

Food Law

Code of Practice (Northern Ireland)

(Issued February 2016)

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Chapter 1 – Introduction

This Code of Practice is issued under Article 39 of The Food Safety (Northern Ireland) Order 1991¹ (the Order), regulation 22 of The Food Hygiene Regulations (Northern Ireland) 2006², and regulation 6 of The Official Feed and Food Controls Regulations (Northern Ireland) 2009³, which empower the Department of Health, Social Services and Public Safety (DHSSPS) to issue codes of practice concerning the execution and enforcement of that legislation by competent authorities. It relates to Northern Ireland only.

Legislation regulating official controls requires the competent authority to carry out these functions. For the purposes of this Code the term competent authority will be used unless reference is made to a specific function of a competent authority. In these circumstances the term used has the meaning set out in the glossary in Annex 1. References to legislation should be considered a reference to that legislation in its current form (unless otherwise indicated). The legislation referred to above requires competent authorities to have regard to this Code when discharging their duties.

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

In addition, Food Standards Agency in Northern Ireland (FSA in NI) can, after consulting the DHSSPS, give a competent authority a direction requiring them to take any specified steps in order to comply with this Code.

If by complying with this Code a competent authority finds public health or food safety is likely to be compromised, they must discuss the matter with FSA in NI at the earliest opportunity.

Competent authorities have statutory duties to enforce legislation relating to food and imported food. Regulation 5 of The Food Hygiene Regulations (Northern Ireland) 2006 sets out the division of enforcement responsibilities between district councils and FSA in NI.

The purpose of enforcement is to ensure compliance with legislation relating to food in each competent authority's area in the United Kingdom (UK). Every competent 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 they are unclear.

¹ <http://www.legislation.gov.uk/nisi/1991/762/contents>

² <http://www.legislation.gov.uk/nisr/2006/3/contents/made>

³ <http://www.legislation.gov.uk/nisr/2009/427/contents/made>

FSA in NI will, from time to time, issue practice guidance for competent authorities. Competent authorities must take account of such guidance, as well as any appropriate guidance issued by the European Union (EU).

Competent authorities must also have regard to the *Framework Agreement on Local Authority Food Law Enforcement* (the Framework Agreement)⁴, which reflects the requirements of this Code.

Competent authorities must be aware that law relating to food is not necessarily made under The Food Safety (Northern Ireland) Order 1991. Law that applies to food is also contained in and/or made under other legislation, including The Diseases of Animal (Northern Ireland) Order 1981⁵, the European Communities Act 1972⁶, The Consumer Protection (Northern Ireland) Order 1987⁷, The Trade Descriptions Act 1968⁸, the Consumer Protection from Unfair Trading Regulations 2008 and directly under EU Regulations.

Competent authorities must also be aware that Article 8(5) of Regulation (EC) No 852/2004 on the hygiene of foodstuffs (Regulation 852/2004)⁹ stipulates that guides to good practice drawn up pursuant to Directive 93/43/EEC on the hygiene of foodstuffs¹⁰ (known in the UK as “Industry Guides to Good Hygiene Practice”) shall continue to apply provided that they are compatible with its objectives.

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

4 <http://food.gov.uk/multimedia/pdfs/enforcement/frameworkagreementno5.pdf>

5 <http://www.dardni.gov.uk/dard-gen-10-21-carcases-animal-products-from-all-eu-countries.pdf>

6 <http://www.legislation.gov.uk/ukpga/1972/68/contents>

7 <http://www.legislation.gov.uk/nisi/1987/2049/contents>

8 <http://www.legislation.gov.uk/ukpga/1968/29/contents>

9 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:165:0001:0141:EN:PDF>

10 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1993:175:0001:0011:EN:PDF>

[Council Directive 93/43/EEC on the hygiene of foodstuffs. Official Journal L175, 19.7.1993, p1-11. This has now been repealed.](#)

Chapter 2 – Communications

2.1. Communications between competent authorities

Where the law allows, competent authorities should share with other competent authorities information about compliance and risk of food business establishments. Competent authorities should respond to any reasonable communication from other competent authorities requesting information or assistance.

Examples of when competent authorities may request information or assistance from other competent authorities may include but are not limited to:

- Referrals of cross boundary enforcement issues or concerns;
- Referrals of food complaints reported to a competent authority in error;
- Information to help coordinate enforcement/infectious disease control activities.

Upon receiving a request or referral, a competent authority should take the following action:

- Acknowledge receipt of the communication and advise the competent authority that the matter is being dealt with;
- Investigate and/or take appropriate enforcement action, if necessary;
- Inform the originating competent authority of any action taken;
- Ensure that responses to requests are open, transparent and provided without undue delay;
- Keep the originating competent authority updated on progress, particularly when action is ongoing and the outcome will not be known for some time.

If the matter is of a serious nature, this should be referred to FSA in NI.

Competent authorities must 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 competent authorities within 28 days.

2.1.1 Primary/Home Authorities

2.1.1.1 Primary Authority

Application of the Primary Authority scheme does not extend to the devolved function of food safety in Northern Ireland. Refer to the Practice Guidance (NI) for further information.

2.1.1.2 Home Authority Principle

The FSA endorses the Home Authority Principle, which is governed by a Joint Statement of Commitment (JSoC) signed in June 2011 by Better Regulation Delivery

Office (BRDO), the Trading Standards Institute (TSI) and the Chartered Institute of Environmental Health (CIEH). Competent authorities must, where possible, adopt and implement its provisions.

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

Home Authorities operate in situations when a business does not have a Primary Authority partnership in place (e.g. if a business chooses not to enter into a partnership or is legally unable to have one), but where there remains a clear need for regulatory activity in relation to that business to be co-ordinated. For example, instances of non-compliance that could be geographically widespread, potentially leading to similar but unconnected regulatory interventions by several competent authorities.

Home Authorities facilitate the sharing of intelligence amongst competent authorities and aim to achieve business compliance primarily in food safety and hygiene, and food standards. The competent authority located in the same area as a business's head office (or alternatively the competent authority where the goods or services are produced) is often best placed to act as the Home Authority for that business.

The Home Authority Principle expects a competent authority to place special emphasis on goods and services originating from a business based within its own area, in an effort to regulate the business at source, thus giving rise to efficiencies in the regulatory system as a whole.

The Home Authority Principle enables regulators to focus on the protection of citizens, workers and the environment whilst adhering to the principles of good regulation (proportionality, accountability, consistency, transparency and targeting).

Competent authorities considering giving advice or taking enforcement action in relation to food businesses which have a Home Authority must consider whether they need to contact the Home Authority before doing so. This may 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. The secure database for Home Authority is hosted via TS Interlink.¹¹

2.2 Regional working

2.2.1 Regional and local liaison groups

District councils 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 district councils.

¹¹ <https://secure.tslinkonline.co.uk/>

District councils should ensure that appropriate representation from Food Examiners, Public Analysts, Department of Agriculture and Rural Development for Northern Ireland Veterinary Service - Veterinary Public Health Programme [DARD (VS-VPHP)], and Agri Food Inspection Branch [DARD (AFIB)], the Consultant in Communicable Disease Control (CCDC) and other experts or specialists are considered as the need arises.

Matters of legal interpretation and consistency should be discussed with colleagues in the appropriate local/regional food liaison group and the home or originating authority if appropriate.

District councils should avoid taking unilateral decisions on interpretations without seeking the views of other district councils, through the local/regional food liaison group, or where appropriate the national Food Hygiene Focus Group and Food Standards and Labelling Focus Group.

In areas where there are commercial shellfish harvesting activities competent authorities should refer to section 7.2 for liaison arrangements.

2.3 Managing incidents and alerts

This section deals with food incidents and food alerts that are first identified by competent authorities.

A schematic representation of the process that competent authorities should follow when dealing with a food incident or hazard and the food incident report form can be found in the Practice Guidance (NI). The food incident report form is also available online at www.food.gov.uk/enforcement/enforcework/report.

2.3.1 Food incidents

2.3.1.1 Definitions

Food incident:

A “food incident” is defined as any event where, based on the information available, there are concerns about actual or suspected threats to the safety or quality of food that might require intervention to protect consumers' interests. Quality should be considered to include food standards, authenticity and composition.

Food incidents are split in to 3 separate categories, which may overlap:

- Food hazards - a food incident involving (or suspected to involve) a biological, chemical and or physical agent in, or condition of, food with the potential to cause an adverse effect on the health or safety of consumers [including outbreaks of foodborne disease and or infectious intestinal disease].
- Food fraud – the deliberate placing on the market, for financial gain, foods which are falsely described or otherwise intended to deceive the consumer
- Non-hazardous incidents which may impact on the food supply chain, including issues of quality, provenance, authenticity, composition and labelling.

2.3.1.2 Documented procedure

Competent authorities must set up and implement a documented procedure for dealing with food incidents and food hazards that are identified within their area.

2.3.1.3 Food hazards

Competent 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 competent authority and is not deemed to be a serious localised food hazard; should be dealt with locally by the competent authority, in conjunction with other relevant agencies and need not to be reported to FSA in NI.
- B. serious localised food hazard** – one in which food is not distributed beyond the boundaries of the competent authority but which involves: *E.coli* O157, other Verocytotoxin-producing *Escherichia coli* (VTEC), *Clostridium botulinum*, *Salmonella typhii* or *Salmonella paratyphi*, or which the district council 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; should be notified by the competent authority to FSA in NI and other relevant agencies at the earliest opportunity and by the quickest available means¹² and confirmed in writing on the incident report form.
- C. non-localised food hazard** – one in which food is distributed beyond the boundaries of the competent authority; should be notified by the competent authority to FSA in NI and other relevant agencies at the earliest opportunity and by the quickest available means and confirmed in writing on the incident report form.

2.3.1.4 Food hazards associated with outbreaks of foodborne illness

If a food hazard has resulted in an outbreak of foodborne illness, the competent authority must consider, with the Public Health Agency (PHA) the activation of their outbreak control plan.

Serious localised outbreaks and non-localised incidents must immediately be notified to the appropriate contacts at FSA in NI and the PHA¹³.

Competent authorities must 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.

¹² Out of hours contact details can be found in the Food Law Code of Practice Supplement.

¹³ Contact details can be found in the Food Law Code of Practice Supplement

2.3.1.5 Food fraud

Intelligence regarding suspicions of food fraud should be shared with FSA in NI. This applies both to issues of food fraud that are believed to be limited to within the competent authority and those which may impact upon or originate from outside of the competent authority. Please refer to the relevant section of the Practice Guidance (NI) for further guidance and submission form.

Completed forms should be sent to: incidents.ni@foodstandards.gsi.gov.uk

2.3.1.6 Deliberate contamination and malicious tampering

Food may be contaminated deliberately. If such an incident occurs district councils 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.

Competent authorities should contact the Police Service for Northern Ireland (PSNI) 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. Contact with the PSNI should be made through the Detective Chief Inspector or Detective Inspectors, Organised Crime Branch, Crime Operation Department, 29 Knocknagoney Road, Belfast, BT4 2PP (Tel No 028 9065 0222). Competent authorities should also advise FSA in NI of such incidents at the earliest opportunity.

Competent 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.

2.3.1.7 Action by the competent authority - food incidents

Once a food incident has been identified, the competent authority must immediately carry out an assessment to determine whether it is a food hazard, is suspected of involving food fraud or is a non-hazardous food incident.

Consideration should be given to 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 might include primary, home, originating and neighbouring authorities, medical specialists, food examiners, public analysts and microbiologists.

Competent authorities must 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 where necessary.

The assessment must include the following:

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

When a competent authority becomes aware of a food incident it must take action to protect public health and safety at the earliest opportunity, including, if necessary, detaining or seizing the food concerned if it is located within the competent authority's area (see section 6.2.10).

Competent authorities must also consider the use of other powers under The Food Hygiene Regulations (Northern Ireland) 2006 or The Food Safety (Northern Ireland) Order 1991 as appropriate, relevant to the circumstances involved.

Localised food hazards must be dealt with locally by the competent authority, in conjunction with other relevant agencies.

Serious localised food hazards and **non-localised food hazards** must be notified by the competent authority to FSA in NI and other relevant agencies at the earliest opportunity.

Significant food incidents that are not food hazards and issues that may be food fraud should also be reported to FSA in NI immediately. In determining significance, consideration should be given to the following factors:

- breaches of food law;
- possible requirement for a co-ordinated approach;
- the disadvantage to the consumer

- disproportionate impact on a sector of the population;
- distribution beyond the UK;
- reputational damage to NI (or the UK);
- public concern;
- likelihood of media interest.

Where a competent authority is in doubt about whether a non-hazardous food incident requires to be reported to FSA in NI, the issue should be discussed with FSA in NI for clarification.

Competent authorities should notify FSA in NI by the quickest available means, and this should be confirmed in writing using a copy of the incident report form.

Where a competent authority becomes aware that a food business operator (FBO) in their area has withdrawn or recalled food from the market in accordance with Article 19 of Regulation (EC) No 178/2002 (Regulation 178/2002), due to non-compliance with the food safety requirements of that Regulation, the competent authority must confirm that FSA in NI is also aware.

Responsibility for action at local level remains with the competent authority unless and until FSA in NI, in writing, notifies the competent authority otherwise.

2.3.1.8 Localised food hazards - media relations

In the event of a localised food hazard, the competent authority could issue a local press statement to alert the public to the hazard. The relevant food business operators must be consulted before the identity of a named business or branded food is discussed with, or released to, the media. Such media releases must be sent to FSA in NI without delay. The competent authority must notify FSA in NI immediately if the food business operator raises objections to the release of such information.

2.3.2 Food alerts

2.3.2.1 Definitions

A “Food Alert for Action” (FAFA) is a communication from FSA in NI to a competent authority concerning a food hazard or other food incident. Where FSA in NI requires any actions/responses by the competent authority, these will be clearly specified. FSA in NI might also issue information to competent authorities on product recalls or withdrawals via its Product Recall/Withdrawal Information Notices.

Allergy alerts are also issued by FSA in NI to quickly communicate allergen risks directly to the consumer. Competent authorities receive copies of these allergy alerts for information purposes only.

2.3.2.2 Responding to food alerts

Competent authorities must ensure that their documented procedure for dealing with food incidents includes the effective response to food alerts issued by FSA in NI.

This documented procedure must be developed in consultation with:

- members of the NI regional food liaison group;
- PHA;
- Public Analyst; and
- relevant officers of the competent authority, e.g. Emergency Planning Officer.

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

- details, including contact details, of the lead food officer for such matters;
- liaison arrangements between competent authority officers;
- 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 competent authorities, both within and outside normal office hours;
- arrangements to provide adequate staff resources to allow effective response to alerts; and
- arrangements to provide adequate equipment, including access to competent authority out of hours, to allow an effective response to be made.

2.3.2.3 Facilities for receiving food alerts and updates

Competent authorities must have facilities to receive food alerts and updates from FSA in NI by an electronic mail system that is acceptable to FSA in NI. Competent authorities must put in place systems to ensure that food alerts can be responded to outside normal working hours.

Competent authorities must advise FSA in NI of their electronic mail address and of any changes to these details at the earliest opportunity.

2.3.2.4 Action by competent authorities

Competent authorities must ensure that any action specified by FSA in NI in a food alert is undertaken promptly, and in accordance with any risk assessment carried out by FSA in NI. If competent authorities propose to take alternative actions, they must agree these with FSA in NI before implementing them. Where a competent authority anticipates difficulties in complying with a request for action given in an alert, they must contact FSA in NI's Consumer Protection team, who deal with food incidents immediately.

2.3.2.5 Media relations - food alerts

Competent authorities wishing to enhance local publicity can, where permitted by FSA in NI, use a press release/media statement issued by FSA in NI as a basis for a local press release. In such cases, the competent authority must ensure that the local statement is accurate, relevant and consistent with FSA in NI's statement.

If competent authorities wish to display food alerts on their websites they must ensure that any material from FSA in NI's food alerts or press/media releases is edited so as to specify what local action has been taken in response to the alert. It must also include local contact information.

2.4 Communication between competent authorities

2.4.1 Information supplied to FSA in NI

2.4.1.1 Food hazards

Competent authorities must notify FSA in NI as soon as they become aware of a:

- serious localised food hazard;
- non-localised food hazard;
- serious localised outbreak of foodborne illness; and
- significant non-hazardous food incidents and issues of food fraud withdrawal or recall of food by a food business operator due to non-compliance with the food safety requirements of Regulation 178/2002 (Article 19)¹⁴.

2.4.1.2 Approved establishment details

Competent authorities must notify FSA in NI via the following link:

executive.support@foodstandards.gsi.gov.uk

- when an establishment has been approved or conditionally approved;
- where an approved establishment ceases activities that are the subject of the approval or conditional approval;
- where an approval or conditional approval has been withdrawn or suspended;
- where a live bivalve mollusc purification centre or modification to an existing centre is proposed (see section 7.4); or
- where consideration is being given to the issue of a closure notice to restrict the harvesting of live bivalve molluscs (see section 7.7).

2.4.1.3 Competent authorities at points of entry

Competent authorities with a point of entry, or External Temporary Storage Facilities (ETSF) must establish routine local liaison and communication with relevant local

¹⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:031:0001:0024:EN:PDF>

organisations for the purpose of general exchange of information on food imports and for the effective handling of incidents. These contacts include, where appropriate:

- Department of Agriculture and Rural Development, Northern Ireland (DARD)
- Her Majesty's Revenue and Customs (HMRC)
- Food and Environment Research Agency (FERA)
- Port operator; import agents; ITSF – Internal Temporary Storage Facilities (formerly 'transit sheds') \ ETSF operators,
- Maritime and Coastguard Agency (MCA),
- The Medicines and Healthcare products Regulatory Agency (MHRA)

2.4.1.4 Notification of food hazards or incidents regarding imported food

All competent authorities must send details of any imports rejected, either at the point of entry or inland, where there is a serious direct or indirect risk to health, to FSA in NI's Consumer Protection team using the Rapid Alert System for Food and Feed (RASFF) notification form.

This will include imports rejected for reasons such as, chemical, microbiological or foreign body contamination or imports from a country which is not authorised to export that category of products to the EU. For breaches of maximum levels for pesticides, the competent authorities should notify FSA in NI's Consumer Protection team¹⁵ of the levels found so that they can determine, based on a risk assessment, whether a RASFF notification is required.

In addition, with regard to testing for residues of veterinary medicines under Regulation (EC) No 470/2009 (such as nitrofurans and chloramphenicol) or those not approved for use, details of all adverse results must be sent to FSA in NI's Consumer Protection team using the RASFF notification form. Where available, copies of the health certificate and the bill of lading should also be forwarded to FSA in NI.

Competent authorities may access the FSA's website, and download copies of the template for the RASFF notification form at:

<https://www.food.gov.uk/enforcement/enforcework/report>

The competent authority must also notify local customs of the rejection decision and the final destination of the consignment if it is to be allowed to be re-exported as soon as possible.

2.4.1.5 Lead food officer details

Competent authorities must notify FSA in NI of the name(s) of their appointed lead officer who ensures that their competent authority meets its obligations under Regulation (EC) No 882/2004 (Regulation 882/2004), the Food Law Code of Practice

¹⁵ incidents.ni@foodstandards.gsi.gov.uk (Tel: 028 9041 7700)

(NI) and the Framework Agreement on Official Feed and Food Controls, and notify any changes to these details.

2.4.1.6 Nominated officer for imported food

Every competent authority with a point of entry must appoint a nominated officer with the necessary competency in imported food control to be a point of contact with FSA in NI on imported food matters. The details of the nominated officer or changes to the nominated officer must be notified to FSA in NI within three working days.

2.4.1.7 Out of hours service

Competent authorities must put in place procedures to ensure that responsible officers can be contacted in the case of an emergency. The competent authority must advise FSA in NI of emergency telephone number or numbers to enable contact to be made outside the competent authority's normal office hours. Information on out-of-hours contacts must be provided in the manner and at the frequency required by FSA in NI (normally twice per year). The competent authority must also proactively advise FSA in NI of any changes to these details at the earliest opportunity.

2.4.1.8 Enforcement e-mail addresses

Competent authorities must notify FSA in NI of their dedicated electronic mail address and notify any changes to these details (see section 2.3.2.3).

2.4.1.9 Delegation of official controls

Competent authorities responsible for the delegation of specific tasks to independent third parties (control bodies)¹⁶ must provide FSA in NI with details of the control body and the tasks delegated to it.

2.4.2 Liaison with other Member States

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

Trans-border matters that may have policy implications, matters relating to outbreaks of foodborne illness and matters connected with food hazards are dealt with by the FSA. Competent authorities must therefore notify FSA in NI of all such matters at the earliest opportunity.

