

# Food Safety Act 1990

## Code of Practice

# **Food Safety Act 1990**

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



## PREFACE

This Code of Practice is issued under Section 40 of the Food Safety Act 1990 (the Act), which empowers the Secretary of State to issue codes of practice concerning the execution and enforcement of the Act and Regulations made under it by Food Authorities. It replaces all Codes previously made under the Act.

Food Authorities are required by Section 40 to have regard to this Code when discharging their duties to enforce the Act and Regulations made under it. This means, in effect, that Food Authorities must follow and implement the provisions of this Code that apply to them.

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

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

Food Authorities have a statutory duty to enforce the Act and Regulations made under it.

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

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

The Agency may, from time to time, issue Practice Guidance for Food Authorities. Food Authorities should take account of such guidance.

Food Authorities must also have regard to the Framework Agreement on Local Authority Food Law Enforcement<sup>1</sup>, which reflects the requirements of this Code. The Framework Agreement is also consistent with the principles of the Enforcement Concordat<sup>2</sup>.

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

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

Food Authorities in Scotland, Wales and Northern Ireland should contact their respective offices within the Food Standards Agency for further advice where necessary.

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1 "The Framework Agreement on Local Authority Food Law Enforcement", published and updated by The Food Standards Agency, Aviation House, 125 Kingsway, London, WC2B 6NH, [www.food.gov.uk](http://www.food.gov.uk)

2 "The Enforcement Concordat", published by The Cabinet Office, Better Regulation Unit, Horse Guards Road, London SW1P 3AL









## CHAPTER 1.1: INTER-AUTHORITY MATTERS

### 1.1.1: Introduction

This Chapter deals with liaison arrangements between Food Authorities, and the division of enforcement responsibilities. It requires the timely exchange of information on food premises registration, the adoption, where possible, of the “Home Authority Principle”, and appropriate representation of Food Authorities in liaison groups. It also sets out ground-rules for the exercise of powers of entry by authorised officers in another Food Authority’s area.

### 1.1.2: Liaison between two-tier Food Authorities

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

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

In the parts of England in which there are two tiers of local government and each tier is a Food Authority, District Council Food Authorities should investigate and take enforcement action in cases relating to the microbiological quality of food, contamination by micro-organisms and their toxins and contamination by foreign matter.

### 1.1.4: Composition, chemical contamination, adulteration and labelling

In the parts of England in which there are two tiers of local government and each tier is a Food Authority, County Council Food Authorities should investigate and take enforcement action in cases relating to chemical contamination (other than when this presents an imminent risk to health – see below).

In situations where the presence of chemical contaminants may pose an imminent risk to public health, the District Council Food Authority should investigate and take enforcement action, but should liaise closely with the County Council Food Authority.

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

- In England, medical advice is available from the Area or Regional Director of Public Health.
- In Wales, medical advice is available from the Chief Administrative Medical Officer/Director of Public Health Medicine of the appropriate local health authority.

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

- The health marking and labelling requirements of product-specific food hygiene Regulations which are enforced by District Council Food Authorities;
- The provisions of the Food Labelling Regulations relating to the sale of food after the “use by” date, and the removal or alteration of “best before” or “use by” dates which are enforced jointly by County and District Council Food Authorities.

### 1.1.5: Registration information

Registration authorities in two tier Food Authority areas should supply the registration information received by them under the Food Premises (Registration) Regulations 1991<sup>3</sup>, to the County Council Food Authority within 28 days of receipt.

County Council Food Authorities in the non-metropolitan counties and port health authorities should pass information they receive which may affect the registration of food premises, or the supplementary record to the District Council Food Authority within 28 days of receipt and vice versa.

### 1.1.6: Quick-Frozen Foodstuffs Regulations 1990<sup>4</sup>

The purpose of these Regulations is to ensure the quality, rather than safety, of quick-frozen food and the primary responsibility for enforcement in two tier Food Authority areas therefore lies with County Council Food Authorities. However, as District Council Food Authorities enforce other temperature control requirements, they should also enforce relevant parts of the Regulations including the verification of temperatures in stores, vehicles and at the point of sale (See Chapter 3.6).

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

The Food Standards Agency endorses the Local Authorities Co-ordinators of Regulatory Services (LACORS) Home Authority Principle and Food Authorities should where possible adopt and implement its provisions<sup>5</sup>. A Food Authority that is unable to adopt, implement, or adhere to the Home Authority Principle must firstly discuss the matter with LACORS and, if the matter cannot be resolved, with the Agency.

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

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3 as amended, SI 1991/2825

4 as amended, SI 1990/2615

5 “The Home Authority Principle – Guidelines for Home Authorities”, and LACORS Home Authority Principle Standards’ Document both available from LACORS [www.lacors.gov.uk](http://www.lacors.gov.uk)

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

### 1.1.8: Operating in other areas

The Food Authority for an area should normally deal with matters arising in its area.

The Act permits authorised officers from outside the Food Authority's area to exercise their powers of entry in another Food Authority's area insofar as business premises are concerned in order to ascertain whether there is on those premises any evidence of law breaking within their own area.

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

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

Authorised officers exercising powers of entry in food businesses outside their own area must not exercise any enforcement powers other than those associated with their powers of entry, which include the taking of samples in connection with the investigation of suspected offences within their own area. Other enforcement powers, which include the seizure or detention of food, must only be exercised by authorised officers of the Food Authority in which the business is located<sup>6</sup>.

### 1.1.9: Regional and Local Liaison

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

Food Authorities should ensure that regional or local liaison groups include appropriate representation from each Food Authority in two-tier Food Authority areas, and from Food Examiners and Public Analysts. Representation from the Meat Hygiene Service, the Dairy Hygiene Inspectorate, the CCDC/CPHM (CD/EH) and other experts or specialists should be considered as the need arises.

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<sup>6</sup> *Walkers Snack Foods Ltd v Coventry City Council* (1998) 3 A11 ER 163 refers

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

Groups of home authorities serving food businesses trading in the same sector of the industry should undertake regular liaison to ensure that the advice given by home authorities across a sector is consistent. LACORS is able to facilitate the development of these liaison arrangements.

Food Authorities where there are commercial shellfish harvesting activities should refer to Paragraph 5.3.2 for liaison arrangements.

## CHAPTER 1.2: QUALIFICATIONS AND EXPERIENCE

### 1.2.1: Introduction

This Chapter concerns the qualifications of authorised officers of Food Authorities who carry out inspections or other enforcement duties under the Food Safety Act 1990.

It implements the qualification provisions of Directives 89/397/EEC<sup>7</sup> and 93/99/EEC<sup>8</sup>.

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

If a Food Authority needs to engage expertise in an area listed in Article 2 of Directive 93/99/EEC, the Food Authority should ensure that any expert it engages has a recognised qualification in the area for which the expertise is required.

### 1.2.2: General Qualification and Experience Requirements

Food Authorities should set up and implement a documented procedure<sup>9</sup> for the authorisation of officers.

Food Authorities should ensure that officers they authorise in accordance with their documented procedure to carry out enforcement under the Act and Regulations made under it are suitably qualified, experienced, and competent to carry out the range of tasks and duties they are required to perform.

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

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

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

Nationals from other countries in the European Economic Area have a right under Community law to the recognition of qualifications and experience gained outside the UK. This situation may arise if an individual seeks employment in Great Britain as a Public Analyst, Food Examiner or authorised officer, having acquired relevant qualifications and work experience in their home country. Food Authorities should accept suitable non-UK qualifications and experience in order to give effect to these Community rights. The

<sup>7</sup> Directive 89/397/EEC On the Official Control of Foodstuffs, OJ L186, 30 June 1989

<sup>8</sup> Directive 93/99/EEC On the Subject of Additional Measures Concerning the Official Control of Foodstuffs, OJ L290, 24 November 1993

<sup>9</sup> See Chapter 2, Paragraph 5.1 of the Framework Agreement.

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

### 1.2.3: New Appointments

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

### 1.2.4: Training

Food Authorities should ensure that authorised officers receive relevant structured on-going training. Such training should explain new legislation and procedures and technological developments relevant to food businesses subject to their inspection. The minimum ongoing training should be 10 hours per year based on the principles of continuing professional development.

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

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

Officers that are newly qualified or are returning to food law enforcement duties after an absence of more than 3 years should be monitored for at least three months or for the duration of their revision training period, whichever is longer.

### 1.2.5: Training Records

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

### 1.2.6: Contracted or Temporary Staff

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

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

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10 Directive 89/48/EEC On a General System for the Recognition of Higher Education Diplomas Awarded on Completion of Professional Education and Training of at Least 3 Years' Duration (The Mutual Recognition of Professional Qualifications)

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

### 1.2.7: Sampling

Samples for microbiological examination or chemical analysis should be taken by authorised officers who are properly trained in the appropriate techniques and competent to carry out the duties assigned to them. Sampling in accordance with the provisions of the Food Safety (Sampling and Qualifications) Regulations 1990 and this Code of Practice should only be undertaken by officers meeting the relevant requirements described in Paragraph 1.2.9 below. These requirements do not apply where an adverse report following analysis/examination would not result in formal action.

### 1.2.8: Lead Officers

Food Authorities with responsibility for food hygiene and safety should appoint a suitably qualified and experienced lead environmental health officer (see Paragraph 1.2.9.1.4) to take lead operational and management responsibility for these matters. The officer appointed should meet the requirements set out in Paragraph 1.2.9.1.1 and have a technical understanding of the food production processes used in the Food Authority's area.

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

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

### 1.2.9: Specific Qualification and Experience Requirements

#### 1.2.9.1: Section A: Food Hygiene and Safety

##### 1.2.9.1.1: Officers Appointed to Carry out Food Hygiene Inspections

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

Officers who are required to inspect businesses that have Hazard Analysis Critical Control Point (HACCP) based food safety management systems should also possess the competencies set out in Annex 2.

Officers authorised to undertake food hygiene and safety inspections of food premises should have a detailed knowledge of the following:

- The nature and types of food businesses in their area and the technology utilised by the businesses that the officer is required to inspect;
- Relevant food hygiene and safety legislation;
- This Code of Practice;



- The Food Safety Act 1990 Practice Guidance;
- The Food Authority's Enforcement Policy;
- UK and EU Industry Guides to Good Hygiene Practice;
- Relevant guidance issued by the Food Standards Agency and by LACORS;
- Relevant industry codes of practice<sup>11</sup>.

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

- All premises which attract a minimum primary inspection frequency of 12 months or less;
- All premises that, under the inspection rating scheme at Annex 5, are in the "substantial" category of the Consumers at Risk section.

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

#### **1.2.9.1.2: Inspection of Specialist or Complex Processes**

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

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

#### **1.2.9.1.3: Inspection of Premises for Approval, Licensing or Registration Under Product-specific Food Hygiene Regulations**

Inspections for the purposes of the approval, licensing or registration of premises under product-specific food hygiene Regulations may only be undertaken by authorised officers of the Food Authority who have a detailed knowledge of the relevant product-specific Regulations.

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

#### **1.2.9.1.4: Qualifications & Awarding Bodies – Food Hygiene**

For the purposes of this Code of Practice an environmental health officer is a person holding a Certificate of Registration of the Environmental Health Registration Board (EHRB) or the Diploma in Environmental Health (or its

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<sup>11</sup> The Institute of Food Science and Technology (IFST) publishes a comprehensive list of Guides and industry codes of practice issued by a variety of bodies – "Listing of Codes of Practice Applicable to Foods". Details of additional Guides and industry codes can be found in the IFST publication "Good Manufacturing Practice".

antecedents) awarded by EHRB or the Royal Environmental Health Institute of Scotland (REHIS).

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

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

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

#### **1.2.9.1.5: Service of Improvement Notices (see also Chapter 3.2)**

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

- Environmental health officers enforcing food hygiene or food processing regulations;
- Holders of the Higher Certificate in Food Premises Inspection who are authorised to carry out food hygiene inspections;
- Holders of the Ordinary Certificate in Food Premises Inspection in relation to the premises they are authorised to inspect (see Paragraph 1.2.9.1.1).

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

#### **1.2.9.1.6: Service of Emergency Prohibition Notices (see also Chapter 3.3)**

Emergency prohibition notices under Section 12 of the Food Safety Act 1990 should be signed only by environmental health officers (see Paragraph 1.2.9.1.4) who have two years' post qualification experience in food safety matters and are currently involved in food law enforcement.

#### **1.2.9.1.7: Inspection, Detention & Seizure of Foodstuffs (see also Chapter 3.4)**

The inspection of food and any decision to detain or seize food under

Section 9 of the Act should only be taken by appropriately qualified officers. Such officers will be environmental health officers and where appropriate official veterinary surgeons and, in respect of meat only, officers qualified in accordance with the Authorised Officers (Meat Inspection) Regulations 1987.

### **1.2.9.2: Section B: Food Standards**

#### **1.2.9.2.1: Officers Appointed to Carry out Food Standards Inspections**

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

Officers authorised to undertake such inspections in food premises should have a detailed knowledge of the following:

- The nature and types of food industry in their area and the technology utilised in those premises the officer is authorised to inspect;
- Relevant food standards and marketing legislation;
- This Code of Practice;
- The Food Safety Act 1990 Practice Guidance;
- The Food Authority's Enforcement Policy;
- Relevant guidance issued by the Food Standards Agency and by LACORS;
- Relevant industry codes of practice.

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

- Diploma in Trading Standards (DTS) or its antecedents;
- Certificate of Registration of EHRB, the EHRB or REHIS Diploma in Environmental Health (or its antecedents);
- Diploma in Consumer Affairs (DCA) provided it includes the Food and Agriculture Paper of Part II, or its antecedents;
- A DCA Certificate of Competence in relation to Food and Agriculture issued by the TSI (or its antecedents);
- A Higher Certificate in Food Premises Inspection issued by EHRB or the IFST with an endorsement to include Food Standards Enforcement;
- The Higher Certificate in Food Standards Inspection issued by SFSORB.

