

Food Safety Act 1990

Code of Practice No. 6:
Prohibition Procedures [\(Revised Autumn 1999\)](#)

CODE OF PRACTICE ON PROHIBITION PROCEDURES (SECTIONS 11 AND 12 OF THE FOOD SAFETY ACT 1990) (Code of Practice No. 6 Revised)

The Sections in **bold type** are a Code of Practice issued under Section 40 of the Food Safety Act 1990 to which food authorities must have regard. The remaining text is for information only.

Section 11

- 1 Section 11 enables a magistrates' court (or, in Scotland, the sheriff) in certain circumstances to make a prohibition order if the proprietor of a food business is convicted of an offence under any food hygiene or processing regulations. ~~to close down insanitary food premises, to prohibit premises from being used for particular kinds of food businesses, to prevent the use of a piece of equipment for any food business or a particular food business, to prohibit a particular process, or to prohibit a person from carrying on or managing any food business, on public health grounds.~~
- 2 ~~The first step in the procedure under Section 11 is for the food authority to successfully prosecute the proprietor of a food business for a breach of hygiene or processing regulations (or orders that may amend or replace them).~~ The existing regulations to which Section 11 applies dealing with hygiene or processing are listed in the attached Schedule; (this should not be regarded as an exclusive list as the regulations may be subject to amendments). ~~In some cases~~ The proprietor may have been issued with an improvement notice with which he has failed to comply.
- 2a If the court is satisfied ~~then considers~~ that a risk of injury to health arises from any process, treatment or equipment used by the business, or from the construction or condition of the premises, equipment or process put public health at risk it must impose the appropriate prohibition order. The court also has discretion to prohibit ~~ban~~ the proprietor or manager of the business from participating in the management of ~~managing~~ any food business.
- 3 The food authority has the power to lift a ~~the~~ prohibition order on the use of a process, treatment or equipment, or on a premises, ~~equipment or a process~~. However, the court must lift a ~~the~~ prohibition on a ~~the~~ proprietor or manager.

Section 12

- 4 If an authorised officer considers that magistrates will be satisfied in their own mind on the balance of probabilities, ~~believes that~~ an imminent risk of injury to health exists in respect of any food business premises, a piece of equipment or a process, then under Section 12 the officer may serve an emergency prohibition notice on the proprietor. The service of an emergency prohibition notice imposes the relevant prohibition with immediate effect. The prohibition should specify where the imminent risk of injury to health arises and may relate to any process, treatment or equipment used by the business, or to the construction or condition of the premises. This ensures the immediate closure of premises or immediate prevention of use of a piece of equipment or a particular process. The authorised officer must then apply to a magistrates' court (or, in Scotland, to the sheriff) for an emergency prohibition order within three days. ~~When the authorised officer applies direct to the court (or in Scotland submits his case to the Procurator~~

~~Fiscal~~). The proprietor must be given at least one day's notice of the intention to apply for an emergency prohibition order ~~do this~~. An emergency prohibition order supersedes an emergency prohibition notice.

- 5 An emergency prohibition notice ceases to have effect at the end of the period of three days beginning with the service of the notice, or, if an application for an order is made, on the determination or abandonment of the application. An emergency prohibition order cannot be made against a person. The food authority has power to lift an emergency prohibition notice or order. Section 12(10) provides for the authority to compensate the proprietor for losses arising from the service of an emergency prohibition notice where no application for an emergency prohibition order is made within three days, or the court is not satisfied that an imminent risk of injury to health existed at the time the notice was served.

~~Definition of~~ **"Imminent Risk of Injury to Health"**

- 6 Section 11 applies if there is a risk of injury to health and Section 12 applies if there is an imminent risk of injury to health.
- 7 The word "imminent" qualifies the word "risk". There should always be an imminent risk of injury to health at the time an emergency prohibition notice is served ~~action can be considered by the authorised officer~~. For example, if the condition of the premises appeared to carry an imminent ~~a high~~ risk of causing food poisoning ~~an outbreak of within the next few days~~, the authorised officer could consider imposing an emergency prohibition notice, subject to the provisions of paragraphs 25 -27 below.
- 8 ~~However,~~ **The authorised officer must understand that it is the risk of injury which must be imminent. The injury itself may occur sometime later, but it is essential to be able to show that it could occur if the action is to succeed in court.** For example, a defective process or treatment could result in incidents of botulism as occurred in the past with yoghurt. Other situations may include a process which introduces a teratogenic chemical into food, which may cause early injury to the developing foetus - but the damage will not be apparent until the baby is born. Similarly, early injury to genes and chromosomes caused by processes or treatments contaminating food with certain (genotoxic) chemicals will not be noticeable until abnormal offspring or a malignant tumour occur at a later stage. Foods containing abnormally high levels of such chemicals may therefore ~~nevertheless~~ represent an imminent risk and should be seized or detained under the terms of Section 9 of the Act. Any process or treatment which exposes the food to the risk of this chemical contamination should be dealt with under the terms of Section 12. Not everyone exposed to the risk of injury will necessarily be injured nevertheless exposure to the risk of injury will have occurred and action can be taken.

