intended for human consumption

<sup>38</sup> European Committee for Standardization, [www.cenorm.be](http://www.cenorm.be)

### **3.7.3: Division of Enforcement Responsibilities**

Both County and District Council Food Authorities may take legal proceedings under Regulation 3 of the Regulations (as read with Schedule 1, Paragraphs 1(a), (b), (c), (d) and (e), and Paragraphs 2(a) and (b)) and Regulations 6 and 7.

District Council Food Authorities should enforce Regulation 3 (and Schedule 1, Paragraph 1(f) as read with 2(c)), Regulation 4 and Regulation 6A (and Schedule 2). They should consult and liaise with County Councils at all relevant stages. County Council Food Authorities should enforce Regulation 5.

### **3.7.4: Approach to Enforcement**

Since the Regulations are concerned with maintaining food quality, compliance checks may be less frequent than for legislation concerned with food safety.

Authorised officers should initially adopt an educative approach and discuss the requirements of the legislation with the food business operator.

Temperature monitoring of quick-frozen foodstuffs in cold stores and display cabinets should be carried out as part of inspection, although not normally during every inspection.

The prime responsibility for monitoring delivery vehicles for compliance with the requirements of Regulation 6A rests with the Food Authority in whose area the vehicle operator is based. In the event of a problem being identified elsewhere, the inspecting Food Authority should liaise with the Food Authority that has prime responsibility.

Detailed examination and sampling of a load should only be undertaken where there is evidence that the temperature of food may have exceeded the maximum level set down in the Regulations. Transport vehicles should not be stopped en-route purely to enforce the Regulations. Inspection should normally take place only during the loading or unloading of a vehicle.

### **3.7.5: Temperature Requirements**

After quick-freezing, the Regulations require relevant food to be kept at, or colder than,  $-18^{\circ}\text{C}$ . A brief upward tolerance of  $3^{\circ}\text{C}$  ( $-15^{\circ}\text{C}$ ) is permitted for primary distribution and for local distribution i.e. that part of the distribution chain in which the food is delivered to the point of retail sale (including sale to a catering establishment).

Food in retail display cabinets must be kept in conditions consistent with good storage practice, and is required to comply with the temperature requirements of the Regulations, although the permitted temperature is higher ( $-12^{\circ}\text{C}$ ) for the warmest packs than for the rest of the "cold chain".

### **3.7.6: Staged Approach to Enforcement**

Enforcement should comprise a staged sequence of examinations and measurements, as described in the Practice Guidance, and an authorised

officer should only proceed to the next step if there is reasonable doubt that the food in question complies with the Regulations.

Article 1.2 of Directive 92/2/EEC states that the method of measuring temperature given in Annex II of the Directive may only be used when inspection leaves reasonable doubt on the threshold of temperatures provided for in Directive 89/108/EEC.

### **3.7.7: Sampling**

If there is reasonable doubt at one step in the sequence of examinations and measurements that food is being kept at the required temperature then the authorised officer should proceed to the next step.

It is necessary to be able to identify positions where food is likely to be warmest in any particular situation in order that it can be sampled where breach of the Regulations is most likely to occur.

It is also important to ensure that whenever and wherever food is sampled in the cold chain, from cold store to retail cabinet, care is taken to avoid unnecessary rises in temperature of the food or of the samples to be tested.

Sampling and subsequent testing should be done with the minimum possible disruption to the operation, without undue delay and, where possible, in a controlled temperature environment, e.g. in a cold store.

## **CHAPTER 3.8: FOOD WASTE**

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

## **CHAPTER 3.9: DISTANCE SELLING / MAIL ORDER**

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



## **CHAPTER 3.10: BOTTLED WATERS**

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

## **CHAPTER 3.11: MICROBIOLOGICAL CRITERIA REGULATION**

All relevant material on Commission Regulation (EC) 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs is contained in the Practice Guidance.

## **CHAPTER 3.12: 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 14.

# **SECTION 4: INSPECTIONS**

## **CHAPTER 4.1: INSPECTIONS**

### **4.1.1: Introduction**

This Chapter defines Food Hygiene and Food Standards Inspections.

Inspections should be carried out at all stages of production, processing and distribution to establish whether the requirements of relevant food law are being met, in line with the general obligations as set out in Article 3 of Regulation 882/2004.

An inspection of a food business may be either a primary inspection or a secondary inspection.

“Enforcement” includes the giving of advice and practical guidance on the interpretation or application of food law.

### **4.1.2: Primary Inspections – General**

A primary inspection is an inspection of a food business in which the appropriate elements set out in the relevant inspection form<sup>39</sup> for the business concerned are considered. Authorised officers may, however, use their professional judgement and decide to cover only certain elements of the inspection form in circumstances where they consider it appropriate to do so (see Paragraph 4.2.2).

Food Authorities or their Regional Groups may develop and use local inspection forms, providing all the elements of an inspection that are appropriate to the type of business being inspected are included.

An officer carrying out a primary inspection should:

- 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;

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<sup>39</sup> The relevant inspection form is the inspection form that relates to the type of business being inspected and the type of inspection being carried out. Inspection forms and aide memoires can be found on the LACORS Website

- Determine relevant enforcement action and communicate to business.

The first visit to a food business establishment in order to assist the operator in putting in place and implementing procedures based on the HACCP principles as required by Article 5 of Regulation 852/2004 will also be considered to be a primary inspection, provided it includes the activities set out at Paragraph 4.2.3.

Subsequent visits to discuss aspects of food safety management procedures based on the HACCP principles will continue to be considered to be a secondary inspection (the fifth bullet of Paragraph 4.1.3 below refers).

#### **4.1.3: Secondary Inspections - General**

A secondary inspection is any other visit to a food business that is not a primary inspection, for any purpose connected with the enforcement of food law, including:

- Additional inspections of establishments that are subject to approval under Regulation 853/2004 (see Paragraph 4.3.4 and Annex 5);
- Sampling visits;
- Visits to check on the progress of measures required after a previous inspection;
- Visits to investigate food and food establishment complaints;
- Visits to discuss aspects of food safety management procedures based on HACCP principles;
- Visits involving the explanation of food safety issues to food handlers.

#### **4.1.4: New Businesses**

Food Authorities should make use of information supplied to them by food business operators in connection with the registration or 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 a primary or secondary inspection.

A Food Authority's approach to the recording and inspection of food businesses that should be registered or approved but are not should be documented in its Food Service Plan<sup>40</sup> or Enforcement Policy.

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<sup>40</sup> See Chapter 1 of the Framework Agreement

#### **4.1.5: Inspections 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. Inspections of, 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.

#### **4.1.6: Frequency of Inspection: Inspection Ratings**

Inspection ratings determine the interval that should elapse between one primary inspection of a food business and the next and the priority of the next primary inspection of that business relative to the other businesses in the Food Authority's planned inspection programme (See also Annex 5).

Establishments subject to approval under Regulation 853/2004 are excluded from the Inspection Rating Scheme and are dealt with separately (see Paragraph 4.3.4).

The inspection rating(s) of a food business should be assessed or re-assessed at the conclusion of every primary inspection in accordance with Annex 5 (or any amendment thereto that may be notified to Food Authorities by the Agency).

Inspection ratings should not be re-assessed at secondary inspections.

Inspection programmes should be planned so that businesses are inspected no later than 28 days after the relevant date determined by the inspection rating, apart from circumstances outside the control of the Food Authority such as seasonal business closures (see also paragraph viii of A5.2.1 in Annex 5).

#### **4.1.7: Early Inspection**

Circumstances may arise that make it appropriate to bring forward a primary inspection. Such circumstances may include when the Food Authority:

- Receives a new registration application;
- Receives a consumer complaint of a serious nature;
- Receives a request to change registration details;
- Becomes aware of any material change in the ownership, management, layout or nature of operation of a food business;
- Receives a referral under the Home Authority Principle;

- Receives a request or other information from the Agency;
- Becomes aware of a possible outbreak of foodborne infection;
- Becomes aware that the business may be closed at the time of the due date because of seasonal closure.

#### **4.1.8: Need to Re-schedule Primary Inspections**

Circumstances may arise that require Food Authorities to re-schedule their primary inspections 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.

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

Discussions will normally take place with LACORS before Food Authorities are asked to re-schedule their primary inspections. 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. They should document the action taken in response to requests under this paragraph.