¹⁶ As defined in Article 2(5) of Regulation 882/2004

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

2.4.2.1 Definitions of trans-border issues

Trans-border matters fall into three broad categories:

- trans-border matters that need to be referred directly to FSA in NI;
- trans-border matters reported to FSA in NI after liaison has taken place;
- routine liaison between competent authorities and competent authorities in other Member States.

2.4.2.2 A. Trans-border matters to be referred directly to FSA in NI

- 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 an issue, including imported food official controls.
- where repeated non-compliance has been identified in connection with different batches, lots or consignments from the same source.

2.4.2.3 B. Trans-border matters reported to FSA in NI after liaison has taken place

- any issue when, after investigation, liaison or inquiry, it appears that circumstances set out in 2.4.2.2 above apply.
- cases involving enforcement authorities in other Member States where there is undue delay, equivocation or a refusal to undertake action which appears to be warranted.
- circumstances in which it appears that elements of the national food law of one Member State conflicts with that of another.
- any issue listed for information which, after investigation, liaison or enquiry, appears to have such implications or is of such a serious nature that FSA in NI must be informed of it.

2.4.2.4 C. Routine liaison between local competent authorities of Member States

Competent authorities must only deal directly with “For Information” matters. Other issues requiring action must be referred without delay to FSA in NI. Competent

authorities must seek advice from FSA in NI if there is doubt as to the appropriate procedure for dealing with a particular trans-border matter.

Matters of routine liaison between local competent authorities of Member States under Category C include:

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

2.4.3 Enquiries to other Member States

Competent authorities must 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 FSA in NI or direct. FSA in NI can provide assistance in identifying the relevant liaison body or authority if necessary.

Competent authorities must carry out a full investigation prior to referring a matter to FSA in NI with full supporting documentation.

2.4.3.1 Enquiries from other Member States

Competent authorities must comply with any reasonable request for information or administrative assistance from another competent authority, food control body, another Member State (or FSA in NI). In doing so they must 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 FSA in NI;
- ensure that responses to requests are open, helpful and provided without undue delay; and
- keep the originating party updated on progress when action is ongoing and the outcome will not be known for some time.

Any request for information which, after investigation, liaison or enquiry, appears to be of a serious nature, must be referred to FSA in NI.

2.4.3.2 Disclosure of Information to Member States

Article 7 of Regulation 882/2004 sets out the general requirements in respect of transparency and confidentiality. Detailed provisions on administrative assistance and co-operation with other Member States are set out in Articles 34 to 38 of Regulation 882/2004.

Article 34 stipulates that Articles 35 to 40 of that Regulation, which deal with administrative assistance and co-operation between Member States “shall not prejudice national rules applicable to the release of documents which are the object of, or are related to, court proceedings, or rules aimed at the protection of natural or legal persons’ commercial interests”.

Competent authorities must therefore ensure that any release of information is compatible with national legislation including that relating to Data Protection and Freedom of Information (see relevant section of the Practice Guidance (NI)).

Chapter 3 – Administration

3.1 Requirements to deliver official controls

3.1.1 Conflicts of interest

This section deals with issues to be considered in ensuring that competent authorities and their authorised officers are impartial and free from conflicts of interest.

3.1.1.1 Avoidance of conflict of interest

In accordance with the requirements of Article 4(2)(b) of Regulation 882/2004 staff carrying out official controls must be free from any conflict of interest.

Competent authorities must ensure that their officers are aware of the potential conflicts of interest that can sometimes arise in an enforcement situation through the promotion of the competent authority's services.

Officers must not provide their own services, e.g. training, in their own time within the area of the competent authority that employs them.

Competent authorities must ensure that potential or actual conflicts of interest do not arise as a result, Home or Originating Authority responsibilities and contracting-out services for enforcement purposes.

Competent authorities and their officers must avoid the exclusive promotion of the competent authority's services if other providers of those services exist in the area or the services are offered there by a different organisation from outside the area.

Where a competent authority delegates enforcement to an independent third party (control body) as per Article 2(5) of Regulation 882/2004 then the competent authority must obtain proof that the control body is impartial and free from any conflict of interest as regards the tasks delegated to it.

3.1.1.2 Enforcement within competent authority-run establishments

The competent authority's food law enforcement policy (see section 5.1.1) must detail the competent authority's arrangements for ensuring compliance with food law in establishments where the competent authority is itself the food business operator, and the steps that must be taken to ensure enforcement decisions are free from any conflict of interest.

Where any serious breach of food law is detected in such an establishment then these must be brought to the attention of the Chief Executive without delay.

Contract caterers that operate within competent authority establishments should be assessed in accordance with section 5.6 and the intervention frequency determined accordingly.

3.1.2 Powers of entry

3.1.2.1 Powers of entry under The Food Hygiene Regulations (Northern Ireland) 2006

The powers of entry under regulation 14 of The Food Hygiene Regulations (Northern Ireland) 2006 may be used in relation to Crown premises.

The Food Hygiene Regulations (Northern Ireland) 2006 do not contain the specific exemptions for certain members of the Royal Family or certain Royal residences afforded by The Food Safety (Northern Ireland) Order 1991 (see 3.1.2.2). Competent authorities must use discretion when exercising their powers in respect of Crown premises.

In practice, competent authorities must adopt the same approach to the enforcement of The Food Hygiene Regulations (Northern Ireland) 2006 in respect of Crown premises as they do in respect of The Food Safety (Northern Ireland) Order 1991.

Competent authorities must deal with food safety and food hygiene matters under The Food Hygiene Regulations (Northern Ireland) 2006; this includes those who handle food for sale or supply food, by virtue of recital (9) and Article 1(2) of Regulation 852/2004, fall outside the scope of that Regulation but remain subject to the provisions of Regulation 178/2002. An example would be enforcement action in respect of a one-off event, such as a wedding reception that resulted in an outbreak of food poisoning i.e. the sale or supply of unsafe food in contravention of Article 14(1) of Regulation 178/2002.

3.1.2.2 Powers of entry under The Food Safety (Northern Ireland) Order 1991

Competent authorities should deal with food standards matters under The Food Safety (Northern Ireland) Order 1991. This again includes those who handle food for sale or supply food, by virtue of recital (9) and Article 1(2) of Regulation 852/2004, fall outside the scope of that Regulation but remain subject to the provisions of Regulation 178/2002.

The powers of entry under Article 33 of The Food Safety (Northern Ireland) Order 1991 may be used in respect of food standards issues, in relation to 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 (Northern Ireland) Order 1991 cannot be exercised. If an authorised officer seeks entry to Crown premises and is informed that such a certificate has been issued, the officer is entitled to see the certificate or a copy of it.

3.1.2.3 Powers of entry under The Official Feed and Food Controls Regulations (Northern Ireland) 2009

The powers of entry under regulation 37 of The Official Feed and Food Control Regulations (Northern Ireland) 2009 may be used by authorised officers for the purpose of ascertaining whether there has been any contravention of the import provisions of these Regulations in relation to food.

3.1.2.4 Powers of entry under The Trade in Animals and Related Products Regulations (Northern Ireland) 2011

The powers of entry under regulation 33 of The Trade in Animals and Related Products Regulations (Northern Ireland) 2011¹⁷ may be used by authorised officers for the purpose of enforcing these Regulations; and in these Regulations “premises” includes any place, vehicle, trailer, container, stall, moveable structure, ship or aircraft.

3.1.2.5 Operating in another area

A competent authority must normally deal with matters arising within its area of jurisdiction, but can inspect business establishments in other competent authority areas to obtain evidence of contraventions in their competent authority areas.

A Primary Authority may make visits in another competent authority area at the request of the business.

When exercising these powers, authorised officers must liaise with the relevant competent 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 competent authority in which the business is located, for example in an emergency or out of hours, the competent authority must be notified as soon as practicable thereafter.

Authorised officers exercising these powers must not give advice to a food business or recommend changes to systems or procedures. Such matters must be passed to the competent authority for the area for appropriate action.

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

¹⁷ <http://www.legislation.gov.uk/nisr/2011/438/contents/made>

3.1.2.6 Powers of search and seizure under Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) and Human Rights Act 1998

The right to privacy and respect for personal property are key principles of the Human Rights Act 1998¹⁸.

Powers of entry, search and seizure must be fully and clearly justified before use because they may significantly interfere with the occupier's privacy. Officers must consider if the necessary objectives can be met by less intrusive means.

Article 33(5) of The Food Safety (Northern Ireland) Order 1991 and regulation 14(5) of The Food Hygiene Regulations (Northern Ireland) 2006 permit an authorised officer to take with them such other persons as they consider necessary. This would include, for example, any 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 must be dealt with. It does not give an authorised officer any right to force entry to search or seize property but it does give the other person the right to be on the premises during the search without the occupier's permission.

In all cases authorised officers must:

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

3.1.2.7 Use of PACE Code B notices

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

A PACE Code B notice should be used in those circumstances where officers are carrying out a directed search. A directed search can be defined as looking for something predetermined as relevant to a suspected or alleged offence.

It may be appropriate as part of an ongoing investigation for example in response to a complaint where evidence of suspected offences may already exist. Ultimately a decision to serve a PACE Code B notice will depend on the individual circumstance of the matter under investigation. Officers should seek further guidance from the competent authorities' own legal counsel if further clarification is needed.

¹⁸ <http://www.legislation.gov.uk/ukpga/1998/42/contents>

3.1.2.8 Interventions at Crown establishments

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

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

Group 1 premises must normally be visited without prior arrangement.

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

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

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

Group 3 premises must always be visited by prior arrangement with the appropriate contact at the establishment concerned, 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 must carry an identity card that incorporates their photograph.

Authorised officers must 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 must 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 must be given in advance of a visit to Group 3 premises, if required.

If the competent authority is in doubt as to how to classify particular premises to which this section applies, they must be treated as Group 3 premises and reviewed at a later stage, if necessary.

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

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

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

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

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

3.2 Registration of food business establishments

3.2.1 What is a food business establishment?

Under Article 2(c) of Regulation 852/2004, 'establishment' means any unit of a food business. A 'food business' as defined in Regulation 178/2002 on general food law means any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of production, processing and distribution of food. EU rules apply only to such 'undertakings', which involve a certain degree of organisation and a certain continuity of food activities.

3.2.2 Who is a food business operator?

A food business operator is defined by Regulation 178/2002 as the natural or legal person responsible for ensuring that the requirements of food law are met within the food business under their control.

3.2.3 Requirement to register a food business establishment

Under Article 6(2) of Regulation 852/2004, food business operators must register the establishment(s) under their control with the appropriate competent authority via the channels described in section 3.2.8.3.

3.2.4 Exemptions from registration

Establishments which undertake food activities which do not require a certain degree of organisation and a continuity of activities do not meet the definition of a food business establishment and therefore fall outside the scope of Regulation 852/2004. Such establishments are exempt from registration requirements but do, however,

remain subject to the provisions of The Food Safety (Northern Ireland) Order 1991 and Regulation 178/2002.

Article 4(1)(b) of Regulation (EC) No 853/2004 (Regulation 853/2004), stipulates that food establishments that are subject to approval under Regulation 853/2004 are not required to also register with the competent authority under Regulation 852/2004 (see section 3.3 on establishments subject to approval).

Both recital 9, and Article 1(2), of Regulation 852/2004 set out the circumstances under which the Regulation, and hence the requirement to register under Article 6(2), would not apply, namely:

- primary production for private domestic use;
- the domestic preparation, handling or storage of food for private domestic consumption;
- the direct supply, by the producer, of small quantities of primary products to the final consumer or to local retail establishments directly supplying the final consumer.

3.2.5 Movable food establishments

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

Although ocean-going ships, aircraft, trains and long-distance coaches are subject to the provisions of Regulation 852/2004; their movable nature generally means that there is little practical value in the registration of individual vehicles with UK competent authorities, as they are not always present in the same area of jurisdiction. The following sections outline the arrangements for registration of movable establishments:

Section 3.2.5.1 (ships and vessels); section 3.2.5.2 (aircraft) and section 3.2.5.3 (trains and coaches).

3.2.5.1 Ships and vessels

Food business operators must register vessels under their control which meet the definition of a food business establishment (section 3.2.1) unless they require approval (i.e. freezer and factory vessels). This includes vessels which are permanently moored in the UK (floating restaurants), vessels which are engaged for the purposes of the distribution of food, and passenger vessels which ply their trade on inland water ways and travel the same routes, never leaving territorial waters e.g. cross channel ferries, river ferries and pleasure craft. If the vessel routinely calls at more than one UK port, the 'registering authority' should usually be the competent authority where the vessel has its 'home port' as a registered vessel with the Maritime and Coastguard Agency (MCA). Any new food business registrations should be notified to the Association of Port Health Authorities (APHA).

3.2.5.2 Aircraft

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

3.2.5.3 Trains and coaches

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

3.2.5.4 Markets

In the case of vehicles and stalls (whether or not these facilities are provided by the market controller) used for transporting, preparing or selling of food to consumers within the area of a market, the food business operator should register the establishment with the competent authority in which their food stocks are ordinarily stored.

3.2.6 Mobile food establishments

The following sections refer to food establishments that have the mobility to trade in more than one location, other than those other moveable food establishments described in section 3.2.5.

Mobile food establishments should be registered by the food business operator with the competent authority within which the establishment is ordinarily kept or returns to between trading and is referred to in the following sections as the 'registering competent authority'.

3.2.6.1 Mobile food businesses with multiple establishments

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

3.2.6.2 Competent authority responsibilities

Where a mobile establishment is trading outside the registering competent authority's area, where possible, the inspecting competent authority should check whether an intervention is due by contacting the registering competent authority and/or, by other means such as information on the mobile unit itself or information on the National Food Hygiene Rating website (unless there are evident food safety issues that require immediate intervention). In these instances, the inspecting competent authority should take advice from the registering competent authority as to whether an intervention is required and if so the type of intervention that may be appropriate e.g. full inspection, partial inspection or revisit.

3.2.6.3 Intervention rating of mobile establishments

Competent authorities should carry out the section 5.6 intervention rating for mobile establishments registered with them when due, based on their own inspection and a consideration of information provided by inspecting competent authorities where an appropriate intervention (inspection, partial inspection or audit) has taken place. The intervention rating by the registering authority should result from an intervention that has taken place at a time when the business is in operation.

3.2.6.4 Exchange of information

Inspecting competent authorities should pass on sufficient information to registering competent authorities to enable them to risk rate the establishment. Such information should be passed on within 14 working days of an intervention or sooner depending on the nature and severity of any contraventions identified.

3.2.7 Other types of establishments

Food activities which meet the definition of a 'food business', in section 3.2.1, must be registered as a food business establishment. This may include, for example, food businesses which offer their goods for sale via the internet, food brokers, and those which operate out of domestic premises, such as home caterers and bed and breakfasts (B&Bs).

3.2.8 Registration process

3.2.8.1 Application

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 sections set out these procedures.

3.2.8.2 Timeframe for registration

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

3.2.8.3 Channels of registration

Competent authorities should require food business operators to provide them with full details of the activities undertaken at the establishment(s). A registration form should be made available to, and completed by the food business operators for each establishment under their control and submitted to the relevant competent authority. A model application form for the registration of a food business establishment can be found at Annex 3.

Under the Provision of Services Regulations 2009, competent authorities must also have an electronic means for food business operators to register food business establishments. Registration may be electronically completed and submitted to the relevant competent authority online using the Gov.uk website (www.gov.uk).

3.2.8.4 Action on receipt of a completed registration form

On receipt of a completed registration form, competent authorities should record the date of receipt on the submission. Where any activities indicated on the form fall outside of their enforcement remit, the relevant competent authority should be notified without delay.

Competent authorities should enter relevant information from the registration form onto their database (see 3.2.8.5) of registered food business establishments. The registration form should then be placed on a file (electronic or otherwise) prepared in respect of each food business establishment.

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

If any information is omitted from a registration form submitted by a food business operator, the competent 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 submission to the food business operator for full completion.

On receipt of a completed registration form, competent authorities should have regard to section 5.2.2.2 with respect to carrying out an inspection.

3.2.8.5 Competent authority records

Article 31(1)(b) of Regulation 882/2004 requires the appropriate competent authority to draw up and keep up to date a list of food establishments that have been registered. The up to date list should only include those registered food establishments currently operational and subject to official controls by the competent authority.

Where a list of registered food establishments exists for other purposes, this list may be used by the competent authority in order to comply with this legislative requirement.

Competent authorities should ensure that an 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 competent authority's database:

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

Competent 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.

3.2.8.6 Acknowledgement of registration

Certificates of registration for food establishments should not be issued to food business operators because of their potential to mislead consumers into believing

that a food establishment has “official approval”. Competent authorities may, however, choose to confirm safe receipt of registration forms and the entry of an establishment on to the list of registered food establishments. It would be of particular benefit if the competent authority acknowledges a registration from a mobile establishment.

Any such confirmation should remind the food business operator to advise the competent authority of any subsequent changes to the business, in accordance with Article 6(2) of Regulation 852/2004.

3.2.9 Changes to food establishment operations

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 establishment(s) and must notify their registering competent authority of any significant changes to the operation. Significant changes are considered to include changes in or ceasing of the food activities and changes to the details previously supplied e.g. a change of trading name or a change of food business operator.

On receipt of a notification of change of activities, competent authorities should update their lists of registered food establishments as appropriate as well as the record on file relating to that particular establishment.

3.3 Food business establishments subject to approval

This section relates to establishments subject to approval under Regulation 853/2004.

3.3.1 When is approval required?

Regulation 853/2004 requires that food business establishments handling food of animal origin that fall under the categories for which Annex III lays down requirements must, with some limited exceptions, be approved by the competent authority. Compliance with relevant requirements of Regulation 853/2004 is required in addition to full compliance with Regulation 852/2004. Registration under Article 6(2) of Regulation 852/2004 is not required for establishments that are subject to approval.

3.3.2 Division of responsibilities between competent authorities (district councils) and central competent authority (FSA in NI)

Responsibility rests with the competent authority for the approval of, and enforcement in relation to, standalone 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, dairy products, egg products, frogs legs and snails, edible co-products (including rendered animal fats and greaves, treated stomachs, bladders, and intestines, gelatine and collagen), and will include certain cold stores and certain wholesale markets.

In establishments, subject to approval under Regulation 853/2004 where control falls to an official veterinarian, which also produce meat products or edible co-products, referred to as integrated establishments, district councils are responsible for enforcement in relation to those parts of the establishment in which the meat products or edible co-products are produced. In these establishments district councils are also responsible for recommending approval in respect of meat product or edible co-product activities, to the central competent authority (FSA in NI).

The central competent authority (FSA in NI), through the Department of Agriculture and Rural Development for Northern Ireland (Veterinary Service-Veterinary Public Health Programme) DARD (VS-VPHP), 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 (EC) No 854/2004¹⁹ (Regulation 854/2004), and for enforcement in such establishments once approved. Such establishments include slaughterhouses, game handling establishments, cutting plants, cold stores integrated with these establishments and such establishments in which any combination of minced meat, meat preparations and mechanically separated meat, are also produced.

DARD (VS-VPHP) will on behalf of the central competent authority (FSA in NI) execute and enforce the relevant provisions of the Hygiene Regulations in respect of collection centres and tanneries supplying raw material for the production of gelatine and collagen intended for human consumption.

Responsibility rests with the central competent authority, through DARD Agri Food Inspection Branch (AfIB) for approval of, and enforcement in, raw milk processing establishments subject to approval under Regulation 853/2004.

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

Where a food business is carrying out any activity that is subject to approval under Regulation 853/2004 (including those normally approved by the central competent authority) without the required conditional or full approval, an offence is committed and enforcement action is the responsibility of the relevant competent authority.

3.3.3 Exemptions from approval

The relevant exemptions from the requirements for approval under Regulation 853/2004 fall into three categories:

3.3.3.1 Direct supply of small quantities of primary products; Regulation 853/2004, Article 1(3)(c),(d) and (e)

- direct supply by the producer of small quantities of primary products to the final consumer;

¹⁹ Regulation (EC) No. 854/2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption. Official Journal L139, 30.4.2004, p206-320

- on-farm slaughter and cutting of small quantities of poultry and lagomorphs; and
- hunters supplying small quantities of wild game or wild game meat directly to the final consumer or to local retail establishments directly supplying the final consumer

Additional guidance material is contained within the Practice Guidance (NI)

3.3.3.2 Retail exemption; Regulation 853/2004, Article 1(5)(b)(ii)

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 subparagraphs (i) and (ii) to exclude certain activities from this requirement.

Retailers otherwise exempt from the requirements of Regulation 853/2004 can, by virtue of Article 1(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 the the Practice Guidance (NI).

3.3.3.3 Food containing both products of plant origin and processed products of animal origin; Regulation 853/2004, Article 1(2)

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

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

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

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

Collection centres and tanneries may supply raw material for the production of gelatine and collagen intended for human consumption. They are not subject to the requirements of Regulation 852/2004, nor are they subject to approval under Regulation 853/2004. They will, however, need to be specifically authorised by the central competent authority through DARD (VS-VPHP) 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.