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

#### **1.2.9.2.3: Quality Assurance Systems**

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

#### **1.2.10: Alternative Enforcement Strategies**

Officers undertaking alternative enforcement strategies (see Paragraph 4.1.10 and Annex 5) are not required to meet the qualification requirements set out in this Chapter. However, any visits by unqualified officers, undertaken as part of an alternative strategy, must be confined to information collection and reporting back. The overall management of alternative enforcement strategies must remain in the hands of a food law enforcement officer qualified in accordance with this Chapter, and decisions to take other enforcement action and/or intervene further must also be made by such an officer.

## CHAPTER 1.3: CONFLICTS OF INTEREST

### 1.3.1: Introduction

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

### 1.3.2: Avoiding Potential Conflicts of Interest

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

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

Food Authorities and their officers should avoid promoting the Food Authority's services exclusively if other providers of those services exist in the area.

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

### 1.3.3: Enforcement within Local Authority-run Premises

The Food Authority's food law Enforcement Policy (see Paragraph 3.1.4) should detail the Food Authority's arrangements for ensuring compliance with food law in premises where the Authority is itself the proprietor of a food business.

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

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



## CHAPTER 1.4: FOOD BUSINESS RECORDS

### 1.4.1: Introduction

This Chapter requires Food Authorities to maintain an accurate database of food businesses and premises in their area, and confirms that this data can be divulged for the purposes of ensuring public health and the effective enforcement of food law. For ships and aircraft, please refer to Chapter 4.4.

### 1.4.2: Food Business Database

Food Authorities should maintain an accurate database of food businesses and food premises in their area. Food Authorities should liaise as necessary to ensure that information is made available to all authorities that require it in accordance with Paragraph 1.1.5. The database should contain a comprehensive record of:

- The Food Authority's register of food premises required by the Food Premises (Registration) Regulations 1991<sup>12</sup>;
- Premises that are the decision-making base of businesses for which the Food Authority acts as home authority for food matters;
- Other premises of which the Food Authority becomes aware in which activities are conducted that fall within the legal definition of "food business" in Section 1 (3) of the Food Safety Act 1990, whether or not they are required to be registered under the Food Premises (Registration) Regulations 1991;

and in respect of district and unitary authorities:

- Premises that have been approved under product-specific food hygiene Regulations with their unique Approval Number.

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

### 1.4.3: Access to information

Food Authorities should provide details of food business records if requested by the HPA, the CCDC/CPHM (CD/EH), the SCIEH, the Food Standards Agency or other similar enforcement or surveillance body to facilitate the investigation of an outbreak or suspected outbreak of disease, the investigation of a food hazard or other food-related emergency or criminal investigation.

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<sup>12</sup> As amended, SI 1991/2825



## CHAPTER 1.5: REGISTRATION OF FOOD PREMISES

### 1.5.1: Introduction

This Chapter covers registration of food premises under the provisions of the Food Premises (Registration) Regulations 1991<sup>13</sup> and applies only to District Council and single-tier Food Authorities.

### 1.5.2: Applications for Registration

Food Authorities should record the date of receipt on the registration form and use the information provided on such forms to decide whether to inspect a business prior to it opening.

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

A Food Authority should comply with any reasonable request by the proprietor of a food business for a copy of the information supplied on their registration application form.

### 1.5.3: Registration Certificates

Registration certificates should not be issued because of their potential to mislead consumers into believing that the food business has official approval.

### 1.5.4: Ships and Aircraft

The Food Premises (Registration) Regulations 1991 (as amended) do not apply to aircraft and ships, unless the latter are permanently moored or used for pleasure excursions in inland or coastal waters only.

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<sup>13</sup> as amended, SI 1991/2825





## CHAPTER 1.6: CROWN AND POLICE PREMISES

### 1.6.1: Introduction

This Chapter concerns the approach to enforcement in Crown premises and in premises that are occupied by the police. It does not apply to premises that are occupied by the NHS or NHS Trusts since these are not Crown premises. For information on military ships and aircraft refer to Chapter 4.4.

### 1.6.2: National Security Certificates

The powers of entry under Section 32 of the Act may be used in relation to Crown premises unless a national security certificate has been issued by a Secretary of State certifying that those powers cannot be exercised. If an authorised officer seeks entry to Crown premises and is informed that such a certificate has been issued, the officer may ask to see the certificate or a copy of it.

### 1.6.3: Obtaining Entry to Crown Premises

For the purposes of obtaining entry, Crown premises fall broadly into 3 categories, although premises may move from one category to another between inspections.

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

Group 1 premises should normally be visited without prior arrangement.

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

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

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

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

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

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

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

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

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

#### **1.6.4: Conduct of Inspections**

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

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

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

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

#### **1.6.5: Photographs**

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

#### **1.6.6: Liaison with the Food Standards Agency**

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

## CHAPTER 1.7: FOOD INCIDENTS AND HAZARDS

### 1.7.1: Introduction

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

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

### 1.7.2: Food Incidents

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

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

### 1.7.3: Food Hazards

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

### 1.7.4: Categories of Food Hazard

Food Authorities should categorise food hazards according to the following criteria:

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

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

### 1.7.5: Deliberate Contamination and Malicious Tampering

Food may be contaminated deliberately. In such an incident Food Authorities should follow the arrangements in this Chapter, except where the deliberate contamination is thought to be due to malicious tampering.

For the purposes of this Code, “malicious tampering” means the deliberate contamination of food by terrorist activity, or with a view to blackmail or extortion.

Arrangements for dealing with malicious tampering incidents have been established between the Food Standards Agency and the police forces throughout the UK and if necessary the National Criminal Intelligence Service will be involved in the investigation.

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

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

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

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

Serious localised outbreaks should immediately be notified to the appropriate contacts at HPA CDSC in England, the National Public Health Service in Wales, and the Food Standards Agency<sup>14</sup>.

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

### **1.7.7: Action by the Food Authority – Food Incidents**

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

### **1.7.8: Action by the Food Authority – Food Hazards**

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

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

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<sup>14</sup> A list giving contact details is issued as a separate document and is available from the Food Incident Team at the Food Standards Agency, Room 415C, Aviation House, 125 Kingsway, London, WC2B 6NH, tel: 020 7276 8448/8453.

The assessment should include the following:

- The nature of the hazard;
- The toxicity of the contaminant, the allergenicity of an undeclared ingredient/constituent, or the virulence and pathogenicity of the organism;
- The 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 on the same premises 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 premises using similar processes in other food industries;
- The possibility that the complaint or problem has been caused by a malicious act (see Paragraph 1.7.5).

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

Food Authorities should also consider the use of other powers under the Act such as service of an emergency prohibition notice under Section 12 (see Chapter 3.3) or, with respect to premises approved under the Meat Products (Hygiene) Regulations or Minced Meat and Meat Preparations (Hygiene) Regulations, service of a prohibition notice or suspension of approval under the Regulations.

### 1.7.9: Notifying the Food Standards Agency

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

Serious localised food hazards and non-localised food hazards should be notified by the Food Authority to the Food Standards Agency and other relevant agencies at the earliest opportunity and by the quickest available means<sup>15</sup> and confirmed in writing using a copy of the incident report form at Annex 4.

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

#### **1.7.10: Media Relations – Localised Food Hazards**

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

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<sup>15</sup> A list giving contacts details is issued as a separate document and is available from the Food Incident Team at the Food Standards Agency, Room 415C Aviation House, 125 Kingsway, London WC2B 6NH tel: 020 7276 8448/8453.







## CHAPTER 2.1: FOOD ALERTS

### 2.1.1: Introduction

A “food alert” is a communication from the Food Standards Agency to a Food Authority concerning a food hazard or other food incident, and a “food alert update” should be read accordingly. A food alert or a food alert update may or may not require the Food Authority to take action and any action/responses required by the Agency will be clearly specified.

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

### 2.1.2: Responding to Food Alerts

Food Authorities should ensure that their documented procedure for dealing with food safety incidents<sup>16</sup> includes the effective response to food alerts issued by the Food Standards Agency.

This documented procedure should be developed in consultation with members of the relevant Food Liaison group, the HPA, Public Analyst, CCDC and any relevant officers of the Food Authority, e.g. Emergency Planning Officer. The documented procedure must include, as a minimum, the following:

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

### 2.1.3: Facilities for Receiving Food Alerts and Updates

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

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

<sup>16</sup> See Chapter 2, Section 14, of the Framework Agreement.

#### **2.1.4: Out-of-hours Services**

Food Authorities should advise the Food Standards Agency of emergency telephone numbers on which responsible officers may be contacted outside the Food Authority's normal office hours and of any changes to these details at the earliest opportunity.

#### **2.1.5: Action by Food Authorities**

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

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

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

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

#### **2.1.7: Disclosure of Information**

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

## CHAPTER 2.2: FOOD STANDARDS AGENCY COMMUNICATIONS AND GUIDANCE

### 2.2.1: Introduction

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

### 2.2.2: Guidance Issued to Food Authorities

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

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

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

### 2.2.3: Enforcement Consistency

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

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

The Food Authority should have regard to any advice issued by LACORS.



## CHAPTER 2.3: INFORMATION TO BE SUPPLIED TO THE FOOD STANDARDS AGENCY

### 2.3.1: Introduction

This Chapter deals with the information required by the Food Standards Agency in relation to Food hazards, approvals and other matters under product-specific food hygiene Regulations; matters relating to single European liaison arrangements; lead officers; electronic mail addresses; and emergency telephone numbers.

### 2.3.2: Matters Relating to Food Hazards

Food Authorities must notify the Food Standards Agency as soon as they become aware of a serious localised food hazard, a non-localised food hazard (see Paragraph 1.7.9), or a serious localised outbreak of foodborne illness (see Paragraph 1.7.6).

### 2.3.3: Matters Relating to Product-specific Food Hygiene Regulations

Food Authorities must notify the Food Standards Agency:

- Whenever they have approved, licensed or registered an establishment under product-specific food hygiene Regulations<sup>17</sup>;
- Specifically where an Egg Packing Centre has been approved as an Egg Products Establishment (see Annex 2, Paragraph A.2.7. of the Practice Guidance);
- Where any details or activities recorded on the approval, licence or registration of an approved establishment have been amended;
- Where an approved establishment ceases activities that are the subject of the approval;
- Where an approval has been refused, revoked, amended or suspended;
- Where an appeal against the refusal, revocation, amendment or suspension of an approval has been made;
- Where they have exercised their powers under the Meat Products (Hygiene) Regulations 1994 (as amended) to suspend an approval, prohibit equipment or impose conditions in Meat Products or Minced Meat and Meat Preparations premises;
- Where a prohibition order under Section 11 or an emergency prohibition order under Section 12 of the Food Safety Act 1990 is served on premises that are subject to product-specific food hygiene Regulations and the order is not lifted within the period of six weeks after it has been served;
- Where they receive an application to vary or revoke a term or limitation attached to an approval;

<sup>17</sup> A standard notification template is contained in Annex 8 of the Practice Guidance.

- Where a shellfish purification plant or modification to existing plant is proposed (see Paragraph 5.1.4);
- Where they have designated a shellfish relaying area (see Paragraph 5.1.5). The notification should include the relevant details of the area and any specified operating conditions;
- Where consideration is being given to the making of a temporary prohibition order to restrict shellfish harvesting (see Paragraph 5.3.7).

#### **2.3.4: Quality of Shellfish Production and Relaying Areas**

Food Authorities responsible for shellfish production or relaying areas must notify the Food Standards Agency where sample results suggest a significant variation in the quality of such areas (see Paragraph 4.3.4.2).

#### **2.3.5: Matters Relating to Single Liaison Arrangements With Other Member States**

Food Authorities must notify the Food Standards Agency whenever they become aware of a trans-border matter that is the responsibility of the Agency to deal with (see Paragraph 2.4.2.1).

#### **2.3.6: Lead Officers**

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

#### **2.3.7: Electronic Mail Addresses**

Food Authorities must notify the Food Standards Agency of their electronic mail address and notify any changes to these details (see Paragraph 2.1.3).

#### **2.3.8: Emergency Telephone Numbers**

Food Authorities must notify the Food Standards Agency of emergency telephone numbers for contact outside normal office hours and notify any changes to these details (see Paragraph 2.1.4).

## CHAPTER 2.4: LIAISON WITH OTHER MEMBER STATES

### 2.4.1: Introduction

LACORS should normally be used to make referrals, on behalf of Food Authorities, to authorities in other Member States, although direct contact can be made with such authorities. Food Authorities should advise LACORS of any such direct contacts with authorities in other Member States, so that they can maintain an overview of the number and nature of trans-border matters being dealt with.

Trans-border matters that may have policy implications, matters relating to outbreaks of foodborne disease and matters connected with food hazards are dealt with by the central competent authority which, in the UK, is the Food Standards Agency.

Food Authorities must therefore notify the Food Standards Agency of all such matters at the earliest opportunity.

### 2.4.2: Trans-border Issues

Trans-border matters fall into three broad categories:

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

#### 2.4.2.1: A. Trans-border Matters to be Referred Directly to the Food Standards Agency

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



#### **2.4.2.2: B. Trans-border Matters Reported to the Food Standards Agency After Liaison has Taken Place**

- Any issue when, after investigation, liaison or inquiry, it appears that circumstances set out in Paragraph 2.4.2.1 above apply;
- Cases involving enforcement authorities in other EC Member States where there is undue delay, equivocation or a refusal to undertake action which appears to be warranted;
- Circumstances in which it appears that elements of the national food law of one Member State conflicts with that of another;
- Any issue listed in category C which, after investigation, liaison or enquiry, appears to have such implications or is of such a serious nature that the Food Standards Agency should be informed of it.

#### **2.4.2.3: C. Routine Liaison Between Local Food Control Authorities of Member States**

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

Food Authorities should only deal directly with category C matters. Matters falling within categories A and B should be referred without delay to the Food Standards Agency.

Food Authorities should seek advice from LACORS if there is doubt as to the appropriate procedure for dealing with a particular trans-border matter.

#### **2.4.3: Enquiries of Other Member States**

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

Food Authorities should carry out a full investigation prior to referring a matter to LACORS with full supporting documentation<sup>18</sup>.

#### 2.4.4: Enquiries from Other Member States

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

- Acknowledge receipt of the request and confirm with LACORS 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 LACORS;
- Ensure that responses to requests are open, helpful and provided without undue delay;
- Keep the originating party and LACORS updated on progress when action is ongoing and the outcome will not be known for some time;
- Inform LACORS of the outcome on completion.