#### **4.1.9: Food Standards Inspections**

Food standards inspections should include checks that the food business is meeting the legal requirements relating to the quality, composition, labelling, presentation and advertising of food and of materials or articles in contact with food.

Food standards inspections 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 inspection programme that includes all the businesses for which the Food Authority has food standards law enforcement responsibility. The programme should be based on the food standards inspection ratings that have been determined in accordance with Annex 5, taking account of the Food Authority's alternative enforcement strategy for low-risk businesses.

#### **4.1.10: Food Hygiene Inspections**

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

Each Food Authority should document, maintain and implement a food hygiene inspection programme that includes all the businesses in which the Food Authority has food hygiene law enforcement responsibility. The programme should be based on the food hygiene inspection ratings that have been determined in accordance with Annex 5, taking account of the Food Authority's alternative enforcement strategy for low-risk businesses.

Chapter 4.3 contains additional requirements in relation to the inspection programme for approved establishments.

#### **4.1.11: Businesses Regarded as Low Risk**

Food businesses that present little or no risk to public health or safety for food hygiene purposes, or of prejudicing consumers or trading unfairly for food standards purposes, need not be subject to primary inspections (see Paragraph 1.2.10 and Annex 5, Paragraphs A5.2.3 (food hygiene) and A5.4.2 (food standards)).

However, primary inspections of such businesses should be triggered by criteria other than the planned inspection programme. These criteria include:

- Applications for registration;
- Consumer complaints;
- Changes in management;
- Significant changes in activities.



#### **4.1.12: Meeting Minimum Inspection Frequencies / Co-ordination**

Food Authorities should ensure that inspections of food business establishments meet the minimum inspection frequencies for both food hygiene and food standards matters as appropriate, as determined by the food hygiene and food standards inspection ratings set out in Annex 5.

##### **4.1.12.1: Single Tier Food Authorities**

Where the same officer is responsible for enforcement of both food hygiene and food standards matters, the officer should decide whether it is appropriate to cover both matters at a single inspection, even though one may not be due under the Food Authority's planned inspection programme.

##### **4.1.12.2: Two Tier Food Authorities**

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

#### **4.1.13: Inspections: Day of Week / Time of Day**

To determine the appropriate time of day for inspections, Food Authorities should have regard to all relevant and available information. This includes:

- The hours of operation of the food business.
- Seasonal factors (where applicable);

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

The Food Authority's approach to inspection out of hours should be documented in their Food Service Plan.

#### **4.1.14: Factory and Fishing Vessels – Hygiene Inspections**

In addition to the planned inspection programme of land based establishments, coastal Food Authorities will need to consider the inspection 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.

## **CHAPTER 4.2: THE INSPECTION**

### **4.2.1: Introduction**

This Chapter describes how inspections should be carried out.

### **4.2.2: Inspections – General**

Primary inspections should be based on the relevant inspection form for the business concerned, or on a documented inspection form that has been developed locally by the Food Authority or its Regional Group (see Paragraph 4.1.2).

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 primary inspection, e.g. an inspection of a supermarket's in-store bakery or restaurant operated by that supermarket. However, an officer who carries out a primary inspection that covers only part of a business should record the scope of the inspection and the reason for limiting the inspection in the premises file and in the food business operator's inspection report.

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 Paragraph 1.5.3.4.2) and hence separate inspections are required as appropriate. Food Authorities may, however, wish to co-ordinate their activities in such a way that they may carry out programmed inspections of these smaller establishments whilst they are on site to inspect the main food business establishment (or elements thereof).

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

A primary 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 every primary 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 best/good practice.

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, any further action the officer intends to take and any recommendations of best/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 inspection frequency or rating applied to the business.

### **4.2.3: Primary Food Hygiene Inspections**

(See also Paragraph 4.1.2)

#### **4.2.3.1: Scope**

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 primary 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;
- Assess and verify appropriate procedures based on HACCP principles appropriate to the nature and size of the business, confirming that controls are in place and operating effectively and that appropriate corrective action is taken when necessary;
- 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 27 of the Food Hygiene (England) Regulations 2006 (see also Regulation 23 in this regard) to remove affected products from the food chain;
- 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 primary 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;
- 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 for the business concerned.

#### **4.2.3.2: Compliance with Article 5 of Regulation 852/2004 (Procedures Based on the HACCP Principles)**

The first visit to a food business establishment to assist the operator in putting in place and implementing procedures based on the HACCP principles, as required by Article 5 of Regulation 852/2004 (where these are not already fully implemented) will also be considered to be a primary inspection, provided it includes the following:

- In depth discussion with the Food Business Operator on activities undertaken in relation to food in order to gain an overview of the food business operations and determine the flow of food within the business from delivery to placing on the market;
- Practical assessment of current level of compliance with relevant parts of Regulation 852/2004 including any degree of compliance with Article 5;
- Development of a system based on the HACCP principles, appropriate to the size and nature of the business;
- Closing discussion to agree actions to be taken in respect of compliance with Article 5 (to be confirmed in writing).

Subsequent visits concerning food safety management procedures based on the HACCP principles will continue to be considered to be a secondary inspection (see the fifth bullet of Paragraph 4.1.3).

#### **4.2.4: Primary Food Standards Inspections - Scope**

(See also Paragraph 4.1.2)

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 primary 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;
- Assess compliance with supplier specifications;
- 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: Secondary Inspections – Food Hygiene and Food Standards** (See also Paragraph 4.1.3)

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

Failure to comply with significant statutory requirements includes:

- Failure to comply with a single requirement that compromises food safety, compromises public health, or prejudices consumers;
- Failure to comply with a number of requirements that, taken together, indicate ineffective management;
- Failure to comply with the requirements of a Hygiene Emergency Prohibition Notice or Order (food hygiene);
- Failure to comply with the requirements of an Emergency Prohibition Notice or Order (food standards).

Secondary inspections under this section should be based on the relevant inspection form for the business concerned, although the inspection may focus on the significant statutory requirements that were found to be contravened at the previous inspection.

The timing of the secondary inspection will be determined by the action taken as a result of the earlier inspection.

Such an inspection should, whenever practicable, be undertaken by the officer who undertook the original inspection.

The Food Authority's approach to secondary inspections should be part of their documented Food Service Plan or Enforcement Policy (see Paragraph 3.1.4).

#### **4.2.6: Clothing and Equipment**

Food Authorities should provide officers who carry out inspections 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 being inspected. 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: INSPECTION OF PRODUCT-SPECIFIC 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 inspected 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. Certain food business establishments subject to approval must also be subject to secondary inspections if necessary to achieve a minimum number of inspections in any 12-month period.

### **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 inspection (see Paragraph 4.3.4).

### **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 Paragraph 5.3.3 of this Code and paragraph A.6.8 and Annex 6, 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 frequency of sampling should follow the advice officially recognised by, or issued by, the Agency<sup>41</sup>.

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

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<sup>41</sup> Guidance on the Frequency of Microbiological Sampling of Purified Molluscs by Operators of Purification Centres – issued February 1995



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: Inspections of Product-Specific Establishments Subject to Approval under Regulation 853/2004**

The minimum number of food hygiene inspections of product-specific food business establishments subject to approval under Regulation 853/2004 should be conducted as necessary in accordance with the following table:

<b>Type of Approved / Authorised Food Business Establishment</b>	<b>Minimum Inspections in 12 Months*</b>
Minced Meat / Meat Preparations / Mechanically Separated Meat	3
Meat Products	3
Live Bivalve Molluscs	2
Fishery Products**	2
Dairy Products	2
Eggs (not primary production) and Egg Products***	2
Frogs' Legs and Snails	1
Rendered Animal Fats and Greaves	1
Treated Stomachs, Bladders and Intestines	1
Gelatine	1
Collagen	1
Collection Centres and Tanneries supplying raw material for the production of gelatine or collagen intended for human consumption****	Use Inspection Rating System at Annex 5
Stand-alone Cold Stores	Use Inspection Rating System at Annex 5

\*One of which must be a primary inspection – see Chapter 4.1 and Chapter 4.2 and paragraphs ii and ix of A5.2 in Annex 5.

\*\*except factory and fishing vessels (see Paragraph 4.1.14), cash and carries that are approved and establishments where the only activity is filleting fresh fish and cold smoking fishery products requiring cooking or salting for preservation in which case additional secondary inspections are not essential.

\*\*\*except establishments where the only activity is breaking out and transporting eggs to a heat treatment plant in which case additional secondary inspections are not essential.