3.3.4 Model approval form

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 section 3.3.6 onwards. Competent authorities must ensure that they, and food business operators, follow these procedures as appropriate. Any deviations from these procedures must be recorded and retained by the competent authority and must, where possible, be agreed with the competent authority beforehand.

An overview of the approval process is set out in a flow chart in the Practice Guidance (NI). A series of template forms is also provided in the Practice Guidance (NI) to assist competent authorities in the administration of approvals. Whilst the content of these documents must be regarded as the minimum required, competent authorities could adapt them as necessary to meet local requirements.

3.3.5 Channels for approval

Under the Provision of Services Regulations 2009, competent authorities must have an electronic means for food business operators to seek approval for food establishments. Applications for approval may be electronically completed and submitted to the relevant competent authority online using the Gov.uk website (www.gov.uk).

3.3.6 Action required following receipt of an approval form

Applications for approval of establishments must 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 must approval be granted to an establishment which is not subject to approval under Regulation 853/2004.

Competent authorities must ensure that the food business operator supplies all relevant information before an application for approval is determined. This

information may be obtained from the food business operator in documentation supplied with the application or during the subsequent on-site visit to the establishment as required by Article 31(2) (b) of Regulation 882/2004 (see section 3.3.8). It is a matter for the competent authority to decide at which stage of the application this information must be provided.

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

3.3.7 Handling

Competent authorities must ensure that the food business operator supplies all relevant information before an application for approval is determined. This information should be obtained from the food business operator in documentation supplied with the application or during the subsequent on-site visit to the establishment as required by Article 31(2) (b) of Regulation 882/2004 (see section 3.3.8). It is a matter for the competent authority to decide at which stage of the application this information must be provided.

In considering applications for approval competent authorities must ensure that they fully consider any exemption that might be available to the applicant afforded by Article 1 of Regulation 853/2004.

3.3.8 Timeframe for approval

Any application for approval from a food business operator must be dealt with promptly. In order to ensure consistency, competent authorities must ask food business operators to submit applications for approval in the appropriate format as set out in the Practice Guidance (NI).

Applications for approval of establishments must 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 must approval be granted to an establishment which is not subject to approval under Regulation 853/2004.

3.3.9 Determination of approval

Before reaching a decision on an application for approval, the competent authority must ensure that an on-site visit is made in accordance with Article 31(2) (b) of Regulation 882/2004.

This must take the form of an inspection of the establishment (see section 5.2.2), to verify that, where necessary, all systems, procedures and documentation meet the relevant requirements of Regulation 852/2004 and Regulation 853/2004.

The inspection must be conducted in accordance with, and cover, all aspects of the relevant inspection form for the business concerned, and consider all issues identified by Regulation 853/2004, as requiring competent authority consent. As per

Article 31(2) of Regulation 882/2004 all the requirements of food law relevant to that business must be met.

3.3.10 More than one type of product

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

There will be establishments where two or more 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.

3.3.11 Conditional approval

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

Competent authorities must 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 competent authority. Professional judgement must be used in deciding whether it would be appropriate to grant conditional approval, on a case by case basis.

If conditional approval is granted, a further visit must be carried out within three months of the conditional approval being granted in accordance with Article 31(2) (d) of Regulation 882/2004.

This visit should be an inspection (section 5.2.2). 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 must be used in deciding whether it would be appropriate to extend conditional approval on a case by case basis. However in no circumstances should conditional approval be extended to more than six months.

3.3.12 Full approval

A competent authority may grant full approval if within three months, or within six months where conditional approval has been extended as described in section 3.3.11 they are satisfied that the food business operator meets all of the relevant requirements in food law including the product specific requirements in Regulation 853/2004. As set out in Article 31(2) (d) of Regulation 882/2004 this must be determined at a new official control visit at the establishment.

3.3.13 Refusal of approval

If an establishment does not fully meet the requirements of Regulation 853/2004, the competent authority must consider whether conditional approval is appropriate in the circumstances.

When a competent authority has decided to refuse an application for approval, it must notify the applicant in writing of the decision at the earliest opportunity. The competent authority must 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 must not be undertaken unless approval or conditional approval is granted. Such notification must also make the food business operator aware of their right of appeal against the decision, and provide the address of the court where such an appeal may be made.

Competent authorities must bear in mind that the food business operator has the right to appeal to a relevant court against the decision to withdraw or suspend an approval or conditional approval. Rights of appeal are subject to The Official Feed and Food Controls Regulations (Northern Ireland) 2009. From the date on which the notice of the decision is served on the relevant person the establishment cannot continue operating whilst the appeal is being determined.

3.3.14 Approval number/identification mark (See also relevant section of the Practice Guidance (NI))

A competent 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 must be a three digit number unique to that competent authority. The approval number should form part of an approval code consisting of the competent authority's two-letter code followed by the approval number.

The approval code must be incorporated into an identification mark which approved establishments are required to apply to their products, as appropriate (see 3.3.15). The requirements for the form of the identification mark are set out in Annex II, Section I B of Regulation 853/2004.

A competent authority must 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.

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

Competent authorities must 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 can apply the same identification mark to both types of food.

3.3.16 Notification

Once approval, or conditional approval, has been granted, the competent authority must notify the applicant in writing, of the nature and scope of the approval and any conditions or limitations that apply and the approval code.

When full approval is granted following conditional approval, the competent authority must notify the food business operator in writing. Such a notification must 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 can continue to be used.

The competent authority must retain a copy of the above notifications on the relevant establishment file and ensure that FSA in NI is notified of the approval in accordance with section 2.4.1.2.

3.3.17 Change of activities or details

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 competent authority becomes aware of any significant changes in, for example, the ownership, management or activities of approved establishment, they must carry out an inspection and take any necessary action.

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

3.3.18 Enforcement in approved establishments

In addition to the enforcement powers detailed in Chapter 6, authorised officers have other powers available to them under The Official Feed and Food Controls Regulations (Northern Ireland) 2009, in respect of product-specific establishments, subject to approval under Regulation 853/2004.

Powers to withdraw or suspend the approval or conditional approval of an establishment subject to approval under Regulation 853/2004, are provided by Article 31(2) (e) of Regulation 882/2004.

Regulation 3(2)/ Schedule 5 of The Official Feed and Food Controls Regulations (Northern Ireland) 2009 designate competent authorities as competent authorities for the purposes of Article 31 of Regulation 882/2004.

Competent authorities must bear in mind that the immediate effect of the suspension or withdrawal of an establishment’s approval is such that the establishment cannot be used for any activities which would render it subject to approval under Regulation

853/2004, or to place products of animal origin, manufactured in the European Union on the market.

On the discovery of non-compliance in establishments subject to approval under Regulation 853/2004, the competent authority must, before considering suspension or withdrawal, explore other enforcement options to control the food hazards presented by the establishment without compromising food safety.

Non-compliance must 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 must be allowed where this is appropriate.

3.3.19 Suspension of approval or conditional approval

Competent authorities must 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.

Competent authorities may request that any guarantee regarding future production made by a food business operator in accordance with this Article is made in writing, although competent authorities must be aware that they cannot insist on this as no requirement exists in law to provide such guarantees in writing.

3.3.20 Withdrawal of approval or conditional approval

Competent authorities must only initiate procedures to withdraw an establishment's approval or conditional approval if other enforcement options have been considered, including suspension of the approval (see section 3.3.18), and if circumstances exist in accordance with Article 31(2) (e) of Regulation 882/2004.

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

3.3.21 Notifications of suspension or withdrawal of approval or conditional approval

Under Article 54(3)(a) of Regulation 882/2004, the competent authority must notify the food business operator in writing of its decision to suspend or withdraw an establishment's approval or conditional approval. The competent authority must 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 cannot be undertaken. Such notification must also make the food business operator aware of their right of appeal against the decision and provide the address of the court where such an appeal can be made. Rights of appeal are subject to regulation 12 of The Official Feed and Food Controls Regulations (Northern Ireland) 2009.

Copies of notifications must be retained on the competent authority's files. The competent authority must also notify FSA in NI at: executive.support@foodstandards.gsi.gov.uk when an establishment's approval or conditional approval has been suspended or withdrawn.

3.3.22 Appeals against suspension or withdrawal of approval or conditional approval

Competent authorities must bear in mind that the FBO has the right to appeal to a relevant court against the decision to withdraw or suspend an approval or conditional approval. Rights of appeal are subject to The Official Feed and Food Controls Regulations (Northern Ireland) 2009. In, from the date on which the notice of the decision is served on the relevant person the establishment cannot continue operating whilst the appeal is being determined, irrespective of whether it is a suspension or withdrawal.

3.3.23 Database of food business establishments

Competent authorities must maintain an up-to-date database of food business establishments which have been approved or conditionally approved by them. Competent authorities must liaise as necessary to ensure that information is made available to all authorities that require it.

3.4 Access to information

Competent authorities must provide details of relevant food business establishment records if requested by the Public Health Agency (PHA), FSA in NI or other similar enforcement or surveillance body to facilitate the investigation of an outbreak or suspected outbreak of disease, the investigation of a food hazard or other food-related emergency or criminal investigation. Such requests must be handled with due regard to Freedom of Information and Data Protection legislation.

Requests for information other than from the above bodies must also be handled with due regard to Freedom of Information and Data Protection in connection with requests for information on registered food business establishments.

3.5 Reports following intervention

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

Communications between competent authorities and multi-site food businesses should be in accordance with the Primary or Home Authority Principle.

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

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

3.5.1 Information requirement

The competent authority's establishment record files, which could be computer based, must be updated after each intervention and include:

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

and in respect of premises inspected for food standards purposes:

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

3.5.2 Retention of establishment record files

Records relating to interventions must be retained in the establishment file for at least six years, unless required for longer retention because of litigation or a review by the Local Government Ombudsman, or required by the document management policy of the competent authority, or following an instruction by the FSA in NI.

3.5.3 Retention of import documentation

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

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

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

Copies of the following information should be retained:

- the Common Veterinary Entry Document (CVED) or Common Entry Document (CED) (after completion and stamping) for a period of three years.
- the original of each third country health certificate or any document required to accompany a consignment and subject to checking e.g. results of analysis, for a period of three years.
- all submission forms with which samples are sent to laboratories for examination and a record of the results of all such examinations, for a period of one year.

3.5.4 Model intervention report form

Where the official control was an inspection, partial inspection or audit, the information detailed in Annex 2 must be included in the report. Reports could include other legislation covered during interventions at food establishments, e.g. health and safety at work etc. although matters relating to food law must be clearly differentiated from other law.

3.5.5 Monitoring of intervention

This section deals with the internal monitoring of interventions by the competent authority of its own service delivery, and the monitoring of each competent authority's intervention actions by the FSA in NI. Competent authorities must ensure that interventions are carried out to a consistently high standard, and that the planned intervention programme is being maintained.

3.5.6 Internal monitoring

3.5.6.1 Documented procedures

Competent authorities must maintain documented procedures for monitoring progress of the planned intervention programme and the quality and consistency of interventions undertaken by their officers, or staff supplied under contract, to ensure, so far as practicable, that interventions are carried out competently. The procedures must include how the competent authority will amend its programme to allow for in-year changes, such as newly opened establishments, establishments found to be closed, and establishments for which the intervention rating is changed.

3.5.6.2 Monitoring system requirement

The monitoring system must include measures to assess:

- adherence to the competent authority's planned intervention programme;
- compliance with this Code of Practice, the Practice Guidance (NI) and other FSA guidance;
- the consistent assessment of intervention ratings;
- appropriate use of relevant inspection forms;
- compliance with internal procedures, policies and the competent authority's enforcement policy;
- that the interpretation and action taken by officers following an intervention is consistent within that competent authority and is consistent with FSA 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 competent authority;

and in relation to food hygiene interventions:

- that officers have due regard to published UK or EU Guides to Good Practice.

3.5.6.3 Verification checks by competent authorities with points of entry for imported food

Article 8 of Regulation 882/2004 requires competent authorities to carry out official controls in accordance with documented procedures. Competent authorities shall have procedures in place to verify the effectiveness of official controls that they carry out and ensure that corrective action is taken when needed and that the documented procedures are updated as appropriate (see section 5.4).

3.6 FSA Monitoring

3.6.1 Competent authority Management Information Systems (MIS)

The competent authority's MIS must also record the details of premises, intervention ratings, interventions, sampling, compliance levels, risk scores and complaint investigations and enforcement actions which are to be sent to FSA in NI via its established monitoring system.

Chapter 4 - Qualifications and experience

4.1 Introduction

This Chapter outlines the qualifications and competencies required by authorised officers of competent authorities who carry out official controls and interventions to verify compliance with food law.

It implements the training provisions of Regulation 882/2004 on official controls.

This Chapter does not apply to staff who have only indirect managerial responsibility for the competent 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 competent authority needs to engage expertise in an area listed in Chapter I of Annex II to Regulation (EC) No 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.

4.2 Authorisations

The European Communities Act 1972 provides a mechanism for incorporating European Community law into the domestic law of the UK. This Act does not provide any enforcement powers. Officers must be specifically authorised under the relevant Regulations made under the European Communities Act 1972 – this authorisation must be correctly described in the authorisation documents and officers' credentials.

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

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

With regard to other specific food regulations made under the European Communities Act 1972, where appropriate, relevant officers should be specifically authorised for each of those Regulations.

Competent authorities must set up and put in place a documented procedure for the authorisation of officers carrying out official controls.²⁰

The authorisation procedure should cover:

- delegated powers – who is authorised to do what and what qualifications are required;
- who is authorised to approve legal proceedings;
- the arrangements in place for refresher and induction training;
- the assessment process to ensure and demonstrate that the competent authority has assessed the competence of the authorised officer/s in accordance with the Code (Chapter 4).

The lead food officer must make a determination based upon the guidance below when authorising an officer to undertake the delivery of official controls. The decision by the lead food officer to authorise must be based upon the officer possessing the underpinning knowledge (qualification); practical training and embedded competencies coupled with maintenance of their ongoing continuing professional development (CPD) requirements.

The competent authority must ensure that the authorisation process is documented along with the evidence of qualification, practical training and CPD. This applies equally to those who are directly employed temporary staff, and to those employed by or as contractors.

4.3 Requirements for those delivering official controls

The Code recognises two defined roles that deliver official controls for hygiene and standards:

- Lead food officer
- Authorised officer

4.3.1 Lead food officer

Competent authorities with responsibility for the enforcement of food law must appoint a suitably competent and experienced lead food officer to take responsibility for operational management of food law matters.

The appointed lead food officer must:

- have a good knowledge and understanding of the nature and type of food establishments that operate in the competent authority's area;
- understand the common hazards and risks associated with the food processes and technologies in operation at these establishments;
- be able to apply appropriate control measures, including enforcement sanctions;

²⁰ See Chapter 2, Paragraph 5.1 of the Framework Agreement on Local Authority Food Law Enforcement.

- apply the requirements of this Code;
- be involved in the assessment of other officers' competency; and
- comply with the competency requirements for lead food officers in section 4.7.2

A competent authority's lead food officer may be an officer employed by another authority provided they meet the necessary competency requirements for the area or areas to which they have been appointed as lead food officer. This will facilitate regional working and sharing of knowledge. This Code also recognises that the lead food officer role may be performed by more than one person.

FSA in NI must be notified of the name(s) and contact details of the person(s) that perform this function on behalf of the competent authority. Changes to the nominated lead food officer should be sent by e-mail to:

executive.support@foodstandards.gsi.gov.uk

4.3.2 Authorised officer

These are officers who undertake assessment of compliance with food law and enforcement action as appropriate. An authorised officer must:

- have a level of knowledge, skills, experience and understanding that allows them to deliver official control interventions;
- have an understanding of the hazards and risks within the establishments they are required to inspect;
- recognise when and be able to enforce appropriately including the ability to advise when formal measures are not appropriate.

This role should be performed by an officer that has the competencies detailed at section 4.8. The level of authorisation should reflect the level of competence assessed by the lead food officer.

Before competent authorities authorise officers to deliver official controls (hygiene and standards), the lead food officer must ensure that the officer:

- holds the baseline qualification listed at section 4.4 of the Code **OR** one of the equivalent qualifications listed in section 4.5 of the Code;
- meets the **relevant** competencies listed at section 4.7 onwards in the Code;
- demonstrates they have maintained their Continuing Professional Development (CPD) in accordance with section 4.10.1 of the Code.

4.3.3 Regulatory support officers

This Code of Practice also recognises that there are alternative interventions that may be delivered by regulatory support officers. These are officers who may carry out the day-to-day tasks within a food team (not official controls). Responsibilities of these officers may include basic data collection, informal sampling, health promotion and elements of infectious disease investigation. Examples of competencies for this role are detailed at section 4.9.

4.4 Baseline qualification

The following qualifications incorporate the underpinning knowledge required to undertake the full range of official controls and enforcement sanctions. The qualifications listed below require a practical training period to be undertaken. The competent authorities must not authorise officers who cannot demonstrate that they have completed this training.

Competent authorities must ensure that an authorised officer possesses either the baseline qualification or one that is equivalent prior to authorising them to undertake official controls.

The baseline qualification for officers undertaking official hygiene controls is: –

- **The Higher Certificate in Food Control**

The Higher Certificate in Food Control may be awarded by any one of the following:

- Environmental Health Registration Board (EHRB); or
- The Scottish Food Safety Officers' Registration Board (SFSORB).

The baseline qualification for officers undertaking official food standards controls is either:

- **The Higher Certificate in Food Control; or**
- **Trading Standards Qualification Framework including Diploma in Consumer Affairs and Trading Standards or Higher Diploma in Consumer Affairs and Trading Standards with food service delivery module.**

4.5 Equivalency of known qualifications

The Certificate of Registration as an Environmental Health Practitioner (EHP) or the Diploma in Environmental Health (or historical equivalent) can be considered an equivalent qualification to that set out at section 4.4 of this Code.

The Certificate of Registration as an EHP may be awarded by the following:

- Environmental Health Registration Board (EHRB)

The Diploma in Environmental Health (or historical equivalent) may be awarded by the following:

- Environmental Health Registration Board (EHRB); or
- The Scottish Food Safety Officers' Registration Board (SFSORB)

It is accepted that investing in the training and development of professionally qualified officers, such as EHPs, remains an important part of wider Environmental Health service delivery.

There are a number of alternative qualifications that can be considered an equivalent qualification to that set out at section 4.4 in the Code. These alternative

qualifications are considered to encompass the same underpinning knowledge required as the baseline qualification and also require the necessary practical training. Further information can be found in the Practice Guidance (NI).

Where qualifications fail to encompass all of the underpinning knowledge areas, lead food officers must restrict the officer's authorisation in accordance with the relevant section of the Practice Guidance (NI).

4.6 Import controls (requirement to appoint an Environmental Health Officer at a Border Inspection Post)

If the approval for the Border Inspection Post permits the importation of any product (other than snails) for human consumption listed in Chapter 3 of Annex I to Commission Decision 2007/275/EC the competent authority may appoint suitably trained environmental health officers to be official fish inspectors for that post in relation to fish and fishery products, and that inspector has all the powers of an official veterinary surgeon in relation to those products.

4.6.1 Equivalency of other qualifications

Existing or prospective competent 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 competent authority employer or prospective officer for an assessment of equivalence, which must then be recognised by FSA in NI.

Nationals from other countries in the European Economic Area have a right under EU law to the recognition of qualifications and experience gained outside the United Kingdom (UK). This situation may arise if an individual seeks employment in the UK as a Public Analyst, Food Examiner or food law enforcement officer, having acquired relevant qualifications and work experience in their home country. Competent authorities should accept suitable non-UK qualifications and experience in order to give effect to these EU rights.

The equivalence of non-UK qualifications will be determined by organisations recognised by the Department for Business Innovation and Skills (BIS) for the purposes of Directive 89/48/EEC (the Mutual Recognition of Professional Qualifications). Competent authorities should make enquiries with the relevant professional and awarding bodies if they have any doubts in this area before confirming an appointment.

4.7 Competencies

The following is a list of competency requirements against which officers will need to provide evidence to demonstrate that they comply in order to undertake the type of official control or perform the role mentioned. The full range of official controls must only be delivered by lead food/authorised officers. Alternative interventions, information gathering and informal sampling may be delivered by regulatory support officers.

4.7.1 Official control / type of role

4.7.2 Lead food officer

The following competencies are required of an officer or officers who fulfil the role of the lead food officer for the competent authority. An officer or officers must be able to demonstrate that they meet the competencies 1 – 3 **in addition** to those relevant competencies required for an authorised officer in section 4.8.

