Chapter 7
Enforcement

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1. Introduction

1.1 Purpose

1.2 Relevant references

1.1 Purpose

1.1.1 FSS enforcement role
These enforcement arrangements apply to all meat establishments approved in Scotland and under veterinary control.

Enforcement action is taken in accordance with the FSS enforcement policy (see Annex 2)

1.2 Relevant references

1.2.1 Authorised Officers (AOs)

Authorised Officers (AOs) involved in enforcement activities must bear in mind the definitions contained within the various pieces of legislation.

1.2.2 Plant management

Proprietor: Under the Food Safety Act, Section 53 (1) in relation to a food business, means the person who carries out the business.

1.2.3 Food Business Operator (FBO)

Food Business Operator means the natural or legal persons responsible for ensuring that the requirements of food law are met within the food business under their control.


1.2.4 Court

References to “court” should be taken to mean, the Sheriff’s Court in Scotland.

1.2.5 Justice of the Peace

References to the “Justice of the Peace (JP)” should be taken to mean, Sheriff or Magistrate in Scotland.
1.2.6 Duly authorised representative

Duly authorised representative is a responsible person who has the authority to act on behalf of the FBO.

1.2.7 Legal definitions

Most legislation includes a definition section that provides guidance on many of the phrases contained within it.

The table below identifies where this guidance can be found in the main pieces of legislation that we enforce.

<table>
<thead>
<tr>
<th>Legislation</th>
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<tr>
<td>(EC) 178/2002</td>
<td>Articles 2 and 3</td>
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<tr>
<td>(EC) 1099/2009</td>
<td>Article 2</td>
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<tr>
<td>The Food Safety Act 1990 (as amended)</td>
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<tr>
<td>All domestic regulations, for example, the Food Hygiene (Scotland) Regulations, the TSE Regulations, Animal By-Product (Enforcement) Regulations, the Welfare of Animals at the Time of Killing Regulations</td>
<td>Regulation 2 “Interpretation “</td>
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1.2.8 Guidance documents

- EU Commission Guidance on Implementation of HACCP
- EU Guidance on Key questions relating to import requirements
- EU Commission Staff Working Document on the understanding of certain provisions on flexibility provided in the Hygiene Package
- EC 2073/2005 Microbiological Criteria for Foodstuffs
- Food Law Code of Practice and Practice Guidance
- Meat Industry Guide (MIG)
- Industry Guide on Edible Co-products and Animal By-products
- Food Safety Management Diary for Meat Producers
- The Wild Game Guide and Photo Annex
2. Legislation, Enforcement Roles and Provisions

2.1 Legislation and enforcement provisions


2.1.2 Code of Practice

The “Food Law Code of Practice and Practice Guidance” have been issued under:

- Section 40 of the Food Safety Act 1990 (as amended)
- Regulation 24 of the Food Hygiene (Scotland) Regulations 2006, and
- Regulation 6 of The Official Feed and Food Controls (Scotland) Regulations 2009

To provide guidance for food authorities on enforcement issues under the legislation. Whilst FSS is not a food authority, it is an enforcement authority and the principles set out in the Code have been mirrored in this chapter.

2.1.3 Requirement to enforce

Each Member State (MS) must enforce food law by monitoring and verifying that relevant legislative requirements are met through a system of official
controls and other activities. It is for each MS to lay down the rules on measures and penalties to be applied when infringements of food law are detected.


When the competent authority identifies non-compliance, it shall take action to ensure that the operator remedies the situation. When deciding which action to take, the competent authority shall take account of the nature of the non-compliance and the operators past record with regard to the non-compliance; Regulation (EC) No 882/2004, Article 54.

Food law includes all statutes, regulations and administrative provisions governing food in general, and food safety in particular, whether at Community or national level. It covers all stages of production, processing and distribution of food, and also of feed produced for, or fed to, food-producing animals.

2.1.4 Enforcement provisions

EC Regulations are directly applicable in all Member States. They detail both the legal requirements the FBO must comply with, as well as official controls that must be performed by the competent authority.

They do not, however, specify the powers of an authorised officer, time limits to bring a prosecution or the split in enforcement responsibilities between different agencies enforcing the same piece of legislation.

Each MS must separately introduce national implementing legislation providing enforcement powers, setting out offences for failure to comply with the European Regulations and to establish the administrative system by means of which non-compliances by FBOs (individuals or companies) can be brought before the courts.

2.1.5 General principles

Regulation (EC) No 178/2002 sets out the general principles and requirements of food law, establishes the European Food Safety Authority (EFSA) and lays down procedures in matters of food safety. It contains:

- definitions (of food, food business operator, and other terms)
- basic principles – FBO responsibility for food safety
- traceability requirements
- EFSA to provide independent scientific opinion: http://www.efsa.europa.eu/
2.1.6 Official controls

Regulation (EC) No 882/2004 sets out the official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare.

Key points covered are:

- organisation of official controls
- crisis management
- imports from third countries
- financing / charges
- national enforcement measures
- community controls – for example, FVO audits

2.1.7 EC Hygiene regulations

The hygiene regulations include:

Regulation (EC) No 852/2004 dealing with the hygiene of foodstuffs.

Key points:

- applies to all food businesses
- looks for good hygiene practice and HACCP based procedures
- concept of industry guides


Key points:

- requirements beyond Regulation (EC) No 852/2004 for food of animal origin
- approval of meat premises
- identification marking
- objectives of the HACCP based procedures
- food chain information


Key points:

- nature of official controls – for example, inspection, verification, auditing
- role of OV and MHI and trained, qualified operatives, and
control on imports

Regulation (EC) No 2073/2005 on microbiological criteria for foodstuffs

Regulation (EC) No 2075/2005 laying down specific rules on official controls for Trichinella in meat

2.1.8 Amendments

EC Regulations are amended periodically and it is important that the original published versions are read in conjunction with any amendments.

Note: It is suggested that users ensure that they access the latest version of the EC Regulations by checking at: http://eur-lex.europa.eu/en/index.htm or Volume 2 of the MOC, which contains recently, published consolidated versions of all EC Regulations.

2.1.9 Domestic regulations

The domestic regulations include:

- The Food Hygiene (Scotland) Regulations 2006 – as amended


- The Official Feed and Food Controls (Scotland) Regulations 2009 - as amended

  Note: These provide enforcement powers in respect of the obligations that apply in Regulation (EC) No 882/2004.

- The General Food Regulations 2004 (Scotland):
  - Provide enforcement powers in respect of the obligations that apply in Regulation (EC) No 178/2002. For example:
    - Article 14 “the food safety requirements”.
    - Article 19 “recall, withdrawal and notification requirements”

Note: Domestic Regulations are amended periodically and it is important to read the original text in conjunction with the amendments. Consolidated versions are available in Volume 2 of the MOC.

2.1.10 Meat Industry Guide compliance

Use of the “Guide to Food Hygiene and Other Regulations for the Meat Industry” “Meat Industry Guide” (MIG) by an FBO is voluntary. However, where an FBO fails to follow good hygiene practices described in the guide, they would need to demonstrate to the competent authority’s satisfaction that
they have nevertheless complied with all legal requirements in the Hygiene legislation.

Failure to follow the guide or a suitable alternative (agreed with the OV) that achieves the same outcome may prevent the FBO from being able to rely upon a statutory due diligence defence if the non-compliance resulted in a prosecution.

2.2 Premises Files

2.2.1 File contents

A premises file must be maintained by the OV at all slaughter establishments supervised by the FSS. This should include details of the plant approval, the FBO responsible for potential offences, all correspondence in date order, copies of all letters, formal notices, minutes of meetings, accounts of telephone conversations and informal notes taken. These documents can be stored both as hard copies in the FSS office, or/and as electronic documents, in the plant’s folder on SharePoint, as agreed between FSS and the SDP.

Letters, formal notices and other correspondence served on FBOs of non-slaughter establishments must also be retained in the SharePoint electronic folder allocated to that premises.

Audit reports are uploaded by FSS audit team in the relevant plant folder on SharePoint.

2.2.2 Security

The premises file and all enforcement literature must be kept secure at all times. When not being referenced or updated, the premises file should be kept in a locked filing cabinet. It will contain evidence that may be required at a later date, together with additional unused material that the prosecution lawyer may have to disclose should a case go to trial.