~~N.B. A teratogenic chemical damages the developing baby in the womb. A genotoxic chemical damages genes and chromosomes.~~

- 9 **Before taking prohibition action involving chemical contamination, authorised officers should seek medical or other expert advice if necessary.** ~~It is recommended that medical advice be sought where a process or treatment is producing food which appears to be so contaminated by chemicals or by improper use of substances that it may pose an imminent risk of injury to health. Food which appears not to comply with food safety requirements can be dealt with under Section 9 of the Food Safety Act. The Codes of Practice on Local Authority Action in dealing with Food Hazard Warning Systems gives further advice on dealing with food hazards which may have regional, national or international implications. In England medical advice is~~

available from the Directors of Public Health of the local health authority, (in whose area the offence may have been committed) or the Regional Medical Officer (at the regional health authority) about the particular substance concerned. These officers will, in turn, seek advice if necessary from the medical specialists at the Department of Health, who will, if necessary, contact MAF's food scientists at the Ministry of Agriculture, Fisheries and Food, in London or at the Food Science Laboratory in Norwich. In Wales, medical advice is available from the Chief Administrative Medical Officer/Director of Public Health Medicine of the appropriate local health authority. If necessary these officers may, in turn, seek advice from the Welsh Office. In Scotland, medical advice is available from the consultant in Public Health Medicine attached to the appropriate Health Board for the area. If the issue is considered to be of wider concern the Health Board may seek advice from medical specialists in the Scottish Home and Health Department who will confer as necessary with the Department of Agriculture and Fisheries for Scotland.

- 10 The imminent risk to be considered by the authorised officer when looking at processes or treatments are chemical as well as microbiological and the longer term effect of the contaminant should be taken into account. The criteria for action will still depend on the [health risk condition as set out](#) conditions in Section 11(2) being satisfied, namely that the imminent risk of injury to health arises from either the construction or condition of any premises or any equipment or the use of any process or treatment. ~~involves risk of injury to health.~~

Powers of Entry

- 11 Section 32(1) of the Act gives authorised officers powers of entry to premises but not the right to force an entry. (This is given by Section 32(2) of the Act). (See also Code of Practice 2 on Legal Matters).
- 12 If ~~an~~ the authorised officer [needs to gain entry to](#) visits premises which have closed ~~and he needs to gain entry~~, for example, to re-inspect premises prior to the hearing, [the officer](#) should, if unable to gain entry by other lawful means, go to a justice of the peace (or, in Scotland, the sheriff) and apply for a warrant which authorises entry to the premises using reasonable force if necessary.
- 13 If ~~an~~ the authorised officer (or, in Scotland, the Procurator Fiscal) suspects that the premises will be closed the court should be asked to issue a warrant at the same time as an order is made, if this is applicable.
- 14 **It is the responsibility of [an](#) the authorised officer who makes such an entry to ensure that the premises are left as effectively secure against unauthorised entry as when he found them.**

Unco-operative Proprietors

- 15 Obstruction of an authorised officer can take place in a number of ways. For example, where an authorised officer believes it is necessary to enter premises in the discharge of [his](#) duties and is unable to gain entry because of obstruction, the individual [responsible](#) causing the obstruction should be cautioned that obstruction of an enforcement officer is an offence under Section 33 of the Act. If such obstruction persists the authorised officer should make an application for a warrant to enter the premises under Section 32 (2) of the Act. The warrant authorises entry to be made and continues in force for a period of one month. Reasonable force may be used to enter premises with a warrant. The authorised officer must first consider whether any of the grounds under Section 32(2) of the Act are satisfied, and if so which, as the magistrate or sheriff

will need to satisfy himself on this point before issuing the warrant.

- 16 The authorised officer may also ask for police assistance, for example, a police escort may be requested. An officer entering premises with a warrant may ~~He is able to~~ take such other persons with him as considered ~~he considers~~ necessary, ~~when entering premises by virtue of~~ under Section 32 of the Act.

CONDITIONS IN EXISTENCE FOR CLOSURE PROHIBITION OF PREMISES OR PROHIBITION OF A PROCESS, TREATMENT OR PIECE OF EQUIPMENT TO BE CONSIDERED

Consideration of Prohibition

- 17 An ~~The~~ authorised officer should consider serving an emergency prohibition notice if he or she is satisfied, as outlined in paragraph 7 above, that an imminent risk to health exists. ~~use professional judgement to decide whether a premises, a process, a treatment or a piece of equipment or its use represents or involves an imminent risk of injury to health. He can thus decide whether action can be taken under Section 12 to~~ Any prohibition imposed must be appropriate: to prohibit the use of a process or treatment for the purposes of the business; to prohibit the use of premises or equipment for the purposes of the business or any other food business of the same class or description; or to prohibit the use of premises or equipment for the purposes of any food business (see Section 11(3)). The court will determine, on the basis of all the evidence, whether imminent risk of injury to health existed at the time the emergency prohibition notice was served.
- 18 The prime consideration should always be to protect public health. However, authorised officers should have regard to the compensation provisions in Section 12(10) and should ~~not~~ proceed under Section 12 only when satisfied that there is ~~unless the existence of an imminent risk of injury to health. can be demonstrated. However, the prime consideration should always be to protect public health.~~
- 19 The situations listed below represent examples of circumstances which may involve imminent risk of injury to health. ~~they are situations where the authorised officer may consider closure or prohibition action.~~ The lists are in no way prescriptive or exhaustive and are for illustrative purposes only.