No.	Statement of Competence
1	Local and specialist knowledge
2	Legislation and centrally issued guidance
3	Planning of an official control programme

4.7.3 Local and specialist knowledge

No. 1	Statement of Competence – Lead officer
1.1	<ul style="list-style-type: none"> Knowledge and understanding of the area for which s/he is acting as the lead food officer – this may include more than one competent authority area.
1.2	<ul style="list-style-type: none"> Knowledge and understanding of the hazards that can occur in establishments within the competent authority's area and risk management techniques.
1.3	<ul style="list-style-type: none"> Knowledge and understanding of when specialist auditing and quality assurance skills are needed to deliver official controls.

4.7.4 Legislation and centrally issued guidance

No. 2	Statement of Competence – Lead officer
2.1	<ul style="list-style-type: none"> Understands relevant EU and national food hygiene or standards legislation and can advise on their application.
2.2	<ul style="list-style-type: none"> Understands, interprets and applies the Framework Agreement on Food Law Enforcement with Local Authorities, the Food Law Code of Practice and associated Practice Guidance appropriately.
2.3	<ul style="list-style-type: none"> Understands and can advise on the application of the full range of enforcement sanctions available and proportionate application of food law.

4.7.5 Planning of an official control programme

No. 3	Statement of Competence – Lead officer
3.1	<ul style="list-style-type: none"> Can appropriately apply national and local priorities to the profile of food business establishments and points of entry in the competent authority's area when planning a programme of official food controls.
3.2	<ul style="list-style-type: none"> Can identify skill or knowledge gaps in officers delivering official food controls.
3.3	<ul style="list-style-type: none"> Understands the process of raising and managing food incidents as set out in the Code of Practice, including responses to infectious disease outbreak

3.4	<ul style="list-style-type: none"> Understands how local contingency arrangements apply to the management of serious food related incidents e.g. infectious disease outbreak.
3.5	<ul style="list-style-type: none"> Understands the role of Home Authorities and Primary Authority Partnerships in co-ordinating the delivery of official controls and ensures it is applied by the competent authority.
3.6	<ul style="list-style-type: none"> Understands how to comply with local and national data gathering and reporting requirements.
3.7	<ul style="list-style-type: none"> Co-ordinates consistent delivery of official controls within the competent authority's and between other competent authorities.

4.8 Authorised officers

The following competencies are required of an officer who fulfils the role of an authorised officer for the competent authority. An officer must be able to demonstrate that they meet the relevant competencies 4 – 8 before they are authorised to undertake this function.

With regards to 4.8.2, officers may be either authorised generally to use all relevant sanctions or individually for specific sanctions depending the level of competency of individual officers.

No.	Official Control / Type of Role
4	Inspection of Food Establishments
5	Use of Enforcement Sanctions
6	Sampling
7	Import and Export controls
8	Reactive investigations

4.8.1 Inspection of food establishments

No. 4	Statement of Competence - Authorised officer
4.1	<ul style="list-style-type: none"> Comprehensive understanding and knowledge of HACCP-based procedures. Has the ability to apply that knowledge taking account of flexibility principles contained within Article 5 of Regulation (EC) No 853/2004.
4.2	<ul style="list-style-type: none"> Can determine and identify hazards and risks that occur in establishments and products. Understands the principles of risk assessment related to food types; processing methods and products.
4.3	<ul style="list-style-type: none"> Understands relevant EU and national food hygiene or standards legislation and can advise on their application. Understands how to assess compliance with the requirements of EC and national food hygiene and standards legislation with further reference to the Food Law Code of Practice and Practice Guidance.
4.4	<ul style="list-style-type: none"> Able to determine the appropriate course of action to remedy non-compliance, including when it is appropriate to escalate enforcement action.
4.5	<ul style="list-style-type: none"> Can make a food hygiene/standards intervention rating assessment of risk using section 5.6 of the Food Law Code of Practice.

4.6	<ul style="list-style-type: none"> Understanding of the common food types and understanding of hazards associated with their use.
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4.8.2 Use of enforcement sanctions

No. 5 Statement of Competence - Authorised officer	
5.1	<ul style="list-style-type: none"> Can clearly differentiate between legal requirements and recommendations of good practice by avoiding gold plating and 'regulatory creep'. Can provide advice and enforce based on levels of compliance with regard to consistency and proportionality based on the hierarchy of risk.
5.2	<ul style="list-style-type: none"> Understands levels of authorisation, enforcement policies and procedures for appeal.
5.3	<ul style="list-style-type: none"> Understands the legal framework with regard to the use of enforcement powers including the role of Primary Authorities and Home Authorities.
5.4	<ul style="list-style-type: none"> Can demonstrate an understanding of how to serve notices; gather evidence; prepare cases for prosecution and apply knowledge to comply with the requirements of PACE and RIPA, where appropriate.

4.8.3 Sampling

No. 6 Statement of Competence - Authorised officer	
6.1	<ul style="list-style-type: none"> Understands formal /informal sampling methodologies and the role of the Public Analyst and Food Examiner.
6.2	<ul style="list-style-type: none"> Is aware of national and local sampling priorities. Can use UKFSS and searchable database, where appropriate.
6.3	<ul style="list-style-type: none"> Can interpret sampling results and make a judgement on appropriate action based on risk.

4.8.4 Import / export controls

No. 7 Statement of Competence - Authorised officer	
7.1	<ul style="list-style-type: none"> Understands the legal framework with regard to imported / exported food and how to assess compliance.
7.2	<ul style="list-style-type: none"> Can determine the most appropriate course of action and the range of enforcement sanctions available.
7.3	<ul style="list-style-type: none"> Can identify food types and comment on fitness at Border Inspection Posts (also see section 4.6).
7.4	<ul style="list-style-type: none"> Can demonstrate an understanding of controls at points of entry include carrying out systematic documentary checks, random identity checks and sampling for analysis or microbiological examination, as appropriate.

4.8.5 Reactive investigations

No. 8 Statement of Competence - Authorised officer	
8.1	<ul style="list-style-type: none"> Understands how to conduct an investigation and gather evidence in

	accordance with PACE and RIPA, where appropriate. Is then able to analyse information and determine an appropriate course of action.
8.2	<ul style="list-style-type: none"> • Can identify when it is appropriate to engage with other agencies and stakeholders in particular when investigating food incidents and or infectious disease outbreaks.

4.9 Regulatory support officer

The following competencies are required of an officer who fulfils the role of a regulatory support officer (or similarly termed role) for the competent authority. An officer must be able to demonstrate that they meet the relevant competency number 9 before they begin to undertake this function. **These officers must not be authorised to deliver official controls.**

4.9.1 Information gathering

No. 9 Statement of Competence - Regulatory support officer	
9.1	<ul style="list-style-type: none"> • Understanding of informal sampling methodologies and is able to gather samples according to NI Public Health Laboratories (NIPHL)/competent authority protocols.
9.2	<ul style="list-style-type: none"> • Can demonstrate an understanding of how to identify food hazards and gather accurate information. Can identify when appropriately authorised officers need to intervene.
9.3	<ul style="list-style-type: none"> • Can demonstrate the communication skills needed to engage with stakeholders and signpost to sources of information and guidance.
9.4	<ul style="list-style-type: none"> • Is able to locate current sources of guidance for food hygiene and standards.

4.10 Training

Competent authorities should ensure that authorised officers receive relevant structured on-going training. Such training should explain new legislation and procedures and technological developments relevant to food businesses subject to their control. The training programme should address gaps that prevent an officer from effectively delivering official controls.

4.10.1 CPD hours

Competent authorities must review the training needs and CPD requirements of their officers on an annual basis.

Lead food officers and authorised officers must obtain a minimum of 20 hours CPD per year, split into:

- A minimum of 10 CPD hours on core food matters directly related to the delivery of official controls;
- 10 hours on other professional matters. This could include training needs identified by the lead food officer during competency assessments/appraisals.

Guidance on training that may be considered as ‘other professional matters’ is contained in the relevant section of the Practice Guidance (NI).

Chapter 5 - Organisation of official controls

5.1 Food service plans

5.1.1 Requirement for a written food service plan

Each competent authority must have an up-to-date, documented food service plan which is readily available to food business operators and consumers. The plan must be subject to regular review and clearly state the period of time during which the plan has effect.

The plan must cover all areas of food law that the competent authority has a duty to enforce and set out how it intends to deliver official controls within its area. The plan must include imported food responsibilities and the control arrangements in place. The plan must include reference to the competent authority's approach to enforcement as set out in Chapter 6 including its alternative enforcement strategy for dealing with those establishments rated as low risk under the food establishment intervention rating scheme set out at section 5.6.

Competent authorities must have regard to any advice issued by FSA in NI when drafting their food service plan.

5.2 Interventions and the delivery of official controls

This section defines the different types of interventions that competent authorities may use, and the circumstances in which they should be applied.

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

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

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

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

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

When planning an intervention programme, competent authorities should ensure that they put in place mechanisms to ensure that authorised officers have regard to Primary Authorities assured advice and access to inspection plans that may guide authorised officers delivering official controls.

Interventions that are official controls must provide sufficient information to competent authorities to establish that food-related activities carried out at food establishments comply with food law. In line with the general obligations set out at Article 3 of Regulation 882/2004, they should be carried out at all stages of production, processing and distribution to establish whether the requirements of relevant food law are being met. An interventions programme is central to a local regulatory and enforcement regime, and competent authorities must ensure that such a programme is appropriately resourced.

5.2.1 Interventions and official control delivery

Interventions that are official controls include:

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

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

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

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

5.2.1.1 Food standards interventions

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

Each competent authority must document, maintain and implement a food standards interventions programme that includes all the establishments for which the competent authority has food standards law enforcement responsibility.

The programme must be based on the food standards intervention ratings that have been determined in accordance with section 5.3.1.2 and section 5.6.2 or in accordance with the competent authority's alternative enforcement strategy in relation to establishments rated as low risk as defined at section 5.3.1.3.

5.2.1.2 Food hygiene interventions

Regulation 852/2004 defines "food hygiene" as:

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

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

Each competent authority must document, maintain and implement a food hygiene interventions programme that includes all the establishments for which the competent authority has food hygiene law enforcement responsibility.

The programme must be based on the food hygiene intervention ratings that have been determined in accordance with section 5.6 or in accordance with the competent authority's alternative enforcement strategy in relation to establishments rated as low risk as defined at section 5.3.1.3.

5.2.2 Inspections and audits

5.2.2.1 Inspections – general

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.2.2.2 Food hygiene inspections

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

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

- assess the risk of the business establishment failing to meet food hygiene requirements;
- assess the hazards posed by the activities of the business, the food business operator's understanding of those hazards, and the application of appropriate controls; having regard to the nature and size of the business;
- establish whether food is being handled and produced hygienically, having regard to subsequent processing;

- assess and verify appropriate procedures based on HACCP principles (where they are required by law) appropriate to the nature and size of the business, confirming that controls are in place and operating effectively, and that appropriate corrective action is taken when necessary.
- assess the efficacy of the controls in place to manage the risk of cross contamination between raw and ready-to-eat foods;
- 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 section 2.3 of this Code and the Home Authority principle, and consider using their powers under regulation 25 of The Food Hygiene Regulations (Northern Ireland) 2006 to remove affected products from the food chain; and
- in relation to retail and catering businesses that sell or use live bivalve molluscs, ensure that where parcels of live bivalve molluscs are split before sale to the ultimate consumer, that information on identification marks is retained for at least 60 days.

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

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

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

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

5.2.2.3 Food standards inspections – scope

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

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

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

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

5.2.2.4 Carrying out an inspection or audit

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

- a full inspection, which is a check on compliance with legal requirements in accordance with elements set out in section 5.2.2 of this Code. A full inspection will consider all aspects of a food business including structure, food safety management and management arrangements; or
- a partial inspection, which is an inspection that covers only certain elements of the inspection as laid down in section 5.2.2 of this Code.

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

An audit may be carried out where a food business operator has put in place a documented food safety management system to address the requirements of Article

5 of Regulation 852/2004. Officers will require an awareness of the food safety management system operated by the business, in order to plan an appropriate audit.

An audit may include:

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

Following an inspection, partial inspection, or audit, an officer should consider revising the intervention rating of the establishment in accordance with section 5.6

5.2.2.5 Initial inspection of a new establishment

Competent authorities must make use of information supplied to them by food business operators in connection with the registration or application for approval of their food business establishments in accordance with Article 31 of Regulation 882/2004 (See sections 3.2 and 3.3 respectively), in order to determine when to carry out an initial inspection.

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

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

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

5.2.3 Planning and notification of interventions

The competent authority food service plan must contain details on how new food establishments are to be included in the competent authority's planned intervention programme.

Intervention programmes must be planned so that establishments receive an intervention no later than 28 days after the relevant date as detailed in section 5.3.1.1 and 5.3.1.2. In circumstances outside the control of the competent authority such as seasonal business closures, competent authorities have the discretion to defer an intervention (see sections 5.3.1.1 and 5.3.1.2).

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

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

There will, however, be circumstances when it is advantageous to give advance notice, particularly when the purpose of an intervention is to see a particular process in operation. Authorised officers must exercise discretion in this area guided by the overriding aim of ensuring compliance with food legislation (see also section 3.1.2.8).

5.2.4 Enforcement actions and revisits

Food businesses that fail to comply with significant statutory requirements must be subject to appropriate enforcement action and revisit(s). Revisits must focus on the contraventions identified at the programmed intervention and ensure that they have been remedied before deciding that no further action is required.

The timing of the revisit will be determined by the action taken as a result of the earlier intervention. Such a revisit must, whenever practicable, be undertaken by the officer who undertook the original intervention.

The competent authority's approach to revisits and enforcement actions must be part of its documented food service plan or enforcement policy (see section 5.1.1).

5.2.4.1 Requirement to revisit food hygiene

Such businesses will be identified by a compliance score of 15 or higher for hygiene and / or structure and / or a confidence in management / control procedures score of 20 or higher as set out in the intervention rating scheme set out at section 5.6.

5.2.4.2 Food standards

Such businesses will be identified by a level of (current) compliance score of 40 and / or a confidence in management / control systems score of 30 as set out in the intervention rating scheme set out at section 5.6.

5.2.5 Requirements for suitable clothing and equipment

Competent authorities must provide officers who carry out an intervention at establishments with clean protective clothing including headgear consistent with good industry practice.

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

Competent authorities must 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.

5.3 Frequency of controls and the requirements of a risk based approach

5.3.1 Food establishment intervention rating schemes

This section deals with the food hygiene and food standards intervention ratings, and frequencies for interventions at food establishments. Details of the two intervention rating schemes are found at section 5.6.

5.3.1.1 Food hygiene intervention rating scheme

Competent authorities that are responsible for enforcing food hygiene law should determine the planned food hygiene intervention frequencies of all registered and approved food establishments for which they are the competent authority using the risk assessment criteria in section 5.6.

The scheme incorporates an option for alternative enforcement strategies for “low-risk” establishments, in which the inherent hazards are not significant by virtue of their trading activities or the number of consumers they supply (see section 5.6.1 Part 1C).

The scheme is set out in the form of an assessment document that can be used by officers in the field. An assessment should be completed at the end of the initial inspection of each newly registered establishment and after each full inspection. An assessment should also be completed following a partial inspection or audit where sufficient evidence has been gathered to complete an assessment.

Officers should use the full range of scores available within the system, as the purpose of the rating system will be frustrated by cautious marking or by a reluctance to recognise effective management/control systems.

Establishments that fall into more than one scoring category for a scoring factor should be allocated the highest score of those that are applicable.

The operation of this intervention rating scheme within the competent authority should be subject to periodic management review to ensure that staff are using the scheme correctly and consistently.

Competent authorities must ensure that interventions for higher risk businesses or those that are likely to be high risk always take priority over interventions for low risk

businesses. Competent authorities should ensure that enforcement action and re-visits are undertaken in accordance with section 5.2.4.

Planned interventions should normally be completed by the due date as determined by the intervention rating and in any case no more than 28 days after that date, apart from circumstances outside the control of the competent authority such as seasonal business closures.

Initial inspections should normally take place within 28 days of registration or from when the competent authority becomes aware that the establishment is in operation. The requirement to undertake initial inspections within 28 days may in some circumstances present a conflict for resources to complete other higher priority activities, in such circumstances prioritisation of interventions within the competent authority's programme should be undertaken in a risk based manner.

Competent authorities may be asked to bring forward the intervention of an establishment following direction from FSA in NI in response to an emerging incident or a national programme of work. Competent authorities should contact FSA in NI if such direction presents a significant disruption to their ability to deliver a risk based intervention programme.

Low-risk activities (category E establishments - food hygiene)

“Low-risk” establishments should be subject to an alternative enforcement strategy or intervention, at least once during any three year period.

Competent authorities that decide to subject “low-risk” establishments to alternative enforcement strategies must set out their strategies for maintaining surveillance of such establishments in either their food service plan and/or enforcement policy.

It is not intended to preclude inspection, partial inspection or audit at low-risk establishments where any of these are the competent authority's preferred surveillance option, in which case the minimum frequency of intervention is determined by the intervention rating.

5.3.1.2 Food standards intervention rating scheme

Competent authorities that are responsible for enforcing food standards legislation should determine the food standards intervention frequencies of food businesses within their areas using the risk assessment criteria in section 5.6.2, in order to determine their planned food standards intervention programmes.

The scheme is set out in the form of an assessment document that can be used by officers in the field. An assessment should be completed at the end of the initial inspection of each newly registered establishment and after each full inspection. An assessment should also be completed following a partial inspection or audit where sufficient evidence has been gathered to complete an assessment.

The scheme incorporates an option for alternative enforcement strategies other than inspections for “low-risk” businesses in which the inherent hazards are not significant

by virtue of their trading activities or the number of consumers they supply (see below).

Competent authorities may opt to base their standards planned intervention programme on the food hygiene risk assessment scheme under this Code of Practice. Competent authorities that exercise this option must ensure that their interventions consider both food hygiene and food standards matters, that interventions of those matters occur no less frequently than would have been the case had both schemes been used, and that the food standards risk assessment is completed and recorded.

Officers should use the full range of scores available within the system, as the purpose of the rating system will be frustrated by cautious marking or by a reluctance to recognise effective management/control systems.

Establishments that fall into more than one scoring category for a scoring factor should be allocated the highest score of those that are applicable.

The operation of this intervention rating scheme within the competent authority should be subject to periodic management review to ensure that staff are using the scheme correctly and consistently.

Competent authorities must ensure that interventions for higher risk businesses or those that are likely to be high risk always take priority over interventions for low risk businesses. Competent authorities should ensure that enforcement action and re-visits are undertaken in accordance with the Practice Guidance (NI).

Planned interventions should normally be completed by the due date as determined by the intervention rating, but in any case no more than 28 days after that date, apart from circumstances outside the control of the competent authority such as seasonal business closures.

Initial inspections should normally take place within 28 days of registration or from when the competent authority becomes aware that the establishment is in operation. The requirement to undertake initial inspections within 28 days may in some circumstances present a conflict for resources to complete other higher priority activities, in such circumstances prioritisation of interventions within the competent authority's programme should be undertaken in a risk based manner.

Competent authorities may be asked to bring forward the intervention of an establishment following direction from FSA in NI, in response to an emerging incident or a national programme of work. Competent authorities should contact FSA in NI if such a direction presents a significant disruption to their ability to deliver a risk based intervention programme.

Low-risk activities (category C establishments – food standards)

“Low-risk” establishments should be subject to an alternative enforcement strategy or intervention, at least once during any five year period.

Competent authorities that decide to subject “low-risk” establishments to alternative enforcement strategies must set out their strategies for maintaining surveillance of such establishments in their food service plan and/or enforcement policy.

It is not intended to preclude inspection, partial inspection or audit at low- risk establishments where any of these are the competent authority’s preferred surveillance option, in which case the minimum frequency of intervention is determined by the intervention rating.

5.3.1.3 Alternative enforcement strategy

Every competent authority must devise an alternative enforcement strategy to determine how they will conduct official controls duties at establishments rated as low risk (i.e. rated category E for food hygiene and category C for food standards) in accordance with the requirements set out at section 5.6.

5.3.2 Food hygiene intervention frequency

5.3.2.1 Establishments intervention rated category A or B for food hygiene

The appropriate planned intervention for an establishment that has been given an intervention rating of category A or B for food hygiene must be an inspection, partial inspection, or audit as defined in section 5.2.2, which must be carried out at appropriate intervals in accordance with the prescribed frequencies specified in section 5.6.

Any other additional intervention, such as sampling or education and training, must be recorded against the establishment for the purpose of monitoring enforcement actions but must not be used as the intervention planned by the intervention frequency as given in section 5.6.

5.3.2.2 Establishments intervention rated category C for food hygiene

Establishments that have been given an intervention rating of category C for food hygiene must receive an intervention at appropriate intervals in accordance with the prescribed frequencies specified in section 5.6. Such interventions may consist of either an inspection, partial inspection, or audit until such time as the establishment is considered by the competent authority to be “broadly compliant” with relevant food law. Once broad compliance has been achieved, planned interventions may alternate between either an inspection or a partial inspection, or an audit or other type of official control as defined in section 5.2.1.