2.3 Division of enforcement responsibilities

2.3.1 FSS enforcement responsibilities

- Red meat slaughterhouses (cattle, pigs, sheep and goats, domestic solipeds, large farmed game, ratites)
- White meat slaughterhouse (poultry, lagomorphs, farmed game birds)
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- Game handling establishments (wild game dressing and cutting)
- Standalone cutting plants
- Establishments approved as “slaughterhouses “for activities limited to the dressing of carcases.
- Any of the following where co-located with a slaughterhouse, cutting plant or game handling establishment:
  - minced meat establishment
  - meat preparation establishment
  - mechanically separated meat establishment
  - processing plant (for meat products, rendered animal fats and greaves, treated stomachs, bladders and intestines, gelatine and collagen)
  - re-wrapping and/or re-packaging establishment
  - cold store

2.3.2 Local authority enforcement responsibilities

- Hunters supplying small quantities of wild game or wild game meat directly to the final consumer / local retailers
- Primary production of wild game carcases by hunters, including game larders they operate
- Producers supplying small quantities of meat from poultry and lagomorphs slaughtered on farm directly to the final consumer / local retailers
- Butchers’ shops (retailing meat to the final consumer or exempt under marginal, localised and restricted)
- Any of the following not co-located with slaughterhouses, cutting plants or game handling establishments:
  - meat preparations establishment
  - minced meat establishment
  - mechanically separated meat establishment
  - processing plant (for meat products, rendered animal fats and greaves, treated stomachs, bladders and intestines, gelatine and collagen)
  - cold stores where no cutting of meat is taking place
- Premises manufacturing composite products containing meat and other edible co products
- Collection centres and tanneries that handle raw material for the production of collagen and gelatine
Where an approved meat establishment subject to veterinary control is also handling other POAO, FSS in liaison with the relevant LA will consider approving all operations requiring approval under Regulation (EC) No 853/2004 that are co-located. This is with the exception of operations that fall under Regulation (EC) No 852/2004 only, such as butcher’s shops and where the establishment is also handling non-POAOs. The parts of the establishment where these operations are carried out will be under the control of the LA.

Wherever possible dual responsibility for the official controls should be avoided but the parts of the establishment where activities covered by Regulation (EC) No 852/2004 only are carried out will be under the control of the LA. The LA must reach agreement with the FSS Veterinary Manager as to the split of enforcement responsibilities and refer to this in their approval recommendation for inclusion in the approval document.

2.4 Communication with FBOs

2.4.1 Communication channels

Effective communication is essential when guiding an FBO on compliance with legal requirements as well as best practice.

The majority of day-to-day compliance can be achieved through verbal discussion.

The OV should work with the FBO to establish agreed lines of communication between the FSS and the FBO and their staff.

It is also important that contingency arrangements exist to avoid difficulties when the FBO’s normal contact person is unavailable.

2.4.2 FBO contact details

The OV must have available at the establishment the contact details for the FBO. For example:

- full name(s)
- address(es)
- telephone numbers and when possible email addresses
- full limited company name and registered office address

http://wck2.companieshouse.gov.uk//wcframe?name=accessCompanyInfo
Where any ownership, legal status or approval details change at an establishment, the FBO is obliged to pass this information on to the competent authority:

_The FBO shall ensure that the competent authority always has up to date information on establishments, including the notification of any significant change in activities and any closure of an existing establishment._


This information should subsequently be provided to:

- FSS Finance
- FSS Operations Approvals and Certification Team, and to
- The Inspection team at the plant.

This will ensure that the OV is always aware of the legal entity responsible for any potential offences within the establishment, whether they are a sole trader, partnership or limited company.

### 2.4.3 Key communication functions

The OV is responsible for:

- advising the FBO on compliance with legal requirements, although the OV must refrain of imposing the FBO the measures on how to get compliance with legal requirements.
- advising the FBO on corrective actions when infringements of legal requirements have been detected.

### 2.5 Recording and monitoring enforcement actions

#### 2.5.1 Systems Based Enforcement (SBE)

SBE offers an opportunity to address the root cause of a multitude of recurring issues across all Systems.

**2.5.1.1 Core Principles of SBE**

a. The whole team (including MHI’s) is responsible for daily recording of issues and non-compliances. Each system will be on a separate page of the Intervention Log (IL) and pages numbered per system. Individual entries will also be numbered. Entries will be made in the appropriate section. The systems are as follows:

i. Animal Health & Identification
ii. Animal Welfare
iii. Cross-contamination
iv. Temperature controls
v. Micro testing
vi. Traceability
vii. Labelling
viii. HACCP
ix. Cleaning
x. Structure and Maintenance
xi. Staff Training
xii. Staff Supervision
xiii. Waste Management
xiv. Pest Control
xv. Water Quality
xvi. Personal Health & Hygiene

b. Entries to the IL are made by all team members and this log effectively provides a summary of all evidence gathered. There is no need for duplication of details in the daybook, a cross-reference will suffice (i.e. “see Day Book”).

c. Adequate lines of communication within the FSS Team will be established in each Approved Establishment. This is to avoid different team members raising the same non-compliance with the FBO and possible inconsistencies in advice or deadlines. All non-compliances recorded in the IL must be discussed with the FBO by the team member raising the issue. This is to avoid having entries on the IL without the FBO being notified. The team member should also provide on the IL entry an agreed deadline along with the details of any evidence gathered.

d. The team will agree on where it is more practical for the IL to be held during operational hours (e.g. on the production line or in the office).

e. The IL should be reviewed at the monthly meeting with the FBO, as a minimum.

2.5.1.2 Guidance on use of SBE related documents

a. The OV should check the IL daily and discuss entries with the Team.
b. All recorded interventions from the IL should be risk assessed by the OV/NOV using both professional judgement and a risk matrix if necessary, to decide upon appropriate escalation to the ENF 11/5.
c. On the IL a comment regarding the risk assessment (as per section 5.3 of this Chapter) can be recorded in the “Action taken by FSS (including risk assessment)” column as necessary.
d. Escalation to the ENF 11/5 could occur if:
i. A single intervention is considered to be sufficiently high risk. Escalation of a such non-compliance should be immediate, and an entry should also be recorded on the IL page for the appropriate and the most relevant system (where a non-compliance could be included in several systems).

ii. Multiple lower/medium risk non-compliances are taken as being indicative of a potential systems-based failure. These should be escalated on the ENF 11/5 as a system failure (rather than on their own).

iii. In cutting plants all non-compliances are recorded directly on the ENF 11/5. Currently, since we do not have daily presence in the CPs, AOs should record identified non-compliances on the ENF 11/5.

e. Where the non-compliance is escalated to the ENF 11/5, a reference number will be allocated to the IL entries to indicate which entry it relates to on the ENF 11/5. In addition, the system, page number and entry number from the IL will be entered in the ENF 11/5 reference.

f. FBO must be informed by the OV of all non-compliances escalated to the ENF11/5 and the action needed to rectify them, with agreement as to a date by which compliance should be achieved.

2.5.1.3 Guidance on use of reference numbers under SBE

a. When an issue is escalated to the ENF 11/5, the sequential reference number allocated to it on the ENF 11/5 must also be added to the appropriate column on the IL for all entries which contributed to the escalation. This will act as a cross-reference to maintain the evidential chain. In addition, the IL entry page and line number should be entered on the ENF 11/5.

b. Potentially multiple non-compliances from different systems, entered on the IL could generate different entries on the ENF 11/5. These could escalate on their own merit (if serious), or as part of a system (if low risk, but repeated across one or more systems – such as an entry escalated for contamination, and the associated training and supervision failure). In this case, each additional reference number generated on the ENF 11/5 must also be entered against the contributing entry in the reference column on the IL. One IL entry could therefore have multiple ENF 11/5 cross-references.

c. As an additional cross-reference, the sequential row number allocated on each system page of the IL to any intervention should be entered on the resulting ENF11/5 entry. This will enable the OV and MHI team to be clear on which entries from the IL are considered on the ENF 11/5.
2.5.2 On-going enforcement action and escalation

When attending any establishment either on a temporary basis or routinely, the incumbent OV or Veterinary Auditor must:

- familiarise themselves with all on-going enforcement action – an up to date document will be available on the FSS SharePoint platform, in the plant’s folder.
- maintain the momentum of existing enforcement action, follow-up on progress and, if agreed deadline for completion has passed, either close off or escalate.
- Enforcement must be escalated in line with the enforcement hierarchy.
- A note should be made on the “Action taken by FSS” section of the IL summarising the course of action followed and/or outcome.
- It is recommended that on the ENF 11/5 the agreed completion date for the entire system should at least cover the deadlines given to the individual issues, hence only when all matters have been addressed, can the entire system entry be closed off.
- The IL also includes the judgement used to complete the previous ENF 11/29 (Risk Assessment) document, which became redundant with the introduction of SBE and the IL.

2.5.3 Completing the enforcement programme

The responsibility to update the enforcement programme in slaughterhouses, co-located cutting plants and Game Handling Establishments lies on the OV on duty at those premises.

The responsibility to update the enforcement programme in standalone cutting plants lies on the Authorised Officer (OV or MHI) attending the premises. The MHI must liaise with the OV responsible for those premises to discuss non-compliances and enforcement action.