\*\*\*\* Collection Centres and Tanneries are authorised, rather than approved (see also Paragraph 5.1.3)

### **4.3.5: Primary Inspections**

Primary inspections of establishments subject to approval under Regulation 853/2004 should be carried out in accordance with Chapter 4.1 and Chapter 4.2.

### **4.3.6: Secondary Inspections**

(See also Paragraph 4.1.3)

Secondary inspections under this section should be conducted even when no contraventions of statutory requirements are identified on the primary inspection and should be based on the relevant inspection form<sup>42</sup> for the business concerned.

The scope of such a secondary inspection and the matters considered may focus on particular aspects of the operations conducted in the establishment, providing it includes:

- Confirmation of the operations carried out;
- Confirmation of products produced;
- An assessment of the effectiveness of critical control points (CCPs);
- The examination of CCP records;
- A review of the use of health/identification marks and any commercial documents.

The scope of the inspection and the matters considered should be recorded on the file relating to the establishment, and in any report to the food business operator.

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<sup>42</sup>The relevant inspection form is the inspection form that relates to the type of business being inspected and the type of inspection being carried out. Inspection forms and aide memoires can be found on the LACORS Website.

## **CHAPTER 4.4: INSPECTION OF SHIPS AND AIRCRAFT**

### **4.4.1: Introduction**

The Food Hygiene (England) Regulations 2006 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 Paragraph 4.4.5.5 in relation to ships). Before considering ship or aircraft inspection, all relevant information should be obtained from the Home Authority (HA), shipping operator or airline, as appropriate. Inspections of, and visits to, ships and aircraft should be duly recorded in accordance with the Framework Agreement.

### **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 Paragraph 4.4.4 regarding UK military craft).

Where an HA agreement is in place, there is an obligation to inform LACORS of the agreement and to follow the LACORS 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 Chapter XII of Annex II of that Regulation.

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

In the case of contraventions that do not warrant service of a notice, an enforcing Food Authority may consider liaising with the HA, and should do so if the HA 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 Paragraph 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 2.4 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 HA 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 HA’s websites and through the LACORS 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 HA for procedural guidance prior to any proposed visit to an RN ship or submarine. Tewkesbury Borough Council, the Royal Air Force HA, should be contacted for guidance prior to any proposed visit to RAF aircraft.

#### Royal Navy

Home Authority: Portsmouth City Council. Tel: (02392) 834253.  
Environmental Health Lead: SO2 Environmental Health Policy. Tel: (02392) 722285.

#### RAF

Home Authority: Tewkesbury Borough Council. Tel: (01684) 295010.  
Environmental Health Lead: Command Environmental Health Officer Tel: (01452) 712612.

#### Army

Home Authority: Rushmoor Borough Council. Tel: (01252) 398398.  
Environmental Health Lead: SO2 Medical Intelligence. Tel: (01276) 412737.

### **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 report 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 report is available, and after taking other factors into account (see Paragraph 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 report, 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 is prepared or served.

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

#### **4.4.5.2: Inspection of the Vessel**

When there is an adverse report from a previous inspection, or the vessel has not been inspected for a period in excess of that set out in Paragraph 4.4.5.5, officers may need to carry out a primary 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 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;
- 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 report<sup>43</sup> should also be prepared and given to the ship's Master before leaving the vessel. If it is not possible for a full report to be completed before the vessel's departure, this should be explained to the Master or his representative and forwarded to the Master at the first available opportunity. The ship's owner should also receive a copy. A further copy should be sent to the MCA at the earliest opportunity if serious shortcomings are found, and the Port Health Authority (PHA) at the next intended port of call, if in UK and, if

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<sup>43</sup> The APHA Ship Sanitation / Food Safety Report Form is available on LACORS website

designated, the relevant HA. This should be prior to any possible visit to the vessel at the subsequent port of call.

#### **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) and the MCA dealing with non-military vessels. Exchanges of copies of relevant inspection reports relating to food safety on ships should be undertaken between PHAs and the MCA, in accordance with the MoU.

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 Paragraph 4.4.3).

#### **4.4.5.5: Frequency of Inspection**

The frequency of inspection of vessels should be based on 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;
- Confidence in food and water safety management systems;
- Date and port of last food safety inspection – see \*Note below;
- Available documentation;
- Recent significant reports of food related problems on the vessel;
- Reports from previous inspections – level of compliance. These could include inspection reports issued by competent authorities in the EU or Third Countries;
- Valid deratting certificate or exemption certificate, where appropriate.

\*Note: Appropriate risk rating could be assessed by the use of Annex 5. In general, cruise ships and passenger ferries should be inspected at least once every 12 months and, subject to the above, general cargo and merchant ships

at least once every 18 months to 2 years, unless there are clear grounds to justify further investigations, e.g. the ship visiting a UK port for the first time or after an absence of 12 months or more. 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 Paragraph 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 HA, or in the absence of an HA, 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, HAs should ensure that airlines are aware of their responsibilities in relation to providing information. HAs should provide relevant information to other Food Authorities, when requested to do so and, where this relates to general airline policy and procedures, be afforded appropriate confidentiality.

##### **4.4.6.2: Information to be Obtained to Assist Inspection Procedures**

If there is no HA 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;
- 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 HA, 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 HA) 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 Paragraph 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;
- 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 HA 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 Paragraph 4.4.3 concerning reporting deficiencies to the country of registration of the aircraft, when appropriate.

## **CHAPTER 4.5: ACTION FOLLOWING INSPECTION**

### **4.5.1: Introduction**

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

### **4.5.2: Post-inspection Reports**

The outcome of a primary inspection should always be reported in writing to the food business operator either at the conclusion of the inspection or as soon as practicable thereafter, even if the outcome was satisfactory.

The report should include all the information detailed in Annex 6, which may be included in a post-inspection letter that sets out the measures to be taken to secure compliance.

Secondary inspections should be followed up in writing if the officer conducting the inspection:

- Requires the food business operator to take action;
- Needs to confirm something has been done;
- Needs something to be noted.

Post-inspection reports may include other legislation covered during inspections of food businesses, 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: Inspection Record Files**

The Food Authority's inspection record files<sup>44</sup>, which may be computer based, should be updated after each inspection 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 licensing;
- Copies of food sample analysis/examination results;

and in respect of establishments inspected for food hygiene purposes:

- An assessment of the business progress in meeting compliance with procedures based on HACCP principles;

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<sup>44</sup> See Chapter 2, Paragraphs 16.1 and 16.2 of the Framework Agreement

- Information on hygiene training undertaken by employees; including any training on the implementation and operation of the food safety management system;
- For establishments that are subject to food hygiene approval requirements, details of approved products handled and cleaning methods employed;

and in respect of premises inspected for food standards purposes:

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

#### **4.5.4: Retention of Inspection Reports**

Inspection reports should be retained for at least 6 years, or until the next primary inspection, whichever period is the longer, unless required for longer retention because of litigation, Local Government Ombudsman review or 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 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, through the Meat Hygiene Service (MHS), 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<sup>45</sup> 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 MHS is also responsible for 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.

The Agency is also responsible for enforcement in relation to the matters regulated by Schedule 6 of the Food Hygiene (England) Regulations 2006 in so far as it 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**

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<sup>45</sup> Regulation (EC) No. 854/2004 laying down specific rules for the organisation of official controls on products of animal origin 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 Annex 3 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*”. Food Authorities should be aware that the regulation does not set any minimum amounts of product of plant origin, or processed product animal origin, that such food must contain.

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) 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 Annex 3 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 Paragraphs 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 Annex 4 of the Practice Guidance. A series of template forms is also provided at Annex 11 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 11 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 Paragraph 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 primary inspection of the establishment (see 4.1.2), 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 Annex 3, Paragraph A.3.4 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 a secondary inspection (see 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 be 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 paragraph 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.

Food Authorities should be aware that the UK has opted to use the transitional derogation provided by Article 8 of Regulation 2073/2005<sup>46</sup> concerning compliance with the value set in Annex I to that Regulation for *Salmonella* in minced meat, meat preparations and meat products intended to be eaten cooked placed on the national market of a Member State. The Regulation permits this transitional derogation to be used up to 31 December 2009 and the UK has opted to use it until this date. In accordance with Article 8 of

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<sup>46</sup> Commission Regulation (EC) 2073/2005 on microbiological criteria for foodstuffs

Regulation 2073/2005 a 'special mark', which cannot be confused with the identification mark provided for in Annex II, Section I B of Regulation 853/2004 must be applied to which the transitional derogation applies.