5.3.2.3 Establishments intervention rated category D for food hygiene

Establishments that have been given an intervention rating of category D for food hygiene must receive an intervention at appropriate intervals, in accordance with the prescribed frequencies specified in section 5.6. Such interventions can alternate between an intervention that is an official control and an intervention that is not an official control.

Competent authorities are restricted in the type of official control for establishments that are category D, but are also rated 30 or 40 for “type of food and method of handling” within section 5.6.1. The official control for these establishments must be an inspection, partial inspection or audit. Competent authorities can alternate between these types of official controls and other types of interventions.

5.3.2.4 Establishments intervention rated category E for food hygiene

Establishments that have been given an intervention rating of category E for food hygiene could be subject to an alternative enforcement strategy (see section 5.3.1.3).

Where the establishment in question is subject to approval under Regulation 853/2004 the use of alternative enforcement strategies is not an appropriate form of intervention. The intervention for such an establishment must be selected from those laid down in section 5.2.1.

Competent authorities must ensure that establishments rated category E for food hygiene continue to be subject to official controls to investigate complaints. These establishments must, as a minimum, be subject to an intervention by the competent authority, which could take the form of an alternative enforcement strategy, not less than once every three years for food hygiene.

It is not intended that the flexibility offered to implement alternative enforcement strategies would preclude full inspection, partial inspection or audit of such establishments, where any of these are the competent authority’s preferred intervention option.

5.3.3 Food standards intervention frequency

5.3.3.1 Establishments intervention rated category A for food standards

The appropriate planned intervention for an establishment that has been given an intervention rating of category A for food standards, must be an inspection, partial inspection, or audit as defined in section 5.2, which must be carried out at appropriate intervals in accordance with the prescribed frequencies specified in section 5.6.2.

Any other additional intervention, such as sampling or education and training, must be recorded against the establishment for the purpose of monitoring enforcement actions but must not be used as the intervention planned by the intervention frequency as given in section 5.6.2.

5.3.3.2 Establishments intervention rated category B for food standards

Establishments that have been given an intervention rating of B for food standards must receive an intervention at appropriate intervals in accordance with the prescribed frequencies specified in section 5.6.2. Such interventions may consist of either an inspection, partial inspection, or audit until such time as the establishment is considered by the competent authority to be “broadly compliant” with relevant food

law. Once broad compliance has been achieved, planned interventions may alternate between either an inspection, a partial inspection, or an audit or other type of official control as defined in section 5.2.1.

5.3.3.3 Establishments intervention rated category C for food standards

Establishments that have been given an intervention rating of category C for food standards could be subject to an alternative enforcement strategy (see section 5.3.1.3).

Where the establishment in question is subject to approval under Regulation 853/2004 the use of alternative enforcement strategies is not an appropriate form of intervention. The intervention for such an establishment must be selected from those laid down in section 5.2.1.

Competent authorities must ensure that these establishments continue to be subject to official controls to investigate complaints. These establishments must, as a minimum, be subject to an intervention by the competent authority, which could take the form of an alternative enforcement strategy, not less than once every five years for food standards.

It is not intended that the flexibility offered to implement alternative enforcement strategies would preclude full inspection, partial inspection or audit of such establishments, where any of these are the competent authority's preferred intervention option.

5.3.4 Revision of the frequency

The intervention rating(s) of a food business must only be revised at the conclusion of an inspection, partial inspection or audit, and in accordance with section 5.6 (or any amendment thereto that has been notified to competent authorities by FSA in NI). An officer must have gathered sufficient information to justify revising the intervention rating and the reasons for revising the rating must be recorded on the establishment file.

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

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

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

5.3.5 Deferring an intervention

Circumstances might arise where FSA in NI requires competent authorities to defer their interventions in order to take urgent action over a period of time.

Such situations might include those where there is evidence that:

- an unsafe practice is occurring or has occurred which represents a significant hazard to public health;
- a particular food handling or food preparation practice is found to entail a previously unsuspected hazard to public health;
- a foodstuff previously thought to be safe is found to be hazardous to public health;
- a food with widespread distribution is found to be contaminated and thereby presents a significant hazard to public health;
- a food with widespread distribution is the subject of fraud in labelling or presentation; and

Where such a situation arises FSA in NI might (by means of a communication issued in accordance with section 2.3.2) require competent authorities to take specific action. Competent authorities are required to have had regard to and to act on, any such communication.

In all cases, FSA in NI will, before taking action under this paragraph, consider whether urgent action by competent authorities is necessary to protect public health or the interests of consumers.

Competent authorities might be asked to provide information to FSA in NI about the action that they have taken, in response to requests under this paragraph and any action taken must be documented.

5.3.6 Information supplied by other competent authorities

Competent authorities must consider the information supplied by other competent authorities in determining the intervention rating of an establishment that has been gathered as a result of an inspection, partial inspection or audit which has been carried out by an authorised officer of another competent authority.

5.4 Import controls

Competent authority procedures must ensure that imported food controls form part of food establishments' inspections. To assist enforcement officers, inspection procedures and aide-memoires should provide sufficient prompts on imported food.

During routine inspections and other visits to food business establishments (e.g. complaint visits, sampling visits) officers must consider the food in possession or offered for sale, and if imported, ensure it also complies with relevant imported food requirements. For example this may include undertaking product traceability checks or in establishments that are the first destination inland after import, confirming the presence of a CVED or CED.

In addition to assessing fitness for consumption, reasonable steps must be taken to check the legality of the importation of any Product of Animal Origin (POAO) and Food Not of Animal Origin (FNAO) from a third country.

5.4.1 Competent authorities with points of entry

Competent authorities responsible for imported Food Not of Animal Origin (FNAO) at points of entry must monitor consignments of FNAO entering ports which originate from outside of the EU. Controls at points of entry include carrying out systematic documentary checks, random identity checks and sampling for analysis as appropriate (Articles 15-25, Regulation (EC) 882/2004).

Official controls must be proportionate and risk-based. Where no specific frequency of checking is specified in the legislation, priority must be given to identifying consignments of FNAO entering a point of entry and its country of origin. The frequency of other types of official controls must be informed by:

- history of compliance for the country of origin, the exporter and/or the importer
- any identified risks associated with the product
- any issues regarding the reliability of any checks that may have already been carried out
- FSA in NI annual sampling priorities for food
- previous knowledge of the product, is it new or unusual

Competent authorities responsible for imported (POAO) at Border Inspection Posts (BIPs) must refer to central guidance produced by Defra, available in the BIP manual at: <https://www.gov.uk/government/publications/border-inspection-post-bip-manual>

5.4.2 Arrangements for points of entry without permanent competent authority presence

Where there is no permanent relevant competent authority presence at an airport or seaport, and it is not considered by the relevant competent authority to be a point of entry for food, the competent authority must (at least once every three months), contact the port operator, HMRC and/or other commercial operators to confirm the port's status regarding food activities and/or obtain information about the volumes, types, countries of origin and customs status of food entering the port since the competent authority's last such enquiry. Competent authorities must keep a record of these exchanges for a period of three years.

The purpose of these arrangements is to provide competent authorities with updated information on food being imported. This will enable risk-based judgements to be made on the targeting of enforcement action and to ensure that emergency controls or restrictions on certain higher risk foods are being enforced.

Further advice on imported food control at points of entry through which occasional and/or low levels of consignments of FNAO are received can be accessed at: http://www.food.gov.uk/business-industry/imports/enforce_authorities/smaller-seaports-and-airports/

5.4.3 Enforcement at points of entry and inland

Where, for the purpose of examination at points of entry, or deferred examination at ETSF, or other place of destination, an authorised officer considers that a consignment needs to be inspected to confirm compliance, Article 18 of Regulation 882/2004 and regulation 30 of The Official Feed and Food Controls Regulations (Northern Ireland) 2009, allow the product to be detained pending the results of any examination associated with the official controls.

Where an authorised officer has detained a food consignment pending any results of examination, they must notify in writing the person/importer responsible for it, serving a notice under regulation 31 of The Official Feed and Food Controls Regulations (Northern Ireland) 2009. The notice must specify that the food must not be removed from the place stated, until the officer has properly considered the results of the examination.

Article 18 of Regulation 882/2004 and regulation 30 of The Official Feed and Food Controls Regulations (Northern Ireland) 2009 do not specify a time limit for examination and investigation of consignments. However, such examinations, and/or detention periods, must be expedited as quickly as practicable to avoid unreasonable disruption to the trade.

Where samples are submitted for analysis or examination, and the consignment is detained pending the results, competent authorities must inform the analyst or examiner of that fact and also ensure that the consignment is stored appropriately and securely. The importer or the importer's agent must be informed of the analysis/examination results as soon as possible and should be given a copy of the certificate of analysis/examination.

If it appears to an authorised officer upon inspection or examination of food, that a batch, lot or consignment of food fails to comply with food safety requirements (Article 14 of Regulation 178/2002), then regulation 31 of The Official Feed and Food Controls Regulations (Northern Ireland) 2009 allows, after having heard from the importer, for the officer to serve a notice requiring:

- destruction of the relevant batch, lot or consignment
- the food be subjected to special treatment
- re-dispatch of the food outside the EU
- another use of the food for purposes other than those for which they were originally intended

In practice, the options specified in the notice must be drawn up after appropriate consultation with the person importing the food or their representative. The person on whom any notice is served must be informed in writing by the authorised officer of any relevant appeal provisions at the time that the notice is served. If the option for re-dispatch is considered but doesn't take place within the 60-day period the consignment must be destroyed, unless delay is justified.

Regulation 34 of The Official Feed and Food Controls Regulations (Northern Ireland) 2009 allows for costs associated with such action to be recovered from the person responsible for the consignment.

Special treatment might include such treatment or processing to ensure the food complies with EU requirements, or the requirements of the third country to where it is to be re-dispatched. Special treatment can also include processing for purposes other than human or animal consumption. Where special treatment is permitted, liaison must take place with any other relevant enforcement authority or organisation to ensure the necessary processing has been carried out. This process can also be used where a non-conforming product is being imported specifically for the purpose of undergoing treatment to comply with EU law.

A consignment must only be re-dispatched outside the EU where the importer has agreed to the proposed destination and has informed the competent authority for the third country why it has been rejected for import into the EU. Where the consignment is being re-dispatched to a country other than that of origin, the competent authority for the country of destination must provide notification to the competent authority controlling the product that it is willing to accept the consignment. The consignment must be officially detained pending re-dispatch.

Any decision on the approval of alternative usage of rejected goods should be informed by any relevant guidance issued by the EU or FSA in NI on the appropriateness of alternative use or re-exportation.

Where official controls indicate that a consignment is injurious to health or unsafe, the consignment must be detained until it is either destroyed or undergoes appropriate measures to protect health.

Imported food failing food safety requirements can also be subjected to The Food Safety (Northern Ireland) Order 1991 provisions to ensure appropriate action is taken. Such provisions include detention and seizure powers, applied in accordance with this Code of Practice.

Officers must have regard to The Official Feed and Food Controls Regulations (Northern Ireland) 2009, The Contaminants in Food Regulations (Northern Ireland) 2013 and any relevant Emergency Control Regulations, which might provide for specific detention powers and notice provisions in relation to certain foods. Any designated port must have adequate facilities to ensure products can be sampled effectively, hygienically and under appropriate conditions.

Arrangements must be in place to ensure that detained or seized FNAO is stored appropriately, particularly to avoid cross contamination of other goods. Food which is to be destroyed or disposed of must be dealt with so as to ensure that there is no possibility of it re-entering the food chain e.g. deep burial at an approved waste disposal site. Copies of waste disposal notes must be kept on file.

5.4.4 Deferred examination of food not of animal origin (FNAO) – inland controls

Regulation 26 of The Official Feed and Food Controls Regulations (Northern Ireland) 2009 allows for, (in exceptional circumstances and where the competent authority has valid reasons), import controls for the examination of consignments of FNAO to be deferred and undertaken by the inland competent authority covering the ETSF or

at any other place of destination in the UK. For more information see the Practice Guidance (NI).

5.4.5 Onward transportation

Article 8 of Regulation (EC) 669/2009 permits onward transportation of a consignment(s) of FNAO, which have undergone a documentary, identity and physical examination (including sampling) at a Designated Point of Entry (DPE), pending the results of the test/analysis. For more information see the Practice Guidance (NI).

5.5 Inspection of ships and aircraft

5.5.1 Introduction

The Food Hygiene Regulations (Northern Ireland) 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) Order (Northern Ireland) 2004, which grant authorised officers powers of entry, only that part of regulation 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 (Northern Ireland) Order 1991, where appropriate.

The range and variety of vessels is an important factor when planning ship inspection activities. In respect of aircraft, primary consideration should be given to the origin of the food on board, including water and other drinks, and the transport to, and loading of, the aircraft.

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

5.5.2 Background and relationship to inspections

Authorised officers should bear in mind that other parts of this Code and corresponding Practice Guidance (NI) 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 (NI).

A strategy for frequency of inspection should be adopted, based on knowledge about different types of craft, their origin and history (see also section 5.5.5.6 in relation to ships). Before considering ship or aircraft inspection, all relevant information should be obtained from the other relevant authorities, the shipping operator, airline, or shipping agent as appropriate. Inspections of, and visits to, ships and aircraft should

be undertaken in accordance with the relevant chapters of the Framework Agreement.

5.5.3 Enforcement issues

Competent authorities should make arrangements to obtain appropriate security clearance for their staff so that they have unrestricted access, subject to compliance, with the normal security procedures of the facility concerned (see section 5.5.4 regarding UK military craft).

Food hygiene standards on ships and aircraft should meet the relevant requirements of Regulation (EC) No 852/2004 including those in Chapters III to X and Annex II of that Regulation. Article 5 of these Regulations also requires the development and implementation of food safety procedures based on HACCP principles. However, such procedures must be commensurate with the size and type of the vessel and the nature of activities undertaken on board.

An authorised officer may employ a variety of enforcement strategies to ensure compliance. Enforcement action must be carried out in accordance with a written enforcement policy. An officer may serve a hygiene improvement notice, remedial action notice or hygiene emergency prohibition notice in relation to any ship or aircraft. The conditions that must be met before such a notice can be served are the same as apply in relation to fixed premises. Having served notice the authorised officer should contact the management company or the handling/shipping agent. If considered necessary, in respect of ships, the officer should also contact the Maritime and Coastguard Agency (MCA) at the earliest opportunity (see section 5.5.5.5).

If the craft is registered in another Member State, the procedures set out in section 2.4.2 on liaison with other Member States should be followed. Any difficulties should be discussed with FSA in NI.

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

5.5.4 UK military ships and aircraft

Authorised officers should refer to section 3.1.2.8 in relation to security considerations when visiting UK military ships and aircraft, which must be regarded as Group 3 premises. This requires prior notification before a proposed visit. Any food safety issues found on inspection, which concern UK military ships and aircraft should be brought to the attention of single Service Environmental Health leads and the relevant home port health authority or primary authority for the particular Service (see below for details). Authorised officers must bear in mind the ultimate purpose of military ships and aircraft, and that galley design may have been constrained for operational reasons. Military policy, procedures and practices should therefore be given due consideration.

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

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

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

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

5.5.5 Food safety inspections of ships

5.5.5.1 Preparation

As with inland premises, ships or other vessels comprise a wide number of different types with a consequent wide variety of food operations on board. Some vessels serve members of the public (e.g. ferries and cruise ships) whereas others operate with a permanent or semi-permanent crew on board and the food operation is purely for their own consumption. Vessels engaged on international voyages require a ship sanitation certificate under the International Health Regulations 2005, issued by the World Health Organization. Inspection for these certificates includes inspection of the food operations against a set of technical standards that are intended to apply globally (The “WHO Technical Handbook”²¹), but the primary purpose of these is protection against diseases and conditions of public health concern. It is thus possible that vessels may be inspected for dual purposes.

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

²¹ http://whqlibdoc.who.int/publications/2011/9789241548199_eng.pdf

Before commencing an inspection for food safety purposes, authorised officers should ascertain whether it is appropriate to inspect the vessel based upon the suggested criteria in paragraph 5.5.5.6.

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

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

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

5.5.5.2 Decision to inspect and frequency of inspection

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

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

If the answer to both of these questions is yes, the vessel should be inspected in a manner commensurate with inland food establishments. The frequency of inspection should be based on the section 5.6. The ship food safety inspection should be recorded on the competent authority's MIS and form part of a LAEMS return.

If the answer to *either one* of these questions is no, it will be the decision of each individual competent authority as to whether they deem a food safety inspection appropriate at any particular time based upon the criteria in section 5.5.5.6. Inspections may be recorded via LAEMS in this scenario.

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

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

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

5.5.5.3 Inspection of the vessel

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

Items for consideration include:

- specifications and sourcing of food and water;
- transport to the vessel, loading and subsequent storage;
- 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;
- arrangements for international catering waste disposal;
- pest control procedures; and
- any known adverse report or cases/outbreaks of gastric illness, etc.

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

5.5.5.4 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 certificate²² should also be prepared and given to the ship's Master before leaving the vessel.

If it is not possible for a full certificate to be completed before the vessel's departure, the documents should be 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 competent authority/ port health authority at the next intended port of call, if in UK and, if designated, the relevant home port health authority. This should be prior to any possible visit to the vessel at the subsequent port of call.

²² The Ship Sanitation Control Certification and the Ship Sanitation Control Exemption Certificate are available at: <https://khub.net/>

5.5.5.5 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) LGR and the MCA dealing with non-military vessels. Exchanges of copies of relevant inspection reports relating to food safety on ships should be undertaken between competent authorities/port health authorities and the MCA, in accordance with the MoU.

Should there be difficulties with serious shortcomings relating to the existence of a health risk condition (as defined by regulation 7(2)/regulation 8(4) of The Food Hygiene Regulations (Northern Ireland) 2006 i.e. there is a risk/imminent risk of injury to health) concerning food and water safety whilst a vessel is in port, consideration should be given to liaising with the MCA for the instigation of action to detain the vessel in accordance with procedures in the MoU. Such deficiencies should also be reported to the competent authority of the state of registration of the vessel (see section 5.5.3).

Vessels such as passenger ferries which operate from, or are based in UK Ports and are registered food businesses, may consider the option of implementing the national food hygiene rating system where appropriate and in particular, if the food business operator (vessel) requests inclusion.

In order to do this, vessels would need to be registered with the relevant port health authority/competent authority as a food business and given an intervention rating in accordance with section 5.6.

5.5.5.6 Other risk criteria

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

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

5.5.5.7 Application of the International Health Regulations 2005 (IHR)

Nothing in this Code of Practice overrides or compromises the duties of competent authorities to inspect and ensure compliance by vessels with their duties under the International Health Regulations 2005, their related technical standards and the Public Health (Ships) Regulations.

5.5.6 Aircraft inspections

5.5.6.1 Preparation

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

The decision to board an aircraft should be based largely on any information provided by the airline; confirmation of the authenticity of the information, and the receipt of any food or food hygiene related complaints from passengers or crew. If such information (as outlined in section 5.5.6.2) 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, by the home authority or in the absence of a home authority, by an authorised officer of the relevant enforcing competent authority. Such checks should confirm, for example, that no changes have taken place to in-flight caterers, source of water supply, etc. Such checks should also verify that the in-flight caterer's HACCP plan is being implemented on board and that systems are in place after food and drink has left the flight catering establishment to establish if risks of contamination (includes microbiological, physical, chemical and allergenic contamination) are controlled up to the point of service to the passenger.

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

5.5.6.2 Information to be obtained to assist inspection procedures

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

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

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

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

The above information should assist an officer to assess the need to actually board a particular aircraft to carry out an inspection. In practice, taking account of section 5.6, and with the appropriate information obtained from the airline company and/or the relevant home authority this might result in a visit to particular types of aircraft, providing high-risk meals once every eighteen months to two years, unless there are compelling reasons to undertake such visits in an intervening period.

5.5.6.3 Information of the aircraft

Cabin crew do occasionally prepare food on board an aircraft and should therefore be made aware in their training of possible cross contamination issues related to their other duties on board, such as handling sick bags and cleaning lavatories in flight. Inspections should normally be undertaken before passengers board the aircraft, ideally after the aircraft has been cleaned, when food is on board, and when airline staff are able to provide assistance and information. Professional judgement should be applied and inspections might be undertaken at other times as necessary. Should there be any uncertainty as to the information provided by cabin staff, the relevant head office (or home authority) should be contacted for clarification.