The OV will also be responsible to update the enforcement programme/ Intervention Log (as applicable) of any premises with the non-compliances identified by FSS Auditors during the course of the FSS Audit. A list of non-compliances will be sent by the auditor following the audit.

The enforcement programme should be a “live” form, updated as necessary every time enforcement action is taken and the up to date electronic version should be stored in the plant’s FSS SharePoint folder.

Some non-compliances may be of a recurring nature (solved once corrective action is requested but re-appear shortly afterwards). In order to
demonstrate continuity of enforcement action, and, if necessary, prove repeated non-compliance in cases referred for investigation, such deficiencies should be entered under the same reference number. In electronic forms, the additional entries can be made on subsequent lines of the same box, underneath the original entry.

2.5.4 HACCP based non-compliances

Where numerous contraventions are observed in an area and these are the result of the FBOs failure to have effectively implemented and maintained their food safety management systems, the entry made in the enforcement programme to evidence the escalation of the HACCP failure should be linked back/ cross referenced to the individual non-compliance(s) in the appropriate themed area of the enforcement programme to evidence cause and effect. Enforcement action on HACCP based failures should be escalated in parallel to the non-compliance that results from its failure to show cause and effect.

2.6 Guidance on completion of enforcement programme

2.6.1 Reference number

The AO should enter the plant number, followed by the last two digits of the year, and a sequential number for each deficiency (for example: 9999/17/001, 9999/ 17/002, 9999/17/003).

These numbers should correlate with the reference number for any written (formal or informal) enforcement and they should be included in full.

NOTE: please also see section 2.5.1.3 above, detailing the cross references between the ENF 11/5 and ENF 11/8 (Intervention Log).

2.6.2 Regulation reference and deficiency

The AO should:

- state the legal provisions that have been breached
- give a short description of the deficiency
- note the system/s breached such as training, pest control, maintenance, cleaning etc., if deemed as failing.

2.6.3 Action required

The AO must detail any action the FBO must take in order to satisfy the requirements of the legislation.
2.6.4 **Agreed completion dates**

The AO must insert the date agreed with FBO management for the correction of the deficiency, or the date for compliance specified in any formal notice.

If the FBO management does not agree to a completion date, the AO must insert the date they consider appropriate for completion and indicate that it was “not agreed”. Any letters should also include this date.

The date should be used as a milestone. Where compliance has not been achieved by the due date, the FBO should be reminded of the issue and enforcement action may require escalating to the next stage in the hierarchy.

When agreeing or setting completion dates, a reasonable deadline for the rectification of each deficiency should be agreed. The deadline should be realistic to allow the FBO to rectify the deficiency, whilst still considering the risk to public health.

2.6.5 **Detention notice served and withdrawn**

The AO should specify the date on which a formal detention notice (ENF 11/1 or ENF 11/26) has been served on the FBO. It is essential that the issue for which the food is detained is monitored, paying particular attention to the 21 day time limit for a Food Safety Act detention.

Where the AO is satisfied that the food can enter the food chain, they should insert the date on which the detention notice is lifted, below the date on which it was served.

If, as a result of the examination/ investigation, the AO does not wish to release the meat for human consumption, they must insert “Not Released” under the date the notice was served. This is to indicate the action taken and to verify that the detained food has not been forgotten about.

2.6.6 **Date compliance achieved**

Record the actual date that compliance was achieved, even if it was the same day that enforcement action was taken.

2.6.7 **Structural work**

Where structural work must be undertaken, the “corrective action “ section of an advisory letter or Hygiene Improvement Notice (HIN) should be specific enough to explain the legal requirement and the outcome to be achieved, without being too prescriptive about the exact way in which this must be achieved.
There may be many ways that the FBO can achieve compliance, but provided they comply with the legal requirement, they have the option to do the work in the way that they see fit, or to carry out equivalent work.

2.6.8 Monitoring progress

The AO should regularly monitor progress towards compliance to identify whether the deficiency is likely to be rectified within the agreed time scale. If necessary, they should ask to see evidence of how corrective action is progressing, for example, planning permission application/ copies of quotes for work/ structural plans.

Where the work does not progress at the agreed rate, the AO should escalate the matter and consider serving a HIN to formalise a suitable time scale, thereby maintaining the momentum in enforcement.

However, it is important that an agreed action plan is set out at the start and that the AO takes a reasonable approach where certain issues arise that are outside the FBOs control.

2.7 Gathering and preserving evidence

2.7.1 Introduction

The AO must gather evidence at the time the offence is witnessed, making detailed contemporaneous notes, which at a later stage could be relied upon in Court. It may be impossible to gather evidence retrospectively as it may no longer exist. Evidence may come in a variety of forms and must supplement a witness statement as an exhibit in order that it may be admissible in court. It is always advisable and useful to obtain corroboration and assistance from other members of the Inspection Team.

Detailed evidence gathering at the time of the offence will provide the AO with as much material as possible to support their witness statement and prove the elements of the offence.

Note: Look after evidence – keep it secure. It is fundamental to proving the offence should formal action be pursued.

2.7.2 Best evidence rule

The AO should also have regard to the “best evidence” rule. Whenever possible, any original items of evidence should be preserved, for example, the original form of a document, rather than a photocopy. If the evidence is a part of a carcase, SRM or a broken limb, it should be preserved by the AO (for example by freezing).
When using a serial, barcoded evidence bag provided by FSS, the AO should email the number used and details of the evidence stored to FSS Investigations:

investigations@fss.scot

A central log will be kept by FSS (Food Crime and Incidents Unit) for all evidence secured in serial bags. In addition, for cross-reference purposes, a locally held in-plant log should also be kept.

OVs should ensure serial bags are in place in all plants and there is a lockable facility for their storage. The OM should be contacted if a re/supply is required.

The procedure when an AO uses an evidence bag is to complete their local register and then email FSS Investigations (investigations@fss.scot) informing of the reference number and reason for use. Arrangements will then be made to update Master spreadsheet held centrally.

Note: evidence bags should be used mainly for gathering evidence for referrals for investigation; however, it has been agreed AOs can secure evidence for any other purpose when necessary (best evidence) but should always follow the protocol above.

If it is not practical or not possible to preserve the evidence, at the plant, for example, if perishable goods are involved and no facilities are available to freeze the product, the AO should contact their OM and follow the protocol detailed in Annex 11 of this chapter on Maintaining Integrity of Evidence during Transport.

The FBO should also be given the opportunity to have the evidence examined by an expert before destruction.

The AO may also wish to consider taking photographs and/or sample evidence before perishable goods are destroyed. If there is doubt about what evidence should be retained, the AO can obtain further advice from FSS Legal, through the agreed communications channels: for OVs AVM in the first instance, for FSS employed MHIs: the area FSS VM.

Proceedings in Scotland: Corroboration

The law in Scotland requires every fact relevant to the proof of the offence to be corroborated by another independent source of evidence, ideally two separate witnesses. This means that the first witness is the AO taking the enforcement action, plus one additional witness. Each witness should have full knowledge of the matter and not be influenced by, or reliant on, the other for recollection of facts. Once the offence has been established by the AO,
both the AO and the other witness should subsequently take part in all aspects of the evidence gathering process.

2.7.3 Note taking

When gathering evidence, remember to record the details of any other persons present, to identify all potential witnesses in the case. This will enable corroborative witness statements to be taken; or for the investigating officer to test the strength of the evidence overall.

The AO should make full use of their pocketbook to make factual contemporaneous notes. These may be referred to in court to help recollect facts and figures that are impossible to recall in detail after the event.

Note: In court, a witness is able to refer to contemporaneous notes recorded in their pocketbook that were made either at the time of the incident or at a later time whilst the events were still fresh in their memory.

However, witnesses are not permitted to read from their witness statement when giving evidence, except in certain limited circumstances.

Note: Where an officer refers to their pocketbook when giving evidence in court, the defence is entitled to see that notebook.

2.7.4 Use of FSS Official Pocketbook

The pocketbook is essential for recording details of incidents at times when the plant daybook is not readily available. The pocketbook is an Aide Memoir for the AO. For example: where an incident occurs away from the FSS office or in non-slaughter establishments where no daybook exists and where detailed facts need to be recorded immediately. The use of the pocketbook is not to replace the plant daybook for recording day-to-day activities, but should supplement completion of the daybook.

2.7.5 Important points

Pocketbooks may be inspected in court; therefore the following guidance must be followed to maintain validity:

- Record name on front cover, designation and date started.
- Make all entries with ink or ball pen.
- Include only original entries and do not copy notes from elsewhere.
- Record the date and time at commencement, and upon completion.
- Enter the notes at the time incident is witnessed or as soon as possible afterwards (contemporaneously), whilst the facts are fresh in the memory.
• To make alterations, strike a pen through the error and write the correction. Then initial in the left hand column. Notes must not be erased.