Conditions where Prohibition of Premises may be Appropriate

- 20 (a) ~~Premises or practices which seriously contravene the Food Hygiene (General) Regulations 1970 (or the Food Hygiene (Scotland) Regulations 1959/1978)~~ food safety legislation and have been or are involved with an outbreak of food poisoning or present an imminent risk of one;

[Example of breach of health risk condition 11(2)(c)]

- (b) serious infestation by rats, mice, cockroaches or other vermin (including birds) or a combination of these infestations resulting in actual food contamination or an imminent ~~real~~ risk of food contamination;

[Example of breach of health risk condition 11(2)(c)]

- (c) ~~Very~~ poor structural condition and poor equipment and/or poor maintenance of routine cleaning and/or serious accumulations of refuse, filth for other extraneous matter resulting in actual food contamination or an imminent ~~real~~ risk of food contamination;

[Example of breach of health risk condition 11(2)(b) and (c)]

- (d) serious drainage defects or flooding of the premises leading to actual food contamination or an imminent ~~real~~ risk of food contamination;

[Example of breach of health risk condition 11(2)(c)]

- (e) any combination of (a), (b), (c) and (d) or the cumulative effect of contravention which together represent an imminent risk of injury to health.

Conditions when Prohibition of Equipment may be Appropriate

21 ~~In addition to the above~~ The following circumstances may be in existence:

- (a) use of defective equipment, for example, a retort incapable of achieving the required canning temperature;

[Example of breach of health risk condition 11(2)(c)]

- (b) use of equipment involving high risk foods which has been inadequately cleaned or disinfected or which is obviously grossly contaminated and can no longer be properly cleaned. ~~(This would not apply, for example, to a potato peeler and in circumstances where cleaning is possible the authorised officer should consider issue of an improvement notice).~~

[Example of breach of health risk condition 11(2)(c)]

Conditions when Prohibition of a Process may be Appropriate

22 ~~In addition to paragraph 20 above~~ The following circumstances may be in existence:

- (a) ~~serious~~ risk of cross contamination involving ready to eat food;

[Example of breach of health risk condition 11(2)(b) or (c)]

- (b) inadequate temperature control, for example, failure to achieve sufficiently high cooking

temperatures;

[Example of breach of health risk condition 11(2)(a)]

- (c) operation outside critical control criteria, for example, incorrect pH of a product which might allow *clostridium botulinum* to grow and produce toxin.

[Example of breach of health risk condition 11(2)(a)]

Seeking Additional Advice

- 23 ~~An~~ The authorised officer may call upon the services of an appropriate expert to assist in making a judgement, for example, someone with specialist knowledge of a particular process. However, ~~it is the authorised officer himself who~~ must be personally satisfied that the health risk condition is fulfilled with respect to the food business. **Food authorities should consider the use of outside experts where the process or treatment under consideration involves specialist knowledge or qualifications¹.** ~~An~~ The authorised officer has powers ~~rights~~ of entry under Section 32 of the Act. In exercising such powers ~~a right~~ an the authorised officer may ~~take with him~~ be accompanied by such other persons as ~~he considers~~ considered necessary, for example, an expert.

Voluntary Procedures

- 24 If ~~an~~ the authorised officer is satisfied ~~believes~~ that premises represent an imminent risk of injury to health, then emergency prohibition action should normally ~~can~~ be taken to close the business or prohibit use of a process or piece of equipment.
- 25 There may be exceptional circumstances where immediate emergency prohibition action ~~closure~~ would be considered unnecessary even though an imminent risk of injury to health existed. For example, if the condition of retail food premises represented an imminent risk, but this was not discovered until around the end of opening hours, and the proprietor undertook to arrange for ~~said he would get~~ a team of contract cleaners to improve the position during the night, the authorised officer might decide not to impose an emergency prohibition. The risk of injury to health in such circumstances would be minimal as the premises would not be open to the public. The authorised officer could decide the following morning whether the imminent risk still existed or had been removed. If the former, he should then take appropriate emergency prohibition ~~action to close the premises~~.
- 26 ~~There is now no advantage in attempting to persuade the proprietor to close voluntarily since the emergency prohibition notice results in immediate closure of the premises.~~
- 27 **If the proprietor ~~owner~~ of a food business offers voluntarily (this should never be prompted) to cease the use of premises as a food business, or the use of equipment or of a process, as appropriate, ~~close voluntarily (this should never be prompted)~~ the authorised officer should:**
- (a) consider whether there is any likelihood of the premises being used as a food

¹Lists of experts in particular fields are maintained by the Institution of Environmental Health Officers and the Institute of Food Science and Technology.

business or, of the use of equipment or, of a process, as appropriate, reopened without the express agreement of the food authority ~~his knowledge and/or agreement~~ (if ~~so~~ such use is likely, and this were to cause injury to health ~~food poisoning~~, the food authority could be criticised for not having used statutory powers);

- (b) recognise that there is no legal sanction against a proprietor when voluntary procedures are used but are not adhered to ~~who reopens for business after offering to close~~;
- (c) explain to the proprietor that, if emergency prohibition action is taken and subsequently found by a court to be unjustified, then compensation would be payable; but that the question of compensation will not arise if voluntary procedures are used ~~by making the offer to close, he is relinquishing rights to compensation~~ if a court subsequently declines to make an emergency prohibition order.