5.5.6.4 Items for consideration in relation to food safety on aircraft

Following a documentary check, the following matters should be considered/ confirmed, as listed in section 5.5.6.2, when appropriate:

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

5.5.6.5 Action on conclusion of the inspection

A report should be sent to the airline following an inspection, with copies to the relevant home authority or primary authority where such an arrangement exists, in respect of UK registered aircraft. Where aircraft from a particular airline are checked and found to be in contravention of the applicable law, full details should be provided to allow adequate follow up, e.g. the type of aircraft; flight number; insufficient knowledge of food hygiene issues amongst the cabin crew, etc. See also section 5.5.3 concerning reporting deficiencies to the country of registration of the aircraft, when appropriate.

5.6 Food establishment intervention rating schemes

This section deals with the food hygiene and food standards intervention ratings, and minimum frequencies for interventions at all food establishments.

5.6.1 Food hygiene scoring system

Part 1: The potential hazard - Three factors determine the potential hazard:

A. Type of food and method of handling

Score	Guidance on the scoring system
40	Manufacturers of high-risk food, wholesalers and packers who re-wrap or re-pack high-risk foods. In this context, high-risk foods may be regarded as foods which support the growth of micro-organisms, and are ready to

Score	Guidance on the scoring system
	eat without further treatment that would destroy pathogenic micro-organisms or their toxins.
30	Preparation, cooking or handling of <u>open</u> high-risk foods by caterers and retailers, except caterers that prepare typically less than 20 meals a day (see below).
10	Preparation, cooking or handling by small caterers of open high-risk foods but serve less than 20 meals on a single day ; Handling of pre-packed high-risk foods; Other wholesalers and distributors not included in the categories above; Manufacture or packing of foods other than high-risk; Establishments involved in the filleting, salting of fish for retail sale to final consumer.
5	Retail handling of foods other than high-risk, and other ambient shelf stable products. Any other businesses not included in the categories above.

Score:	<input type="text"/>
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B. Method of processing

Establishments that undertake a specific method of processing (including those that extend the shelf life of the product) that has the potential to increase the risk to public health beyond that of the normal cooking or storage, should be given an additional score under this section. However, it may only be allocated once, i.e. the maximum score under this section is 20.

Score	Guidance on the scoring system
20	<p>Below is a non-exhaustive list of processing types that should be allocated an additional score of 20. Authorised officers will need to make a judgement regarding additional processing types not listed below. The overriding principle to assess is whether the process itself creates an increased risk and /or the intention is to increase the shelf life of the product by applying it.</p> <ul style="list-style-type: none"> • Canning or other aseptic packing of low-acid foods; • Vacuum and sous-vide packing; • Manufacture of cook/chill food, i.e. cooked and prepared meals or foods which may be eaten cold or after reheating. (The simple reheating of cook-chill meals is excluded from the scope of this paragraph.); • Fermentation of meats e.g. to produce salamis and other fermented sausages; • Air drying e.g. dried hams, biltong, jerky; • Freeze drying; • Addition of salt and/ or other preserving agents; • The cooking and cooling of meat products prior to service e.g. production of hams by retailers, including butchers; This is not intended to be applied to simple catering operations where foods

	<p>may often be pre prepared and subsequently re heated.</p> <ul style="list-style-type: none"> Establishments that manufacture, prepare, or serve high risk uncooked or lightly cooked ready to eat food of animal origin, whose nature poses a residual microbiological food safety hazard. This is intended to include caterers/manufacturers producing foods such as steak tartare and other raw meat dishes, fish and meat carpaccio, types of sushi or sashimi, ceviche, and burgers intended to be eaten rare or undercooked through controlled procedures.
0	Any other case not included above.

Score:	<input type="text"/>
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C. Consumers at risk

This factor is intended to reflect the number of consumers likely to be at risk and the potential geographical extent of any incident if there is a failure of food hygiene and safety procedures.

Score	Guidance on the scoring system
15	Food businesses involved in either the manufacture, distribution, packing or wrapping operations of food which is distributed nationally or internationally.
10	Businesses serving a substantial number of customers, including a significant proportion from outside the local area, e.g. superstore, airport caterer, motorway service area caterer; Manufacturers not included in the category above.
5	Businesses, most of whose customers are likely to be living, staying or working in the local area, e.g. high street or corner shop, high street supermarket, or high street restaurant.
0	Businesses typically supplying less than 20 consumers each day.

Score:	<input type="text"/>
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PLUS

An **additional** score of 22 (in addition to the score above) should be included for establishment's involved in the production or service of food intended specifically for consumption by consumers which are likely to include a vulnerable risk group of more than 20 persons.

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

Score	Guidance on the scoring system
22	Production and/or service of high-risk foods in establishments where the ultimate consumers of the product produced includes a vulnerable risk group of more than 20 persons.

0	Any other case not included above.
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Score:	
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Part 2: Level of (current) compliance

The food hygiene and safety procedures (including food handling practices and procedures, and temperature control), and the structure of the establishment (including cleanliness, layout, condition of structure, lighting, ventilation, facilities etc.), should be assessed separately using the scoring system below.

The score should reflect compliance observed during the inspection according to the guidance set out below.

In circumstances where the failure to comply involves both elements of the establishment's structure and procedures, this non-compliance should be reflected in the scores awarded for both the 'hygiene' and 'structural' factors.

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

Score – hygiene:	
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Score – structural:	
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Part 3: Confidence in management/control procedures

The confidence in management score should assess whether a business' food safety management/control procedures are appropriate, with the identification of the correct hazards and controls, whilst the assessment of the level of current compliance achieved as a result of practices being carried out should be considered as part of the compliance with food hygiene and safety procedures element in Part 2.

Where management has an effective food safety management system in place which is well understood by the workforce, they should achieve a good standard in Part 2, and consequently a low score for that risk factor.

Confidence in management is not meant to reconsider this aspect. It is to elicit a judgement on the likelihood of satisfactory compliance being maintained in the future.

Assessment of “Management” may include two elements; corporate management (any company-wide systems and processes for food controls) and local management (implementation by local management of corporate systems and separate branch or “in store” systems and processes).

Officers should also reflect the level of reassurance provided by checks undertaken on the food safety management systems directly at an individual establishment via an independent third party as part of an assurance scheme which address applicable legislation.

The confidence in management / control procedures score is not solely about documented procedures and their implementation. Factors that will influence the officer’s judgement include:

- the "track record" of the company, its willingness to act on previous advice and enforcement, and the complaint history;
- the attitude of the present management towards hygiene and food safety; and
- hygiene and food safety knowledge, including hazard analysis/HACCP and the control of critical points;
- satisfactory food safety management based procedures;

In determining ‘satisfactory’ in respect of HACCP based procedures, officers should consider, based on the principle of proportionality, the need for a permanent procedure or procedures based on HACCP principles, i.e. commensurate with the nature and size of the food business. In some food businesses there are not critical control points and in some cases good hygiene practices can replace the monitoring of critical control points. The requirement for businesses to retain records also needs to be flexible in order to avoid undue burdens for very small businesses.

Score	Guidance on the scoring system
30	Poor track record of compliance. Little or no technical knowledge. Little or no appreciation of hazards, risk or quality control. No food safety management procedures. Manager does not recognise or accept the need for food safety and hygiene controls.
20	Significantly varying record of compliance. Poor appreciation of hazards and control measures. No food safety management procedures. Some reluctance in recognising or accepting the need for food safety and hygiene control procedures.

Score	Guidance on the scoring system
10	<p>Satisfactory record of compliance.</p> <p>Access to relevant technical advice source and/or guides to good practice or assurance scheme.</p> <p>Understanding of significant hazards and control measures in place.</p> <p>Making satisfactory progress towards documented food safety management procedures commensurate with type of business.</p> <p>Note: "Making progress" can only be considered appropriate once. If at the next intervention the food safety management procedures are not satisfactory the score of 10 is not appropriate.</p>
5	<p>Good record of compliance.</p> <p>Technical advice available in-house or access to, and use of, technical advice from a Primary Authority, trade associations and/or from Guides to Good Practice or assurance scheme.</p> <p>Effective management control of hazards.</p> <p>Having effective self-checks with satisfactory documented food safety management procedures commensurate with type of business.</p> <p>Audit by competent authority confirms general compliance with procedures.</p>
0	<p>Excellent record of compliance.</p> <p>Access to technical advice, or manager knowledgeable and competent.</p> <p>Proactive and ability of self-regulation.</p> <p>Has satisfactory documented food safety management procedures commensurate with type of business, which may be subject to external audit process.</p> <p>Audit by competent authority confirms compliance with documented procedures with few/minor non-conformities not identified as critical control points.</p>

Score:	<input type="text"/>
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PLUS

An **additional** score of 20 (in addition to the score above) should be included where there is a significant risk:

- of food being contaminated with *Clostridium botulinum* and the micro-organism surviving any processing and multiplying; or
- of ready-to-eat food being or becoming contaminated with micro-organisms or their toxins that are pathogenic to humans, e.g. *E. coli* O157 or other VTEC, *Salmonella* sp.; *Bacillus cereus*.

In this context, significant risk means the probability that an incident is likely to occur. The following matters should be considered when assessing this factor:

- the potential for contamination or cross-contamination by the specified micro-organisms;
- the likelihood of survival and growth of the specified micro-organisms;

- the existence of procedures based on HACCP principles and confidence in their implementation, including documentation and records of monitoring of controls;
- the extent and relevance of training undertaken by managers, supervisors and food handlers; and
- whether intervention by the competent authority is necessary to reduce the probability of an incident occurring.

The additional score must only be applied on a case-by-case basis, must not be applied generically to whole categories of food business establishments, and must be removed at the next inspection if the significant risk no longer exists.

The additional score must also be consistent with the baseline assessment of confidence in management/control systems. If confidence in management is assessed as 0 or 5, and there is also assessed to be a significant risk of contamination of food with one of the specified micro-organisms, then one of the assessments cannot be correct, and each should be reviewed. Establishments should not pose a significant risk if there is high or moderate confidence in management/control systems.

Score	Guidance on the scoring system
20	Significant risk of food being contaminated with <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.
0	Any other case not included above.

Score:

Inspection Ratings: Total:

Food hygiene intervention frequencies

Category	Score	Minimum intervention frequency
A	92 <u>or higher</u>	At least every six months
B	72 to 91	At least every 12 months
C	52 to 71	At least every 18 months
D	31 to 51	at least every 24 months
E	0 to 30	A programme of alternative enforcement strategies or interventions every three years

Establishments rated as low-risk (30 or less) need not be included in the planned inspection programme, but must be subject to an alternative enforcement strategy at least once in every three years.

5.6.2 Food standards scoring system

Part 1: The potential risk

A. Risk to consumers and/or other businesses

This factor considers the potential adverse effect on consumers, and the consequences for other businesses, should the business not comply with food standards legislation. Adverse effects on consumers include safety and economic prejudice. Consequences for other businesses include the economic effects of unfair trading.

Score	Guidance on the scoring system
30	Manufacturers of PARNUTS foods; Manufacturers or packers of high value foods, or high volume foods where there is an incentive for fraudulent adulteration; Manufacturers of foods that contain a wide range of additives; Businesses that make nutrition, nutrient content, or health claims on pre-packed food labels or in advertising. Food businesses including manufacturers and importers which handle imported foods or food ingredients which may be subject to increased risk of chemical contamination.
20	Manufacturers or packers of foods that are subject to statutory compositional standards.
10	Local businesses that use in-store produced labels, window displays, chalk boards, menus etc, e.g. butchers, bakers, health food shops, restaurants, takeaways, caterers supplying more than 10 meals per day, and businesses using claims for marketing advantage.
0	Caterers supplying not more than 10 meals per day, e.g. bed and breakfast; Any business not included in the categories above.

Score:

B. Extent to which the activities of the business affect any hazard

This factor considers the type of activities that the food business undertakes, the need for those activities to be closely monitored and controlled, and their potential effectiveness in maintaining compliance with food standards legislation. Consider whether the business produces, labels, or advertises products to which food standards law applies. If the business produces its own products, consider the monitoring and control of recipes and ingredients.

The scores below provide examples of food businesses to which a particular score could apply.

Score	Guidance on the scoring system
30	Food manufacturers, processors, importers handling a wide range of goods.

20	Local businesses that label loose goods on display, and/or undertake pre-packing for direct sale.
10	Non-manufacturing retail/catering selling only from their own establishment.
0	Any business not included in the categories above.

Score:

C. Ease of compliance

This factor considers the volume and complexity of food standards law that applies to the business, and with which it has a responsibility to ensure compliance.

Consider the range and complexity of products, processes and services including the consistency of raw materials. Consider the difficulty of the task for the food business operator including how easy it is to recognise a hazard.

Score	Guidance on the scoring system
30	Manufacturer, packer or importer of a wide range of products.
20	Manufacturer, packer or importer of a limited range of products.
10	Retailers who apply descriptions to food such as butchers, bakers and delicatessens; Caterers with complex menus.
0	Any business not included in the categories above.

Score:

D. Consumers at risk

This factor considers the number of consumers likely to be at risk if the business fails to comply with food standards legislation.

Score	Guidance on the scoring system
20	Manufacturers, producers and packers of food that is distributed nationally or internationally.
10	Businesses whose trade extends beyond the local area, e.g. regional supermarket/hypermarket; small-scale local manufacturer.
5	Businesses supplying the local area, e.g. high street or corner shop; local supermarket, local restaurant.
0	Businesses supplying less than 30 consumers each day. Any other business not included in the categories above.

Score:

Part 2: Level of (current) compliance

This factor considers the level of compliance observed during the inspection.

Adherence to relevant UK or EU Industry Guides to Good Practice and other similar guidance e.g. FSA should be considered.

Score	Guidance on the scoring system
40	General failure to satisfy statutory obligations. Standards generally low.
10	A typical business with some minor non-compliance with statutory obligations.
0	High standard of compliance with statutory obligations and industry codes of recommended practice, conforms to relevant trade good practice.

Score:

Part 3: Confidence in management/control systems

The actual performance of management is scored in Part 2 on the basis of the results achieved and observed. A management that achieves good food standards performance, well understood by the workforce, should achieve a good standard in Part 2, and consequently a low score for that factor.

Confidence in management is not meant to reconsider this aspect. It is to elicit a judgement on the likelihood of satisfactory compliance being maintained in the future.

Factors that will influence the inspector's judgement include:

- the "track record" of the company, its willingness to act on previous advice and enforcement, and the complaint history;
- the attitude of the present management towards food standards legislation, and the existence or otherwise of relevant home or originating authority arrangements; internal or external technical knowledge on food standards matters available to the company;
- the presence of quality systems, including supplier assessments and performance monitoring, appropriate to the size of the business and the risks involved, with clearly defined responsibilities for managing risk; and
- for small businesses, consider the checks appropriate to that business.

Score	Guidance on the scoring system
30	Little or no technical knowledge. Little or no appreciation of hazards or quality control. No food standards management system. Disproportionate number of justifiable complaints since the last inspection.
20	Staff have a basic understanding of relevant food law. May not have a food standards management system. At least one justifiable complaint since the last inspection.
10	Score of 10 or better in Part 2. Staff demonstrates awareness of relevant food law and necessary controls. Appropriate food standards management system. Smaller businesses may have minimal documented system. At least one justifiable complaint since the last inspection.
0	Technical advice available. Subject to internal audit/checks. Good food standards management system, documented records of critical checks

	and supplier checks, which may be subject to third party audit. Evidence of compliance with documented management system with few/minor non-conformities. No justifiable complaints since the last inspection.
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Score:	
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Food standards inspection frequencies

Category	Score	Minimum intervention frequency
A	101 to 180	At least every 12 months
B	46 to 100	At least every 24 months
C	0 to 45	Alternative enforcement strategy or intervention every five years

Establishments rated as low-risk (45 or less) need not be included in the planned inspection programme but must be subject to an alternative enforcement strategy at least once in every five years.

Chapter 6 – Enforcement Sanctions and Penalties

6.1 Dealing with non-compliance

6.1.1 Proportionality and consistency

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

Authorised officers must 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, Remedial Action Notices, Hygiene Prohibition Procedures/Prohibition Procedures and prosecution procedures.

Where a Primary Authority partnership exists competent authorities should attempt to resolve non-compliance by liaising with the Primary Authority where appropriate.

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

In considering whether to initiate enforcement action, competent authorities should take account of the following:

- the Code for Prosecutors; and
- the competent authority's enforcement policy.

6.1.2 Requirement for a written policy

Each competent authority should have an up-to-date, documented food law enforcement policy which is readily available to food business operators and consumers.

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

Competent authorities should have regard to any advice issued by FSA in NI when drafting their food law enforcement policies.

A competent authority's food law enforcement policy may be part of a generic policy, or combined with other enforcement policies, e.g. health and safety, providing the applicability of the policy to the enforcement of food law is clear.

Authorised officers should implement their competent authority's food law enforcement policy, which should reflect all the factors set out in section 5.1.1.

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 must 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 competent authority should not adopt policies where the number of (hygiene) improvement notices served or the number of other legal processes, such as prosecution is an indicator of performance.

If a Primary Authority partnership is in place competent authorities must liaise with the Primary Authority when considering formal action except in circumstances where the need to act swiftly is critical.

6.2 Formal sanctions

6.2.1 Hygiene improvement notices

This section deals with the use of hygiene improvement notices under regulation 6 of The Food Hygiene Regulations (Northern Ireland) 2006.

Hygiene improvement notices served under regulation 6 of The Food Hygiene Regulations (Northern Ireland) 2006 must only be signed by officers who have been authorised to do so by the competent authority and meet the competency requirements set out in Chapter 4.

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

6.2.1.1 When to use hygiene improvement notices

Hygiene improvement notices may be appropriate in any of the following circumstances or a combination thereof:

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

6.2.1.2 When not to use a hygiene improvement notice

The hygiene improvement notice procedure would be inappropriate in the following circumstances where:

- the contravention may be 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 swift enforcement action is needed, for example, a one day festival or sporting event (a hygiene emergency prohibition notice would be the only formal remedy which would have immediate effect); and
- there is a breach of good hygiene practice but no failure to comply with an appropriate regulation.

6.2.2 Improvement notices

This section deals with the use of improvement notices under Article 9 of The Food Safety (Northern Ireland) Order 1991.

Improvement notices served under Article 9 of The Food Safety (Northern Ireland) Order 1991 must only be signed by officers who have been authorised to do so by the competent authority and meet the competency requirements set out in Chapter 4.

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

6.2.2.1 When to use an improvement notice

Competent authorities should deal with breaches of The Food Hygiene Regulations (Northern Ireland) 2006 by using the enforcement powers provided by those Regulations (such as hygiene improvement notices under regulation 6). However, where legislation such as The Fish Labelling Regulations (Northern Ireland) 2013 is involved, they should issue an improvement notice under Article 9 of The Food Safety (Northern Ireland) Order 1991.

6.2.2.2 When not to use an improvement notice

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

6.2.3 Food Information Regulations improvement notices

This section deals with the use of improvement notices served under Article 9 of The Food Safety (Northern Ireland) Order 1991.

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

6.2.3.1 When to use Food Information Regulations improvement notices

Competent authorities should deal with breaches of the Food Information Regulations (Northern Ireland) 2014 by using the enforcement powers provided by those Regulations (such as improvement notices). Improvement notices should be used in line with the enforcement policy of the competent authority and must be considered as part of the escalation of enforcement action in line with the hierarchy of enforcement.

An improvement notice may be served on a person (food businesses operator) requiring the person to comply with the provisions listed in subsection (1A) of the modified version of Article 9 of The Food Safety (Northern Ireland) Order 1991 set out in Part 1 of Schedule 4 to FIR 2014. These are:

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

6.2.3.2 When not to use a Food Information improvement notice

A food information improvement notice would be inappropriate where breaches exist in respect of food hygiene, or 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.

FIR includes criminal sanctions for failure to comply with certain allergen labelling and information requirements (these are listed in regulation 10 of the Regulations) but, where there is a failure to comply with those provisions, enforcement officers will need to choose, based on the circumstances, between taking a criminal prosecution in relation to the contravention or serving an improvement notice. It will be possible, in some cases, for an competent authority to take a criminal prosecution for the contravention itself and also for the enforcing officer to issue an improvement notice to require measures to be taken by the food business operator to make the business compliant.

6.2.4 Hygiene emergency prohibition notices (HEPNs)

This section deals with the use of hygiene emergency prohibition procedures under regulation 8 of The Food Hygiene Regulations (Northern Ireland) 2006

- the associated voluntary closure procedures;
- the prohibition of persons under regulation 7;

- the use of emergency prohibition procedures under Article 11 of The Food Safety (Northern Ireland) Order 1991 and associated voluntary closure procedures; and
- the prohibition of persons under Article 10 of The Food Safety (Northern Ireland) Order 1991.

Competent authorities must continue to use the prescribed forms set out in The Food Safety (Improvement and Prohibition - Prescribed Forms) Regulations 1991²³ when using powers under Articles 10 and 11 of The Food Safety (Northern Ireland) Order 1991.