The 'special mark' to be used is an oval within an oblong. Within the oval there should be the letters UK, the license/approval number, and the letter N, to indicate that the product is for the national market. This combines the oval shape of the identification mark and much of the information required by that mark whilst remaining distinct in itself – thereby meeting the requirement of the Regulation that the special mark 'cannot be confused with the identification mark'.

### **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 Paragraph 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<sup>47</sup>. Rights of appeal are subject to Regulation 12 of the Official Feed and Food Controls (England) Regulations 2006.

Food Authorities should bear in mind that Regulation 12(5) of the Official Feed and Food Controls (England) Regulations 2006 stipulates that following an appeal against a decision of a Food Authority to refuse or withdraw an approval, the food business operator who, immediately before such refusal or withdrawal, had been using the establishment concerned may continue to use it, pending the results of the appeal, subject to any conditions imposed by the competent authority for the protection of public health.

If the Food Authority considers that any activities undertaken in an establishment pending the result of an appeal may present a risk to public health, it should consider the use of other relevant enforcement powers, appropriate to the circumstances involved.

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<sup>47</sup> A template form is provided at Annex 11, A.11.3 of the Practice Guidance

### **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<sup>48</sup> (see Paragraph 5.1.12).

When full approval is granted following conditional approval, the Food Authority should notify the food business operator in writing<sup>49</sup>. Such a notification should also include details of the nature and scope of the approval any conditions or limitations 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 Paragraph 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.

### **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.

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<sup>48</sup> A template form is provided at Annex 11, A.11.2 of the Practice Guidance

<sup>49</sup> A template form is provided at Annex 11, A.11.2 of the Practice Guidance

## **CHAPTER 5.2: ENFORCEMENT OPTIONS IN PRODUCT-SPECIFIC ESTABLISHMENTS SUBJECT TO APPROVAL UNDER REGULATION 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 2006 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 2006 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 the it subject to approval under Regulation 853/2004.

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 Paragraph 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 it has a reasonable expectation that the identified deficiencies will be rectified and 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 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<sup>50</sup>. Rights of appeal are subject to Regulation 12 of the Official Feed and Food Controls (England) Regulations 2006.

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 Regulation 12(5) of the Official Feed and Food Controls (England) Regulations 2006 stipulates that following an appeal against a decision of a Food Authority to refuse or withdraw an approval, the food business operator who, immediately before such refusal or withdrawal, had been using the establishment concerned may continue to use it, pending the results of the appeal, subject to any conditions imposed by the competent authority for the protection of public health. This provision does not extend to appeals against the suspension of an approval.

If the Food Authority considers that any activities undertaken in an establishment pending the result of an appeal may present a risk to public health, it should consider the use of other relevant enforcement powers, appropriate to the circumstances involved.

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<sup>50</sup> 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 requires relevant Food Authorities to establish and maintain a local shellfish liaison group. 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 Paragraph A.6.6 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, a gatherer of live bivalve molluscs (including pectinidae) to be placed on the market requires a registration document 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 or area in the case of wild pectinidae) to the dispatch centre or relaying area, purification centre or processing centre.

Food Authorities should issue such registration documents to gatherers, including fishing vessels, that harvest live bivalve molluscs. (A model registration form can be found at Annex 6, 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 Paragraphs 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 dispatch, or such longer period as the Food Authority may specify.

#### **5.3.4: 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.

#### **5.3.5: 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 FSA recommends that a Closure Notice should be used as the means to inform interested parties; a model Closure Notice can be found at Annex 9.

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 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 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 17(1) of the Food Hygiene (England) Regulations 2006, it is an offence to contravene a specified Community 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 Paragraph 5.1.2, the Agency, through the Meat Hygiene Service (MHS), 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 MHS 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 MHS.
- 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 of small quantities of primary products (including wild game) to the final consumer or to local retail establishments supplying the final consumer (Article 1(3)(c) of Regulation 853/2004);
- on farm slaughter and cutting of small quantities of poultry and lagomorphs (Article 1(3)(d) of Regulation 853/2004);
- 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 5 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 in LACORS advice<sup>51</sup>.

Whilst the Food Safety Act 1990, the Food Safety (Sampling and Qualifications) Regulations 1990 and the Food Hygiene (England) Regulations 2006 provide a framework for Food Authority sampling which is carried out specifically with a view to pursuing legal action if the results show an offence has been committed, 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<sup>52</sup>**

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 that details their intended food sampling priorities. The programme should take account of the number, type and risk ratings of the food businesses and the type of food produced in the area, the Food Authority's 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.

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.

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<sup>51</sup> Further advice for Food Authorities on microbiological sampling can be found in LACORS "Guidance on Food Sampling for Microbiological Examination" published in January 2006

<sup>52</sup> See Chapter 2, Paragraph 12.4 of the Framework Agreement

### **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;
- 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 1990. Food Authorities should be aware that SI 1983 No. 1508, SI 1983 No. 1509, SI 1988 No. 2206 and SI 1989 No. 2383 have been revoked.

### **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 1990 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<sup>53</sup>.

### **6.1.6: Division of Samples for Analysis**

Unless the sample meets the criteria for submission for analysis without division into three parts (see Paragraph 6.1.6.4. of the Practice Guidance), the formal sample should, as soon as possible, be divided into 3 representative parts. Regulation 6(1) of the Food Safety (Sampling and Qualifications) Regulations 1990 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

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<sup>53</sup> A list of UK official food control laboratories has been submitted to the European Commission and is published on the Agency's website [www.food.gov.uk](http://www.food.gov.uk)

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 9 of the Food Safety (Sampling and Qualifications) Regulations 1990, certificates of analysis must be in the format set out in Schedule 3 to those regulations.

#### **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 Paragraph 1.1.7)

In accordance with Regulation 9 of the Food Safety (Sampling and Qualifications) Regulations 1990, 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 Hygiene (England) Regulations 2006, Regulation 12)**

All samples for examination, taken in accordance with Regulation 12 of the Food Hygiene (England) Regulations 2006 and the requirements of this Code should be submitted to the Food Examiner at a laboratory accredited for the purposes of examination and which appears on the list of official food control laboratories.

In accordance with Regulation 13(10) of the Food Hygiene (England) Regulations 2006, the Food Safety (Sampling and Qualifications) Regulations 1990 apply in relation to a sample procured by an authorised officer of a food authority under Regulation 12 of the Food Hygiene (England) Regulations 2006 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 13(11) of the Food Hygiene (England) Regulations 2006 certificates of examination must be in the format set out in Schedule 3 to the Food Safety (Sampling and Qualifications) Regulations 1990.

#### **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 Paragraph 1.1.7)

In accordance with Regulation 9 of the Food Safety (Sampling and Qualifications) Regulations 1990, 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: MONITORING OF INSPECTIONS

## CHAPTER 7.1: MONITORING OF INSPECTIONS

### 7.1.1: Introduction

This Section outlines the matters that need to be monitored by Food Authorities to ensure that inspections are carried out to a consistently high standard and that the planned inspection programme is being maintained.

### 7.1.2: What Needs to be Monitored

Food Authorities should maintain documented procedures for monitoring progress of the planned inspection programme and the quality and consistency of inspections undertaken by their officers, or staff supplied under contract, to ensure, so far as practicable, that inspections are carried out competently. The procedures to be followed should include arrangements for recording in-year changes to the planned inspection programme; newly opened establishments; establishments found to be closed; and establishments for which the risk rating is changed.

The monitoring system should include measures to review:

- Adherence to the Food Authority's planned inspection programme;
- The priority given to inspecting businesses according to inspection ratings;
- Compliance with this Code of Practice, the Practice Guidance and other Agency guidance;
- The consistent assessment of inspection ratings;
- Appropriate use of relevant inspection forms<sup>54</sup>;
- Compliance with internal procedures, policies and the Food Authority's Enforcement Policy;
- That the interpretation and action taken by officers following an inspection is consistent within that Food Authority and is consistent with Agency and/or LACORS 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 inspections:

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<sup>54</sup> The relevant inspection form is the inspection form that relates to the type of business being inspected and the type of inspection being carried out. Inspection forms and aide memoires can be found on the LACORS Website



- The priority given to inspecting product-specific establishments subject to approval under Regulation 853/2004.
- That officers have due regard to published UK or EU Guides to Good Practice.