If a request for information of a confidential nature is received, Food Authorities should ensure that the information is essential and is relevant to the outcome of any investigation. The Food Authority will have to proceed through the usual test on disclosure of information to a third party i.e. give consideration to whether there are issues of:

- Confidentiality;
- Data protection;
- Human rights.

They must then consider Article 7 of 93/99/EEC<sup>19</sup>, relating to the terms on which information which is confidential can be transmitted i.e. professional secrecy, and if there are criminal proceedings, then the information may only be used with prior consent and in accordance with the international conventions and agreements in force on mutual legal assistance in criminal matters. The Food Authority should also bear in mind the terms of Article 7.2 of Directive 93/99/EEC.

The Food Authority can refuse to provide such information if they have carried out the necessary checks (as set out above) so that they can comply with Article 7.3 i.e. “Any refusal to provide information according to the provisions of this Article must be justified”. If in doubt, Food Authorities should seek advice from LACORS.

<sup>18</sup> Food Authorities should complete a copy of the “Notification of Incident to Home Authority” form that can be downloaded from the LACORS web site at [www.lacors.gov.uk](http://www.lacors.gov.uk)

<sup>19</sup> Directive 93/99/EEC On the Subject of Additional Measures Concerning the Official Control of Foodstuffs

### 2.4.5: Withholding Information

Food Authorities should not withhold information from another Member State unless such action can be justified.

### 2.4.6: Professional and Commercial Secrecy

Article 7 of Directive 93/99/EEC provides that any information that is transmitted to another Member State is covered by professional and commercial secrecy.

When transmitting information directly to another Member State, Food Authorities should indicate to the receiver that it is subject to professional and commercial secrecy (pursuant to that Directive). Equally when receiving such information, Food Authorities should only disclose that information to LACORS, the Food Standards Agency, other enforcement bodies or the Courts, and then only if such disclosure is essential. Food Authorities must ensure that such information is afforded the protection required when the information is under their control.

Section 3:

# General Enforcement



## CHAPTER 3.1: APPROACH TO ENFORCEMENT

### 3.1.1: Introduction

This Chapter lists reference materials of which Food Authorities should take account. It requires each Food Authority to document its food law Enforcement Policy and keep it up to date. It also requires that direct communication with multi-site food businesses should normally be with the head office unless the business has agreed other arrangements. A clear distinction between statutory requirements and good practice must be made in all communications with food businesses. Where appropriate, decisions to prosecute should be taken at the earliest opportunity. Where, on the other hand, it is decided to adopt an informal approach, it should be explained to the proprietor what action is needed to secure compliance.

### 3.1.2: Enforcement Information

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

This includes relevant legislation, this Section 40 Food Safety Act Code of Practice, UK Industry Guides to Good Hygiene Practice<sup>20</sup> where appropriate, guidance issued by the Food Standards Agency and LACORS, relevant industry codes of practice, and appropriate technical literature.

### 3.1.3: Reasonableness, Proportionality and Consistency

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

Authorised officers should take account of the full range of enforcement options. This includes educating proprietors, giving advice, informal action, sampling, detaining and seizing food, serving improvement notices, prohibition procedures and prosecution procedures.

Except where circumstances indicate a significant risk, officers should operate a graduated and educative approach starting at the bottom of the pyramid i.e. advice/education and informal action and only move to more formal action where the informal does not achieve the desired effect.

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

- In England & Wales, the Code for Crown Prosecutors;
- The Enforcement Concordat and, in England and Wales, any relevant Codes of Practice issued under the Regulatory Reform Act 2001;
- The Food Authority's Enforcement Policy.

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<sup>20</sup> References to "UK Industry Guides to Good Hygiene Practice" in this Code mean Guides that are recognised by UK Government as Guides that are presumed to comply with the Food Safety (General Food Hygiene) Regulations 1995 (as amended) and the Food Safety (Temperature Control) Regulations 1995.

### 3.1.4: Food Law Enforcement Policies

Each Food Authority should have an up to date, documented food law Enforcement Policy<sup>21</sup> which is readily available to businesses and consumers.

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

Food Authorities should have regard to any advice issued by the Food Standards Agency and by LACORS when drafting their food law Enforcement Policies.

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

Authorised officers should implement their Food Authority's food law Enforcement Policy, which should reflect the provisions of the Code for Crown Prosecutors. Departures from the Policy should be exceptional and the reasons for any departure should be recorded.

In deciding the type of enforcement action to take, an authorised officer should have regard to the nature of the breach and the history of compliance of the proprietor or, in the case of new businesses, an assessment of the proprietor's willingness to undertake the work identified by the officer.

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

### 3.1.5: Communication With Multi-site Food Businesses

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

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

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

### 3.1.6: Mandatory Requirements and Advice

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

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

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<sup>21</sup> See Chapter 2, Paragraph 15.1 of the Framework Agreement

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

### 3.1.7: Prosecution

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

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

- The hierarchy of enforcement structure indicates that a prosecution is appropriate as opposed to use of, say, informal action or use of an Improvement Notice. (Practitioners should be aware, however, that if an Improvement Notice or similar is used, it too is a matter which can go before the Court, and the Officer should be able to justify his actions. The criteria below will be of assistance.)
- The sufficiency of the evidence (the test for which is set out in the Code for Crown Prosecutors). Of particular note is:
- The likely cogency of any important witness, and their willingness to co-operate;
- The alleged person or persons have been identified;
- Any explanation offered by the suspect;
- The likelihood of the suspect being able to establish a defence – in particular a due diligence defence;
- The public interest test has been satisfied (again, the test is set out in the Code for Crown Prosecutors). Prosecutors must note that unless the Evidential Test is satisfied, the Public Interest Test is irrelevant. If the evidence is not present, no amount of argument in favour of it being in the public interest will suffice to justify launching the prosecution, as the Prosecutor will already have decided that it is more likely than not that it will fail in Court on the available evidence. Of particular note is:
- The seriousness of the offence;
- The prevalence of that type of offence in the area in which it was committed (if the offence is not serious in itself);
- The suspect's previous convictions or cautions;

The above points are those in favour of prosecution. There are various factors against prosecution including:

- The likelihood of a nominal penalty;
- The offence was committed as a result of a genuine mistake or misunderstanding ( this must be balanced against the seriousness of the offence);
- Whether any other action, such as issuing a formal caution in accordance with Home Office Circular 59/1990 would be more appropriate.



It is important that the authorised officers fully brief their legal advisers on the public health aspect of the case in hand so that they can, in turn, impress upon the Court the seriousness of the allegations.

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

### **3.1.8: Informal Approach**

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

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

Correspondence should be treated as outlined in Paragraph 3.1.6. This should be discussed and, if possible, agreed with the proprietor.

## CHAPTER 3.2: IMPROVEMENT NOTICES

(See also Paragraph 1.2.9.1.5)

### 3.2.1: Introduction

This Chapter deals with the use of Improvement Notices under Section 10 of the Food Safety Act<sup>22</sup>.

### 3.2.2: When to Use Improvement Notices

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

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

### 3.2.3: When Improvement Notices are not Appropriate

The improvement notice procedure would not be appropriate in the following circumstances:

- Where the contravention might be a continuing one, for example, personal cleanliness of staff and a notice would only secure an improvement at one point in time;
- In transient situations, where breaches exist which pose a potential and imminent risk of injury to health and it is considered that swift enforcement action is needed, for example, a one day festival or sporting event. An emergency prohibition notice would be the only formal remedy which would have immediate effect;
- Where there is a breach of good hygiene practice but no failure to comply with an appropriate regulation.

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<sup>22</sup> Reference should be made to the LACORS Guidance on the Use of Improvement Notices.



## CHAPTER 3.3: PROHIBITION PROCEDURES

(See also Paragraph 1.2.9.1.6)

### 3.3.1: Introduction

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

### 3.3.2: When to Use Emergency Prohibition Procedures

Unless the use of voluntary procedures is more appropriate in the circumstances, emergency prohibition procedures should be used if an authorised officer has evidence of an imminent risk of injury to health.

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

#### 3.3.2.1: Conditions Where Prohibition of Premises May be Appropriate

- Infestation by rats, mice, cockroaches, birds or other vermin, serious enough to result in the actual contamination of food or a significant risk of contamination (breach of health risk condition 11(2)(c));
- Very poor structural condition and poor equipment and/or poor maintenance or routine cleaning and/or serious accumulations of refuse, filth or other extraneous matter resulting in the actual contamination of food or a significant risk of food contamination (breach of health risk conditions 11(2)(b) and (c));
- Drainage defects or flooding of the premises, serious enough to result in the actual contamination of food or a significant risk of food contamination (breach of health risk condition 11(2)(c));
- Premises or practices which contravene the Food Safety (General Food Hygiene) Regulations 1995 and have been or are implicated in an outbreak of food poisoning (breach of health risk condition 11(2)(c));
- Any combination of the above, or the cumulative effect of contraventions which, taken together, represent an imminent risk of injury to health.

#### 3.3.2.2: Conditions Where Prohibition of Equipment May be Appropriate

- Use of defective equipment, e.g. a pasteuriser incapable of achieving the required pasteurisation temperature (breach of health risk condition 11(2)(c));
- 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 (breach of health risk condition 11(2)(c)).

### 3.3.2.3: Conditions Where Prohibition of a Process May be Appropriate

- Serious risk of cross contamination (breach of health risk conditions 11(2)(b) or (c));
- Inadequate temperature control, e.g. failure to achieve sufficiently high cooking temperatures (breach of health risk condition 11(2)(a));
- Operation outside critical control criteria, for example, incorrect pH of a product which may allow *Clostridium botulinum* to multiply (breach of health risk condition 11(2)(a));
- The use of a process for a product for which it is inappropriate (breach of health risk condition 11(2)(a)).

### 3.3.3: Voluntary Procedures

Voluntary procedures to remove an imminent risk of injury to health may be used, at the instigation of either the proprietor or the manager of the business, when the proprietor or manager of the business agrees that an imminent risk of injury to health exists. An officer may suggest this option to the proprietor or manager, but not when they are unable to use Section 12 of the Food Safety Act 1990. If in doubt, the proprietor or manager should be advised to take legal advice.

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

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

The officer should ensure that frequent checks are made on the premises to ensure that they have not re-opened.

If the owner of a food business offers to close voluntarily, the officer should:

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

### 3.3.4: Action When a Prohibition Order has Been Made Against a Person

A prohibition order can only be fully effective if other Food Authorities are notified, as the individual concerned may try to start a business in another area.

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

- Case number
- Court details
- Date of prohibition order
- Date(s) of offence
- Nature of offence(s)
- Regulation/section number under which offence was made
- Penalties
- Name of business proprietor or manager
- Name of the business
- Business premises address including post code
- Business type/main activity (e.g. catering, retail etc)
- Details of assumed names.

The Food Authority should also notify CIEH at the earliest opportunity after they learn that a prohibition in their area has been lifted.



## CHAPTER 3.4: SEIZURE AND DETENTION

(See also Paragraph 1.2.9.1.7)

### 3.4.1: Introduction

This Chapter describes the circumstances when the use of detention and seizure powers is appropriate; the procedures for serving and withdrawal of notice; voluntary surrender; and the destruction or disposal of food.

### 3.4.2: Detention of Food

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

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

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

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

If food is to be detained where it is found, the authorised officer should be satisfied that adequate arrangements can be made to ensure its security and prevent tampering. The officer should organise periodic monitoring of the food throughout the period of detention. Before making such arrangements regard should be had to the nature of the food, the quantity, any health hazard that it represents and the ownership of the premises where it is located. The officer should generally avoid leaving it in the charge of, or in premises owned by, any person who may be prosecuted for an offence under Sections 7 or 8 of the Act.

### 3.4.3: Notices of Detention and Seizure

A food detention notice should be signed by the officer who takes the decision to detain the food.

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

A food condemnation notification should be given to the person in charge of the food when the officer intends to have the food dealt with by a Justice of the Peace. The notification may also be given to the owner of the food.



### 3.4.4: Seizure of Food

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

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

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

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

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

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

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

When food has been seized, the owner should be notified of the intention to apply to a Justice of the Peace for condemnation of the food.

Food that has been seized should be dealt with by a Justice of the Peace as soon as is reasonably practicable, normally within 2 days, but if necessary longer to ensure that parties attend and be represented should they so choose. Highly perishable food should be dealt with by a Justice of the Peace at the earliest opportunity.

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

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

### 3.4.5: Withdrawal of Food Detention Notice

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

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

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

### 3.4.6: Dealing with Batches, Lots or Consignments of Food

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

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

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

### 3.4.7: Voluntary Procedures

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

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

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

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

### 3.4.8: Destruction or Disposal of Food

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

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

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

## CHAPTER 3.5: TEMPERATURE CONTROL REGULATIONS

### 3.5.1: Introduction

This Chapter concerns the enforcement of the Food Safety (Temperature Control) Regulations 1995<sup>23</sup> (the Regulations), which are concerned primarily with the safety of food that needs to be stored under chilled conditions.

### 3.5.2: General Approach to Temperature Checks

The Regulations require certain types of perishable food to be maintained within specified temperature ranges. The purpose of checking the temperature of such foods for enforcement purposes is to establish whether these requirements are being met, taking account of any exemptions or tolerances that may apply.

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

Stage 1 – a check of any temperature monitoring equipment used by the business, including any logs or records derived from it, and verification of the accuracy of temperature monitoring equipment by air temperature measurement if necessary;

Stage 2 – measuring between-pack temperature of food without disturbing the state of the food or its individual packaging, although cases may be opened (non-destructive temperature checks);

Stage 3 – measuring the temperature of the product itself (destructive testing).

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

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

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

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

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

Unless temperature control is the subject of a complaint, temperature measurement should normally only be carried out as part of a primary inspection.

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23 SI 1995/2200

### 3.5.3: Food that is Warmer than Prescribed Chill Temperatures

When measuring the temperature of food itself, authorised officers should be aware that the Regulations allow the temperature of a food subject to chill temperatures to rise above 8°C for a period of not more than 4 hours.