• Do not remove pages from the notebook.

• Sign and date each entry at the base of each page.

Entries must be relevant, factual, legible, concise and written in plain English.

If accompanied by a colleague whilst witnessing a contravention, one AO may record the details in their pocketbook. The other may read through the notes made and where they agree with what has been recorded, they may countersign at the end of the entry to acknowledge that it is a true and accurate account of events.

Where the AO and FBO have had a conversation regarding action to be taken to achieve compliance, it may be beneficial to ask the FBO to sign the notes taken by the AO as an accurate account of what was agreed.

2.7.6 Security

The AO is responsible for ensuring the security of their notebook and for producing it in court. Further notebooks are available from FSS Operations. The notebooks have serial numbers allocated to each AO; the list of them is kept in the FSS office in Aberdeen. In the case of lost notebook, the AO must immediately inform their line manager who will notify FSS of the details.

2.7.7 Return of all notebooks

Notebooks remain the property of FSS and must be returned to FSS Headquarters in Aberdeen prior to staff leaving employment or in the case of the notebooks being damaged or completed. Staff should send their notebooks to FSS Aberdeen, for the attention of Food Crime and Incidents Unit, via post, recorded delivery.

2.7.8 Disclosure of unused material

The Criminal Procedure and Investigations Act 1996 (CPIA) places an obligation on the prosecuting authority to retain and record all relevant information relating to any enforcement action.

The prosecuting authority – a term which includes the OV, the FSS team members, the IO, the prosecuting lawyers and the enforcement agency itself – has a duty to investigate all reasonable lines of enquiry and disclose to the defence all relevant unused material which:

• might undermine the case for the prosecution, or
• might reasonably be expected to assist the defence case
This material may include:

- informal and formal memos
- email traffic
- previously unreported offences and/or warnings recorded on operational paperwork
- daybook entries
- contemporaneous notebook entries
- minutes of meetings
- draft witness statements
- photographs and all negatives from both used and unused photographs
- instructions to expert witnesses or analysts

2.7.9 Storage and availability

Anything that is relevant to the case and which is not used by the prosecution is unused material and can be potentially disclosed. This fact makes it important that when notes are taken, emails written or drafts prepared, they should be made on the understanding that the defence may be entitled to see them and refer to them in open court. Even if there are good reasons for arguing that they are so sensitive that the defence should not see them, there is a high threshold which needs to be met to satisfy the court that this is the case.

The OV and FSS team should therefore ensure that:

- all material relevant to a course of enforcement is recorded and retained
- all material is safely stored

The IO must be made aware of the existence of all relevant material as soon as possible after a referral for investigation is made.

2.7.10 Photographic evidence

Taking photographs in approved premises for the purposes of evidence gathering will often be a fundamental part of the evidence gathering process.

The AO may inform the FBO of what is intended as a matter of courtesy. However, the FBO cannot stop an AO from taking photographs for the purposes of evidence gathering and it could be an offence for them to obstruct the AO who is carrying out their duties.

- When photographs are taken, details should be recorded in a contemporaneous notebook, including the photograph number, the subject,
location and date/time. Colleagues should assist one another in this process.

- Photographs should be taken with a suitable digital camera; however, a record must be kept of how the digital information was downloaded and on to what medium it was stored, together with the Supporting Evidence Photographic Report for recording full details of digital images taken (see annex 6).

Reference: See ‘Digital Camera Protocol’ on the following page for additional information.

- Where the subject photograph is not clear, it may assist the court to have a colleague appear in the photograph to point to the item that needs identifying.

- Video filming is very useful to demonstrate a particular high speed operation/operational practices or welfare issues in a live animal.

- When printed, it is useful to add details to the reverse of the photograph, clearly indicating the subject matter, location and other relevant details.

Although all AOs have powers to take photographs for the purpose of evidence gathering, they must always seek the permission of the FBO if they are taking photographs for any other reason than evidence gathering.

Note: Any verbal comment recorded whilst any filming is being undertaken must later be transcribed word for word and will constitute part of the evidence.

Tip: Give the camera lens time to adjust to the temperature/humidity before taking pictures in order to prevent fogging.

2.7.11 Conventional camera protocol

If the AO intends to photograph evidence using a conventional camera, capture images and run off the remainder of the film taking blank shots.

2.7.12 Digital camera protocol

FSS Camera Set up and Usage

Please read over the instruction manual within the box before use. This contains information on the accessories, charging the battery and about the cameras various functions.

Before first use, charge the battery. When it is fully charged, insert the battery and insert one of the memory cards. Note there is a lock where the door is on the side of the camera, this should be released to allow access
and locked once the battery and card are inserted (full instructions with picture guidance in the manual).

When the camera is first switched on, you will be asked to view the underwater requirements. Select yes to view or no to continue with the camera set up.

You will be prompted to set up the clock. Select the menu button to continue. Enter the date and time using Day/Month/Year and 24 hour formats. As this will be used as part of evidence, it is essential this is accurate.

Once completed, the camera will be ready for use.

The cameras and memory cards should be treated with care due to the sensitive data they will hold. It is up to the holder of each asset to keep them secure at all times. Any damage or loss should be reported to the lead asset holder immediately. The lead asset holder for Hallmark will be Sandy Duncan and the lead asset holder for FSS will be the Operation Managers for each of their areas.

Evidence Gathering

Fundamental rule of Scots law is that best evidence be presented to courts in relation to criminal proceedings. This would obviously present difficulties when we are dealing with animal carcases or other items of either a perishable nature or physically large dimensions, therefore in order to support the verbal testimony of a witness (yourself) and to alleviate unnecessary movements of productions, we photograph and if possible/required video the items concerned.

Please Note: These photographs/videos do not remove the need to seize original items as productions as the photographs are essentially just an aid that will be made available to the court for use during any subsequent judicial proceeding.
In order to properly identify the item being photographed, a production label should be completed detailing the date, location, what the item is, where it was found, reporting OV/MHI and any other witness present (Annex 10 of this chapter). The label should be placed within camera shot and a clear photograph taken of the item. This should be undertaken for each individual item that is to be photographed as it provides a ready identifier for later use. In some situations, consider taking a video as this would reflect the situation more accurately (e.g. an operation, process, behaviour, welfare issue, etc.)

Please note: Supplies of Production labels will be distributed to ensure ease of availability.

Thereafter, for the purposes of evidence gathering, please ensure that you have gathered all the photographs that you require and then upload images from the memory card securely to the FSS IT system via your SCOTS LAPTOP (No personal devices), saving the images in Jpeg format, which in turn you can upload to the related incident which will have been generated on the CLIO system.

Please Note: There is no requirement to save the memory card as a production, as it is of no evidential value and can therefore be reused.

When the AO intends to capture images using a digital camera, they should ensure the following:

- the memory card is clear of previous images, unless you have come from another visit; for this reason, it is advisable not to use a personal camera or a non-work issued camera phone to take evidential images, as these items may also contain personal photographs
- the date and time are correctly set
- poor quality images must not be deleted as they may become unused material in due course
- full particulars of images of the case are recorded, using the Supporting Evidence Photographic Report, available at annex 6 of this chapter
- all images taken that relate to that case, together with the corresponding photographic evidence report, are downloaded onto the hard-drive of a Scots Laptop prior to uploading to CLIO system.
- when required for a referral for investigation, all the images relating to that case and supporting photographic evidence report are copied onto two separate non-reusable CD-ROMs (SFClU will complete this task)
- one CD is marked as the ‘Master Copy’; this must be bagged and tagged, and its details recorded in the daybook or in the AO’s contemporaneous note book, and stored somewhere secure (SFClU will complete this task)
the other CD is marked as the ‘Working Copy’; it should also be tagged and its details recorded in the daybook or in the AO’s contemporaneous note book, and stored in a secure place for collection by the Investigating Officer (SFClU will complete this task)

2.7.13 Supporting evidence photographic report

The “Supporting evidence photographic report” has been introduced to provide a contemporaneous record of images taken whilst gathering evidence.

In ideal circumstances, the report should be completed at the time the evidence is gathered. However, when this is not feasible, it should be completed as soon as possible thereafter.

The report should be stored electronically in the same file as the images to which it relates.

A new report should be prepared to accompany images of each separate incident.

This is available at annex 6 on “Supporting evidence photographic report” of this chapter.

2.7.14 Retention of unused photographic images

All unused photographs, images and negatives must be retained.