## SECTION 8: ANNEXES

### ANNEX 1: Glossary of Terms

APHA	Association of Port Health Authorities
CCDC	Consultant in Communicable Disease Control
CCP	Critical Control Point
CEFAS	Centre for Environment, Fisheries and Aquaculture Science
CEN	The European Committee for Standardization
CIEH	Chartered Institute of Environmental Health
CPHM (CD/EH)	Consultant in Public Health Medicine (Communicable Disease/Environmental Health)
DCA	Diploma in Consumer Affairs
DEFRA	Department for Environment, Food and Rural Affairs
DH	Department of Health
DHSSPS	Department of Health, Social Services and Public Safety (Northern Ireland)
DTS	Diploma in Trading Standards
<i>E. coli</i> O157	<i>Escherichia coli</i> O157
EEA	European Economic Area
EHO	Environmental Health Officer
EHP	Environmental Health Practitioner
EHRB	Environmental Health Registration Board
EU	European Union
FAO	Food and Agricultural Organisation of the United Nations
Framework Agreement	Framework Agreement on Local Authority Food Law Enforcement
FVO	Food and Veterinary Office (of the European Commission)
HA	Home Authority
HACCP	Hazard Analysis and Critical Control Point
HPA	Health Protection Agency
HPS	Health Protection Scotland (formerly SCIEH)
IFST	Institute of Food Science and Technology
LACORS	Local Authorities Co-ordinators of Regulatory Services
MCA	Maritime and Coastguard Agency
MOD	Ministry of Defence
MoU	Memorandum of Understanding
PARNUTS	Foodstuffs intended for particular nutritional uses
PHA	Port Health Authority
REHIS	Royal Environmental Health Institute of Scotland

SFSORB	Scottish Food Safety Officers' Registration Board
SVS	State Veterinary Service
The Agency	The Food Standards Agency
TSI	Trading Standards Institute
TSO	Trading Standards Officer
UKAS	United Kingdom Accreditation Service
VTEC	Vero cytotoxin-producing <i>Escherichia coli</i>

## **ANNEX 2: HACCP Evaluation Competencies**

### **Standards of Competence for Food Authority Officers in Relation to procedures based on HACCP principles**

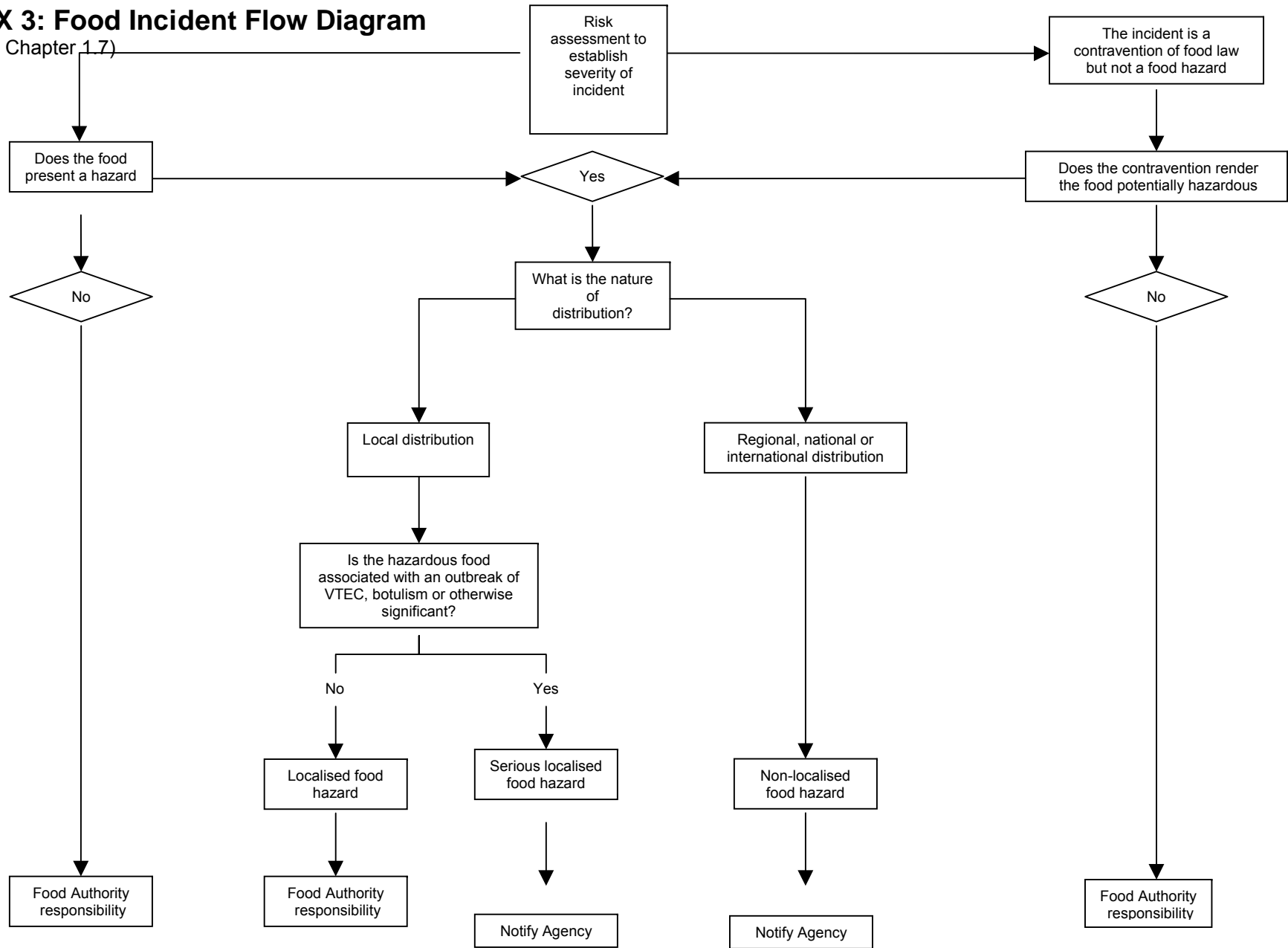
Food Authorities must satisfy themselves that staff engaged in the food hygiene inspection of food business establishments involving the audit of procedures based on HACCP principles, in addition to holding the relevant qualification prescribed in Chapter 1.2 for the category of business to be inspected, are able to demonstrate the following competencies.

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)



## **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 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):**

<b>Local</b>	<b>Retail</b>
<b>Regional</b>	<b>Catering</b>
<b>Manufacture</b>	<b>National</b>
<b>International</b>	<b>Import/Export</b>

**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: Inspection Rating Schemes**

### **A5.1: Introduction**

This Annex deals with the food hygiene and food standards inspection ratings and frequencies for primary inspections of food businesses.

### **A5.2: Food Hygiene Inspection Rating Scheme**

#### **A5.2.1: Basic Principles**

- i. Food Authorities that are responsible for enforcing food hygiene law should determine the food hygiene inspection frequencies of food businesses within their area using the risk assessment criteria in this Annex, in order to determine their planned food hygiene inspection programmes.
- ii. Establishments subject to approval under Regulation 853/2004 are excluded from this determination and are dealt with separately (see ix. below) except stand-alone cold stores. In respect of these establishments and collection centres and tanneries supplying raw material for the production of gelatine or collagen intended for human consumption (see Paragraphs 4.3.4 and Paragraph 5.1.3) inspection frequencies should be determined using the Food Hygiene Inspection Risk Rating Scheme in this Annex.
- iii. The scheme incorporates an option for alternative enforcement strategies other than primary 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).
- iv. 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 every primary inspection.
- v. 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.
- vi. The operation of this inspection rating scheme within the Food Authority should be subject to periodic management review to ensure that staff are using the scheme correctly and consistently.
- vii. Establishments that are due or overdue for inspection should be inspected according to their respective inspection ratings, with those having higher ratings being prioritised for inspection over those with lower ratings. The practice of completing the inspection programme of lower rated establishments that have not been visited during an earlier programme before commencing the inspection of higher rated establishments cannot be supported.

- viii. Primary inspections should normally be completed by the due date as determined by the inspection 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.

#### **A5.2.2: Establishments Subject to Approval under Regulation 853/2004**

- ix. Each approved establishment except stand-alone cold stores (see ii. above), must receive at least one primary inspection, and, if required, one or more secondary inspections, so as to achieve the minimum number of inspections in any 12 month period set out in Paragraph 4.3.4. These inspections are relevant to food hygiene matters. However, the frequency of inspections in approved establishments for food standards purposes should be assessed as part of the food standards risk rating system.