~~28 If the authorised officer accepts any offer to close voluntarily he should obtain written confirmation of the proprietor's offer to close and an undertaking not to reopen without specific permission. He should ensure that frequent checks are made on the premises to ascertain that they have not reopened.~~ If a manager or an employee of a food business offers to close voluntarily the authorised officer will need to ensure that the person has the authority of his employer to agree to such voluntary action.

28a If an authorised officer is minded to accept any voluntary offer from a proprietor the officer should:

- (a) obtain an offer document signed and dated by the proprietor setting out in detail the nature and extent of the offer;
- (b) determine whether the nature and extent of the offer would have at least the equivalent effect of any appropriate prohibition action;
- (c) if it would, prepare an acceptance document setting out: the nature and extent of the offer, its acceptance by the authorised officer, an undertaking to be signed by the proprietor to adhere to the contents of the acceptance document from the time of signing it until the time it is varied or cancelled in writing by the authorised officer;
- (e) obtain the proprietor's signature to the acceptance document;
- (d) if an offer document would not have at least the equivalent effect of any appropriate prohibition, or the proprietor does not sign the acceptance document, impose the appropriate prohibition.

28b It is vital that the procedure above, if appropriate, take places immediately an authorised officer is satisfied an imminent risk of injury to health exists. Hand written offers and the use of acceptance forms are acceptable to assist in this. A proprietor should be given a copy of any acceptance document.

~~Evidence required for EPN~~

Issuing the Notice or Order

- 29 Certain authorities may require that if in the course of inspecting premises ~~an~~ the authorised officer has reason to believe that an imminent risk of injury to health exists the inspection should be continued in the company of a second authorised officer; this is not essential in England and Wales but a corroborative witness is required in Scotland. The first officer may begin to gather evidence pending the arrival of the second, except in Scotland where corroboration is essential.
- 30 **In England and Wales emergency prohibition notices or voluntary agreements should ~~can~~ be signed only by environmental health officers who are authorised to inspect food premises: hold a certificate of registration of the Environmental Health Officers Registration Board (or any antecedents of such certificates) dated at least two years before the date of issue of the Emergency Prohibition Notice, and (i) hold a corporate membership certificate of the Chartered Institute of Environmental Health, or (ii) hold a certificate of professional competence of the Chartered Institute of Environmental Health. (In Scotland emergency prohibition notices should be signed only by environmental health officers who have two years post qualification experience in food safety matters).** ~~officers authorised to do so by their employing authority. In the non metropolitan counties, these notices may only be issued by officers of the district councils. To maintain a consistent approach by all authorities, food authorities should arrange that these notices should be issued only by fully qualified officers with experience in food law enforcement. These will be environmental health officers and official veterinary surgeons designated under the Fresh Meat Export (Hygiene and Inspection) Regulations 1987 and carry out official veterinary surgeon duties for the food authority.~~
- 31 ~~The authority before authorising an officer to issue emergency prohibition notices should be satisfied that the officer is competent to do so, is a fully qualified environmental health officer or official veterinary surgeon and possesses experience in a variety of food enforcement situations which would allow him to undertake the duties for which he has been authorised. Before authorising an officer to issue emergency prohibition notices the food authority should have full regard to the fact that the issue of such notices is a significant step in a legal process. Consequently inappropriate or wrongful service of a notice could result in the authority being sued or subject to substantial compensation claims. Officers who are not authorised to issue emergency prohibition notices will need to know who in the authority is authorised to take such action. Consideration should be given to any difficulties that might arise outside of normal office hours.~~
- 32 An emergency prohibition order or a prohibition order - both of which are made by the courts - need not necessarily be served by the authorised officer who initiated the action or even by an environmental health officer. However the order should be served by an authorised competent person who would be able to take any required action, for example, dealing with obstruction or explaining the purpose of the order. ~~For example, a technical assistant could be used.~~ In Scotland a court order would normally be served by a court official.
- 33 If an emergency prohibition notice, an emergency prohibition order or a prohibition order cannot be served on the proprietor by hand (see Methods of Serving the Notice or Order paragraphs 36 to 39) because, for example, the proprietor of the business is not present at the premises, a copy of the document should be served by hand on whoever would be responsible for complying with the immediate closure or prohibition action, for example, the local manager.

- 34 **The authorised officer should ensure that the proprietor is aware of those matters which are considered to constitute an imminent risk.** This statement is included within the prescribed emergency prohibition notice. However the proprietor may not understand what steps need to be taken to remove the imminent risk and further advice may be necessary.
- 35 ~~Once an emergency prohibition notice, an emergency prohibition order or a prohibition order is lifted the authority should review the frequency of inspection of the premises depending on the nature of the contravention.~~ If the notice or order was served for conditions which could recur, the authority should ensure that the next inspection takes place within six months.