2.7.15 Samples: physical confirmation of the failure

A variety of different types of sample may be gathered as evidence, for example:

- rust / dirt scrapings
- samples of meat / offal / SRM
- trimmings of faecal or other contamination
- heads of animals
- whole carcases or joints
- bodies of dead animals

The AO should inform the FBO of their intentions. Enlist the services of a colleague to witness the collection of the sample (if available) and also to record details of what, when, where and how; recording the date and time in their pocket notebook. The samples should be bagged and labelled with all relevant details and sealed with a tamper evident seal.
All samples must be kept under secure conditions in an environment where they will not deteriorate. Details of storage location and transportation should also be recorded to maintain continuity of evidence. Temperature logs and relevant calibration records of chillers and freezers, where evidence samples are stored, should be accurately maintained, as they may be required as evidence in court. A log of (potential) evidence stored in plant freezers should be kept in each plant, including for RIM samples temporarily stored, pending uplift, as they may become evidence (e.g. if the RIM test results come back positive). The template for the evidence stored in freezers can be found at Annex 14 of this chapter.

2.7.16 Post-mortem evidence

There may be circumstances where an animal has died in transit or in the lairage, and a post mortem examination would be required, for example to support a case for a breach of animal welfare legislation.

Before undertaking any post mortem examination, the OV must have regard to the requirements in chapter 6 on ‘Notifiable diseases’.

Where the OV is to perform a post mortem examination on site consideration must be given to the following:

- there should be suitable isolation facilities in the lairage to carry out the examination
- hygiene procedures must be followed and C&D carried out following examination and disposal
- the OV should have the appropriate protective clothing and equipment required for the procedure
- a detailed report of the findings must be prepared at the time
- photographic evidence should be gathered having regard to the guidance contained in this chapter
- appropriate specimens should be retained, for example, fracture site, limbs or bodies of animals/ birds and stored as outlined below to maintain continuity of evidence

**Note:** Once examined, the specimen should be retained in a secure location in case the FBO requires their own appointed representative to view the evidence.

Where an on-site post mortem examination is not considered appropriate, the carcase can be sent to the nearest APHA laboratory for examination. Continuity of evidence must be maintained as outlined below.
The VM/ OM should be consulted before initiating an off-site post mortem examination or advising the laboratory that the carcase is being sent.

The VM/ OM will advise on any financial implications involved in the cost of the APHA post mortem and report.

**Note:** Body parts that are required as evidence, but are, by definition, ABP must be retained until the conclusion of the court case. Afterwards, they must be disposed of appropriately.

### 2.7.17 Temperature readings: factual figures

The AO should ensure that where thermometers are used for evidential purposes, the thermometer used is periodically calibrated, and where required for evidence in court is recalibrated. The calibration certificates will be required as an exhibit and all relevant temperatures are recorded where necessary; ambient, surface, probe (internal) and between packs ask a colleague to help record these details at the time the readings are taken.

**Tip:** The AO should ensure that when asked, they can explain what temperature related to which carcase/ other chilled or frozen meat together with its location.

### 2.7.18 Light meter readings: factual figures

When gathering evidence of poor lighting conditions, ensure that the light meter used is within calibration before taking the reading. If the meter readings are required as evidence for court, it is advisable the light meter is recalibrated to demonstrate that it was accurate on the day it was used.

Light meter can be obtained through the VM/ OM.

**Tip:** Do not take light meter readings when the sunshine is streaming in and no processing is being carried out.

### 2.7.19 Humidity readings: factual figures

When gathering evidence of poor humidity conditions, ensure that a calibrated hygrometer is used and if the readings are required as evidence in court, that the hygrometer is recalibrated to demonstrate that it was accurate on the day it was used.

The hygrometer can be obtained through VM/ OM.
2.8 Information obtained from unauthorised sources – RIPA

2.8.1 Introduction

This topic covers instruction on dealing with information which may be provided under the Regulation of Investigatory Powers Act 2000 (known as RIPA).

2.8.2 Information received

Under the law, AOs should take extreme care when dealing with a case where plant staff or other contacts have provided information about possible offences or misconduct.

Where this sort of information is provided, the AO must always inform their line manager, who must in turn notify FSS Operations who will be responsible for informing FSS Legal Division and Investigation Branch.

2.8.3 Questioning contacts

Plant staff or any other person must not be asked to obtain or pass on information about possible offences or misconduct. If they are asked to pass on information, it almost certainly will not be possible to conduct a successful investigation into the allegations since it will not be possible to use the evidence obtained.

2.8.4 Use of informers

It is essential that AOs remember not to ask plant staff or other contacts to obtain or pass on information about possible offences or misconduct even where they have first come forward of their own free will and given information about such matters.

AOs must not try to get someone to act as an informer or obtain information in an undercover way.

Example 1

A disgruntled employee contacts you to inform you that the operator of a licensed slaughterhouse and cutting plant is using the licensed premises at night and without FSS supervision to slaughter and process cattle which have no passports. He is in a position to know when this is happening and to contact you at the time it is taking place.
Example 2
An MHI is transferred to a new plant and becomes aware that the OM and other MHIs at the licensed premises are working in collusion with the plant management. The OM and some other staff are returning condemned sheep carcases to the line after trimming them. In return the OM is receiving cash payments and meat cuts of his choice. The MHI is willing to inform you of when these incidents take place and to collate information on the dates, times, persons involved, number of carcases and owners of the stock.

Example 3
A delivery driver from a licensed slaughterhouse has delivered several consignments of over temperature pig carcases to a large city market. He is concerned that he may be prosecuted with the originating plant operators if a load is intercepted at the market. He is willing to provide information relating to dates times and consignment details of future deliveries which he believes have not been chilled to the correct temperature before transportation.
3. **Surrender, Detention, Seizure and Condemnation**

3.1 Voluntary surrender

3.2 On line temporary detention

3.3 Detention under the Food Hygiene / Food Safety and Hygiene Regulations

3.4 Detention under the Food Safety Act 1990

3.5 Condemnation procedure

### 3.1 Voluntary surrender

#### 3.1.1 Means of voluntary surrender

Where meat has **not** been produced in accordance with the hygiene regulations or is **unfit** for human consumption, the FSS should seek voluntary surrender of the meat.

Voluntary surrender is an everyday occurrence within a slaughterhouse and may be evidenced by completing a "Rejected Meat Receipt" (PMI 4/8). This will identify the carcase, part carcase, and offal and should be issued and signed by the OV/MHI and a responsible member of the plant management. Alternatively, there may be different plant local arrangements (OWS data sign off etc.)

An "Agreement to Destroy Food" (ENF 11/7) notice should be completed where any dispute arises, or where issues are more complex. For example, where:

- there are large quantities of meat
- the animal's identification is being questioned
- the farmer retains ownership of the carcase after processing and their consent is required.

This agreement should be completed before the meat is consigned to the bin and is in addition to the "Rejected Meat Receipt ".

**Reference:** See chapter 9 on Forms for PMI 4/8 and ENF 11/7.
3.1.2 Legal powers

The authorised AO has powers to detain food under:

- Food Hygiene (Scotland) Regulations 2006 (as amended)
- the Food Safety Act 1990 (as amended), via the above Regulations
- Article 18 of Regulation (EC) 882/2004 for third country imports

3.2 On line temporary detention

3.2.1 Holding carcases identified for detention

In many slaughterhouses, the majority of detained carcases are rectified on the detained rail, under the supervision of an MHI dedicated to that task.

Colour-coded plastic hook tags can be used to identify carcases for detention. The colour-coded tags are used to signify specific conditions and serve to alert the MHI to the action required. Make the FBO aware of the system. The colour-coded tags should be used to represent the following:

<table>
<thead>
<tr>
<th>Colour</th>
<th>Use for</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red</td>
<td>Pathology</td>
</tr>
<tr>
<td>Yellow</td>
<td>SRM</td>
</tr>
<tr>
<td>Green</td>
<td>Contamination</td>
</tr>
<tr>
<td>Blue</td>
<td>Sample identification tag</td>
</tr>
<tr>
<td>Grey</td>
<td>TB carcases</td>
</tr>
</tbody>
</table>

3.2.2 Labelling detained carcases

Carcases and offal that have been detained for further inspection and that require more secure individual identification can be tagged using individually numbered talisman seal(s). Seals can be ordered via the area OM.

To maintain correlation between the carcase and offal, several talisman seals must be used. The individual seal numbers should be recorded with any other relevant details for the carcase and cross-referenced on the Detention of Food Notice.

The seals must remain in place until the carcase and offal have been re-inspected and a decision made on the fitness of the carcase and offal for human consumption.
3.2.3 Detention tape

Detention tape should be used to help identify any boxed meat, or shrink wrapped pallets of boxed meat and should be used in conjunction with a Detention of Food Notice. Detention tape can be ordered via the area OM.

3.2.4 When to formally detain

There may be occasions where meat cannot be dealt with immediately on the detained rail because:

- the OV may wish to undertake a further examination of the carcase to identify any signs of oedema/ emaciation, fever or other pathological condition that may not be evident when the carcase is still warm
- the OV may wish to carry out an investigation into the origin, marking, age, fitness, suitability of any meat or animal under the FBOs control
- the FBO prefers to carry out rectification work / removal of arthritic limbs when carcases are chilled

In such circumstances, the OV will require the FBO to store the suspect meat in a detained chiller.