#### **A5.2.3: Low-Risk Activities**

- x. Establishments scoring less than 31 points overall need not be subject to primary inspections (see Paragraph 4.1.11).
- xi. Such “low-risk” establishments must, however, be subject to an alternative enforcement strategy not less than once in any 3-year period.
- xii. Food Authorities that decide not to subject “low-risk” establishments to primary inspections must set out their alternative enforcement strategies for maintaining surveillance of such businesses in their Food Service Plan or Enforcement Policy.
- xiii. It is not intended to preclude inspections of such establishments where inspection is the Food Authority’s preferred surveillance option, in which case the minimum frequency of inspection is determined by the inspection rating.

## A5.3: The Food Hygiene Scoring System

### A5.3.1: Part 1: The Potential Hazard

Three factors determine the potential hazard:

#### A5.3.1.1: A. Type of Food and Method of Handling

<b>Score</b>	<b>Guidance on the Scoring System</b>
<b>40</b>	Manufacturers of high-risk food that are not subject to approval under Regulation 853/2004. Wholesalers and packers who re-wrap or re-pack high-risk foods. In this context, high-risk foods may be regarded as foods that support the growth of micro-organisms, and/or are intended for consumption without further treatment that could destroy pathogenic micro-organisms or their toxins.
<b>30</b>	Preparation, cooking or handling of <u>open</u> high-risk foods by caterers and retailers, except caterers that prepare less than 20 meals a day (see below).
<b>10</b>	Handling of pre-packed high-risk foods; Caterers that prepare high-risk foods but serve less than 20 meals a day; 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 or cold smoking of fish for retail sale to final consumer.
<b>5</b>	Retail handling of foods other than high-risk, such as fruit, vegetables, canned and other ambient shelf stable products. Any other businesses not included in the categories above.

<b>Score:</b>	<input type="text"/>
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### A5.3.1.2: B. Method of Processing

An additional score should be included for processes listed in the table below. If an additional score under this section is appropriate it may only be allocated once; i.e. the maximum score under this section is 20.

Score	Guidance on the Scoring System
20	Thermal processing or aseptic packing of low-acid foods; Vacuum and sous-vide packing (except raw/unprocessed meat and dried foods); Manufacture of cook/chill food i.e. cooked and prepared meals or foods which may be eaten cold or after reheating (NB: Catering premises should not be included in this category unless they are engaged in the specific operation referred to commercially as the preparation of cook-chill meals. The simple reheating of cook-chill meals is excluded from the scope of this paragraph); Small-scale production of cooked meat products in food business establishments which are not subject to approval under Regulation 853/2004 e.g. by certain retailers including butchers.
0	Any other case not included above.

Score:	
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### A5.3.1.3: C. Consumers at Risk

The number of consumers likely to be at risk if there is a failure of food hygiene and safety procedures.

Score	Guidance on the Scoring System
15	Manufacturers of food that is distributed 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 supplying less than 20 consumers each day.

Score:	
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### **PLUS**

An **additional** score of 22 (in addition to the score above) should be included for establishments such as hospitals, nursing homes, day-care centres and child nurseries, where production and/or service of high-risk foods takes place, and where more than 20 persons in a vulnerable group are at risk. In this context, vulnerable groups are those that include people who are under 5 or over 65 years of age, people who are sick, and people who are immunocompromised.

<b>Score</b>	<b>Guidance on the Scoring System</b>
<b>22</b>	Production and/or service of high-risk foods in premises where there are more than 20 people in a vulnerable group at risk;
<b>0</b>	Any other case not included above.

<b>Score:</b>	
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### **A5.3.2: 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. Adherence to any relevant UK or EU Industry Guide to Good Hygiene Practice should be considered when assessing compliance.

Conformity with relevant national guidelines or industry codes of recommended practice will also be necessary to score 0 or 5.

<b>Score</b>	<b>Guidance on the Scoring System</b>
<b>25</b>	Almost total non-compliance with statutory obligations.
<b>20</b>	General failure to satisfy statutory obligations – standards generally low.
<b>15</b>	Some major non-compliance with statutory obligations – more effort required to prevent fall in standards.
<b>10</b>	Some non-compliance with statutory obligations and industry codes of recommended practice. Standards are being maintained or improved.
<b>5</b>	High standard of compliance with statutory obligations and industry codes of recommended practice, minor contraventions of food hygiene regulations. Some minor non-compliance with statutory obligations and industry codes of recommended practice.
<b>0</b>	High standard of compliance with statutory obligations and industry codes of recommended practice; conforms to accepted good practices in the trade.

<b>Score – Hygiene:</b>	
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<b>Score – Structural:</b>	
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### **A5.3.3: 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 hygiene performance, well understood by the workforce, should have

achieved 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 hygiene and food safety;
- Hygiene and food safety technical knowledge available to the company (internal or external), including hazard analysis/HACCP and the control of critical points;
- Satisfactory documented procedures and HACCP based food safety management systems.

<b>Score</b>	<b>Guidance on the Scoring System</b>
<b>30</b>	Poor track record of compliance. Little or no technical knowledge. Little or no appreciation of hazards or quality control. No food safety management system.
<b>20</b>	Varying record of compliance. Poor appreciation of hazards and control measures. No food safety management system.
<b>10</b>	Satisfactory record of compliance. Access to and use of technical advice either in-house, from trade associations and/or from Guides to Good Practice. Understanding of significant hazards and control measures in place. Making satisfactory progress towards a documented food safety management system / procedures commensurate with type of business.
<b>5</b>	Reasonable record of compliance. Technical advice available in-house or access to and use of technical advice from trade associations and/or from Guides to Good Practice. Have satisfactory documented procedures and systems. Able to demonstrate effective control of hazards. Will have satisfactory documented food safety management system. Audit by Food Authority confirms general compliance with documented system.
<b>0</b>	Good record of compliance. Access to technical advice within organisation. Will have satisfactory documented HACCP based food safety management system which may be subject to external audit process. Audit by Food Authority confirms compliance with documented management system with few/minor non-conformities not identified in the system as critical control points.

<b>Score:</b>	<input type="text"/>
---------------	----------------------

## **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 more likely to occur than not. 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;
- 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 primary 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.

<b>Score</b>	<b>Guidance on the Scoring System</b>
<b>20</b>	Significant risk of food being contaminated with <i>Cl. botulinum</i> , 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.
<b>0</b>	Any other case not included above.



<b>Score:</b>	
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Inspection Ratings:										Total:	
---------------------	--	--	--	--	--	--	--	--	--	--------	--

**A5.3.4: Food Hygiene Inspection Frequencies**

<b>Category</b>	<b>Inspection Rating</b>	<b>Minimum Inspection Frequency</b>
<b>A</b>	92 or higher	at least every 6 months
<b>B</b>	72 to 91	at least every 12 months
<b>C</b>	42 to 71	at least every 18 months
<b>D</b>	31 to 41	at least every 2 years
<b>E</b>	0 to 30	Alternative enforcement strategy

## Food Standards Inspection Rating Scheme

### A5.3.5: Basic Principles

- i. Food Authorities that are responsible for enforcing food standards law should determine the food standards inspection frequencies of food businesses within their areas using the risk assessment criteria in this Annex, in order to determine their planned food standards inspection programmes.
- ii. 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 LACORS guidance on risk assessment for trading standards. Where assessments are based on the LACORS scheme, the inspection frequency for food standards purposes should not be less than would have been the case under this scheme.
- iii. Food Authorities in single tier local authority areas may opt to base their planned inspection programme on the food hygiene risk assessment scheme under this Code of Practice. Food Authorities that exercise this option must ensure that their inspections consider both food hygiene and food standards matters, that inspections 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.
- iv. The scheme incorporates an option for alternative enforcement strategies other than primary 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).
- v. 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 every primary inspection.
- vi. 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.
- vii. Businesses that fall into more than one scoring category for a scoring factor should be allocated the highest score of those that are applicable.
- viii. The operation of this inspection rating scheme within the Food Authority should be subject to periodic management review to ensure that staff are using the scheme correctly and consistently.
- ix. The inspection of higher risk businesses must always take preference over the inspection of lower risk. The practice of completing the inspection programme of lower risk businesses that have not been visited

during an earlier programme before commencing the inspection of higher risk businesses cannot be supported.

- x. The minimum inspection frequencies described should not be regarded as strict and absolute. However, primary inspections should be completed no more than 28 days after the due date, apart from circumstances outside the control of the Food Authority such as seasonal business closures (see Paragraph 4.1.6).