Where the proprietor of the business suggests that specified temperatures have been exceeded for unavoidable reasons the authorised officer should discuss the reasons with the proprietor and, where possible, seek agreement on action to prevent any recurrence.

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

If the food itself is at a higher temperature than the prescribed chill temperature and the authorised officer is of the opinion that it also fails food safety requirements, the officer should normally deal with the food under Section 9 of the Food Safety Act 1990. Voluntary procedures to remove food from the food chain may, however, be used in appropriate circumstances (see Paragraph 3.4.7).

If food is at a higher temperature than 8°C, but does not fail food safety requirements, the authorised officer should use professional judgement to determine the most appropriate action in the circumstances. The food may still be fit for consumption, even if it has been maintained at temperatures higher than those specified in the Regulations beyond the time limits allowed.

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

### 3.5.4: Checking and Calibration of Enforcement Measuring Thermometers etc

Thermometers and other temperature measuring devices used for enforcement purposes should be tested and calibrated by a suitably accredited tester, and according to any recommendations of the manufacturer or supplier, to ensure accuracy, integrity and reliability.

Devices should also be checked for accuracy at regular intervals between each test and calibration to ensure they remain within relevant tolerances.

Temperature measurements that are to be used in evidence should be taken with a thermometer or other measuring device that has a current certificate of calibration from a suitably accredited tester, e.g. the instrument manufacturer or a UKAS accredited laboratory or testing house.

## CHAPTER 3.6: QUICK FROZEN FOODSTUFFS

### 3.6.1: Introduction

This Chapter concerns enforcement of the Quick-frozen Foodstuffs Regulations 1990<sup>24</sup> (the Regulations) as amended, which implement Directives 89/108/EEC and 92/2/EEC in Great Britain.

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

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

### 3.6.2: Division of Enforcement Responsibilities

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

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

### 3.6.3: Approach to Enforcement

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

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

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

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

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

### 3.6.4: Temperature Requirements

After quick-freezing, the Regulations require relevant food to be kept at, or colder than, -18°C. A brief upward tolerance of 3°C (-15°C) is permitted for

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24 As amended, SI 1990/2615

primary distribution and for local distribution i.e. that part of the distribution chain in which the food is delivered to the point of retail sale (including sale to a catering establishment).

Food in retail display cabinets must be kept in conditions consistent with good storage practice, and is required to comply with the temperature requirements of the Regulations, although the permitted temperature is higher (-12°C) for the warmest packs than for the rest of the “cold chain”.

### 3.6.5: Staged Approach to Enforcement

Enforcement should comprise a staged sequence of examinations and measurements, as described in the Practice Guidance, and an authorised officer should only proceed to the next step if there is reasonable doubt that the food in question complies with the Regulations.

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

### 3.6.6: Sampling

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

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

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

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

## CHAPTER 3.7: WASTE FOOD

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





## CHAPTER 3.8: DISTANCE SELLING

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



## CHAPTER 3.9: BOTTLED WATERS

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







## CHAPTER 4.1: INSPECTIONS

### 4.1.1: Introduction

This Chapter defines Food Hygiene and Food Standards Inspections.

Inspections should be carried out at appropriate stages of the food chain to establish whether the requirements of relevant food law are being met.

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

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

### 4.1.2: Primary Inspections – General

A primary inspection is an inspection of a food business in which the appropriate elements set out in the relevant inspection form for the business concerned<sup>25</sup> are considered. Authorised officers may, however, use their professional judgement and decide to cover only certain elements of the inspection form in circumstances where they consider it appropriate to do so (see Paragraph 4.2.2).

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

An officer carrying out a primary inspection should:

- Establish the scope of the business and the relevant food law that applies to the operations taking place;
- Thoroughly and systematically gather and record information from the observation of practices, procedures and processes, and discussion with food handlers, contractors, proprietors 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;
- Determine relevant enforcement action and communicate to business.

### 4.1.3: Secondary Inspections

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

- Additional inspections of establishments that are subject to product-specific food hygiene Regulations (see Paragraph 4.3.6 and Annex 5);
- Sampling visits;

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<sup>25</sup> The relevant inspection form is the inspection form that relates to the type of business being inspected and the type of inspection being carried out. Inspection forms can be found on the LACORS Website.



- Visits to check on the progress of measures required after a previous inspection;
- Visits to investigate food and food premises complaints;
- Visits to discuss implementation of HACCP based systems;
- Visits involving training of food handlers;
- Inspections of premises to assess a licensing application.

#### 4.1.4: New Businesses

Food Authorities should review applications for registration under the Food Premises (Registration) Regulations 1991<sup>26</sup> and updates to existing registrations and determine when to carry out a primary or secondary inspection.

A Food Authority's approach to the recording and inspection of food businesses that should be registered but are not, and those that are exempt from registration, should be documented in its Food Service Plan or Enforcement Policy.

#### 4.1.5: Inspection Ratings

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

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

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

Inspection programmes should be planned so that businesses are inspected no later than 28 days after the relevant date determined by the inspection rating.

#### 4.1.6: Early Inspection

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

- Receives a consumer complaint;
- Receives a new registration application;
- Receives a request to change registration details;
- Becomes aware of any material change in the ownership, management, layout or nature of operation of a food business;
- Receives a referral under the Home Authority Principle;
- Receives a request or other information from the Food Standards Agency;
- Becomes aware of a possible outbreak of foodborne infection;

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<sup>26</sup> As amended, SI 1991/2825

- Becomes aware that the business may be closed at the time of the due date because of seasonal closure.

#### 4.1.7: Need to Re-schedule Primary Inspections

Circumstances may arise that require Food Authorities to re-schedule their primary inspections in order to take urgent action over a period of time.

Such situations may include those where there is evidence that:

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

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

Discussions will normally take place with LACORS before Food Authorities are asked to re-schedule their primary inspections. In all cases, the Food Standards Agency will, before taking action under this paragraph, consider whether urgent action by Food Authorities is necessary to protect public health or the interests of consumers.

Food Authorities may be asked to provide information to the Food Standards Agency about the action that they have taken. They should document the action taken in response to requests under this paragraph.

#### 4.1.8: Food Standards Inspections

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

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

Each Food Authority should document, maintain and implement a food standards inspection programme that includes all the businesses for which the Food Authority has food standards law enforcement responsibility. The programme should be based on the food standards inspection ratings that

have been determined in accordance with Annex 5, taking account of the Food Authority's alternative enforcement strategy for low-risk businesses.

#### **4.1.9: Food Hygiene Inspections**

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

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

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

Paragraph 4.3.6 contains additional requirements in relation to the inspection programme for businesses that are subject to product-specific food hygiene Regulations.

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

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

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

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

#### **4.1.11: Single Tier Food Authorities**

Single tier Food Authorities should ensure that inspections of food businesses meet the minimum inspection frequencies for both food hygiene and food standards matters, as determined by the food hygiene and food standards inspection ratings.

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

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27 "Proposal for a Regulation of the European Parliament and of the Council on the hygiene of foodstuffs" OJ C 48 E, 24.2.04, p.1

### 4.1.12: Timing of Inspections

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

- The inspection rating;
- Seasonal factors (where applicable);
- The need to check compliance with new legislative requirements;
- The time which has elapsed since the previous inspection;
- The hours of operation of the food business.

A Food Authority's inspection programme should provide for food businesses to be inspected at times when they are open for business, whether or not that coincides with the Food Authority's normal hours of work. Food businesses that are open for business at night, at weekends or in the early hours of the morning should, on occasions, be inspected at these times, even if they are also open for business during the day. The Food Authority's approach to inspection out of hours should be documented in their Food Service Plan<sup>28</sup>.

### 4.1.13: Factory and Fishing Vessels – Hygiene Inspections

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

Inspections of fishing vessels whilst at sea should not normally be undertaken by officers of Food Authorities. In the case of factory vessels, there may be circumstances when inspections can only be carried out when the factory vessels are moored offshore.

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

Factory vessels should be inspected at least once in any 12 month period.

The main purpose of an inspection of a fishing vessel other than a factory vessel is to identify any risks to public health and to assess whether areas or equipment which come into direct contact with fishery products are likely to give rise to contamination. An inspection is also required in order to ensure that fishing vessels, including those with freezer facilities, comply with the conditions laid down in the Regulations.

While a vessel may be registered with another Food Authority, there is nothing to prevent any authorised officer of any other Food Authority from inspecting the vessel, if the officer considers it necessary. Where, during an inspection, contraventions of the Regulations are identified, the authorised officer should notify the Food Authority where the vessel is normally based of the contraventions noted. The Food Authority receiving details of contraventions should liaise with the notifying Food Authority and take whatever follow-up action is necessary.

<sup>28</sup> See Chapter 1 of the Framework Agreement



## CHAPTER 4.2: THE INSPECTION

### 4.2.1: Introduction

This Chapter describes how inspections should be carried out.

### 4.2.2: Inspections – General

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

The inspection form is intended to assist officers and businesses by introducing a structured approach to the inspection process consistent with quality assurance practice.

It is not necessary to inspect every aspect of a food business at every primary inspection, e.g. an inspection of an in-store bakery or restaurant within a supermarket. However, an officer who carries out a primary inspection that covers only part of a business should record the scope of the inspection and the reason for limiting the inspection in the premises file and in the proprietor's inspection report.

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

At an appropriate point at the beginning of the inspection, the officer should discuss with the proprietor or representative the purpose and scope of the inspection and what the officer intends to do.

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

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

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

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

Officers should offer advice where it is appropriate (e.g. Paragraph 3.1.3) or is requested, and should encourage food businesses through this educative approach to adopt best/good practice.

At the conclusion of every inspection, the officer should discuss any contravention of food law discovered, any corrective action necessary, the timescale for corrective action, any further action the officer intends to take and any recommendations of best/good practice that the officer considers appropriate.

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

The Food Authority should, on request, advise and discuss with the proprietor, the inspection frequency or rating applied to the business.

#### 4.2.3: 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 primary food standards inspection should:

- Assess the risk of the enterprise failing to meet food standards requirements;
- Consider the existence and effectiveness of management systems designed to ensure that food standards requirements are met and, where they exist, test their effectiveness;
- Assess compliance with composition, presentation and labelling requirements by examining advertisements, labels, descriptions, menus, claims, recipes and other records;
- Assess compliance with supplier specifications;
- Recommend good practice in accordance with relevant industry codes and other relevant technical standards.

The full scope of the food standards inspection is detailed in the relevant inspection form for the business concerned (see Paragraph 4.1.2).

#### 4.2.4: Food Hygiene Inspections – Scope

Although requirements in relation to own checks regimes in product-specific food hygiene Regulations differ from the horizontal hazard analysis requirements in the Food Safety (General Food Hygiene) Regulations 1995 , the purpose of inspection is the same.

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

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

- Assess the risk of the enterprise failing to meet food hygiene requirements;
- Assess the hazards posed by the activities of the business, the manager's/proprietor's understanding of those hazards, and the application of appropriate controls;
- Assess and verify appropriate hazard analysis or Hazard Analysis and Critical Control Point (HACCP) food safety management systems, confirming that controls are in place and operating effectively and that appropriate corrective action is taken when necessary;
- Verify that appropriate "own-checks" are being carried out effectively;



- 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 code, and other relevant technical standards, and promote continued improvements in hygiene standards through the adoption of good practice;
- Check the source and any health marking of raw materials, and the health marking and destination of finished products. Where deficiencies in health marking are identified, officers should refer to and implement any relevant provisions of Chapters 1.7 and 2.4 of this Code and the Home Authority Principle, and consider using their powers under Section 9 of the Act to remove affected products from the food chain;
- In relation to retail and catering businesses that sell or use shellfish, ensure that where parcels of shellfish are split before sale to the ultimate consumer, that the health marks are retained for at least 60 days.

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

- A discussion with any staff responsible for monitoring and corrective action at critical control points to confirm that control is effective;
- A physical inspection to determine whether critical controls have been identified and whether the controls are in place and to assess compliance with relevant food law;
- A discussion regarding any hazards that have been identified by the officer that have not been covered by the business's systems;
- A discussion regarding any failure to implement or monitor any critical controls that have been identified by the business.

Published UK Industry Guides to Good Hygiene Practice may be particularly relevant to certain premises subject to the Food Safety (General Food Hygiene) Regulations 1995 as will other published recommended industry codes of practice. Officers may draw these to the attention of food business proprietors in appropriate circumstances.

The full scope of the food hygiene inspection is detailed in the relevant inspection form for the business concerned (see Paragraph 4.1.2).

#### 4.2.5: Secondary Inspections – Food Hygiene and Standards

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

Failure to comply with significant statutory requirements includes:

- Failure to comply with a single requirement that compromises food safety, compromises public health, or prejudices consumers;
- Failure to comply with a number of requirements that, taken together, indicate ineffective management;



or, in relation to food hygiene,

- Service of an emergency prohibition notice or order.

Secondary inspections under this section should be based on the relevant inspection form for the business concerned (see Paragraph 4.1.2), although the inspection may focus on the significant statutory requirements that were found to be contravened at the previous inspection.

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

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

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

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

Food Authorities should provide officers who carry out inspections with clean protective clothing including headgear consistent with good industry practice.

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

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

## CHAPTER 4.3: INSPECTION OF APPROVED ESTABLISHMENTS – ADDITIONAL REQUIREMENTS

### 4.3.1: Introduction

This Chapter requires Food Authorities to identify businesses that are subject to product-specific food hygiene Regulations and ensure they are approved or registered and inspected as appropriate. It also sets out specific requirements for plants producing minced meat for trade with other EEA States; on sampling at each inspection of a shellfish dispatch or purification centre; and on following-up adverse sample results, and egg products. Certain businesses subject to approval, registration or licensing, must also be subject to secondary inspections if necessary to achieve a minimum number of inspections in any 12-month period.

### 4.3.2: General Requirements

Food Authorities should ensure that businesses in their area that are subject to product-specific food hygiene Regulations are identified and appropriately approved, licensed or registered, as required by the relevant legislation and subjected to regular inspection (see Paragraph 4.3.6) .

### 4.3.3: Minced Meat and Meat Preparations

#### 4.3.3.1: Inspection During Production

Approved production plants producing minced meat destined for trade with other EEA States should be inspected at least once on every day that this production takes place.