Methods of Serving the Notice or Order

- 36 Section 50 of the Act covers the service of all documents. A prohibition order and an emergency prohibition order are issued by the court.
- 37 **The authorised officer should make every effort to serve a prohibition order, an emergency prohibition order or an emergency prohibition notice by delivering it to the proprietor of the business by hand. The authorised officer should consult with the local Justices' Clerk to see if it would be possible to serve the order on the proprietor before he leaves the court.** In Scotland this would not be possible unless the proprietor ~~there is no possibility of an order being ready to serve on a proprietor before he leaves the court unless he is asked to stay.~~ **If the business is operated as a partnership every effort must be made to serve the notice or order on each and every one of the partners.** However the service of the notice or order on a number of partners may present difficulties particularly where a partner may not at the time be resident in the United Kingdom. As soon as the notice or order is properly served on any one of the partners it takes effect. Corroboration of service is required in Scotland if the document is hand delivered.
- 38 If it is not possible to serve the document by hand then the authorised officer should serve the document by post, obtaining proof of posting and/or advice of delivery. A fax machine may be used to send the document quickly to the proprietor of the business, for information purposes only, but a copy sent by fax does not constitute good service and the document itself a hard copy ~~must follow.~~ It may be useful for officers to record the time of service, even when the postal service is used.
- 39 Immediately the document has been legally served by one of the methods mentioned in Section 50, the prohibition on the use of the premises or equipment for the purposes of any food business or a particular type of food business or prohibition on a process or treatment comes into effect. ~~The start of the prohibition does not in this case depend on the document being received.~~ An authorised officer should be aware that although an Order has effect when made by a court, an underlying offence requires actual knowledge of the Order. In other words, a criminal offence is committed when a person "... knowingly contravenes ..." the requirements of the Order.

Circumstances following Service of an Emergency Prohibition Notice

40—The ~~a~~ Authorised officers should be aware of difficult situations which could arise when serving ~~an~~ emergency prohibition notices.

41 A restaurant subject to a notice may, for example, be full of customers at the time the notice is about to be served. The authorised officer has no powers to require the public to leave. In order to protect the public the authorised officer may have to make use of the powers in Section 9 of the Food Safety Act and seize items of food which do not comply with food safety requirements, thus ensuring certain items are removed from the menu. In certain extreme circumstances the authorised officer would have no choice but to seize or detain all food in the restaurant. Thus the restaurant would then have no option but to close.

42 In the case of a process or piece of equipment the authorised officer may, following discussion with the proprietor, let a started process finish before serving the notice. It may be difficult to cease production in the middle of a numbered batch or there may be a possibility of causing damage to a process or piece of equipment by stopping a process. The authorised officer may then seize, or detain, under Section 9 of the Act any food produced in the remainder of the batch which did not comply with food safety requirements.

Application to the Court

43 Some authorities have authorised officers under Section 223 of the Local Government Act 1972 to represent the authority in proceedings before the magistrates court. Where such an arrangement does not exist, the authority should try to agree procedures. **The authority should discuss a detailed programme of formal action with its litigation solicitor and with the clerk of the local magistrates court and should clarify details of local court practice to try to and resolve potential difficulties of obtaining court time at short notice.** This could be initiated by informal contact with the magistrates' clerk office to ensure that, if at all possible, applications for emergency prohibition orders are expedited.

44 It is essential that the proprietor is notified that the authorised officer intends to apply for an emergency prohibition order and is aware of his rights. A notice of intention to apply application for an emergency prohibition order must be served on the proprietor at least one day before the date of the application for the order. This notice should be in the form set out in Form 3 of the Food Safety (Improvement and Prohibition - Prescribed Forms) Regulations 1991. ~~This notice gives details of the court appearance.~~

45 If the authorised officer is preparing to take action under Section 12 the council's legal advisers should be contacted ~~by telephone if possible~~ and the authorised officer should take into account any advice given. Arrangements should also be made for the magistrates' clerk office to be notified.

46 On return to the office the authorised officer should make every effort to expedite matters. ~~A stock of notices for use under Section 12 should be maintained by the food authority and if possible any such notices should be carried by the officer, if authorised to serve them.~~

47 In Scotland applications are normally made to the sheriff by the Procurator Fiscal and are governed by court procedures. The application for the order will require consultation with the Procurator since it is likely that the merits of the proposed prosecution for offences will be dealt with at that time. However it is possible for solicitors employed by food authorities ~~district councils in town clerks' departments~~ to make these applications.

Action to be Taken Prior to the Hearing

- 48 **The authorised officer should organise periodic monitoring of the premises between the service of the notice and the court hearing. This is especially important if there is likely to be a delay. The monitoring need not be carried out by the authorised officer who initiated the action or served the notice. The premises should be re-inspected shortly before the hearing (preferably the day before or on the day of the hearing itself) by the original authorised officer, if this is possible, or by an authorised officer with the relevant experience. This should also be the case if any contravention was found during the period of monitoring. In Scotland such visits should be undertaken by two officers because of the need for corroboration.**
- 49 The purpose of the re-inspection is for the authorised officer to gather information as to the current condition of the premises or equipment for the purposes of the court hearing. If appropriate more evidence may be gathered. (See Evidence Required, paragraphs 50 to 52). **The authorised officer should take particular note of any changes which have taken place since the notice was served.** For example, the circumstances which led to the service of the notice may have worsened, or other circumstances not present originally may now also pose an [imminent](#) risk [of injury](#) to health. If the authorised officer is considering bringing the attention of the court to Section 11(1) ~~in order~~ for a prohibition order to be considered, it is important that suitable evidence is gathered to produce to the court. (See Prohibition Orders paragraph 53).