#### **A5.3.6: Low-Risk Activities**

- xi. Businesses scoring 45 points or less overall need not be subject to primary inspections (see Paragraph 4.1.11.).
- xii. Such “low-risk” businesses must, however, be subject to an alternative enforcement strategy not less than once in any 5-year period.
- xiii. Food Authorities that decide not to subject “low-risk” businesses to primary inspections must set out their alternative enforcement strategies for maintaining surveillance of such businesses in their Food Service Plan or Enforcement Policy.
- xiv. It is not intended to preclude inspections of such businesses where inspection is the Food Authority’s preferred surveillance option, in which case the minimum frequency of inspection is determined by the inspection rating.

### **A5.4: The Food Standards Scoring System**

#### **A5.4.1: Part 1: The Potential Risk**

##### **A5.4.1.1: 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.

<b>Score</b>	<b>Guidance on the Scoring System</b>
<b>30</b>	Manufacturers of PARNUTS foods; Manufacturers or packers of high value foods, or high volume foods where there is an incentive for fraudulent adulteration; Manufacturers of foods that contain a wide range of additives; Businesses that make nutrition, nutrient content, or health claims on pre-packed food labels or in advertising.
<b>20</b>	Manufacturers or packers of foods that are subject to statutory compositional standards.
<b>10</b>	Local businesses that use in-store produced labels, window displays, chalk boards, menus etc, e.g. butchers, bakers, health food shops, restaurants, take aways, caterers supplying more than 10 meals per day, and businesses using claims for marketing advantage.
	Caterers supplying not more than 10 meals per day, e.g. bed and breakfast; Any business not included in the categories above.

<b>Score:</b>	<input type="text"/>
---------------	----------------------

#### **A5.4.1.2: 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.

<b>Score</b>	<b>Guidance on the Scoring System</b>
<b>30</b>	Food manufacturers, processors, importers processing a wide range of goods.
<b>20</b>	Local businesses that label loose goods on display, and/or undertake pre-packing for direct sale.
<b>10</b>	Non-manufacturing retail/catering selling only from their own establishment.
<b>0</b>	Any business not included in the categories above.

<b>Score:</b>	<input type="text"/>
---------------	----------------------

#### A5.4.1.3: 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:	<input type="text"/>
--------	----------------------

#### A5.4.1.4: 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:	<input type="text"/>
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#### A5.4.2: 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. Agency, Food Advisory Committee and LACORS 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:	
--------	--

#### A5.4.3: 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;
- For small businesses, consider the checks appropriate to that business.

<b>Score</b>	<b>Guidance on the Scoring System</b>
<b>30</b>	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 primary inspection.
<b>20</b>	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 primary inspection.
<b>10</b>	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 primary inspection.
<b>0</b>	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 primary inspection.

<b>Score:</b>	<input type="text"/>
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#### **A5.4.4: Food Standards Inspection Frequencies**

<b>Category</b>	<b>Points Range</b>	<b>Minimum Inspection Frequency</b>
<b>A</b>	101 to 180	at least every 12 months
<b>B</b>	46 to 100	at least every 24 months
<b>C</b>	0 to 45	Alternative enforcement strategy

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 Inspection Report**

A report containing the following information must be provided to the food business operator / food business proprietor following each primary inspection. 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 INSPECTION CONDUCTED:

AREAS INSPECTED (to be specified):

DOCUMENTS AND/OR OTHER RECORDS EXAMINED (to be specified):

SAMPLES TAKEN (to be specified):

KEY POINTS DISCUSSED DURING THE INSPECTION (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 Hygiene (England) Regulations 2006**

Model forms which may be used by authorised officers in connection with the Food Hygiene (England) Regulations 2006 are provided from A7.1 to A7.16, as summarised in the following table.

<b>Location</b>	<b>Model Form</b>	<b>For Use In Connection With</b>
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 9
A7.11 / A7.12	Notice of Withdrawal of Remedial Action Notice / Detention Notice	Regulation 9
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 / 7.18	Certificate That Food Has Not Been Produced, Processed or Distributed In Compliance With The Hygiene Regulations	Regulation 27

## A7.1: Model Form 1 - Hygiene Improvement Notice

Authority: .....

### The Food Hygiene (England) Regulations 2006 - 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**

1. 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.
2. 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.
3. 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**

4. In accordance with Regulation 20 of the Food Hygiene (England) Regulations 2006, 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.
5. If you decide to appeal, the time set out in the notice is suspended and you do not have to carry out the work described until the appeal is heard. 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.
6. 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 Hygiene (England) Regulations 2006 - 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**

1. 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.
2. 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.
3. If you believe that you have acted to remove the health risk condition, you may apply in writing to the authority for a certificate of satisfaction which, if granted, would allow you to use the premises, process, treatment or equipment again. You can do this even if the court hearing has not taken place.
4. You are not allowed to use the premises, process, treatment or equipment for the purpose specified in paragraph 2 of the notice (see Regulation 7(3) of the Food Hygiene (England) Regulations 2006) as applied by Regulation 8(4) until
  - (a) a court decides you may do so; or
  - (b) the authority issues you with a certificate as in paragraph 3 above; or
  - (c) 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
  - (d) the authority abandons the application.
5. 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.
6. **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.

<b>WARNING</b>
----------------

***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 Hygiene (England) Regulations 2006 - 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**

1. 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 Hygiene (England) Regulations 2006 as applied by Regulation 8(4)).
2. 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.
3. If the court is satisfied by the authority's evidence that the health risk condition is fulfilled, then an order will be made stating what you may not do. The order will be served on you by the authority. A copy of it must be fixed by the authority in a conspicuous position on your premises and it is an offence to deface it (Section 1 of the Criminal Damage Act 1971).
4. In accordance with Regulation 21 of the Food Hygiene (England) Regulations 2006, you have the right to appeal to the Crown Court against the decision of the Magistrates' Court if you think that it is wrong.
5. 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 Hygiene (England) Regulations 2006 or associated regulations.
6. If you have been issued with a Hygiene Emergency Prohibition Notice from the authority, you will know what steps should be taken to remove the health risk condition.
7. If the 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 Hygiene (England) Regulations 2006 - Regulation 9

#### REMEDIAL ACTION 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. 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 operation 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(7) not to comply with this notice.

**Please read the notes overleaf carefully. If you are not sure of your rights or the implications of this notice, you may want to seek legal advice.**

## **A7.8: Model Form 4 - Remedial Action Notice (Reverse)**

### **NOTES**

1. The authorised officer is satisfied that the requirements of the Hygiene Regulations are not being met and/or that an inspection under the Hygiene Regulations is being hampered for the reasons given.
2. When an authorised officer is satisfied that relevant action has been taken or any inspection by an authorised officer will not be hampered this notice will be withdrawn by means of a further notice in writing.

### **YOUR RIGHT OF APPEAL**

3. In accordance with Regulation 20 of the Food Hygiene (England) Regulations 2006, 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.
4. This notice remains in effect even if you are appealing against the terms of this notice.

**WARNING**

***FAILURE TO COMPLY WITH THIS NOTICE IS AN OFFENCE***

Offenders are liable to be fined and/or imprisonment for up to 2 years.

## A7.9: Model Form 5 - Detention Notice

Authority: .....

### The Food Hygiene (England) Regulations 2006 - Regulation 9

#### DETENTION NOTICE

(Establishments subject to approval under Article 4(2) of Regulation (EC) No. 853/2004)

1. To:.....  
(Food Business Operator or Duly Authorised Representative)

At:.....  
.....  
(Address of Food Business Operator or Duly Authorised Representative)

Name of food business:.....

Address of food business:.....  
.....

2. The following food is being detained for the purposes of examination:

Description:.....  
.....  
.....

Quantity:.....  
.....

Identification Marks / Health Marks:.....  
.....  
.....

3. This food is not to be used.

4. The food is being detained for the purposes of examination.

5. The food must not be removed from:.....  
.....  
.....  
.....(Name / address of food business where food is to remain)

6. You will be informed in writing as soon as the Authorised Officer is satisfied as to the result of the examination. The notice will then either be withdrawn and the food released, or the food will be seized to be dealt with by a Justice of the Peace, who may condemn the food and order its destruction. You may choose to destroy the food at any time.

Signed: .....(Authorised Officer)

Name in capitals: .....

Date:.....

Address:.....  
.....