Where daily inspections are required it is not necessary to produce a detailed report after every inspection. It may be more appropriate to produce a daily report that concentrates on specific areas such as personal hygiene, temperature control or incoming raw materials rather than structural requirements.

Routine inspections may be carried out by a suitably qualified person who meets the requirements of Regulation 8 (3) of the Fresh Meat (Hygiene and Inspection) Regulations 1995, or Regulation 8 (2) and Schedule 16 of the Poultry Meat etc. (Hygiene and Inspection) Regulations 1995.

In order to meet the requirements of Regulation 12 (5) of the Minced Meat and Meat Preparations (Hygiene) Regulations 1995, these inspectors must be under the responsibility and supervision of an environmental health officer.

### 4.3.4: Shellfish

#### 4.3.4.1: Examination of Movement Documents

Food Authorities should carry out regular examinations of movement documents to determine their accuracy. The examination of the documents and samples should normally be carried out as part of the inspection of dispatch or purification centres (see Paragraph 5.3.3 of this Code and A.7.9 of the Practice Guidance).

#### **4.3.4.2: Sampling as Part of the Inspection**

Each inspection of a dispatch or purification centre should include the taking of samples for laboratory tests. The frequency of sampling should follow the advice issued by the Food Standards Agency .

The Food Authority must investigate test results that show breaches of the end product standard.

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

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

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

### **4.3.5: Egg Products**

#### **4.3.5.1: Sampling as Part of the Inspection**

In accordance with Schedule 7 of the Egg Products Regulations 1993, samples should be taken by Food Authorities to test that eggs and egg products comply with appropriate requirements of Schedule 4 Parts I-VI. Occupiers must be informed of results and records should be kept by Food Authorities.

Authorised officers must examine the occupier's own test and processing records, which must be provided upon request. These records must be accurate and date back at least two years from the date of the statutory test, or process, to which the record relates.

#### **4.3.5.2: Denatured Egg**

Authorised officers should satisfy themselves that the denaturing process operated by the occupier is such that it is not possible for denatured egg to be used for human consumption.

### **4.3.6: Secondary Inspections**

Secondary food hygiene inspections (see Paragraph 4.1.3) of businesses that are subject to product-specific food hygiene Regulations should be conducted as necessary, at least one of which must be unannounced, to achieve the minimum number of inspections in any 12-month period set out in the following table:

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31 Guidance on the Frequency of Microbiological Sampling of Purified Molluscs by Operators of Purification Centres – issued February 1995

<b>Category of Food Business</b>	<b>Minimum Inspections in 12 Months*</b>
Meat Products	3
Minced Meat or Meat Preparations	3
Dairy Products	2
Egg Products**	2
Fish Products***	2
Shellfish Purification or Despatch	2

\* One of which must be a primary inspection – see paragraphs ii and ix of Annex 5.

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

\*\*\* except factory and fishing vessels (see Paragraph 4.1.13), cash and carries that are approved and establishments where the only activity is filleting fresh fish and cold smoking fishery products requiring cooking or salting for preservation in which case additional secondary inspections are not essential.

Secondary inspections should be conducted even when no contraventions of statutory requirements are identified on the primary inspection.

Secondary inspections under this section should be based on the relevant inspection form for the business concerned (see Paragraph 4.1.2).

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

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

The scope of the inspection and the matters considered should be recorded on the premises record, and in any report to the proprietor.



## CHAPTER 4.4: INSPECTION OF SHIPS AND AIRCRAFT

### 4.4.1: Introduction

The Food Safety (Ships and Aircraft) (England and Scotland) Order 2003<sup>32</sup> extends the meaning of “premises” to give authorised officers powers of entry to certain ships and aircraft to enforce specified parts of the Food Safety Act, The Food Safety (General Food Hygiene) Regulations 1995<sup>33</sup>, and The Food Safety (Temperature Control) Regulations 1995<sup>34</sup>.

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

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

### 4.4.2: Background and Relationship to Other Inspections

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

A strategy for frequency of inspection should be adopted, based on knowledge about different types of craft, their origin and history. (See also Paragraph 4.4.5.5 in relation to ships). Before considering aircraft inspection, all relevant information should be obtained from the Home Authority (HA) or airline, as appropriate.

Inspections of, and visits to, ships and aircraft should be duly recorded in accordance with the Framework Agreement.

### 4.4.3: Enforcement Issues

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

Where an HA agreement is in place, there is an obligation to inform LACORS of the agreement and to follow the LACORS guidelines.

Standards on ships and aircraft should meet the requirements of Chapters III – X of Schedule 1 of the Food Safety (General Food Hygiene) Regulations 1995, and

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32 SI 2003/1895

33 As amended, SI 1995/1763

34 As amended, SI 1995/2200

Regulations 1 – 3 and 10, 11, 16 – 19 of the Food Safety (Temperature Control) Regulations 1995, where appropriate.

An improvement notice or an emergency prohibition notice may be served under the Food Safety Act 1990 in respect of an aircraft or ship that is registered in the United Kingdom. The conditions that must be met before such a notice can be served are the same as apply in relation to fixed premises.

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

An authorised officer may also serve an improvement or emergency prohibition notice in relation to a foreign registered ship or aircraft. In such cases, the authorised officer should contact the UK office of the company or Handling Agent. If considered necessary, in respect of ships, the officer should also contact the Maritime and Coastguard Agency (MCA) at the earliest opportunity (see Paragraph 4.4.5.4). Where there is no such UK office or Handling Agent, the competent authority in the country where the ship or aircraft is registered should be made aware of the defects found.

If the craft is registered in another Member State, the procedures set out in Chapter 2.4 on Liaison with other Member States should be followed. Any difficulties should be discussed with LACORS.

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

#### **4.4.4: UK Military Ships and Aircraft**

Authorised Officers should refer to Chapter 1.6 of this Code in relation to security considerations when visiting UK military ships and aircraft, which must be regarded as Group 3 premises. This requires prior notification before a proposed visit. Any food safety issues found on inspection, which concern UK military ships and aircraft should be brought to the attention of single Service Environmental Health leads and the relevant HA for the particular Service (see below for details). Authorised Officers must bear in mind the ultimate purpose of military ships and aircraft, and that galley design may have been constrained for operational reasons. Military policy, procedures and practices should therefore be given due consideration.

Authorised Officers should also take account of the relevant parts of “JSP 456 – Defence Catering Manual Vol. 3”, which is available on the individual HA’s websites and through the LACORS website.

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

Authorised Officers should contact Portsmouth City Council, the Royal Navy HA for procedural guidance prior to any proposed visit to an RN ship or submarine. Tewkesbury Borough Council, the Royal Air Force HA, should be contacted for guidance prior to any proposed visit to RAF aircraft.

## Royal Navy

Home Authority: Portsmouth City Council. Tel: (02392) 834253.

Environmental Health Lead: SO2 Environmental Health Policy. Tel: (02392) 722285.

## RAF

Home Authority: Tewkesbury Borough Council. Tel: (01684) 272165.

Environmental Health Lead: Command Environmental Health Officer Tel: (01452) 712612.

## Army

Home Authority: Rushmoor Borough Council. Tel: (01252) 398168.

Environmental Health Lead: SO2 Medical Intelligence. Tel: (01276) 412737.

### 4.4.5: Ships

#### 4.4.5.1: Preparation

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

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

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

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

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

#### 4.4.5.2: Inspection of the Vessel

When there is an adverse report from a previous inspection, or the vessel has not been inspected for a period in excess of that set out in Paragraph 4.4.5.5, officers may need to carry out a primary inspection of the relevant parts of the vessel. Due consideration should be given to the "Industry Guide to Good Hygiene Practice: Catering Guide – Ships".

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 hazard analysis systems, which will depend on the type of vessel;
- Food temperature control (as applied by the Order) and monitoring;
- Commensurate with their food handling activities, the food handlers' knowledge of food hygiene/own health status;
- Food and water sampling;
- Pest control procedures;
- Any known adverse report or cases/outbreaks of gastric illness, etc.

#### 4.4.5.3: Action on Conclusion of the Inspection

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

#### 4.4.5.4: Liaison with the Maritime and Coastguard Agency (MCA)

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

Should there be difficulties with serious shortcomings relating to an imminent risk 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.

#### 4.4.5.5: Frequency of Inspection

The frequency of inspection of vessels should be based on the following:

- Name and type of vessel, e.g. general cargo/passenger vessel, passenger ferries, cruise vessels;
- Port of registration;
- Age/condition/history of vessel;

- Crew and passenger numbers/profile/“turnover”;
- Vessel’s trading pattern/schedule/previous port(s) of call;
- Confidence in food and water safety management systems;
- Date and port of last food safety inspection – see \*Note below;
- Available documentation;
- Recent significant reports of food related problems on the vessel;
- Reports from previous inspections – level of compliance. These could include inspection reports issued by competent authorities in the EU or Third Countries;
- Valid deratting certificate or exemption certificate, where appropriate.

\*Note: Appropriate risk rating could be assessed by the use of Annex 5. In general, cruise ships and passenger ferries should be inspected no more frequently than once every 12 months and, subject to the above, general cargo and merchant ships every 18 months to 2 years, unless there are clear grounds to justify further investigations, e.g. the ship visiting a UK port for the first time or after an absence of 12 months or more. Visits to other vessels, such as training yachts, based at specific ports should be decided on a basis of number of vessels, local conditions and knowledge gained through previous inspections.

#### 4.4.6: Aircraft

##### 4.4.6.1: Preparation

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

The decision to board an aircraft should be based largely on any information provided by the airline; confirmation of the authenticity of the information, and the receipt of any food or food hygiene related complaints from passengers or crew. If such information (as outlined below in Paragraph 4.4.3.2) 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 either by the HA, or in the absence of an HA, by an officer of an appropriate enforcing Food Authority. Such checks should confirm, for example, that no changes have taken place to in-flight caterers, source of water supply, etc.

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

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

If there is no HA arrangement, liaison with an airline is essential to gain an understanding of how they operate food safety controls on board their aircraft, and 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 monitoring and control (as applied by the Order); own health status and exclusion from work policy;
- Training records, standard of training, including retraining, when appropriate;
- Flight caterers, and/or nominated companies assembling and/or transporting meals to the aircraft, used by each airline. In-flight menus should assist in the assessment of whether high-risk foods are handled and/or prepared on board. The onus is on the airline to provide evidence that the food originates from a reputable source;
- Specifications in place with the caterer for the supply of food to aircraft and the accepted temperature for delivery, including for high-risk foods;
- Details of food and water safety arrangements when supplied to an aircraft in a foreign location;
- Potable water supply – source, use of bowsers, cleaning/disinfection of storage tanks – frequency/effectiveness. To be checked prior to or after the inspection;
- Flights or routes with return catering including multiple sector catering, and from which airports;
- Pest control contract and monitoring;
- Cleaning contractor, with details of contracts, e.g. cleaning schedules, and monitoring of the effectiveness of the cleaning regime;
- Reports of analysis/examination of food and potable water on aircraft by the airline, which should relate to the Food Authority's own sampling regime;
- Whether the airline undertakes self-audits and whether any reports are available.

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

#### 4.4.6.3: Inspection of the Aircraft

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

#### 4.4.6.4: Items for Consideration in Relation to Food Safety on Aircraft

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

- Flight caterers – confirmation of the information obtained, regarding source of meals, etc;
- Transport and loading of aircraft, including the means of temperature control of the food in the delivery vehicle;
- Food storage facilities on the aircraft, including the provision of insulated containers and/or ice-packs and the maximum stated time period until serving and/or re-heating, taking account of the type of aircraft, e.g. long or short haul, and the food served;
- Whether food is prepared on the aircraft and the facilities available for such operations, e.g. personal hygiene; avoidance of cross-contamination; provision of disposable gloves for certain duties and disinfectant wipes;
- Return flight meals taking account of the shelf-life of the food;
- Temperature control (as applied by the Order) and monitoring during flights;
- Reheating/cooking;
- Pest control;
- Water supply – source and potability/cleanliness of tanks;
- Procedures for cleaning food handling areas, trolleys/carts;
- Food and water sampling.

#### 4.4.6.5: Action on Conclusion of the Inspection/Contact with Home Authority

A report should be sent to the airline following an inspection, with copies to the relevant HA where such an arrangement exists, in respect of UK registered aircraft. Where aircraft from a particular airline are checked and found to be in contravention of the applicable law, full details should be provided to allow adequate follow up, e.g. the type of aircraft; flight number; insufficient knowledge of food hygiene issues amongst the cabin crew, etc. See also Paragraph 4.4.6 concerning reporting deficiencies to the country of registration of the aircraft, when appropriate.

## CHAPTER 4.5: ACTION FOLLOWING INSPECTION

### 4.5.1: Introduction

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

### 4.5.2: Post-inspection Reports

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

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

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

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

Post-inspection reports may cover other legislation covered during inspections of food businesses, e.g. health and safety at work, weights and measures etc, although matters relating to the Food Safety Act and Regulations made under it should be clearly differentiated from the others.

### 4.5.3: Inspection Record Files

The Food Authority's inspection record files<sup>35</sup>, which may be computer based, should be updated after each inspection and include:

- Information on the size and scale of the business and its customer base;
- Information on the type of food activities undertaken by the business, including any special equipment, processes or features;
- Copies of any correspondence with the business, including documentation associated with approvals or licensing;
- Copies of food sample analysis/examination results;

and in respect of premises inspected for food hygiene purposes:

- An assessment of the business compliance with the appropriate hazard analysis, or HACCP requirements ("own checks");
- Information on hygiene training undertaken by employees;
- For premises that are subject to product-specific food hygiene Regulations, details of any derogations in force, details of approved products handled and cleaning methods employed;

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<sup>35</sup> See Chapter 2, Paragraphs 16.1 and 16.2 of the Framework Agreement

and in respect of premises inspected for food standards purposes:

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

#### 4.5.4: Retention of Inspection Reports

Inspection reports should be retained for at least 6 years, or until the next primary inspection, whichever period is the longer, unless required for longer retention because of litigation, Local Government Ombudsman review or the document management policy of the Food Authority, or instruction by the Food Standards Agency.