Evidence Required

- 50 **The authorised officer should collect sufficient evidence to produce to the court in order to substantiate any enforcement proceedings.** The evidence required will differ for each situation and the authorised officer should use ~~his~~ professional judgement and experience to decide what is required. [In Scotland the need for corroboration will also need to be considered.](#)
- 51 **It is very important that detailed contemporaneous notes ~~should~~ be taken during the inspection in relation to matters which have been observed and in respect of which evidence may need to be given to a court. Evidence may also include sketches, photographs and videos.** Photographic evidence can be of particular value. If the authorised officer believes that photographs will assist they should preferably be taken with a polaroid type camera, or a camera which prints the date the photograph was taken on the photograph, but this is not essential. Samples may also be taken and produced in court, for example, of insects, dirt or other contaminants.
- 52 Although authorised officers need not be accompanied by a witness there may be occasions when visual reports are of particular relevance and there would be certain benefits in being accompanied by a witness. Council solicitors may advise that it is preferable for the officer to be accompanied. [An authorised officer may](#) ~~He is able to~~ take any other persons with him by virtue of Section 32 of the Act. In Scotland corroboration is essential. **If a note of an inspection is compiled for use by the officers at the end of, or during, a visit, both officers should satisfy themselves as soon as possible after the visit that it is accurate, so they may rely on it in court.**

Prohibition Orders

- 53 Following a second or subsequent inspection of premises prior to a court hearing for an offence under the processing or hygiene regulations ~~listed in the schedule of this Code~~, the authorised officer may discover that the defect giving rise to the prosecution ~~either has not been remedied, removed or has reoccurred, been removed but has reoccurred because of a managerial lapse~~. If the proprietor of the food business is convicted by the court, the authorised officer should bring the attention of the court to Section 11(1) ~~in order~~ for the court to consider a prohibition order on the premises, process or equipment. This should ~~would~~ ensure that until the required action is taken there is no ~~health risk~~ of injury to health.
- 54 Before the hearing the authorised officer should make every effort to inform the proprietor of the business, or his ~~of his~~ legal representative, ~~before the hearing~~ either by serving a written notice or, if that is not possible, orally, of the intention to draw the attention of the court to provisions relating to prohibition, ~~either by serving written notice of the intention or if that is not practicable orally~~. Any evidence available to the food authority should be disclosed to the proprietor or ~~his~~ legal representative before the hearing.
- 55 In Scotland, the prosecution is conducted by the Procurator Fiscal. It would be necessary for the authorised officer to alert the Procurator Fiscal to the possibility of using Section 11(1) and thereafter rely on the Procurator Fiscal to bring the sheriff's attention to the matter in such a way that a prohibition order may be granted.

PROHIBITION OF A PERSON

Circumstances Which May Lead the Court to Consider Prohibition

- 56 In extreme circumstances where the proprietor or manager of a food business has been convicted of an offence, the authorised officer may consider ~~feel~~ that the proprietor or manager should be prohibited from participating in the management either of any food business, or of a specified food business. ("Manager" in relation to a food business means any person who is entrusted by the proprietor with the day-to-day running of the business, or any part of the business.) Relevant circumstances may include repeated serious offences such as failure to clean, failure to maintain equipment, blatant disregard for health risks or putting the public at risk by knowingly using unfit food.

Information to be given to the Court

- 57 In such circumstances, the prosecution should draw to the attention of the court the power contained in Section 11(4) to prohibit a person if the court thinks this proper. There may be a need for authorised officers to attend court even when a guilty plea is entered, in order to assist the court to make a decision. In Scotland it is essential for authorised officers to attend court to advise the Procurator Fiscal and to provide any further evidence or opinion the court may require.
- 58 It is important that any information which might assist the court in considering such action is provided, ~~given to the court~~, should the court wish to make use of it.
- 59 It is not for the authorised officer to "recommend" such action to the court. This is because to impose a prohibition on a proprietor or manager is in the nature of a penalty and it is never the

practice of the prosecution to apply to the court to impose any particular form of penalty.

60 Information which may be required could be:

- (a) the state of the premises or equipment both at the time of the offence and at the time the premises were re-visited prior to the hearing;
- (b) evidence that the proprietor or manager had been involved in the commission of offences elsewhere which tended to show weaknesses in management (the authorised officer may have to investigate to ascertain whether the proprietor or manager has been involved in convictions at previous food premises and what these convictions were for). It is usual practice for those prosecuting to ascertain whether there have been any previous convictions or cautions and to obtain details for presentation to the court in the event of the prosecution being successful.

Action when a Prohibition Order has been made

61 For the prohibition of a person to be fully effective, other authorities should be notified as the individual concerned may try to start a business in another area. Therefore, as soon as the prohibition of a proprietor or manager takes place the food authority should notify [LACOTS](#) ~~the Institution of Environmental Health Officers (IEHO)~~, supplying the following information - the information given by the prosecution which led to the court imposing the prohibition, the name and address of the person concerned and any name which the person has admitted using in the past, the reasons the prohibition was imposed (if known) and the address of the premises where the offences occurred. In certain circumstances it may be useful to include a physical description of the person, for example, in the cases of a persistent offender known to use assumed names.

62 It is essential that the food authority should similarly notify [LACOTS](#) ~~the IEHO~~ when they learn of any such prohibition being lifted by a court in their area. [LACOTS will arrange for the notification of other authorities.](#)

~~63 The IEHO will arrange for the notification of other authorities (including Scotland) and will contact the Local Authorities Co-ordinating Body for Trading Standards (LACOTS) so that authorities at county level are also aware of the prohibition.~~

64 If a prohibition of a person takes place in Scotland, the Scottish authorities should notify [the Scottish Food Co-ordinating Committee \(SFCC\)](#) who will in turn notify [LACOTS](#).