Tel: ..... 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**

1. The authorised officer has, by means of this notice, required the detention of the food specified for the purposes of examination.
2. The food must remain where it is. If it is moved it may only be moved to the place stated in paragraph 5 of this notice.
3. If an authorised officer is satisfied that the food need no longer be detained this notice will be withdrawn by means of a further notice in writing.
4. If, for some reason, you need to move the food after receiving this notice, you should contact the 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 Hygiene (England) Regulations 2006 - Regulation 9

#### 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 Duly Authorised Representative)

At:.....  
.....  
(Address of Food Business Operator or 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**

1. 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.
2. The relevant notice/notices is/are now withdrawn.

## A7.13: Model Form 7 - Certificate That Health Risk Condition No Longer Exists

Authority: .....

### The Food Hygiene (England) Regulations 2006 - 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**

1. 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.
2. 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 Hygiene (England) Regulations 2006 - Regulations 7 and 8

#### NOTICE OF DETERMINATION THAT THE HEALTH RISK CONDITION REMAINS IN EXISTENCE

1. To: .....(Food Business Operator)

At: .....

.....(Address of Food Business Operator)

Name of food business .....

Address of food business .....

2. The enforcement authority has determined that it is NOT satisfied that you have taken sufficient measures to secure that the health risk condition described in the:

Hygiene Prohibition Order\*

Hygiene Emergency Prohibition Notice\*

Hygiene Emergency Prohibition Order\*

[\* Officer to delete as appropriate]

served on you on ..... (date) is no longer 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**

1. The enforcement authority is not satisfied that the health risk condition no longer exists in respect of the circumstances that caused the enforcement authority to issue you with a Hygiene Emergency Prohibition Notice or the court to impose a Hygiene Prohibition Order or Hygiene Emergency Prohibition Order.
2. You still cannot use the premises, process, treatment or equipment in question for the purposes described in the Hygiene Emergency Prohibition Notice, Hygiene Prohibition Order or Hygiene Emergency Prohibition Order even if you are appealing against the terms of this notice.
3. In accordance with Regulation 20 of the Food Hygiene (England) Regulations 2006, 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.
4. As soon as you think that the health risk condition has been removed because of actions you have taken, you may apply in writing to the authority for a certificate of satisfaction which, if granted, would allow you to use the premises, process, treatment or equipment again. If a Hygiene Emergency Prohibition Notice has been issued, you can do this even if the court hearing has not taken place.

**WARNING**

***FAILURE TO COMPLY WITH THE ORIGINAL NOTICE OR ORDER IS AN OFFENCE***

Offenders are liable to be fined and/or imprisonment for up to 2 years.

# A7.17: Model Form 9 - Certificate that Food Has Not Been Produced, Processed or Distributed in Compliance with the Hygiene Regulations

Authority: .....

## The Food Hygiene (England) Regulations 2006 - Regulation 27

### CERTIFICATE THAT FOOD HAS NOT BEEN PRODUCED, PROCESSED OR DISTRIBUTED IN COMPLIANCE WITH THE HYGIENE REGULATIONS

1. To:.....(Food Business Operator)

At:.....

.....(Address of Food Business Operator)

Name of food business:.....

Address of food business:.....

.....

2. Following an inspection, the enforcement authority is satisfied 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**

1. The authority is not satisfied that food has been produced, processed, or distributed in compliance with the Hygiene Regulations. The reasons why the authority is not satisfied are given.
2. 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 submitted to the relevant food authority 28 days before commencing food operations. On the basis of the activities carried out, certain food business establishments are required to be approved rather than registered. If you are unsure whether any aspect of your food operations would require your establishment to be approved, please contact [the Food Authority] for guidance.

1. **Address of establishment** \_\_\_\_\_  
(or address at which moveable establishment is kept) **Post code** \_\_\_\_\_

2. **Name of food business** \_\_\_\_\_ **Telephone no.** \_\_\_\_\_  
(trading name)

3. **Full Name of food business operator** \_\_\_\_\_

4. **Address of food business operator** \_\_\_\_\_  
**Post code** \_\_\_\_\_

**Telephone no.** \_\_\_\_\_ **E-mail** \_\_\_\_\_

5. **Type of food business** (Please tick ALL the boxes that apply):

- |                               |                          |   |                          |
|-------------------------------|--------------------------|---|--------------------------|
| Farm Shop                     | <input type="checkbox"/> | Staff restaurant/canteen/kitchen          | <input type="checkbox"/> |
| Food manufacturing/processing | <input type="checkbox"/> | Catering                                  | <input type="checkbox"/> |
| Packer                        | <input type="checkbox"/> | Hospital/residential home/school          | <input type="checkbox"/> |
| Importer                      | <input type="checkbox"/> | Hotel/pub/guest house                     | <input type="checkbox"/> |
| Wholesale/cash and carry      | <input type="checkbox"/> | Private house used for a food business    | <input type="checkbox"/> |
| Distribution/warehousing      | <input type="checkbox"/> | Moveable establishment e.g. ice cream van | <input type="checkbox"/> |
| Retailer                      | <input type="checkbox"/> | Market stall                              | <input type="checkbox"/> |
| Restaurant/café/snack bar     | <input type="checkbox"/> | Food Broker                               | <input type="checkbox"/> |
| Market                        | <input type="checkbox"/> | Takeaway                                  | <input type="checkbox"/> |
| Seasonal Slaughterer          | <input type="checkbox"/> | Other ( <b>please give details</b> ):     |                          |

6. **Type of business:**

- |                                      |                          |
|--------------------------------------|--------------------------|
| Sole Trader                          | <input type="checkbox"/> |
| Partnership                          | <input type="checkbox"/> |
| Limited Company                      | <input type="checkbox"/> |
| Other ( <b>please give details</b> ) | <input type="checkbox"/> |

\_\_\_\_\_  
*(If Limited Company, please complete 7. below)*

7. **Limited company name** \_\_\_\_\_ **Company no.** \_\_\_\_\_

**Registered Office address** \_\_\_\_\_  
**Post code** \_\_\_\_\_

8. **Number of vehicles or stalls kept at, or used from, the food business establishment and used for the purposes of preparing, selling or transporting food:**

5 or less     6-10     11-50     51 plus

9. **Water supplied to the food business establishment:**    **Public (mains) supply**     **Private supply**

10. **Full name of manager (if different from operator)** \_\_\_\_\_

11. **If this is a new business** \_\_\_\_\_  
Date you intend to open

12. **If this is a seasonal business** \_\_\_\_\_  
Period during which you intend to be open each year

13. **Number of people engaged in food business**    0-10     11-50     51 plus     (**Please tick one box**)  
Count part-time worker(s) (25 hrs per week or less) as one-half

**Signature of food business operator** \_\_\_\_\_

**Date** \_\_\_\_\_

**Name** \_\_\_\_\_  
(BLOCK CAPITALS)

**AFTER THIS FORM HAS BEEN SUBMITTED, FOOD BUSINESS OPERATORS MUST NOTIFY ANY CHANGES TO THE ACTIVITIES STATED ABOVE TO [THE FOOD AUTHORITY] AND SHOULD DO SO WITHIN 28 DAYS OF THE CHANGE(S) HAPPENING.**

## **ANNEX 9: Model Notice of Temporary Closure of Production Area(s) (Live Bivalve Molluscs / Shellfish)**

### **NOTICE OF TEMPORARY CLOSURE OF PRODUCTION AREA(S)**

**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 Hygiene (England) Regulations 2006 S.I. 2006/14**

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]<sup>1</sup> –

As Competent Authority for the purposes of the above EC provision by virtue of regulation 4 of the Food Hygiene (England) Regulations 2006 S.I. 2006/14 –

[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.<sup>2</sup>

Signed:

Dated this [ ] day of [ ] 200[ ]

---

[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 17 of the Food Hygiene (England) Regulations 2006 S.I. 2006/14. On conviction a fine or imprisonment for a term of up to two years or both may be imposed.**

---

**[PRIVATE INDIVIDUALS ARE STRONGLY ADVISED NOT TO GATHER [insert description of affected animals] FOR THEIR OWN CONSUMPTION FROM THE AFFECTED PRODUCTION AREA. THERE MAY BE A RISK TO HUMAN HEALTH IN DOING SO.]**

---

<sup>1</sup> Recent analysis of samples taken by [insert authority] from the affected area has shown that [insert animals] are affected by [insert problem].

<sup>2</sup> [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.]

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