## CHAPTER 5.1: APPROVALS

### 5.1.1: Introduction

Any premises, centre or establishment subject to product-specific food hygiene Regulations must be approved, licensed or registered by the relevant authority which should deal promptly with any applicant seeking approval. The responsibility to approve premises will largely fall to Food Authorities.

Such premises will fall within the scope of the following legislation:

- Dairy Products (Hygiene) Regulations 1995<sup>36</sup>;
- Meat Products (Hygiene) Regulations 1994<sup>37</sup>;
- Minced Meat and Meat Preparations (Hygiene) Regulations 1995<sup>38</sup>;
- Food Safety (Fishery Products and Live Shellfish)(Hygiene) Regulations 1998<sup>39</sup>;
- Egg Products Regulations 1993<sup>40</sup>.

Food Authorities should, as far as is practicable, follow the approval procedures detailed in the flow chart in Annex 8 of the Practice Guidance. Any deviations to these procedures should be recorded and retained by the Food Authority.

A series of template documents are provided in Annex 8 of the Practice Guidance to assist Food Authorities in the administration of approvals. Whilst the content of these documents should be regarded as the minimum required, Food Authorities may adapt them as necessary to meet local requirements.

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

### 5.1.2: Applications

Food Authorities should ensure that all applications for approval are made in writing, by the appropriate person and, whenever possible, in the appropriate format as identified in the Practice Guidance. However, Food Authorities should be aware that the form of application is not specified in any of the Regulations referred to above.

Applications for approval should only be accepted from premises that intend to engage in an activity that requires such approval.

Food Authorities should normally ensure that the applicant supplies all relevant information before an application is determined. This information may be obtained from the applicant in documentation supplied with the application form or during the subsequent approval inspection of the premises. It is a

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<sup>36</sup> as amended, SI 1995/1086

<sup>37</sup> as amended, SI 1994/3082

<sup>38</sup> as amended, SI 1995/3205

<sup>39</sup> as amended, SI 1998/994

<sup>40</sup> SI 1993/1520

matter for the Food Authority to decide at which stage this information should be provided.

Food Authorities should ensure that they fully consider any exemptions or derogations that may be available to the applicant.

### **5.1.3: Determination of Applications – General**

Before reaching a decision on an application for approval, the Food Authority should ensure that a primary inspection of the premises, as defined in Paragraph 4.1.2 is carried out to verify that, where necessary, all systems, procedures and documentation meet the requirements of the relevant Regulations. The inspection should be conducted in accordance with and cover all aspects of the relevant inspection form for the business concerned, and consider all issues identified by the Regulations as requiring Food Authority consent.

When considering an application to approve a part of premises, Food Authorities should take into consideration any other activities that may be carried out in the premises as a whole.

There will be premises where two or more sets of product-specific food hygiene Regulations apply, e.g. premises dealing with fishery products and meat products. In such cases the appropriate Regulations will apply to areas of the premises where only one type of product is handled. In areas of the premises where facilities are shared, the provisions of each set of Regulations will apply. Food Authorities should approve such premises if the minimum requirements of all relevant Regulations are met.

### **5.1.4: Shellfish Purification Plants**

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

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

### **5.1.5: Approval of Shellfish Relaying Areas**

It is the responsibility of Food Authorities to designate any suitable relaying areas that fulfil the criteria necessary for designation as “Class A” or “B” by the Food Standards Agency. The procedure and criteria for the approval of relaying areas is set down in Regulation 3(2) and Schedule 2, Chapter III of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998 (the Regulations). Food Authorities should only designate relaying areas after consultation with the Agency.

Schedule 2, Chapter III of the Regulations refers to specific operating conditions, e.g. density of molluscs, relaying periods and minimum water temperature which will be determined by the Food Standards Agency.

### 5.1.6: Notification of Approval – General

Once approval has been granted, the Food Authority should notify the applicant, in writing, of the nature and scope of the approval, any conditions or limitations that apply and the unique approval number<sup>41</sup>.

The Food Authority should retain a copy of this notification on the relevant premises file and ensure that a copy is forwarded to the Food Standards Agency.

### 5.1.7: Notification of Decision – Egg Products

In the case of egg products establishments, Regulation 5(6) of the Egg Products Regulations 1993 requires the Food Authority to give a written response to an application for approval to the applicant within 28 days of the Food Authority receiving an application. The written response must include reasons if an application for approval is refused.

### 5.1.8: Refusal of Approval and Appeals – General

Food Authorities may defer determination of an application for a short period to enable additional work to be completed to comply with the requirements of the Regulations.

If premises do not meet the requirements of the Regulations, the Food Authority should either refuse the application or defer the determination for a specified period.

When a Food Authority has decided to refuse or defer an application for approval it should notify the applicant in writing of the decision at the earliest opportunity.

In either case, the Food Authority should advise the applicant in writing of the reasons for refusal or deferment, the matters necessary to satisfy the requirements of the Regulations, and make it clear that activities requiring approval may only be undertaken once approval has been granted.

The Food Authority should ensure that an applicant whose application has been refused is made aware of their right of appeal against the decision and is provided with the address of the Magistrates Court where such an appeal may be made<sup>42</sup>.

In order to maintain consistency of approach, Food Authorities should discuss their proposed response to any appeal with the Food Standards Agency.

If the Food Authority considers that the continuing use of an establishment or centre, pending the result of an appeal, may pose a risk to public health, it should consider using the emergency prohibition powers under Section 12 of the Food Safety Act.

41 A specimen notification template is contained in Annex 8 of the Practice Guidance.

42 A specimen notification template is contained in Annex 8 of the Practice Guidance.

### 5.1.9: Change of Details or Activities

Where a Food Authority becomes aware of any significant changes in, for example, the ownership, management or activities of approved premises, they should take appropriate action as detailed in Paragraph 4.2.4.

### 5.1.10: Variation of Approvals – Fishery Products and Live Shellfish

A person who has been granted an approval under the provisions of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998<sup>43</sup> may at any time apply to the Food Authority to vary or revoke any term or limitation attached to the approval.

The Food Authority must consult with the Food Standards Agency where such an application relates to a condition that was originally imposed by the Agency or CEFAS.

### 5.1.11: Non-approved Premises Thought to be Engaged in Activities Requiring Approval

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

Officers should be careful to ensure that:

- Such premises are not exempt from the relevant product-specific legislation;
- When contemplating the use of seizure and detention, or Improvement Notices, that the requirements of the Food Safety Act 1990 Sections 9 and 10 respectively are met. For example, in a commercial operation, if a meat product is not stored according to the relevant legislation, then the requirements of Section 10(3)(b) are met – the regulation governing storage is to “secure the observance of hygienic conditions and practices in connection with the carrying out of commercial operations with respect to food or food sources”.

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<sup>43</sup> As amended, SI 1998/994

## CHAPTER 5.2: ENFORCEMENT OPTIONS IN PRODUCT-SPECIFIC PREMISES

### 5.2.1: Introduction

In addition to the enforcement provisions of the Food Safety Act 1990, authorised officers also have enforcement powers under product-specific food hygiene Regulations.

Powers of revocation, normally following the service of a prohibition order under Sections 11 or 12 of the Food Safety Act 1990 on the premises, are available under the product-specific food hygiene Regulations. Enhanced enforcement powers to amend and suspend approvals are also available in relation to premises approved to produce meat products and minced meat and meat preparations.

Officers should normally seek to remedy non-compliance with product-specific food hygiene Regulations by using the improvement notice provisions of the Food Safety Act 1990, but amendment and suspension notices may be used when appropriate.

### 5.2.2: Revocation of Approval – General

Where a Food Authority becomes aware that approved premises have ceased an activity that is the subject of its approval, it must revoke the approval and notify the Food Standards Agency in accordance with the provisions of Chapter 2.3.

In other cases, Food Authorities should only seek revocation where they are satisfied that the approved establishment is unable to handle food in accordance with the relevant Regulations. The Food Authority should ensure that, where legislation allows, other means to control the food hazards presented by the business, such as suspension or amendment of approval are explored before seeking a revocation.

Non-compliance itself is not sufficient to justify revocation of approval; a reasonable opportunity to achieve compliance must be allowed. However, revocation should be recommended in circumstances when there is no reasonable expectation that any deficiencies will be rectified.

### 5.2.3: Revocation of Approval – Meat Products and Minced Meat/Meat Preparations

The Meat Products (Hygiene) Regulations 1994 (as amended) and the Minced Meat and Meat Preparations (Hygiene) Regulations 1995 (as amended) provide for the revocation of approval with respect to structural, management and hygiene issues without the need for a prohibition order to be in place.

The revocation of an approval made under these Regulations, may be considered under the following circumstances:

- Where conditions of hygiene are inadequate and necessary measures to remedy the shortcomings, within a specified period of time, have not been addressed by the occupier;

- Where any requirement of the appropriate Regulations has not been complied with and inadequate, or no action, has been undertaken to ensure that a similar breach will not occur in the future;
- Where any condition attached to the approval has not been complied with;
- When premises no longer fall within the scope of the appropriate Regulations.

#### **5.2.4: Enhanced Enforcement Powers – Meat Products and Minced Meat/Meat Preparations – Temporary Conditions**

Regulation 19A of the Meat Products (Hygiene) Regulations 1994 (as amended) and Regulation 12A of the Minced Meat and Meat Preparations (Hygiene) Regulations 1995 (as amended) provide for the imposition of temporary approval conditions, prohibition of equipment or premises or the reduction or cessation of activities by the service of Statutory Notice.

Authorised officers should only serve Notice with respect to these matters if they have reasonable grounds to do so. Such grounds will include:

- The failure of any equipment or part of the approved premises to comply with the requirements of the Regulations;
- The need to impose conditions upon or the prohibition of the carrying on of any process breaching the requirements of the Regulations or hampering adequate health inspection in accordance with the Regulations;
- Where the rate of operation of the business is detrimental to its ability to comply with the Regulations.

As soon as the Food Authority is satisfied that the matters specified in the Notice have been complied with, they must issue a notice of withdrawal.

#### **5.2.5: Suspension of Approval – Meat Products and Minced Meat/ Meat Preparations**

The Meat Products (Hygiene) Regulations 1994 (as amended) and the Minced Meat and Meat Preparations (Hygiene) Regulations 1995 (as amended) provide for the suspension of approval under certain circumstances.

Authorised officers should consider the immediate suspension of an approval with respect to premises approved to handle Meat Products or Minced Meat and Meat Preparations in the following circumstances:

- Where there is a current serious risk to public health;
- Where there are current breaches of the relevant Regulations;
- Where an inspection is being hampered;
- Where the occupier has failed to comply with Notice served under Regulation 19A of the Meat Products (Hygiene) Regulations 1994 or Regulation 12A of the Minced Meat and Meat Preparations (Hygiene) Regulations 1995.

In the event where a current serious risk to public health exists it would be appropriate to suspend an approval without warning.

### 5.2.6: Notifications of Suspension and Revocation of Approval

The Food Authority should notify the occupier and the Food Standards Agency in writing of its decision to suspend or revoke an approval using the standard forms in Annex 8 of the Practice Guidance. Copies of such notifications should be retained on the Food Authority's files.

The Food Authority should consider issuing a new approval code to an approved establishment when it has suspended or revoked an approval under one set of product-specific food hygiene regulations, but approval remains in force with the same approval number under other product-specific food hygiene regulations.





## CHAPTER 5.3: MATTERS RELATING TO SHELLFISH<sup>44</sup>

### 5.3.1: Introduction

This Chapter requires relevant Food Authorities to establish and maintain a local shellfish liaison group. It also deals with the need for movement documents or permanent transport authorisations, monthly checks on relaying areas, and the publication of information about prohibited areas.

### 5.3.2: Liaison Arrangements

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

### 5.3.3: Shellfish Movement Documents

A gatherer of live shellfish to be placed on the market requires a movement document to identify each batch as it moves from the production area to the dispatch centre, relaying area, purification centre or processing centre (Regulation 19(1)(b)). Food Authorities should provide movement documents on demand. Food Authorities may not make any charge for the issue of movement documents, nor may they unreasonably refuse to issue the documents to a gatherer.

The form and content of the movement document is set out in Chapter II of Schedule 2 to the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998<sup>45</sup>.

Any Food Authority which issues movement documents should keep a record indicating the number issued, together with the names and details of the persons to whom they were issued and the respective reference number(s).

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

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

Details of the requirements for Food Authorities to take microbiological samples can be found in Paragraphs 4.3.4.1 and 4.3.4.2.

### 5.3.4: Permanent Transport Authorisation

An alternative to issuing separate movement documents is to issue a permanent transport authorisation to gatherers employed by the person who operates a dispatch centre, purification centre, relaying area or processing plant.

<sup>44</sup> See also "Food Safety (Fishery Products and Live Shellfish)(Hygiene) Regulations 1998 Guidance to Food Authorities that have Designated Bivalve Mollusc Production Areas in their District" – issued by the Food Standards Agency and CEFAS on 29 August 2002.

<sup>45</sup> as amended, SI 1998/994

In deciding whether to issue a permanent transport authorisation, the Food Authority should consider the requirements of Chapter II, paragraph 8 of the Food Safety (Fishery Products & Live Shellfish)(Hygiene) Regulations 1998 and in particular the history of compliance of the gatherer with relevant food safety and hygiene legislation. A Food Authority should liaise with adjoining Food Authorities if a business operates from more than one Food Authority area.

A Food Authority may withdraw a permanent transport authorisation if, for example, the Food Authority is aware of irregularities or breaches of the Regulations concerning gathering and handling of live shellfish.

A separate permanent transport authorisation should be issued for each harvesting area used by the gatherer.

### **5.3.5: Checks on Relaying Areas**

Authorised officers should carry out checks at least every month in relaying areas to ensure that the relaying conditions specified by the Food Standards Agency are being complied with. The conditions that must be observed when live bivalve molluscs are relayed in approved relaying areas are specified in Schedule 2, Chapter III of the Regulations.

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

### **5.3.6: Prohibited Area for Shellfish Production**

Where an area is designated by the Food Standards Agency as being a prohibited area for shellfish production and that area has previously been used for harvesting, Food Authorities should notify all persons known to be involved in the local shellfish industry of the relevant details, having regard to any arrangements for doing so that have been agreed with relevant shellfish liaison groups. The Food Authority should also publicise the information in a manner that is likely to bring it to the attention of as many people in the affected locality as possible.