3.2.5 Assessment of the detention facilities and history and confidence in management

Detention facilities vary in type, size and security, the OV must assess how satisfactory the facilities are and how the FBO intends to detain meat that has to be stored for further examination/ investigation.

The assessment should identify:

- how secure the facilities are, including number of people who are in possession of a key
- the level of confidence in management and their staff
- whether previously detained meat has ever been sold, gone missing or been moved contrary to the OVs instructions
- whether the size of the detained facility is sufficient to accommodate all the suspect meat
- whether the meat has already received a health mark or identification mark

The decision whether to formally detain meat with a Detention of Food Notice (ENF 11/1) or Detention Notice ENF 11/26) will depend on all the above factors.

It **may not** be necessary to serve a formal detention of food notice on the FBO in many non-contentious day to day situations, for example:

- where meat is stored overnight for routine rework and has not been health marked, and
- is secured in lockable detained facilities on the premises,
- where the FBO has always been compliant and has a good working relationship with FSS team, or
- where carcases have been tested for BSE/ Trichinella and are awaiting a negative test result prior to being health marked.

In the slaughterhouses/GHEs with regular FSS attendance there should always be a written detention protocol in place, agreed between the FBO and OV and all members of the FSS team should be aware of the procedures.

However, where there are contentious issues, a history of non-compliance at the plant; and the FBO:

- refuses to voluntarily surrender non-compliant/ certified meat declared unfit for human consumption, or
- has detention facilities that are too small/ not secure enough, or
- intends to take the meat before a Magistrate/ Sheriff to seek a condemnation order.

The OV should, as a matter of good practice, always formally detain the meat using a formal detention notice (ENF 11/1 or 11/26). This is to ensure that the competent authority can secure all non-compliant meat and *take formal action* where the FBO breaches any of the requirements specified in a formal detention notice.

**Note:** Regulation (EC) No 853/2004, Annex III, Section I, Chapter IV, Paragraph 12 requires the FBO to follow the instructions of the OV to facilitate post mortem of all animals. Where they fail to do so, this may constitute an offence for obstructing the OV and for failing to comply with the EC Regulations.

In order that the OV can prove that they instructed the FBO to detain the meat and take action where this did not occur, it is always good practice to serve the formal detention of food notice. Cross-reference should be made in the Day Book when the notice was served.
3.3 Detention under the Food Hygiene (Scotland) Regulations 2006

3.3.1 Relevant legislation

A Detention Notice (ENF 11/26) can be served under Regulation 9(5) of The Food Hygiene (Scotland) Regulations 2006.

3.3.2 General principle

A Detention Notice provides powers to an AO to detain any animal or food of animal origin (specified in the notice), either on the premises, or at another location (specified in the notice).

Detention under the provisions of Regulation 9(5) is intended to be used in circumstances where further examination of the animal or food is required, or sampling is undertaken (for example, for potential residues or when a DNA test is being conducted by the Local Authority to clarify the identity and trace the origin of an animal).

3.3.3 Declaring unfit

Formal detention is inappropriate when the OV is required to declare material unfit for human consumption because detention can only be applied to food. Once meat has been declared unfit, it will become an animal by-product and disposal should be in line with the requirements of the EU and domestic Animal By-Product Regulations. See annex 5 on ‘Flow diagram’ and chapter 2.8 on ‘Animal by-products’, section 5.

Note: where meat is being declared unfit and the FBO is disputing the actions of the AO, it is useful to set out the rationale for this action in writing to the FBO.

3.3.4 AO duties

The AO should:

- discuss the reason for service of the detention notice with the FBO
- ensure the detained meat is accurately identified using an individually numbered talisman seal, the details of which must be recorded on the detention notice, or by using FSS detention tape for boxed meat
- once identified, ensure that the detained meat is secured so that it cannot be tampered with.
- Note: In some occasions, the only possible way to secure the meat might be by securing the whole chill / freezer area. This is more likely to occur when dealing with large amounts of boxed chilled/ frozen meat in cutting plants
and cold stores. The AO must use their judgment to secure the detained meat.

- record details of the date and time of service of the notice on the back of the form, in a pocketbook, or in the plant daybook
- ensure that the FBO can easily identify what has been detained at the time of service
- advise the FBO of the likely timescale for the examination, so that they can take steps to prevent deterioration of the product; for example, boning under FSS supervision and freezing to preserve the value of the meat

3.3.5 Service details

The notices:

- should be served by hand on the FBO or their duly authorised representative
- may be hand written
- must be served as soon as practicable

The AO should always retain a copy of the notice served.

3.3.6 Time period

No time period exists within which the examination must take place, however, this must be completed as soon as practicable.

3.3.7 Right of appeal

No right of appeal exists against the service of a Regulation 9 (5) Detention notice (ENF 11-26) under the domestic Food Hygiene (Scotland) Regulations 2006.

3.3.8 Withdrawal

The notice may be withdrawn by the AO completing the withdrawal section at the base of the detention notice, once they are satisfied that the meat is fit for human consumption. The meat may then be released/ health marked.

If the AO is not satisfied that the meat is fit for human consumption, then they should seek voluntary surrender of the meat for disposal as an animal by-product.

Where voluntary surrender is not forthcoming, prior to the meat having been health marked, the OV should send a letter to the FBO explaining why they are declaring the meat unfit and serve an animal by-product notice requiring the disposal of the meat under the domestic animal by-product regulations. Where the meat has been health marked and subsequently deteriorates and becomes unfit, and the FBO refuses to surrender the product, the OV must
seize the food under the provisions of Section 9 (3) (b) of the Food Safety Act 1990 (as amended) (ENF 11/27) and take it before a Justice of the Peace or Sheriff to be condemned.

**Note:** Detention under the provisions of Regulation 9 (5) of the domestic hygiene regulations is intended to be used for short term issues to allow a further examination to take place, or samples to be taken.

### 3.3.9 AO checklist

Where the detained food is not released, specify in the AO checklist on the reverse of the Detention Notice:

- the nature of disposal and the category of ABP that the food was consigned under
- whether an Agreement to Destroy Food Notice was signed by the FBO and the Notice reference number
- whether the detention led to the food being certified, seized and taken before a court to have it condemned

### 3.4 Detention of Food under the Food Safety Act 1990

#### 3.4.1 Relevant legislation

Regulation 23 of The Food Hygiene (Scotland) Regulations 2006 also allows the AO to detain suspect food for further investigation. This is achieved via the detention provisions contained in Section 9(3)(a) of the Food Safety Act 1990, which provides powers for the AO to detain, inspect and seize any food that is thought may not comply with the food safety requirements and is intended for human consumption. The Detention of Food Notice to use in these circumstances is the ENF 11/1

**Note:** Formal detention is inappropriate when the OV is required to declare material unfit for human consumption- because detention can only be applied to food. Once it has been determined that the meat has to be declared unfit, it will be an animal by-product and disposal should be in line with the requirements of the Animal By-Products Regulations.

#### 3.4.2 When to serve a Food Detention Notice (ENF11/1)

When FBOs are unwilling to either surrender meat that the AO has judged unfit, or is un-cooperative with respect to the voluntary detention of food for further investigation into its fitness or for compliance with the food safety requirements to be properly assessed, the AO must formally detain or seize (as appropriate) the food in accordance with Food Safety Act Section 9.
Note: The AO shall as soon as is reasonably practicable, and in any event within 21 days, determine whether or not he is satisfied that the food complies with the food safety requirement.

Legislation:

- Regulation 27 (3) of the Food Hygiene (Scotland) Regulations 2006 specify that where food has not been ‘produced, processed, or distributed’ in accordance with the regulations it shall be treated for the purposes of Section 9 of the Food Safety Act, as failing to comply with the food safety requirements.

- Art 14 of Regulation (EC) No 178/2002 identifies the food safety requirements.

- Regulation (EC) No 854/2004, Annex 1, Section II, Chapters II, III and V identify the circumstances where meat is required to be declared unfit for human consumption.

3.4.3 Reasons for service

Meat which fails to comply with food safety requirements under Article 14, (EC) 178/2002 includes:

- meat that is unsafe
- meat that is unfit for human consumption
- meat that is injurious to health

3.4.4 Service of notice

Prior to serving a notice, the AO must have in their possession all the evidence to justify its service. The Detention of Food Notice should be served by hand on the person in possession of the meat who is deemed to be ‘the owner’. A copy of the notice can be forwarded to the monetary owner, if different.

Note: Monetary owner could be the owner of the animal from which the meat was produced, for example, the farmer.