Affixing the Notice or Order on the Premises

65 Sections 11 and 12 direct that as soon as practicable after the making of an order or the service of a notice a copy of the order or notice should be affixed in a conspicuous position on the premises by the food authority. The purpose of this display is to inform the public - which for this purpose includes anyone who may use the premises or equipment - why a premises is [prohibited from use as a food business](#) ~~closed~~ or a process or piece of equipment [is](#) prohibited.

66 An authorised officer of the authority, either a qualified environmental health officer or some other authorised officer capable of explaining the meaning and importance of the notice, should take this action. The officer need only be accompanied by a witness if required by the authority.

The authorised officer who initiated the action need not necessarily be involved. A witness is required in Scotland.

- 67 **The authorised officer should if possible firmly affix the document inside the premises but in a position where it can clearly be seen and read by members of the public from the outside. A preferable position would be on the inside of the glass of a front display window.**
- 68 If such a position is unavailable the officer should use professional judgement as to the best place available and if necessary affix a second copy of the document to the outside of the premises making sure, as far as possible, that it is protected from the weather and possible vandalism.
- 69 The document should be placed at about eye level.
- 70 **The food authority should arrange for periodic checks to be made on the document to establish that it is still there.** ~~If it has been removed or defaced, appropriate action should be taken—see Unauthorised Removal or Defacement of Notices or Orders, Paragraphs 71 to 75.~~

Unauthorised Removal or Defacement of Notices or Orders

- 71 The Act makes no specific reference to defacing or removing a prohibition order, an emergency prohibition order or an emergency prohibition notice. This issue is, however, ~~already~~ covered by other legislation.
- 72 Section 1 of the Criminal Damage Act 1971 makes it an offence for any person to destroy or damage property belonging to another without reasonable cause. As an emergency prohibition notice is the property of the food authority. **If the authorised officer discovers that a notice has been removed or defaced he should replace it ~~the notice~~ as soon as possible, and consider starting proceedings for criminal damage.**
- 73 Section 63 of the Magistrates' Courts Act 1980 enables a court making an order to make provisions ancillary to it, such as requiring that the order should not be defaced or removed. The breach of such a requirement is punishable by a ~~£2,000~~ £5,000 fine or a fine of £50 per day where the breach continues after there has been a court decision about the breach, or two months imprisonment in either case. **The authorised officer should ask the court at the time of the making of an order to make provisions ancillary to it under Section 63 of the Magistrates Courts Act 1980.**
- 74 **Where an order has been removed or defaced the officer should start proceedings under Section 63(3) of the Magistrates' Courts Act 1980 for breach of ~~disobedience to~~ the court's requirement that it should not be removed or defaced.** Such proceedings can be started by making a complaint in writing to the court, stating when the order was made, what its terms were and how a requirement of the order had been broken.
- 75 The legal position in Scotland is quite different. ~~Section 78 of the Criminal Justice (Scotland) Act 1980~~ Section 52 of the Criminal Law (Consolidation)(Scotland) Act 1995 (like the Criminal Damage Act 1971 for England and Wales) makes it an offence for any person to damage or destroy the property of another without justifiable cause. Any person therefore who removes or defaces a notice, which is the property of the food authority, will be guilty of an offence. If the offence is prosecuted in the district court the culprit is liable to a fine of up to £1,000 or

imprisonment of up to 60 days, or both. If the offence is prosecuted in the sheriff court, the culprit is liable to a fine of up to ~~£2,000~~ £5,000 or imprisonment of up to 3 months, or both for a first offence. In such event, the person responsible, who may or may not be the proprietor, could be liable ~~lay himself open~~ to criminal proceedings. **If a notice is removed or defaced in Scotland the authorised officer should report to the Procurator Fiscal. The authorised officer should ensure that the Procurator Fiscal is fully appraised of the significance of the notice and the potential consequences for the public if it is removed or defaced, otherwise he may not seek to prosecute what might be considered a case of petty vandalism.**

Lifting the Notice or Order

- 76—~~On a~~ An application in writing by the proprietor to the food authority for a certificate lifting an emergency prohibition notice or order or a prohibition order must be dealt with as soon as reasonably practicable and in any event within 14 days. The authorised officer should re-visit the premises as soon as possible ~~to and determine as soon as is reasonably practicable or in any event within 14 days~~ whether or not he is satisfied that the risk of injury to health no longer exists.
- 77 The decision to issue ~~a~~ the certificate that there is no longer a risk to health should be made by the authorised officer who initiated the action if this is possible, or by an authorised officer with the relevant qualifications and experience.
- 78—~~If the authority is of the opinion that the health risk condition has been removed, a~~ Arrangements should be made for the food authority to issue the certificate (under Section 12(8)) as quickly as possible or in any event within 3 days from the date the decision was made. It ~~The certificate~~ may be issued by fax. The certificate should be in the form of Form 4 of the Food Safety (Improvement and Prohibition - Prescribed Forms) Regulations 1991. An arrangement may be made between the authority and the proprietor to allow the premises to resume operating as a food business ~~re-open~~ immediately.
- 79 If the authorised officer is of the opinion that the risk of injury to health ~~health risk condition~~ has not been removed, the food authority must, within 14 days of the date of the proprietor's application, issue a notice of continuing risk to health, ~~arrangements should be made (under Section 12(9)(b)). The notice should be in the form set out in Form 5 of the Food Safety (Improvement and Prohibition - Prescribed Forms) Regulations 1991 and must include the reasons why the food authority is not satisfied that the risk of injury to health has been removed.~~ ~~for the food authority to issue a notification of continuing risk to health as quickly as possible. The notification requires the authority to give reasons why it is not satisfied that the health risk condition has been removed.~~
- 80 **The certificate lifting an emergency prohibition notice may be issued prior to the date of the hearing or the application for an emergency prohibition order but the proprietor may still be prosecuted for an ~~the~~ offence under appropriate food hygiene or processing regulations. The food authority should ensure that the court is informed in this situation.**
- 81 A prohibition order on the proprietor or manager of ~~a~~ the food business can only be lifted by the court.