### **5.3.7: Temporary Prohibition Orders (temporarily prohibiting the harvesting of shellfish)**

The Food Authority should discuss its reasons for wishing to make a temporary prohibition order (TPO) with the Food Standards Agency before deciding whether to make the order. The Food Authority should also liaise with CEFAS to determine whether any other factors should be taken into account. The discussion with the Agency should include consideration of whether any action should be taken to withdraw any shellfish from sale that may already have been distributed locally or nationally.

The Food Authority should ensure that TPOs can be made quickly, since pollution incidents or other problems are likely to be unexpected. Food Authorities will wish to consider authorising officers to act on their behalf in an emergency.

When a TPO is made, the Food Authority should advise all known gatherers in their district who either have movement documents already issued, or have a permanent transport authorisation of the effect of the TPO. Other Food

Authorities with an interest should also be advised, so those operators within their area who are affected by the TPO are aware of the effect of the order.

Where it appears to a Food Authority that prohibition of harvesting is likely to be required for a period in excess of 28 days, including the extension of an existing TPO beyond 28 days or its renewal within 28 days of expiry, it should liaise with the Food Standards Agency as soon as possible. The Food Authority should undertake such additional sampling of harvesting waters and shellfish as may be specified by the Agency to provide information on which action can be considered.

A Food Authority may revoke a TPO before the expiry of 28 days. Food Authorities should revoke a TPO as soon as they are satisfied that the consumption of molluscs or other shellfish from a laying subject to an order is no longer a risk to public health.



## CHAPTER 5.4: MATTERS RELATING TO FRESH MEAT<sup>46</sup>

### 5.4.1: Introduction

This Chapter relates to the enforcement duties of Food Authorities under the Fresh Meat (Hygiene and Inspection) Regulations 1995<sup>47</sup> and the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995<sup>48</sup>.

### 5.4.2: Enforcement in Unlicensed Premises

Enforcement of the Regulations in unlicensed premises is the responsibility of Food Authorities.

This includes premises in which the operations carried out require a licence but where no such licence has been issued.

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46 Further information can be found in the guidance to Welsh Food Authorities entitled “Illegal Slaughter of Livestock and the Production of Smokies” and Guidance to English Food Authorities entitled “The Illegal Meat Trade, Enforcement Guidance for Local Authority Officers in England” issued March 2004 in electronic format.

47 SI 1995/539

48 SI 1995/540



Section 6:

# Sampling and Analysis





## CHAPTER 6.1: SAMPLING AND ANALYSIS

### 6.1.1: Introduction

Effective routine sampling is an essential part of a well-balanced enforcement service and should therefore feature in the enforcement service of all Food Authorities. Guidance to help ensure sampling by Food Authorities is undertaken effectively and consistently is set out in the Practice Guidance and in LACORS advice<sup>49</sup>.

Whilst the Act and the Food Safety (Sampling and Qualifications) Regulations 1990<sup>50</sup> provide a framework for Food Authority sampling which is carried out specifically with a view to pursuing legal action if the results show an offence has been committed, it is important to recognise that samples may also be taken for the purposes of surveillance, monitoring and providing advice to proprietors. A Food Authority's Sampling Policy and Programme should cover all types of sampling work undertaken.

### 6.1.2: Sampling Policy and Sampling Programme<sup>51</sup>

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

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

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

The sampling policy should commit the Food Authority to providing the resources necessary to carry out its food sampling programme.

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

49 Further advice for Food Authorities on microbiological sampling can be found in LACORS "Guidance on Food Sampling for Microbiological Examination" published in January 2002.

50 as amended, SI 1990/2463

51 See Chapter 2, Paragraph 12.3 of the Framework Agreement

### 6.1.3: Requests for Information from Manufacturers or Importers

Food Authorities should meet all reasonable requests to provide information on the selection of the sample, sampling method and method of microbiological examination or chemical analysis to enable the manufacturer or importer of the food to assess the result or repeat the examination or analysis.

### 6.1.4: Sampling – General

The sampling provisions of the remainder of this Section do not apply to:

- Samples of food that are the subject of complaint and are brought to the Food Authority by consumers or other agencies;
- Samples of food that are submitted to the Public Analyst for monitoring or surveillance purposes alone, i.e. there is no intention at the time of sampling that any formal enforcement action will ensue from the result;
- Samples of food procured under the Act which are not taken for analysis or examination, e.g. samples submitted for expert opinion, pest identification etc;
- Samples of food that are taken as evidence in their own right e.g. use-by dates;
- Samples that are taken under the provisions of regulations that have their own detailed sampling provisions and are listed in the Schedule to the Food Safety (Sampling and Qualifications) Regulations 1990.

### 6.1.5: Samples for Analysis

All samples for analysis, taken in accordance with the Food Safety (Sampling and Qualifications) Regulations 1990 and the requirements of this Code should be submitted to the appointed Public Analyst at a laboratory accredited for the purposes of analysis and which appears on the list of official food control laboratories<sup>52</sup>.

#### 6.1.5.1: Division of Samples for Analysis

Unless the sample meets the criteria for submission for analysis without division into three parts (see Paragraph 6.1.5.4. of the Practice Guidance), the formal sample should, as soon as possible, be divided into 3 representative parts. Regulation 6 (1) of the Food Safety (Sampling and Qualifications) Regulations 1990 requires that the sample should be divided into 3 representative parts. The resultant parts of the sample are referred to in this Code as final parts. Where practicable, the division should be carried out on the premises of the seller/owner of the food, 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.

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<sup>52</sup> A list of UK official food control laboratories has been submitted to the European Commission and is published on the FSA website [www.food.gov.uk](http://www.food.gov.uk)

The sampling of imported foods at the port of entry may pose particular difficulties. In the special circumstances found by Port Health Authorities, a sample need not be divided on the premises or in the presence of any representative of the seller/owner or importer, unless the legislation under which the sample is taken specifically requires otherwise.

#### **6.1.5.2: Notification to Manufacturer/Packer/Importer**

If the identity of the packer or manufacturer or importer, or his or her agent, 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. The notice should be given as soon as practicable after sampling has taken place and should include the name of the food. If the person in question is the owner of the food and has received a final part, this is not necessary.

#### **6.1.5.3: Certificates of Analysis**

Where a certificate indicating that the foodstuff does not comply with legal requirements has been received, the Food Authority should refer to and implement any relevant provisions of Chapters 1.7 and 2.4 of this Code and the Home Authority Principle. A copy of the certificate should be sent as soon as practicable to the person from whom the food was sampled and the importer/manufacturer/producer if based in the EU.

Where the Food Authority is undertaking an investigation the release of the certificate may be delayed if its early release might compromise the investigation.

### **6.1.6: Samples for Examination**

All samples for examination, taken in accordance with the Food Safety (Sampling and Qualifications) Regulations 1990 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.

#### **6.1.6.1: Notification to the Manufacturer**

Where the results from a sample for examination provides evidence that an offence has been committed, the officer concerned should refer to and implement any relevant provisions of Chapters 1.7 and 2.4 of this Code and the Home Authority Principle. Except in the case of imported food, they should also notify the manufacturer of the food, if known, giving details of the alleged offence and of the circumstances in which the sample was taken.

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). In the case of imported food, the importer, or their agent, may be notified. Any person who has been so notified is entitled on request to a copy of the certificate of examination, as is the owner of the food.



Section 7:

# Monitoring of Inspections



## CHAPTER 7.1: MONITORING OF INSPECTIONS

### 7.1.1: Introduction

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

### 7.1.2: What Needs to be Monitored

Food Authorities should maintain documented procedures for monitoring progress of the planned inspection programme and the quality and consistency of inspections undertaken by their officers, or staff supplied under contract, to ensure, so far as practicable, that inspections are carried out competently.

The monitoring system should include measures to review:

- Adherence to the Food Authority's planned inspection programme;
- The priority given to inspecting businesses according to inspection ratings;
- Compliance with Food Safety Act Code of Practice and Food Standards Agency guidance;
- The consistent assessment of inspection ratings;
- Compliance with relevant inspection forms;
- Compliance with internal procedures, policies and the Food Authority's Enforcement Policy;
- That the interpretation and action taken by officers following an inspection is consistent within that Food Authority and is consistent with Food Standards Agency and/or LACORS guidance;
- That officers are aware of and have access to other published industry codes of practice relevant to the businesses within the area of the Food Authority;

and in relation to food hygiene inspections:

- The priority given to inspecting businesses that are subject to product-specific food hygiene Regulations;
- That officers have due regard to published UK or EU Industry Guides to Good Hygiene Practice.









## ANNEX 1: GLOSSARY OF TERMS

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

Shellfish	The Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998 definition: only bivalve molluscs, echinoderms, tunicates and marine gastropods
SVS	State Veterinary Service
The Agency	The Food Standards Agency
TPO	Temporary Prohibition Order
TSI	Trading Standards Institute
TSO	Trading Standards Officer
UKAS	United Kingdom Accreditation Service
VTEC	Vero-cytotoxin Producing <i>Escherichia coli</i>

## ANNEX 2: HACCP Evaluation Competencies

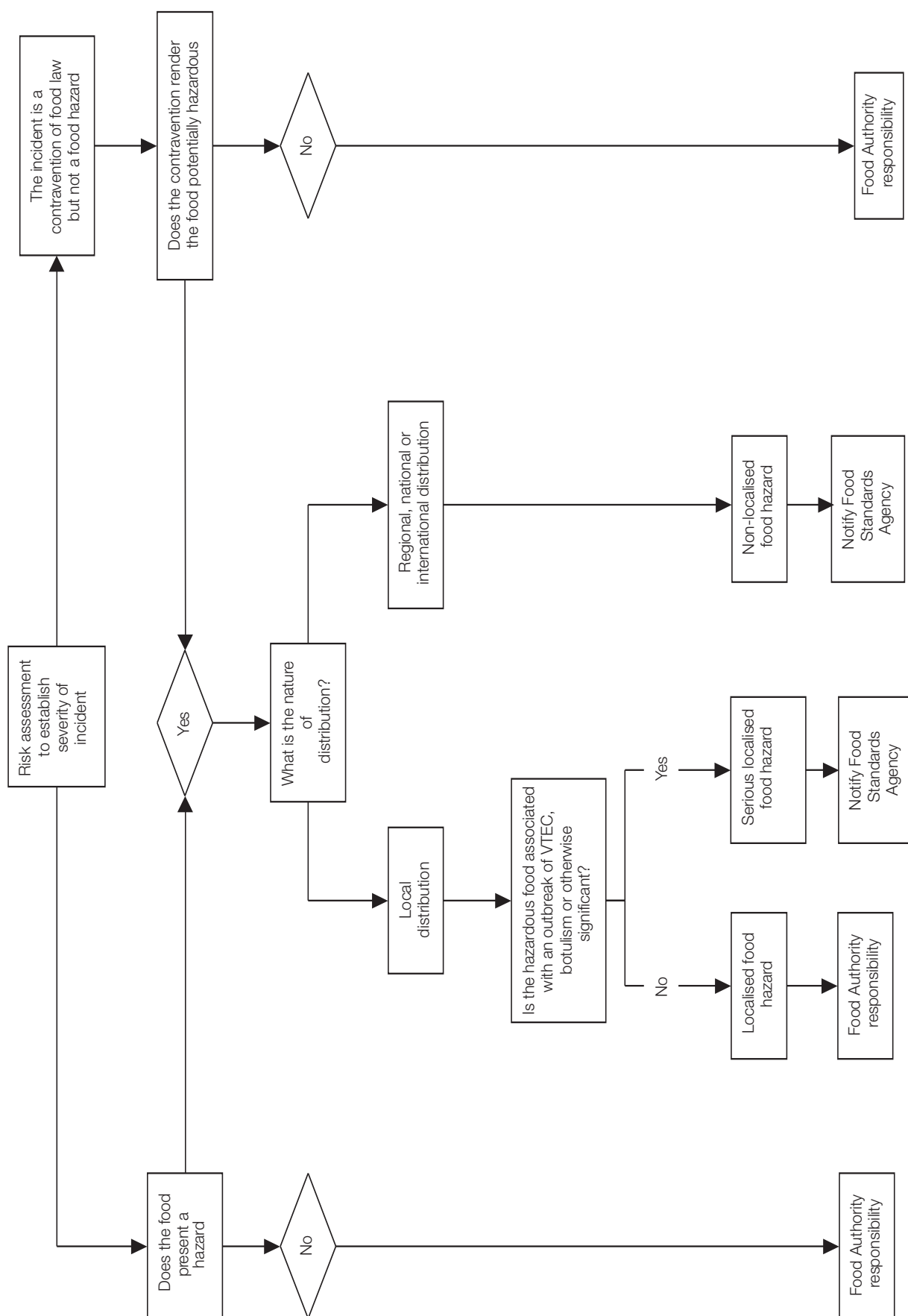
### Standards of Competence for Food Authority Officers in Relation to HACCP Based Management Control Systems

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

- 1 To identify, through the conduct of an audit, the need for improved food safety control in food premises.
  - 1.1 Assess the quality of food safety hazard identification in a food business.
  - 1.2 Assess the quality of critical control point (CCP) identification in a food business.
  - 1.3 Assess the suitability of controls in place and their monitoring at CCPs.
  - 1.4 Assess the verification and review by business proprietors of HACCP based management control systems.
- 2 To promote and support the implementation of HACCP based management control systems in food businesses.
  - 2.1 Explain the principles of hazard analysis to business proprietors or managers.
  - 2.2 Specify targets for improved control of food safety hazards.
  - 2.3 Provide advice on carrying out hazard analysis and implementing controls.
  - 2.4 Explain the relationship between HACCP systems (based on Codex) and other food safety management systems.
- 3 To secure compliance with hazard analysis/HACCP based management control systems requirements in legislation.
  - 3.1 Explain the legal requirements in relation to HACCP based management control systems.
  - 3.2 Secure compliance by discussion and persuasion.
  - 3.3 Secure compliance by the issue of notices. Secure compliance through the courts (and gather and preserve evidence in a form usable in court).