3.4.5 Content of notice

The notice must specify:

- description (carcase / box type, colour, markings)
- quantity
- identification marks if any (detained tags, numbers or labels)
- address and location where food is to remain.
- a different location to which it may be moved (if applicable)
- why, in the officer's opinion, the food does not comply with the food safety requirements, linking the matter to Article 14 of Regulation (EC) 178/2002

### 3.4.6 Number of notices

Where a quantity of meat of different types or batches is being detained, the AO should issue a separate Detention of Food Notice for each type or batch.

Where the meat that fails to comply with the hygiene requirements is part of a batch of the same class or description, it shall be presumed unless the contrary is shown that the whole batch fails to comply and the AO should detain all of it. Part of the food may subsequently be seized if necessary and an Order for Condemnation of Food applied for. The Detention Notice must be withdrawn in respect of the remainder if the AO is satisfied that the problem affects only part of the batch.

**Regulation:** Regulation 27 (3) the Food Hygiene (Scotland) Regulations 2006 and Food Safety Act 1990 Section 8 (3).

### 3.4.7 Right of appeal

No right of appeal exists for a Detention of Food Notice under the Food Safety Act 1990. However, if not voluntarily surrendered, the meat must be seized and taken before a Justice of the Peace or Sheriff for them to determine whether the food should be condemned or not.

### 3.4.8 Time limit

The AO shall, as soon as is reasonably practicable, and in any event within 21 days, determine whether or not they are satisfied that the meat complies with the food safety requirement.

If they are satisfied that the food complies with food safety requirements, the AO must immediately withdraw the notice.

Or, if the AO is not satisfied that the food complies, they must seize the food and have it dealt with by a Justice of the Peace.

### 3.4.9 Withdrawal

If the notice is to be withdrawn, the AO must immediately serve a Withdrawal of Detention of Food Notice upon the recipient of the original Detention Notice - ENF 11/2.

If a Detention of Food Notice is withdrawn, or condemnation order is refused, compensation is payable to the owner of the food for any depreciation in its value which can be shown to result from the AOs actions.
The AO must ensure that all detained food is suitably and securely stored to minimize any deterioration; for examples, a lockable room, or by means of a security talisman tag on the chiller door.

3.4.10 AO checklist

Where the detained food is not released, specify in the AO checklist on the reverse of the Detention Notice:

- the nature of disposal and the category of ABP that the food was consigned under
- whether an Agreement to Destroy Food Notice was signed by the FBO and the Notice reference number
- whether the detention led to the food being certified, seized and taken before a court to have it condemned

3.5 Condemnation procedure

3.5.1 When an application for a Condemnation Order from the court is not appropriate

When the provisions relating to “Decisions Concerning Food Chain Information; Decisions Concerning Live Animals and Decisions Concerning Meat “ in Regulation (EC) No 854/2004 require meat to be declared unfit for human consumption prior to the Health Mark or ID Mark being applied.

Reference: (EC) 854/2004, Annex I, Section II, Chapters II, III and V.

The OV should inform the FBO, in writing where a dispute arises, that the legislation requires the material to be declared unfit for human consumption and disposed of as an animal by-product (ABP). See Article 54 of Regulation (EC) 882/2004.

If the FBO fails to voluntarily surrender such product, the OV must serve a ‘Notice for the Disposal of Animal By-Products’ (ENF 11/12) in accordance with chapter 2.8, section 5 on “Enforcement “. See also Annex 5 of this chapter.

3.5.2 When to apply for a condemnation order from the court

Only after meat has been health marked or ID marked and it has failed to be produced, processed or distributed in accordance with the hygiene regulations, or breaches the “food safety requirements “ should the OV:

- formally detain the food (ENF 11/26 or 11/1)
• certify the food as non-compliant (ENF 11/25)
• formally seize the food (ENF 11/27)
• apply to a Magistrate or Sheriff to issue a Condemnation Order

3.5.3 Obtaining a condemnation order

In Scotland, a Condemnation Order may be obtained from either a Sheriff sitting in the Sheriff Court or from a Justice of the Peace (and, in Glasgow, a Stipendiary Magistrate) sitting in the District Court. As a matter of good practice, an Order should be sought from a Sheriff where at all possible.

3.5.4 Action to take

The OV is to follow the steps in the table below.

Reference: The Food Safety Act 1990 Section 9 (3) (b), Section 9(4) (b).

Reference: The Food Law Code of Practice.

<table>
<thead>
<tr>
<th>Action and Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Detain the food (ENF 11/1 or ENF 11/26) Ensure that any food that you suspect does not comply with the food safety requirements is formally detained using a Food Safety Act Detention of Food Notice (ENF 11/1) or Detention Notice (ENF 11/26). Reference: See chapter 9 on ‘Forms’ for ENF 11/1 and ENF 11/26</td>
</tr>
<tr>
<td>Complete and serve Certification of Meat Notice (ENF 11/25) Once the OV has determined that the food has not been produced, processed or distributed in accordance with the provisions of the Hygiene Regulations they must serve notice on the FBO with the reasons why it fails to comply. Reference: See chapter 9 on ‘Forms’ for ENF 11/25.</td>
</tr>
<tr>
<td>Complete and serve a Seizure of Food Notice (ENF 11/27) If after certifying the meat, the FBO refuses to voluntarily surrender the food, complete a Seizure of Food Notice (ENF 11/27) and serve it on the FBO and a copy on the owner of the food where relevant. Reference: See chapter 9 on ‘Forms’ for ENF 11/27.</td>
</tr>
<tr>
<td>Complete and serve a Food Condemnation Warning Notice (ENF 11/13) ENF 11/3 should be served on the owner / person in charge of the food (FBO). If relevant, a copy of the Condemnation Warning Notice should also be served on the owner of the animal from which the meat was produced, for example, the farmer.</td>
</tr>
<tr>
<td>Advise FSS legal adviser FSS will arrange legal representation. A summary of events and copy of all legal notices must be sent to FSS area VM</td>
</tr>
<tr>
<td>Contact the local police Establish which court covers the area for the establishment where the detained food is held.</td>
</tr>
<tr>
<td>Contact the court In Scotland, the court process will not commence without the correct documentation being generated by Scottish lawyers. They</td>
</tr>
</tbody>
</table>
will liaise with the Clerk to the court on the appropriate date, time and venue for the hearing. The OV and any other witnesses should inform FSS Operations of dates when they are available for court. The OV and witnesses should bear in mind the comments of the Code of Practice on the speed with which the case should go to court.

| Complete and serve Food Condemnation Warning Notice (ENF 11/3) | Ensure that the notice is served by the most appropriate method available in the circumstances to ensure that all relevant parties are informed of the time and place of the hearing in good time. Document and retain records of service to show the court. Retain copies of the Condemnation Warning Notice, the Certification of Meat Notice and the Seizure of Food Notice to produce to the Justice of the Peace, the Clerk to the Court and the FSS legal representative. Have a copy of the relevant sections of the Code of Practice and Practice Guidance. Reference: See chapter 9 ‘Forms’ for ENF 11/3. |
| Attend the hearing | Prepare three copies of the Complaint for Condemnation of Food Order (ENF 11/15) and of the Order For Condemnation of Food (ENF 11/16) itself for the Sheriff to sign. Read the papers again before going to court. Attend court early to meet the FSS advocate. On attending the hearing, the AO should take:  
  - their Authorisation Certificate/ Warrant for the legislation being enforced and FSS photo ID card  
  - copy of the Certification of Meat failing to comply with the requirements of the Hygiene Regulations  
  - copies of the Detention and/ or Seizure Notice and a record of service  
  - copies of the Condemnation Warning Notice and record of service  
  - copies of the Complaint for Condemnation of Food Order  
  - copies of the Order for Condemnation of Food  
  - contemporaneous notes which may be referred to (notebook or plant daybook)  
  - a consolidated copy of the relevant legislation (highlight sections for easy reference)  
  - copies of the Code of Practice  
  - any additional evidence, for example, copies of a public analyst or expert report  
  - a representative sample of the food if the hearing is to be held in court and the entire batch cannot be transported (where appropriate)  
### Manual for Official Controls | Amendment 13

| **Official Detention of non-compliant meat from third countries** | Explain clearly when presenting the evidence in court:  
- why the meat should be condemned  
- quote the Regulation(s) which has/ have been breached  
- what the problems are if the meat is not condemned  
- what the risk is to public health  
If successful: maintain supervision to ensure meat is disposed of  
If unsuccessful: meat is health-marked and restored to owner  
Where any issue of compensation arises the AO must not discuss or negotiate any compensation for depreciation in value of the meat or food. The AO should ask the FBO/Owner of the food to put any complaint in writing to the Head of Operational Delivery (HOD).  
Where meat has been imported directly from a third country into the UK and suspicion exists of non-compliance with traceability requirements or correlation between the product and any certified guarantees, an AO may officially detain the product using the ENF 11/32. See chapter 3 on 'Imported and exported meat and animals', section 4 on 'Action for unsatisfactory consignments'. |

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**Chapter 7 – Enforcement**

Food Standards Scotland
4. **Hierarchy of Enforcement**

4.1 Introduction

4.2 Informal enforcement action: Verbal

4.3 Informal enforcement action: Written

4.4 Formal enforcement action: Statutory Notice

4.5 Statutory Notices for Hygiene Contraventions

4.6 Remedial Action Notices (RAN)

4.7 Hygiene Improvement Notices (HIN)

4.8 Hygiene Emergency Prohibition Notices (HEPN)

4.9 Hygiene Emergency Prohibition Orders (HEPO)

4.10 Referral for investigation

4.11 Protocol for referral for investigation

4.12 Referral for investigation: FSS Legal

4.13 Change of FBO during enforcement action

4.14 Warrant to enter premises

4.15 Operational Delivery Incident Management Protocol
4.1 Introduction

4.1.1 The hierarchy of enforcement

The flow diagram below outlines the stages that comprise the hierarchy of enforcement.