HEPNs served under regulation 8 of The Food Hygiene Regulations (Northern Ireland) 2006 or emergency prohibition notices served under Article 11 of The Food Safety (Northern Ireland) Order 1991 should be signed only by officers who are specifically authorised to serve these notices and meet the competency requirements set out in Chapter 4.

6.2.4.1 When to use HEPNs

Unless the use of voluntary procedures is more appropriate in the circumstances, hygiene emergency prohibition procedures must 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 must be served on the food business operator, followed by an application to a court of summary jurisdiction for a hygiene emergency prohibition order.

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

- use of equipment for the processing of high-risk foods that has been inadequately cleaned or disinfected or which is grossly contaminated and can no longer be properly cleaned.
- dual use of complex equipment, such as vacuum packers, for raw and ready-to-eat foods.

6.2.4.2 Health risk conditions

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.

²³ SR 1991 No. 214

- the use of a process for a product for which it is inappropriate.

In respect of hygiene emergency prohibition notices and hygiene emergency prohibition orders, the competent authority must 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 competent authority must determine the position as soon as is reasonably practicable and within a period of no longer than 14 days. If the competent authority is satisfied that the health risk condition no longer exists, it must issue a notice to that effect to the food business operator and must do so within three days of being so satisfied. If the competent authority determines that the health risk condition remains in existence, it must issue a notice of that determination to the food business operator and must do so within three days.

6.2.5 Voluntary procedures (food hygiene)

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

Any voluntary closure agreement must 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.

6.2.5.1 When to use voluntary procedures

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

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

6.2.5.2 When not to use voluntary procedures

If the food business operator offers to close voluntarily, the officer must 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 competent authority might be criticised for not having used statutory powers). The officer should;

- recognise that there is no statutory legal sanction against a food business operator who re-opens for business after offering to close,

although enforcement action for the actual breaches e.g. unsafe food, similar processing as before, etc, remains available; and

- explain to the food business operator that, by making the offer to close, any right to compensation is lost.

6.2.5.3 When to use hygiene prohibition procedures against a person

At the time when the food business operator / food business proprietor is convicted of a relevant offence, the authorised officer may feel that it is appropriate to ask the court to consider making an order preventing that person from operating a food business.

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

6.2.6 Action when a hygiene prohibition order (HPO) has been made against a person (regulation 7(4))

A hygiene prohibition order issued by a court can only be fully effective if other competent authorities are notified, as the individual concerned may try to start a business in another area.

The competent authority must notify the CIEH 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/Article number under which offence was made;
- penalties;
- name of food business operator or manager;
- name of the business;
- food business establishment address including post code;
- business type/main activity (e.g. catering, retail etc.); and
- details of assumed names.

6.2.6.1 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 can only cease to have effect if, on an application by the food business operator, the court gives such a direction, in accordance with the provisions at regulation 7(8).

Note should be made that no application will be entertained within six months of the date of the order being made.

The competent authority must also notify CIEH by the next working day after they learn that a hygiene prohibition order against a person has been lifted in their area.

6.2.7 The Food Safety (Northern Ireland) Order 1991 procedures

Unless the use of voluntary procedures is more appropriate in the circumstances, emergency prohibition procedures must 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 must be served on the proprietor, followed by an application to a court of summary jurisdiction for an emergency prohibition order.

6.2.7.1 When to use emergency prohibition procedures (Article 12)

The following are examples of circumstances that could 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 might cause injury to the developing foetus, but the damage, will not be apparent until the baby is born.
- A process or treatment that introduces a genotoxic chemical (one that damages genes or chromosomes) into food the effects of which might not manifest themselves until the effected child develops or a malignant tumour occur at some time in the future.

6.2.8 Voluntary procedures (food standards)

Voluntary procedures to remove an imminent risk of injury to health can 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 could suggest this option to the proprietor or manager, but only when they are able to use Article 11 of The Food Safety (Northern Ireland) Order 1991. If in doubt, the proprietor or manager must be advised to take independent legal advice.

Any voluntary closure agreement must 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.

6.2.8.1 When to use voluntary procedures (food standards)

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

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

6.2.8.2 When not to use voluntary procedures (food standards)

If the proprietor of a food business offers to close voluntarily, the officer must 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 competent authority might be criticised for not having used statutory powers); recognise that there is no statutory legal sanction against a proprietor who re-opens for business after offering to close, although enforcement action for the actual breaches e.g. unfit food etc., remains available; and explain to the proprietor that, by making the offer to close, any right to compensation if a court subsequently declines to make an emergency prohibition order is lost.

6.2.9 Action when a prohibition order has been made against a person (Article 10)

A prohibition order issued by a court can only be fully effective if other competent authorities are notified, as the individual concerned might try to start a business in another area.

The competent authority must 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/Article number under which offence was made;
- penalties;
- name of food business proprietor or manager;
- name of the business;
- food business establishment address including post code;
- business type/main activity (e.g. catering, retail etc.); and
- details of assumed names.

6.2.9.1 Lifting of prohibition orders against persons (Article 10(6)(b) and Article 10(8))

Prohibition orders against persons, imposed under Article 10 by a court can only cease to have effect if, on an application by the proprietor, the court gives such a direction, in accordance with the provisions at Article 10(8).

The competent authority must also notify CIEH by the next working day after they learn that a prohibition order made against a person has been lifted in their area.

6.2.10 Seizure and detention

This section describes the circumstances when the use of detention and seizure powers under Article 8 of The Food Safety (Northern Ireland) Order 1991 is appropriate including after food has been certified in accordance with regulation 25 of The Food Hygiene Regulations (Northern Ireland) 2006. It also covers the procedures for serving and withdrawal of notices, voluntary surrender, and the destruction or disposal of food.

Competent authorities must continue to use the forms set out in The Detention of Food (Prescribed Forms) Regulations (Northern Ireland) 1991²⁴ when using powers under Article 8 of The Food Safety (Northern Ireland) Order 1991, including after food has been certified in accordance with regulation 25 of The Food Hygiene Regulations (Northern Ireland) 2006.

The inspection of food and any decision to detain or seize food through the application of Article 8 of The Food Safety (Northern Ireland) Order 1991 (including as directed by regulation 25 of the Food Hygiene Regulations (Northern Ireland) 2006) must only be taken by officers who are specifically authorised to seize and detain food and serve the appropriate notices and meet the competency requirements set out in Chapter 4.

As regards official controls in relation to the import of food from third countries, regulation 30 of The Official Feed and Food Controls Regulations (Northern Ireland) 2009 provides the power to competent authorities to take action under Articles 18 to 21 and 24(3) of Regulation 882/2004 if the conditions set out in those Articles are fulfilled. These Articles relate to the detention, destruction, special treatment, re-dispatch and other appropriate measures in respect of food imported from third countries.

6.2.10.1 The Food Hygiene Regulations (Northern Ireland) 2006, regulation 25

When food has not been produced, processed or distributed in compliance with the “Hygiene Regulations” as defined in regulation 2 of The Food Hygiene Regulations (Northern Ireland) 2006, an authorised officer may use regulation 25 of those Regulations to seize the food by the use of Article 8 of The Food Safety (Northern Ireland) 1991. Following the certification required by regulation 25, the authorised officer should follow the advice set out in this Chapter in connection with the use of Article 8 of The Food Safety (Northern Ireland) Order 1991.

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 25 of The Food Hygiene Regulations (Northern Ireland) 2006 can be found in the Practice Guidance (NI).

²⁴ S.R 1991 No. 215

6.2.10.2 Detention of food

Unless the circumstances require immediate action, a decision to detain food must only 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 must be used to determine whether food must 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 must specify a place to which the food is to be moved.

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

In all cases, but especially with highly perishable food, the officer must 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 must be satisfied that adequate arrangements can be made to ensure its security and prevent tampering. The officer must 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 must 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.

6.2.10.3 Seizure of food

When considering whether to seize food that has been detained, authorised officers must 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 must be agreed by the authorised officer, and the owner or the person in control of the food and the subject of a signed, written undertaking.

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

Arrangements must be made for that competent authority to take steps to ensure the processing or treatment is carried out, including the service of a detention of food notice if appropriate.

If the receiving competent authority is unable to accept responsibility for ensuring that the food is properly processed or treated, the arrangement must not proceed.

Unless the preceding paragraphs of this section apply, or the use of voluntary procedures are more appropriate, food must be seized if an authorised officer has evidence that it does not satisfy food safety requirements.

If evidence indicates that food that has already been detained must 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 must be dealt with by a justice of the peace as soon as is reasonably practicable, normally within two days, but if necessary longer to ensure that parties can attend and be represented should they choose to do so. Highly perishable food must be dealt with by a justice of the peace at the earliest opportunity.

The person in charge of the food or the owner must be given the opportunity of being present and represented should they choose to do so when the food is dealt with by the justice of the peace, although action must 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 must be documented and retained to show the court that was the case.

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

6.2.10.4 Notices of detention and seizure

A detention or seizure of food notice must be signed by the officer who takes the decision to detain the food.

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

A food condemnation notification must 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 must, where possible also be given to the owner of the food.

6.2.10.5 Withdrawal of detention of food notice

The authorised officer must act as quickly as possible when evidence or information indicates that detained food can be released, and in any case within 21 days. A withdrawal of detention of food notice must be served.

The decision to issue a withdrawal of detention of food notice must be taken either by the officer who originally issued the notice or initiated the action or by another officer with the relevant experience and competence.

A withdrawal of detention of food notice must 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 can be served by any authorised officer.

6.2.10.6 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 must 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 must take into account the following:

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

6.2.10.7 Voluntary procedures

Voluntary procedures to remove food that is not suitable for human consumption from the food chain can 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 must be issued for food that is voluntarily surrendered to the competent authority for destruction. The receipt must indicate that the food has been voluntarily surrendered to the competent authority for destruction and be signed and counter-signed by the authorised officer and the person surrendering the food respectively.

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

If the competent 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 would have to bear the expenses itself.

6.2.10.8 Destruction or disposal of food

The competent authority is responsible for ensuring the destruction of food that has been seized or voluntarily surrendered, and arrangements must 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 must be disfigured so as to prevent any possibility of it being returned to the food chain.

The competent authority must 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.

6.2.11 Enforcement powers for imported food

Regulation 30 of The Official Feed and Food Controls Regulations (Northern Ireland) 2009 provides competent authorities with 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. The Official Feed and Food Controls Regulations (Northern Ireland) 2009 provides the enforcement powers for competent authorities in carrying out official controls on FNAO from third countries, either at the point of entry or inland.

6.2.11.1 Notices under The Official Feed and Food Control Regulations (Northern Ireland) 2009

Regulation 31 of these Regulations requires authorised officers to serve a notice on the FBO:

- where they propose to place a consignment under official detention under Article 18 or 19(1) of Regulation 882/2004
- where they propose to take any of the measures in Article 19(1)(a) or(b) of Regulation 882/2004, after hearing from the food business operator responsible for the consignment as provided for in Article 19
- where they propose to take any action referred to in Article 19(2)

Further guidance on these enforcement powers for imported food control can be found in the Practice Guidance (NI).

6.2.11.2 Detention/seizure of illegal imports of Products of Animal Origin (POAO) found inland at premises outside Customs control

Where illegal imports of POAO are found inland in an area/establishments outside Customs control, the competent authority has responsibility for the enforcement action.

Where an authorised officer wishes to detain any POAO found inland in order to investigate further to establish its safety or compliance, voluntary co-operation might be sought in the first instance. In situations where this is not possible or is inappropriate due to risk, there is a provision under Article 18 of Regulation 882/2004 for an authorised officer to require the person having charge of the consignment to detain the product until such a time as the investigation is complete.

Where the officer is satisfied that a POAO has been illegally introduced (checks at a Border Inspection Post have been evaded), they must take appropriate action as

outlined in regulation 19 and regulation 20(3) of The Trade in Animals and Related Products Regulations (Northern Ireland) 2011. The officer must seize the consignment of products and either:

- have it dispatched for rendering or incineration as Category 1 material in accordance with relevant animal by-products legislation; or
- have it re-dispatched, by the mode of transport by which it was first introduced into the EU, to a destination in a third country within 60 days,

Although the final decision rests with the enforcing competent authority, in most circumstances it is unlikely to be appropriate or practical to re-dispatch the products. Further guidance is available in the Practice Guidance (NI) and in FSA in NI's Resource Pack for Inland Enforcement of Imported Feed and Food Controls, which can be found at:

http://www.food.gov.uk/business-industry/imports/enforce_authorities/resourcepack

6.2.12 Remedial Action Notice (RANs)

Powers to issue remedial action notices and detention notices are provided by regulation 9 of The Food Hygiene Regulations (Northern Ireland) 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 in the Practice Guidance (NI).

RANs may be issued in any food establishment. Detention notices under regulation 9 of The Food Hygiene Regulation (NI) 2006 may only be served in establishments subject to approval.

Authorised officers must seek to remedy non-compliance in establishments by a graduated approach to enforcement (see section 6.1.1). When necessary, the hygiene improvement notice provisions in regulation 6 of The Food Hygiene Regulations (Northern Ireland) 2006 must be considered (see section 6.2.1). Authorised officers must 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 can be used, when appropriate.

6.2.12.1 When to use RANs

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 Regulations (Northern Ireland) 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 additionally makes provision for the detention of any food, including the taking of samples for the

purposes of examination, by the service of a detention notice, in an establishment subject to approval under Regulation 853/2004.

Circumstances which may lead to the issue of a remedial action notice in respect of an establishment include:

- the failure of any equipment or part of an establishment to comply with the requirements of the “Hygiene Regulations” as defined by regulation 2 of The Food Hygiene Regulations (Northern Ireland) 2006
- the need to impose conditions upon or the prohibition of the carrying on of any process breaching the requirements of the Regulations or hampering adequate health inspection in accordance with the Regulations; and
- where the rate of operation of the business is detrimental to its ability to comply with the Regulations.

Circumstances which could lead to the issue of a detention notice include:

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

Such action must be proportionate to the risk to public health and where immediate action is required to ensure food safety. A remedial action notice can be used if a continuing offence requires urgent action owing to a risk to food safety 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 who served the remedial action notice is satisfied that the action specified in a remedial action notice has been taken, the notice must be withdrawn by means of a further notice in writing. Similarly, in respect of a food detention notice, if the authorised officer is satisfied that the food need no longer be detained, the relevant notice must also be withdrawn by means of a further notice in writing.

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. (For the detention and seizure of food in establishments not subject to approval, see section 6.2.10.)

6.2.13 The Food Additives, Flavourings, Enzymes and Extraction Solvents –Regulations (Northern Ireland) 2013 - improvement notices

Improvement notices served under regulation 7 of The Food Additives, Flavourings, Enzymes and Extraction Solvents Regulations (Northern Ireland) 2013 may only be signed by officers who have been authorised to do so by the competent authority.

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

6.2.13.1 When to use The Food Additives, Flavourings, Enzymes and Extraction Solvents Regulations (Northern Ireland) 2013 - improvement notices

Officers should only consider issuing improvement notices under The Food Additives, Flavourings, Enzymes and Extraction Solvents Regulations (Northern Ireland) 2013 where the business is in breach of the provisions set out in regulation 7.

They should be considered as part of the escalation of enforcement action in line with the hierarchy of enforcement.

Formal action should be proportionate to the consumer protection risk. Whether to serve a notice will require an assessment of the risk taking into account factors such as the likelihood of non-compliant foods being distributed widely with large numbers of consumers misled and the potential sensitivity to the public opinion. Consideration should also be given to any information on previous informal enforcement actions which might not have been successful, or if the authorised officer has reason to believe that an informal approach will not be successful.

6.2.13.2 When not to use The Food Additives, Flavourings, Enzymes and Extraction Solvents Regulations (Northern Ireland) 2013 - improvement notices

Officers should not use improvement notices under The Food Additives, Flavourings, Enzymes and Extraction Solvents Regulations (Northern Ireland) 2013 where the business is in breach of the provisions set out in regulation 3, 4, 5, or 6 as these are criminal offences.

6.2.14 Separation on best practice vs. legal requirements

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 and in accordance with the principles set out in the Code for Prosecutors²⁵.

Where, on the other hand, it is decided to adopt an informal approach, it must be explained to the food business operator what action is needed to secure compliance.

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

²⁵<http://www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/Code%20for%20Prosecutors/Code%20for%20Prosecutors%20Revised%202008%20FINAL.pdf>

Standard documents, circulars, booklets, and other publications issued by the competent authority must be accurate and reflect current practice. Competent authorities must be prepared to discuss letters, circulars, etc. with any food business operator to whom they have been sent.

Chapter 7 – Matters relating to live bivalve molluscs

7.1 Introduction

This section deals with the establishment and maintenance of local shellfish liaison groups. It also deals with the need for registration documents or permanent transport authorisations, classification of production and relaying areas, imports of live bivalve molluscs and closure notices.

7.2 Liaison arrangements

All competent authorities where there are commercial shellfish activities, should have representation on the regional shellfish liaison group. The functions of the group are likely to vary depending on the local shellfish industry and local issues. (See the Practice Guidance (NI)). Representatives from other government departments (e.g. DOE, DARD Fisheries) may also participate in the group when necessary.

7.3 Registration documents: live bivalve molluscs

Under Regulation 853/2004, each gatherer of live bivalve molluscs (including pectinidae) to be placed on the market, requires a registration document (unless issued with a permanent transport authorisation) to identify each batch that they gather for its movement from the harvesting site. The movement might 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.

Competent authorities must issue such registration documents to gatherers, including fishing vessels that harvest live bivalve molluscs. A model registration form is available in the Practice Guidance (NI). This must contain a unique number/code and be given to the harvester or gatherer before they carry out harvesting. Competent authorities cannot make any charge for the issue of registration documents, nor can they unreasonably refuse to issue the documents to a gatherer.

Any competent authority which issues registration documents must have systems in place to control and monitor the issue of registration documents. The management system should include a record of the names and details of the persons to whom they were issued, the number of registration documents issued and the respective unique number/code of the individual documents.

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

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

7.3.1 Permanent Transport Authorisations (PTA)

A competent authority can issue to gatherers, a permanent transport authorisation (PTA) as an alternative to separate movement documents when the gatherer also operates the purification centre, relaying area or processing establishment to which their harvested live bivalve molluscs are being delivered. However, all establishments operated by the gatherer must fall within the jurisdiction of the single competent authority. A separate PTA should be issued for each individual shellfish harvesting area.

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

Where a competent authority is not satisfied with the operators' compliance with the hygiene legislation, after a PTA has been given, the competent authority can withdraw the PTA.

7.3.2 Examination of registration documents

Competent authorities should carry out regular examinations of completion of registration documents to determine their accuracy. The examination of the documents should normally be carried out as part of the inspection of dispatch or purification centres (see the Practice Guidance (NI)), but checks may also be conducted on shellfish harvesters during other interventions.

7.4. 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 FSA in NI.

Competent authorities must liaise with FSA in NI regarding the approval of these establishments, in particular the verification of the effective operation of the purification system(s), in operation at these establishments. The competent authority must have regard to FSA in NI's assessment of the food business operator's operation of the purification system(s) during their determination of approval of the establishment.

7.4.1 Sampling as part of the inspection

Each inspection of a dispatch or purification centre should include the taking of samples for laboratory tests. The competent authority must in liaison with the food business operator investigate test results that show breaches of the end product standard.

7.5 Classification of live bivalve Molluscs (LBMs)

It is the responsibility of FSA in NI to classify production and relaying areas from which it authorises the harvesting/or relaying of live bivalve mollusc. A food business operator must apply to FSA in NI to have any suitable area classified. FSA in NI will only process an application for the classification of an LBM aquaculture bed once they have received the necessary confirmation from DARD Fisheries that the area is licensed and authorised for the purposes of aquaculture. The procedure and criteria for classification of bivalve mollusc beds and relaying areas is set down in Annex II, Chapter II of Regulation 854/2004.

Live bivalve molluscs must, after harvesting, be treated in accordance with the classification of the production/relaying area, in respect of placing on the market.

7.6 Imports of LBMs

Imported live bivalve molluscs for human consumption or processing require post import notification and control. This is to ensure that they are not relayed in EU waters.

Consignments of live bivalve molluscs for human consumption or processing must be imported with a Common Veterinary Entry Document (CVED) and have been subject to veterinary checks at an EU border inspection post (BIP). Boxes 33 (acceptable if channelled) and 37 (details of controlled destinations) of the CVED must be completed.

7.7 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 have not been met or that there may otherwise be a risk to human health, the competent authority must close the production area concerned to prevent the harvesting of live bivalve molluscs or, if appropriate, the area may be classified by FSA in NI, in accordance with the Regulation.

When the closure of a production area is required, FSA in NI will liaise with the competent authority responsible for closing the production area. Closure of a production area may be either by temporary close notice (TCN) or voluntary agreement with the food business operator. A model closure notice can be found in the Practice Guidance (NI). The competent authority should then immediately notify the relevant interested parties of the closure (e.g. operators of purification centres, dispatch centres and other processing establishments as necessary).