## ANNEX 3: FOOD INCIDENT FLOW DIAGRAM







## ANNEX 4: Food Hazard Reporting Form

### FOOD INCIDENT REPORT FORM

TO BE COMPLETED BY THE INVESTIGATING OFFICER/REPRESENTATIVE  
AND FAXED TO THE FOOD STANDARDS AGENCY ON: 020-7276-8446 (Tel:  
020-7276-8448/8453)

1. Reporting Local Authority's name and address:
2. Name of reporting Officer including telephone, fax and e-mail details:
3. Date and time initial information received by Local Authority:
4. Initial information received by:
5. Received from (include Local Authority, HPA etc, address, telephone number and contact name where possible):
6. Method (telephone/fax/letter/other):
7. Brief description of incident:
8. Type of contamination:
9. Description of product

Type of Product:

Product Name:

Brand Name:

Batch Code/s:

Description of Packaging:

Pack Size:

Durability Date/s or Code/s:

Country of Origin:

UK Importer/Distributor (including contact details):

Manufacturer (including contact details):

10. Has clinical illness occurred?

Details (type of illness, symptoms, numbers of consumers affected etc):

11. Full details of distribution (including EU and Third Countries)  
e.g. quantities/areas, and when the particular product/batch in question  
was first placed on the market:

12. Is the manufacturer/retailer/supplier aware of the incident, if so what are  
their proposals for dealing with it?

13. Assessment of hazard (please circle):

Local	Retail
Regional	Catering
Manufacture	National
International	Import/Export

14. Other relevant contact details (e.g. home and/or originating authority/CCDC/HPA/other)

Name:

Address, telephone and fax numbers, e-mail address:

15. Has any enforcement action already been taken? For example, have samples been taken for examination or analysis, or detention notices served, or food seized? Please fax any laboratory reports or detention notices etc to the FSA with this form, or as soon as possible thereafter.

16. Has there been media interest? Yes/No

If there has been a press release please fax to the FSA with this form.

17. Any additional information: Please attach additional pages if necessary.

Signed:

Date:

Job Title:



## ANNEX 5: INSPECTION RATING SCHEMES

### A5.1: Introduction

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

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

#### A5.2.1: Basic Principles

- i. Food Authorities that are responsible for enforcing food hygiene law should determine the food hygiene inspection frequencies of food businesses within their area using the risk assessment criteria in this Annex, in order to determine their planned food hygiene inspection programmes.
- ii. Premises that are subject to product-specific food hygiene Regulations are excluded from this determination and are dealt with separately (see below). Butchers that need to be licensed should be assessed normally but, regardless of their consequent inspection rating, should be inspected before annual licensing.
- iii. The scheme incorporates an option for alternative enforcement strategies other than primary inspections for “low risk” businesses in which the inherent hazards are not significant by virtue of their trading activities or the number of consumers they supply (see below).
- iv. The scheme is set out in the form of an assessment document that can be used by officers in the field. An assessment should be completed at the end of every primary inspection.
- v. Officers should use the full range of scores available within the system, as the purpose of the rating system will be frustrated by cautious marking or by a reluctance to recognise effective management/control systems.
- vi. The operation of this inspection rating scheme within the Food Authority should be subject to periodic management review to ensure that staff are using the scheme correctly and consistently.
- vii. Premises that are due or overdue for inspection should be inspected according to their respective inspection ratings, with those having higher ratings being prioritised for inspection over those with lower ratings. The practice of completing the inspection programme of lower rated premises that have not been visited during an earlier programme before commencing the inspection of higher rated premises cannot be supported.
- viii. Primary inspections should normally be completed by the due date as determined by the inspection rating, but in any case no more than 28 days after that date, apart from circumstances outside the control of the Food Authority such as seasonal business closures.

#### **A5.2.2: Premises subject to Product-specific Food Hygiene Regulations**

- ix. Each business that is subject to product-specific food hygiene Regulations must receive at least one primary inspection, and, if required, one or more secondary inspections, so as to achieve the minimum number of inspections in any 12 month period set out in Paragraph 4.3.6.

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

- x. Premises scoring less than 31 points overall need not be subject to primary inspections (see Paragraph 4.1.10).
- xi. Such “low-risk” businesses must, however, be subject to an alternative enforcement strategy not less than once in any 3-year period.
- xii. Food Authorities that decide not to subject “low-risk” businesses to primary inspections must set out their alternative enforcement strategies for maintaining surveillance of such businesses in their Food Service Plan or Enforcement Policy.
- xiii. It is not intended to preclude inspections of such premises where inspection is the Food Authority’s preferred surveillance option, in which case the minimum frequency of inspection is determined by the inspection rating.

## A5.3: The Food Hygiene Scoring System

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

Three factors determine the potential hazard:

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

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

Score	
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#### A5.3.1.2: B. Method of Processing

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

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

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

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

Score	Guidance on the Scoring System
15	Manufacturers of food that is distributed nationally or internationally.
10	Businesses serving a substantial number of customers including a significant proportion from outside the local area, e.g. superstore, hypermarket, airport caterer, motorway service area caterer; Manufacturers not included in the category above.
5	Businesses, most of whose customers are likely to be living, staying or working in the local area, e.g. high street or corner shop, high street supermarket, or high street restaurant.
0	Businesses supplying less than 20 consumers each day.

Score	
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#### PLUS

An **additional** score of 22 (in addition to the score above) should be included for premises such as hospitals, nursing homes, day-care centres and child nurseries, where production and/or service of high-risk foods takes place, and where more than 20 persons in a vulnerable group are at risk. In this context,

vulnerable groups are those that include people who are under 5 or over 65 years of age, people who are sick, and people who are immunocompromised.

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

Score	
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### A5.3.2: Part 2: Level of (Current) Compliance

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

The score should reflect compliance observed during the inspection according to the guidance set out below. Adherence to any relevant UK or EU Industry Guide to Good Hygiene Practice should be considered when assessing compliance.

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

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 effort required to prevent fall in standards.
10	Some non-compliance with statutory obligations and industry codes of recommended practice. The premises are in the top 50 per cent of premises and standards are being maintained or improved.
5	High standard of compliance with statutory obligations and industry codes of recommended practice, minor contraventions of food hygiene regulations. Some minor non-compliance with statutory obligations and industry codes of recommended practice.
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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### A5.3.3: Part 3: Confidence in Management/Control Systems

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

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

Factors that will influence the inspector's judgement include:

- The “track record” of the company, its willingness to act on previous advice and enforcement, and the complaint history;
- The attitude of the present management towards hygiene and food safety;
- Hygiene and food safety technical knowledge available to the company (internal or external), including hazard analysis/HACCP and the control of critical points;
- Satisfactory documented procedures and HACCP based food safety management systems.

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

Score	
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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 more likely to occur than not. The following matters should be considered when assessing this factor:

- The potential for contamination or cross contamination by the specified micro-organisms;
- The likelihood of survival and growth of the specified micro-organisms;
- The existence of hazard analysis or HACCP systems and confidence in their implementation including documentation and records of monitoring of controls;
- The extent and relevance of training undertaken by managers, supervisors and food handlers;
- Whether intervention by the Food Authority is necessary to reduce the probability of an incident occurring.

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

The additional score must also be consistent with the baseline assessment of Confidence in Management/Control Systems. If confidence in management is assessed as “High” or “Moderate”, 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. Premises 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	
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Inspection Ratings:								Total:	
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#### A5.3.4: Food Hygiene Inspection Frequencies

Category	Inspection Rating	Minimum Inspection Frequency
<b>A</b>	92 to 196	at least every 6 months
<b>B</b>	72 to 91	at least every 12 months
<b>C</b>	42 to 71	at least every 18 months
<b>D</b>	31 to 41	at least every 2 years
<b>E</b>	0 to 30	Alternative enforcement strategy

## A5.4: Food Standards Inspection Rating Scheme

### A5.4.1: Basic Principles

- i. Food Authorities that are responsible for enforcing food standards law should determine the food standards inspection frequencies of food businesses within their areas using the risk assessment criteria in this Annex, in order to determine their planned food standards inspection programmes.
- ii. Alternatively, where the Food Authority is responsible only for food standards enforcement, or where food hygiene and food standards enforcement is carried out by separate departments within the same Food Authority, e.g. Environmental Health and Trading Standards, the food standards risk assessment may be based on the LACORS guidance on risk assessment for trading standards. Where assessments are based on the LACORS scheme, the inspection frequency for food standards purposes should not be less than would have been the case under this scheme.
- iii. Food Authorities in single tier local authority areas may opt to base their planned inspection programme on the food hygiene risk assessment scheme under this Code of Practice. Food Authorities that exercise this option must ensure that their inspections consider both food hygiene and food standards matters, that inspections of those matters occur no less frequently than would have been the case had both schemes been used, and that the food standards risk assessment is completed and recorded.
- iv. The scheme incorporates an option for alternative enforcement strategies other than primary inspections for “low-risk” businesses in which the inherent hazards are not significant by virtue of their trading activities or the number of consumers they supply (see below).
- v. The scheme is set out in the form of an assessment document that can be used by officers in the field. An assessment should be completed at the end of every primary inspection.
- vi. Officers should use the full range of scores available within the system, as the purpose of the rating system will be frustrated by cautious marking or by a reluctance to recognise effective management/control systems.
- vii. Businesses that fall into more than one scoring category for a scoring factor should be allocated the highest score of those that are applicable.
- viii. The operation of this inspection rating scheme within the Food Authority should be subject to periodic management review to ensure that staff are using the scheme correctly and consistently.
- ix. The inspection of higher risk businesses must always take preference over the inspection of lower risk. The practice of completing the inspection programme of lower risk businesses that have not been visited during an earlier programme before commencing the inspection of higher risk businesses cannot be supported.

- x. The minimum inspection frequencies described should not be regarded as strict and absolute. However, primary inspections should be completed no more than 28 days after the due date, apart from circumstances outside the control of the Food Authority such as seasonal business closures (see Paragraph 4.1.5).

#### **A5.4.2: Low-Risk Activities**

- xi. Businesses scoring 45 points or less overall need not be subject to primary inspections (see Paragraph 4.1.10.).
- xii. Such “low-risk” businesses must, however, be subject to an alternative enforcement strategy not less than once in any 5-year period.
- xiii. Food Authorities that decide not to subject “low-risk” businesses to primary inspections must set out their alternative enforcement strategies for maintaining surveillance of such businesses in their Food Service Plan or Enforcement Policy.
- xiv. It is not intended to preclude inspections of such businesses where inspection is the Food Authority’s preferred surveillance option, in which case the minimum frequency of inspection is determined by the inspection rating.

### **A5.5: The Food Standards Scoring System**

#### **A5.5.1: Part 1: The Potential Risk**

##### **A5.5.1.1: A. Risk to Consumers and/or Other Businesses**

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

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.
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, take aways, 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	
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#### A5.5.1.2: B. Extent to Which the Activities of the Business Affect any Hazard

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

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

Score	Guidance on the Scoring System
30	Food manufacturers, processors, importers processing 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 premises.
0	Any business not included in the categories above.

Score	
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#### **A5.5.1.3: C. Ease of Compliance**

This factor considers the volume and complexity of food standards law that applies to the business and with which it has a responsibility to ensure compliance. Consider the range and complexity of products, processes and services including the consistency of raw materials. Consider the difficulty of the task for the trader including how easy it is to recognise a hazard.

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

<b>Score</b>	
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#### **A5.5.1.4: D. Consumers at Risk**

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

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

<b>Score</b>	
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### A5.5.2: Part 2: Level of (Current) Compliance

This factor considers the level of compliance observed during the inspection. Adherence to relevant UK or EU Industry Guides to Good Practice and other similar guidance e.g. Food Standards Agency, Food Advisory Committee and LACORS should be considered.

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

Score
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### A5.5.3: Part 3: Confidence in Management/Control Systems

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

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

Factors that will influence the inspector's judgement include:

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

## Score Guidance on the Scoring System

Score	Guidance on the Scoring System
<b>30</b>	Little or no technical knowledge. Little or no appreciation of hazards or quality control. No food standards management system. Large number of justifiable complaints since the last primary inspection.
<b>20</b>	Staff have a basic understanding of relevant food law. May not have a food standards management system. At least one justifiable complaint since the last primary inspection.
<b>10</b>	Score of 10 or better in Part 2. Staff demonstrate awareness of relevant food law and necessary controls. Appropriate food standards management system. Smaller businesses may have minimal documented system. At least one justifiable complaint since the last primary inspection.
<b>0</b>	Technical advice available. Subject to internal audit/checks. Good food standards management system, documented records of critical checks and supplier checks, which may be subject to third party audit. Evidence of compliance with documented management system with few/minor non-conformities. No justifiable complaints since the last primary inspection.

<b>Score</b>	
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### A5.5.4: Food Standards Inspection Frequencies

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

Premises rated as low risk (45 or less) need not be included in the planned inspection programme but must be subject to an alternative enforcement strategy at least once in every 5 years.

## ANNEX 6: FOOD PREMISES INSPECTION REPORT

A report containing the following information must be provided to the proprietor of the food business following each primary inspection. The information may be provided as a separate report or may be included as part of a letter from the Food Authority.

TRADING NAME AND ADDRESS OF THE BUSINESS, AND REGISTERED ADDRESS IF DIFFERENT:

NAME OF THE PROPRIETOR OF THE BUSINESS:

TYPE OF BUSINESS:

NAME(S) OF PERSON(S) SEEN AND/OR INTERVIEWED:

DATE AND TIME OF INSPECTION:

SPECIFIC FOOD LAW UNDER WHICH INSPECTION CONDUCTED:

AREAS INSPECTED (to be specified):

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

SAMPLES TAKEN (to be specified):

KEY POINTS DISCUSSED DURING THE INSPECTION (to be specified):

ACTION TO BE TAKEN BY THE FOOD AUTHORITY (to be specified):

SIGNED BY:

NAME IN CAPITALS:

DESIGNATION OF INSPECTING OFFICER:

CONTACT DETAILS OF INSPECTING OFFICER:

CONTACT DETAILS OF SENIOR OFFICER IN CASE OF DISPUTE:

DATE:

FOOD AUTHORITY NAME AND ADDRESS:

Food Safety Act 1990 Code of Practice