Official Removal of Notices or Orders

- 82 A notice is the property of the food authority, and technically the authority should be responsible for removing it once it is no longer required.
- 83 In practical terms it ~~does~~ would not matter who ~~removes~~ removed the copy of the notice from the premises as long as an agreement ~~is~~ has been reached between the proprietor and the authority on who ~~is~~ was to be responsible for the removal, so as to avoid possible charges under the Criminal Damage Act 1971, or the Criminal Justice (Scotland) Act 1980.
- 84 Similar considerations may be applied to the removal of a copy of an order from the premises, for although an order is issued from a court it is the authority who issues the certificate which lifts the order.
- 85 Again it ~~does~~ would not matter who ~~removes~~ removed the copy of the order as long as a similar agreement ~~is~~ was reached so as to avoid possible proceedings under the Magistrates Courts Act 1980, or the Criminal Justice (Scotland) Act 1980.

Breach of a Notice or Order

- 86 A person who knowingly contravenes a prohibition order is guilty of an offence under Section 11(5) and a person who knowingly contravenes an emergency prohibition notice, or an emergency prohibition order, is guilty of an offence under Section 12(5) or 12(6).
- 87 The authorised officer should start proceedings for the offence under the appropriate Section by laying information before the magistrates court. In Scotland the authorised officer ~~should~~ would submit details of any contravention to the Procurator Fiscal who ~~will~~ would decide upon an application to the sheriff.
- 88 If the authorised officer believes that there is sufficient evidence to show that the proprietor is unlikely to respond to a summons, application should be made for a warrant rather than a summons. The court will decide if the circumstances justify this action and may ask the authorised officer for ~~a~~ his view as to whether to endorse the warrant with bail. The authorised officer should use ~~his~~ professional judgement and take into account all relevant circumstances in his decision. In Scotland the Procurator Fiscal ~~will~~ would seek an arrest warrant if a summons ~~is~~ was ignored.
- 89 The food authority should make contingency arrangements with its legal department so that in the event of the breach of a notice or order there is no delay in making an application before the court.

Appeals Procedure

- 90 Under Section 37 of the Act any person who is aggrieved by a decision of a food authority to refuse to issue a certificate that there is no longer a risk to health may appeal by way of a complaint to the magistrates' court (or in Scotland to the sheriff). The time limit for such appeals is one month from the date when the authority gave notice of their refusal to lift the prohibition.
- 91 **It is essential that the recipient of a notice of refusal clearly understands that he has the right of appeal. The food authority should give the recipient ~~The recipient should be given by the food authority,~~ the name and address of the local magistrates court or the local sheriff court ~~Procurator Fiscal~~ for the district concerned.**

92 The authorised officer should always be able to provide suitable evidence as to why the order or notice could not be lifted in any particular case.

93 **The authority should endeavour to resolve the appeal as quickly as possible by agreeing to an early court date, if this is suggested by the person seeking to appeal. Clearly opportunities to negotiate before the hearing date should not be overlooked.**

Compensation

94 Food authorities will be aware that compensation may be payable to the proprietor if the action of the authority is held by the court to have been unjustified. Section 12(10) relates to compensation payable in certain circumstances when an emergency prohibition notice has been served.

95 Compensation is payable in respect of "any loss" which is directly attributable to the wrongful service of the notice. The authority may assess the amount of compensation due taking into account (among other things) the following aspects where applicable:

- (a) the length of time the process or treatment was halted or the use of premises or equipment was prohibited and for what purpose;
- (b) loss of trade;
- (c) value of spoiled food;
- (d) loss of goodwill;
- (e) loss of wages;
- (f) how much of the damage to trade is repairable;
- (g) obligation of the proprietor to mitigate his own loss;

or, if the proprietor of the business is agreeable, a loss adjuster may be called in.

96 **If there is disagreement between the proprietor and the food authority concerning the amount of compensation then the food authority should seek to resolve this informally by arranging a meeting between ~~themselves~~ itself and the proprietor.**

97 If no agreement can be reached arbitration should be applied for. Both the authority and the proprietor have the right to refer the matter to arbitration. In Scotland, the sheriff may appoint a single independent arbiter to resolve disputes over the right to or value of compensation (in England the procedure is governed by the Arbitration Acts).

File Records

98 A copy of each voluntary agreement, Emergency Prohibition Notice/Order should be retained for at least 2 years unless required for longer retention because of litigation or local ombudsman review.