Where the closure relates to a “wild fishery” (e.g. Foyle, Narrow Water), the competent authority must prominently display a closure notice where food businesses harvesting shellfish from the affected area might reasonably be expected to see them.

The competent authority must liaise with FSA in NI over the issue of a closure notice. Liaison with FSA in NI might include consideration of whether any action should be

taken to withdraw any live bivalve molluscs from sale that has already been distributed locally or nationally (for contact details see Practice Guidance (NI)).

Following a closure, FSA in NI may instigate additional sampling to determine when the closed area should re-open. FSA in NI will liaise with the competent authority regarding the re-opening of a closed production area.

FSA in NI will also notify other relevant government departments/organisations of any closures (e.g. DOE, DARD Fisheries, FSAI, SFPA) and immediately update their official control results on the FSA website to reflect any closures.

7.8 Reclassification

FSA in NI is responsible for the reclassification of production areas. Where results of FSA in NI's official control monitoring programme warrant reclassification FSA in NI will instigate reclassification of an area and notify relevant interested parties.

Chapter 8 – Sampling and analysis

8.1 Introduction

Effective routine sampling is an essential part of a well-balanced enforcement service and should, therefore, feature in the sampling policy of all competent authorities. Guidance to help ensure sampling by competent authorities is undertaken effectively and consistently is set out in the Practice Guidance (NI).

Whilst The Food Safety (Northern Ireland) Order 1991, The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 2013, The Food Hygiene Regulations (Northern Ireland) 2006 provide a framework for competent 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 competent authority's sampling policy and programme should cover all types of sampling work undertaken.

8.1.1 Sampling policy and sampling programme²⁶

Competent authorities must prepare and publish a food sampling policy and make it available to businesses and consumers. The policy must set out the competent authority's general approach to food sampling and its approach in specific situations such as process monitoring, imported food monitoring, Home Authority Principle, inspections, complaints, special investigations and national, regional and local co-ordinated programmes. This sampling policy must 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.

Competent authorities must also prepare a sampling programme which details their intended food sampling priorities. The programme must take account of the number, type and intervention ratings of the food businesses, and the type of food produced in the area, imported foods, the competent authority's originating or Home Authority responsibilities and the need to ensure that the provisions of food law are enforced. The sampling programme does not normally have to be published.

The sampling policy must commit the competent authority to providing the resources necessary to carry out its food sampling programme.

The sampling policy and the sampling programme must be prepared in consultation with the food examiner and/or the public analyst, which may take place on a local or regional basis.

²⁶ See Chapter 2, Paragraph 12.4 of the Framework Agreement on Local Authority Food Law Enforcement.

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

All samples which are sent to an official laboratory constitute official control samples²⁷.

8.1.2 Requests for information from manufacturers or importers

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

8.1.3 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 competent authority by consumers or other agencies;
- samples of food that are submitted to the public analyst for monitoring or surveillance purposes alone, i.e. there is no intention at the time of sampling that any formal enforcement action will ensue from the result;
- samples of food procured in accordance with food law which are not taken for analysis or examination, e.g. samples submitted for the opinion of other experts e.g. pest identification etc;
- samples of food that are taken as evidence in their own right e.g. use-by dates; and
- samples that are taken under the provisions of regulations still in force that have their own detailed sampling provisions, and are listed in Schedule 1 of The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 2013.

8.1.4 Samples for analysis (The Food Safety (Northern Ireland) Order 1991, Article 29)

All samples for analysis, taken under Article 29 of The Food Safety (Northern Ireland) Order 1991 in accordance with The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 2013 and with the requirements of 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.²⁸

²⁷ <http://www.food.gov.uk/enforcement/foodsampling/foodcontrollabs>

²⁸ 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

8.1.5 Division of samples for analysis

Unless the sample meets the criteria for submission for analysis without division into three parts (see the Practice Guidance (NI)), the formal sample should, as soon as possible, be divided into three representative parts. Subject to regulation 7(4), regulation 7(1) of The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 2013, requires that the sample should be divided into three representative parts. The resultant parts of the sample are referred to in this Code as final parts. Where practicable, the division should be carried out in the establishment of the food business operator, who, if present, should be given the opportunity to observe the sampling and division before being invited to choose one of the parts for retention.

The sampling of imported foods at the port of entry may pose particular difficulties. In the special circumstances found by the competent authority, 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.

8.1.6 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.

8.1.7 Certificates of analysis

In accordance with regulation 10 of The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 2013, certificates of analysis must in principle be in the format set out in Schedule 3 to those Regulations, though may be subject to such adaptation as circumstances reasonably require.

8.1.8 Notification of results (analysis)

Where a certificate of analysis indicating that the foodstuff does not comply with legal requirements has been received, the competent authority should refer to and implement any relevant provisions of section 2.3 and the Home Authority Principle (see section 2.1.1.2).

In accordance with regulation 10 of The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 2013, a copy of the certificate of analysis must be supplied, on request, to the owner of the food which has been analysed. If the alleged offence is thought to be related to the manufacturer, they should be informed at the earliest opportunity by the fastest possible means (e.g. fax or telephone, subsequently confirmed in writing) along with the relevant competent authority. The

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

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

8.1.9 Samples for examination (The Food Hygiene Regulations (Northern Ireland) 2006, regulation 12)

All samples for examination, taken in accordance with regulation 12 of The Food Hygiene Regulations (Northern Ireland) 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 15(11) of The Food Hygiene Regulation (Northern Ireland) 2006, The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 2013 apply in relation to a sample procured by an authorised officer of a district council under regulation 13 of The Food Hygiene Regulations (Northern Ireland) 2013, as if it were a sample procured by an authorised officer under Article 29 of The Food Safety (Northern Ireland) Order 1991.

8.1.10 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.

8.1.11 Certificates of examination

In accordance with regulation 13(11) of The Food Hygiene Regulations (Northern Ireland) 2013 certificates of examination must be in the format set out in Schedule 3 to The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 2013.

8.1.12 Notification of results (examination)

Where a certificate of examination indicating that the foodstuff does not comply with legal requirements has been received, the competent authority should refer to, and implement any relevant provisions of section 2.3 and the Home Authority Principle (see section 2.1.1.2).

In accordance with regulation 10 of The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 2013, a copy of the certificate of examination must be supplied, on request, to the owner of the food which has been examined. If the

alleged offence is thought to be related to the manufacturer, they should be informed at the earliest opportunity by the fastest possible means (e.g. fax or telephone, subsequently confirmed in writing), along with the relevant competent authority. The packer or, in the case of imported food, the importer, or their agent, may also be notified.

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

Annex 1 - Glossary

Advanced electronic signature	Has the meaning set out in Regulation 2, The Electronic Signatures Regulation 2002.
APHA	Association of Port Health Authorities.
Approved establishment	A premise approved under Regulation (EC) No 853/2004 for handling, preparing and/or producing products of animal origin.
Audit	A systematic and independent examination to determine whether activities and related results comply with planned arrangements and whether these arrangements are implemented effectively and are suitable to achieve objectives.
Authorised Officers	Has the meaning set out in Article 2(2) of The Food Safety (Northern Ireland) Order 1991.
Awarding bodies	In relation to the Code, the awarding bodies are: The Chartered Institute of Environmental Health (CIEH); Trading Standards Institute (TSI) and; The Institute of Food Science and Technology (IFST).
BIS	Department for Business, Innovation and Skills.
BRDO	Better Regulation Delivery Office.
Broadly compliant(Hygiene)	An establishment that has an intervention rating score of not more than 10 points under each of the following three parts of section 5.6.1: Part 2: Level of (Current) Compliance - Hygiene and Level of (Current) Compliance – Structure; and Part 3: Confidence in Management.
Broadly compliant(Standards)	An establishment that has an intervention rating score of not more than ten points under each of the following parts of section 5.6.2, Part 2: Level of (Current) Compliance; and Part 3, Confidence in Management/Control Systems.
CEN	The European Committee for Standardisation.
CCDC	Consultant in Communicable Disease Control.
CCP	Critical Control Point.

Central competent authority	Has the meaning set out in Regulation 882/2004 ²⁹ and is the Food Standards Agency.
CED	Common Entry Document.
CIEH	Chartered Institute of Environmental Health.
CIM	Confidence in Management.
Competent authority	Has the meaning set out in Regulation 2 (1) The Official Feed and Food Controls Regulations (Northern Ireland) 2009 ³⁰ . For the purposes of the Code this would, normally, mean district councils.
Competent person	Meeting the requirements of the competency framework set out in Chapter 4.
Complaint	Conformity with the requirements of the law.
Compliance risk elements	These are defined within the Hygiene Risk Rating System as structure compliance, hygiene compliance, confidence in management and significant risk.
Conditional Approval	Has the meaning set out in Article 31(2)(d) of Regulation (EC) No 882/2004.
Could	Is generally used to indicate those provisions which are for guidance only.
CPD	Continuing Professional Development.
CVED	Common Veterinary Entry Document
Domestic premises	A dwelling house or other building used principally, but not exclusively as a dwelling and its curtilage.
<i>E.coli</i> O157	<i>Escherichia coli</i> O157.
EEA	European Economic Area.
EHRB	Environmental Health Registration Board.
Electronic communication	Has the meaning set out in section 15(1) Electronic Communications Act 2000.
Electronic records	Information captured through electronic means, and which may or may not have a paper records to back it up. Also called machine readable record.

²⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:226:0003:0021:EN:PDF>

³⁰ <http://www.legislation.gov.uk/ukxi/2009/3255/contents/made>

Electronic signature	Has the meaning set out in Regulation 2 of the Electronic Signatures Regulation 2002.
Emergency Control Order	Has the meaning set out in Article 12 of The Food Safety (Northern Ireland) Order 1991.
Emergency Prohibition Order	Has the meaning set out in Article 11 of The Food Safety (Northern Ireland) Order 1991.
Enforcement Authority	Has the meaning set out in Regulation 2 (1) of The Food Hygiene Regulations (Northern Ireland) 2006.
Establishment	“Establishment” does not simply mean “premises”, but is directly linked to the business occupying the establishment (“establishment denotes both premises and the manner in which those premises are being used by the food business operator”).
ETSF	External Temporary Storage Facilities.
Evidence	The measure and conditions necessary to control hazards and to ensure fitness for human consumption of a foodstuff taking into account its intended use.
Export	The action of sending or transporting a commodity abroad, especially for trade or sale outside the EU.
EU	European Union.
FBO	Food Business Operator.
FHIS	Food Hygiene Information Scheme.
FHRS	Food Hygiene Rating Scheme.
Food Examiner	Has the meaning set out in Article 30 (9) of The Food Safety (Northern Ireland) Order 1991 and regulation 5 of The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 2013.
FSA	Food Standards Agency.
Food Business	Has the meaning set out in Regulation (EC) 178/2002 – Article 3.2 ³¹ .
Food Business Operator	Has the meaning set out in Regulation (EC) 178/2002 – Article 3.3.

³¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:031:0001:0024:EN:PDF>

Framework	Framework Agreement on Local Authority Food Law Enforcement ³² .
Full Approval	Has the meaning set out in Article 31(2)(d) of Regulation (EC) No 882/2004.
Food Incident	Has the meaning set out in section 2.3.1 of this Code.
Food Alert	Has the meaning set out in section 2.3.2 of this Code.
Food Hazard	Has the meaning set out in section 2.3.1 of this Code.
Formal Action	The taking of action against a food business operator as set out in the legislation including the service of a statutory notice to remedy non-compliance with legal requirements, the issuing of a Simple Caution or the institution of legal proceedings for breaches of legal requirements.
HACCP	Hazard Analysis and Critical Control Point.
Hazard	Anything that has the potential to cause harm.
Home Authority	The authority where the relevant decision making base of an enterprise is located.
Hygiene	The measure and conditions necessary to control hazards and to ensure fitness for human consumption of a foodstuff taking into account its intended use.
Hygiene Emergency Prohibition Notice	Has the meaning set out in regulation 8 of The Food Hygiene Regulations (Northern Ireland) 2006.
Hygiene Improvement Notice	Has the meaning set out in regulation 6 of The Food Hygiene Regulations (Northern Ireland) 2006.
Hygiene Prohibition Order	Has the meaning set out in regulation 7 of the Food Hygiene Regulations (Northern Ireland) 2006.
IFST	Institute of Food Science and Technology.
Import	The action of bringing in goods and/or services from another country outside of the EU.
Improvement Notice	Has the meaning set out in Article 9 of the Food Safety (Northern Ireland) Order 1991.

³² <http://food.gov.uk/multimedia/pdfs/enforcement/frameworkagreementno5.pdf>

IMS	Information Management Scheme.
Inherent Risk Elements	These are defined within the Hygiene Risk Rating System as Potential Hazard, Method of Processing, Consumers at Risk and Vulnerable Groups.
Informal Action	Bringing to the attention of a food business operator and giving advice on non-compliances with food safety law in order that any non-compliance can be quickly remedied.
Inspection	The examination of any aspect of food in order to verify that such aspect(s) comply with the legal requirements of food law.
Inspecting Authority	The competent authority that carries out the official control intervention in respect of any establishment.
Intervention	Regulatory <u>actions</u> taken by a <u>government</u> in <u>order</u> to affect or interfere with <u>decisions</u> made by <u>individuals</u> , <u>groups</u> , or <u>organizations</u> <u>regarding</u> social and economic <u>matters</u> .
Investigation	The action taken by the competent authority to gather evidence where it believes an offence has been committed.
LAEMS	Local Authority Enforcement Monitoring System
LBRO	Local Better Regulation Office (now BRDO).
Live bivalve molluscs	References to live bivalve molluscs also include live echinoderms, live tunicates and live marine gastropods, in line with Annex III, Section VII(1) of Regulation (EC) No 853/2004 laying down specific hygiene rules for food of animal origin (Regulation 853/2004), with the exception of parts of the Code which deal with purification of live bivalve molluscs.
Local Authority	Has the meaning set out in Section 270 of Local Government Act 1972 ³³ .
MCA	Maritime and Coastguard Agency.
MIS	Management Information System.
Mobile Establishment	Premises other than permanent premises, and “relevant moveable premises” means moveable premises, used for the transport or preparation of food or the retail sale of food on five or more days, whether consecutive or not, in any period

³³ <http://www.legislation.gov.uk/ukpga/1972/70/contents>

	of five consecutive weeks, other than – (a) motor vehicles which are constructed solely for the purpose of carrying no more than 8 passengers (including the driver) and their personal effects, (b) tents, or (c) moveable premises which are ordinarily kept outside Great Britain.
Monitoring	Conducting a planned sequence of observations or measurements with a view to obtaining an overview of the state of compliance with feed or food law, animal health and animal welfare rules.
MoU	Memorandum of Understanding.
Must	Is used to confirm an obligation.
May	On its own indicates an optional exercise of a power or function.
May not	Indicates a prohibition.
NIPHL	Northern Ireland Public Health Laboratory.
Non-compliant	A failure to comply with the one or more requirements of a food law.
Official controls	Has the meaning set out in Article 2 (1) of Regulation (EC) No 882/2004.
Official controls Interventions	Inspections, monitoring, surveillance, verification, auditing and sampling (where the analysis/examination is to be carried out by an Official Laboratory).
Official Control Laboratory	A laboratory accredited for the purposes of analysis, and which appears on the list of official food control laboratories.
Originating authority	Means the authority in whose area final food production takes place.
Other interventions	Education, advice and coaching provided at a food establishment and information and intelligence gathering (including sampling where the analysis and examination is NOT to be carried out by an Official Laboratory).
PACE	Police and Criminal Evidence (Northern Ireland) Order 1989.
Penalty	The punishment imposed by a court on conviction for an offence under food legislation.

PARNUTS	Foodstuffs intended for particular nutritional uses.
Port Health Authority	Has the meaning set out in Section 2 of Public Health (Control of Diseases) Act 1984 ³⁴ .
Primary Authority	Has the meaning set out in Section 25 of Regulatory Enforcement and Sanctions Act 2008 ³⁵ .
Prohibition Order	Has the meaning set out in Article 10 of The Food Safety (Northern Ireland) Order 1991.
Prohibited Person	Has the meaning set out in regulation 7 (4) The Food Hygiene Regulations (Northern Ireland) 2006.
PTA	Permanent transport authorisation.
Public Analyst	Has the meaning set out in Article 27 of The Food Safety (Northern Ireland) Order 1991 and regulation 4 of The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 2013.
RAF	Royal Air Force.
Records	Means information preserved in writing or the like.
REHIS	Royal Environmental Health Institute of Scotland.
Remedial Action Notice	Has the meaning set out in regulation 9(1) of The Food Hygiene Regulations (Northern Ireland) 2006.
Registering authority	The competent authority responsible for registering an establishment under Regulation (EC) No 852/2004. In relation to a mobile establishment, the registering authority will be where it is ordinarily kept.
Regulation 25 Certificate	A certificate issued under regulation 25 of The Food Hygiene Regulations (Northern Ireland) 2006 that food has not been produced, processed or distributed in compliance with the hygiene regulations.
Risk	The chance or probability that a person will be harmed or experience an adverse health effect if exposed to a hazard.
Risk Analysis	A process consisting of three interconnected components: risk assessment, risk management and risk communication.

³⁴ <http://www.legislation.gov.uk/ukpga/1984/22/contents>

³⁵ <http://www.legislation.gov.uk/ukpga/2008/13/contents>

RIPA	Regulatory Investigatory Powers Act 2000.
RN	Royal Navy.
Safety	The quality of averting or not causing injury, danger, or loss.
Sanction	The provision within a statute to take punitive action for failure to comply with the provisions of the statute.
Sampling	Taking food or any other substance (including from the environment) relevant to the production, processing and distribution of food or to the health of animals, in order to verify through analysis compliance with food law.
SFSORB	Scottish Food Safety Officers' Registration Board.
SIMS	Ships Inspection Management System.
Signed	Means having a signature affixed either in writing or by electronic means.
Standards	Rules or principles defined in food safety law that are used as the basis for judgment against.
Surveillance	Means a careful observation of one or more food businesses, or food business operators or their activities.
Third Country	Has the meaning set out in Chapter V of Regulation (EC) No 882/2004.
TSI	Trading Standards Institute.
Third Party Assurance	Independent verification of business compliance against a predetermined standard which has been endorsed by the FSA as being equivalent to /complying with the requirements for food law.
UK	United Kingdom.
UKAS	United Kingdom Accreditation Service.
UKFSS	United Kingdom Food Surveillance Scheme.
Validation	Means confirmation that requirements have been complied with.
Verification	Means the checking, by examination and the consideration of objective evidence, whether specified requirements have been fulfilled.

VTEC	Verocytotoxin-producing <i>Escherichia coli</i> .
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Annex 2 – Food business establishment/food premises intervention report



A report containing the following information must be provided to the food business operator/food business proprietor following each intervention. The information may be provided as a separate report or may be included as part of a letter from the competent authority:

Trading name and address of the business, and registered address if different:

Name of the food business operator/food business proprietor:

Type of business:

Name(s) of person(s) seen and/or interviewed:

Date and time of inspection:

Specific food law under which intervention conducted:

Areas inspected/audited (to be specified):

Documents and/or other records examined (to be specified):

Samples taken (to be specified):

Key points discussed during the visit (to be specified):

Action to be taken by the competent 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:

Competent authority name and address:

Annex 3 – Model application form for the registration of a food business establishment

APPLICATION FOR THE REGISTRATION OF A FOOD BUSINESS ESTABLISHMENT

(Regulation (EC) No 852/2004 on the hygiene of foodstuffs, Article 6(2))

This form should be completed by food business operators in respect of new food business establishments and received by the relevant competent authority 28 days before commencing food operations. On the basis of the activities carried out, certain food business establishments are required to be **approved** rather than **registered**. If you are unsure whether any aspect of your food operations would require your establishment to be approved, please contact [insert name of competent authority] for guidance.

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

2. **Trading name of food business** _____ **Telephone no.** _____

3. **Full Name of food business operator(s)** _____
(or Limited company where relevant)

4. **Head Office address of food business operator** _____
(where different from address of establishment) _____ **Post code** _____

Telephone no. _____ **E-mail** _____

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

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

Other (please give details):

6. **If this is a new business, the date you intend to open** _____

Signature of food business operator _____

Date: _____

Name: _____
(BLOCK CAPITALS)

AFTER THIS FORM HAS BEEN SUBMITTED, FOOD BUSINESS OPERATORS MUST NOTIFY ANY SIGNIFICANT CHANGE IN ACTIVITIES TO THE ACTIVITIES STATED ABOVE (INCLUDING CLOSURE) TO THE COMPETENT AUTHORITY AND SHOULD DO SO WITHIN 28 DAYS OF THE CHANGE(S)