Start

Verbal Advice/Request for Compliance (always a requisite)

Informal Advisory Letter

Formal Statutory Notice

Recommendation for Investigation OR Formal Caution

End
4.1.2 Approach to the hierarchy

The approach to the hierarchy of enforcement and level at which the AO commences enforcement action will be dependent upon:

- the urgency / severity of the situation
- the most appropriate course of action that will control the risk
- the enforcement tools available under that piece of legislation
- the history of the FBO and their willingness to comply
- FSS Enforcement Policy

4.1.3 Enforcement - informal and formal action

The term “Enforcement” includes advisory visits, assisting the FBO with compliance, approval visits and formal enforcement action.

Verbal advice and written advice/advisory letters constitute informal enforcement action.

Formal enforcement action includes official detention of food, the service of formal notices, cautions, and referrals for investigation and prosecutions.

4.1.4 Subject of enforcement action

Any FBO or person who is the subject of enforcement action should be kept fully informed of any intended or actual enforcement action by the AO.

4.1.5 The health mark and enforcement hierarchy

The health mark is not part of the hierarchy. However, the AO should refuse to apply the health mark in red meat plants and game handling establishments under the following circumstances:

- where the animal has not undergone ante-mortem and post-mortem inspection in accordance with (EC) 854/2004, Annex 1, Section I, Chapter III, paragraph 2 (a)
- where there are grounds for declaring the meat unfit for human consumption, or in the OVs opinion, after examination of all relevant information, the meat constitutes a risk to public or animal health, or is not suitable for human consumption in accordance with (EC) 854/2004, Annex 1, Section II, Chapters II, III and V
- where the meat fails to comply with the provisions of Article 14.5 (EC) 178/2002 in that the food is unacceptable for human consumption according to its intended use, for reasons of contamination (whether by extraneous matter or otherwise), or through putrefaction, deterioration or decay
Similarly, the Identification Mark (Regulation (EC) No 853/2004, Article 5, 2) must only be applied by the FBO to products in poultry slaughterhouses and all cutting plants if the product has been manufactured in accordance with the requirements of (EC) 853/2004, in establishments meeting the requirements of Article 4 of (EC) 854/2004. Where the product has not been so manufactured, then any application of this mark to meat will contravene (EC) 854/2004, Article 5, 2.

This breach will:

- constitute an offence under Regulation 17 of the Food Hygiene (Scotland) Regulations 2006
- potentially warrant the service of a Remedial Action Notice under Regulation 9(1) of the same Regulations, immediately prohibiting the use of the mark

### 4.2 Informal enforcement action: Verbal

#### 4.2.1 When to give verbal advice

The first stage of enforcement action considered by the AO should be education and advice. Whilst it is the FBOs responsibility to know which legal provisions are applicable to their business, the AO should ensure that, where necessary, they clarify and update the FBO on any relevant legal requirements. This is to ensure that the FBO understands the outcome to be achieved.

Verbal advice should go hand in hand with all stages in the enforcement process to help the FBO achieve compliance, and understand why enforcement action is being taken. For example, AOs must always try to explain to the FBO why immediate action may be required, why a statutory notice is being served, or why the matter is being referred for investigation, if appropriate.

Where verbal advice is of a technical nature, it may be helpful for this to be followed up with a letter in writing confirming the discussion/meeting.

It is important that the AO does not continue to give verbal advice where this is being ignored, without escalating enforcement action in the appropriate way.

**Note:** Where immediate action is required on public health or animal welfare grounds, verbal advice should be given, but if ignored it may be appropriate to move straight to formal enforcement action to secure compliance as soon as possible (for example, Public Health - RAN, Animal Welfare – Welfare Enforcement Notice, Improvement Notice or Referral for Investigation).
4.2.2 Records
All verbal advice should be recorded on the FSS Intervention Log (ENF 11/8) or enforcement programme (ENF 11/5); both documents can be found in Chapter 9, Forms.

4.3 Informal enforcement action: Written

4.3.1 Advisory letters/ Written advice
Advisory letters are considered “informal” enforcement action and failure by the FBO to comply with a letter of advice will not necessarily constitute an offence. However, an advisory letter produced later in court will help to demonstrate fairness and proportionality in the enforcement approach and that the FBO may have ignored previous advice.

Advisory letters should be sent by the AO to the FBO when:

- the FBO or a staff member has failed to take appropriate corrective action following verbal advice
- where there is a contravention of the Regulations which does not have an immediate impact on public health or animal welfare

The AO should inform the FBO of the intention to write an advisory letter. Ideally, the AO should meet with the FBO or their representative before issuing an advisory letter to discuss all the issues including the timescale for completion. It is good practice to ask the FBO to confirm in writing their agreement to any timescale. Accurate minutes of any meetings in respect of compliance should be taken.

In advisory letters, the AO must not warn of prosecution action in the event of future contraventions, as this could prejudice any future formal investigation.

Advisory letters must be typed and sent on FSS official letterhead paper (template at Annex 7 of this chapter). In the case of advisory letters sent to limited companies, these should be addressed to the FBO c/o The Company Secretary at the Registered Office address and a copy handed to plant management.

4.3.2 Checklist for advisory letters
The table below lists the points that an AO should follow when drafting an advisory letter. The AO should:
Address the advisory letter to the relevant FBO. In the case of a limited company, also copy the letter to the Company Secretary at the Registered Office address.

Detail the relevant EC and Domestic Regulations under which the offence is committed.

Quote the legal requirements.

State the non-compliance (what is wrong) – (by negating the legal requirements)

State the corrective action required, or that works of an equivalent effect are acceptable.

Indicate the timescale sought for compliance.

Distinguish clearly between legal requirements and best practice.

Conclude the advisory letter politely and point out that it is an offense not to comply with the regulations.

Follow management instructions in relation to verification of the advisory letter and send verified letter to the FBO, by also saving a copy in the plant folder on SharePoint and updating the ENF 11/5.

The AO should not threaten with prosecution.

Ideally, this should be agreed with the FBO before drafting, or the FBO should be asked to respond in writing providing the timescale.
4.4 Formal enforcement action: Statutory Notice

4.4.1 Preparation for formal action
Before taking formal enforcement action, the AO should:

- advise the FBO verbally of this intention
- be aware of all on-going enforcement action by reviewing the Enforcement Programme
- have regard to the FSS Operations Enforcement Policy
- ensure that evidence has been secured to demonstrate that the contravention still exists that will warrant the escalation of enforcement action

4.4.2 Statutory notices
Statutory Notices are legal documents and care must be taken to ensure they are completed correctly and used appropriately. They should only be served by FSS AOs authorised to do so.

4.4.3 Checklist prior to serving statutory notices
The diagram below lists the points that an AO should follow before serving a Statutory Notice. The AO should:

```
Start

Issue verbal advice (where the hierarchy applies this is always the starting point)

Verbal advice complied with?

NO

Issue letter of advice

Letter of advice complied with?

NO

Check that agreed timescales have elapsed and there is sufficient evidence to justify a formal notice

Consider issuing a formal notice

YES

No further action at this time

YES
```
4.4.4 Checklist when serving Statutory Notices.

At the time of serving a formal Statutory Notice, the AO should ensure that all the following checks are complied with:

- the formal notice is addressed to and served on the correct person/ legal entity; this will depend on which particular regulation has been breached
- the local plant manager has received a copy of any formal notice where the original was served on the limited company and sent c/o “The Company Secretary” to the Registered Office address
- the notice is clearly worded, concise and easily understood; it is typed (unless drafted by hand and served immediately), dated and signed by the AO
- the notice accurately describes the non-compliance relevant time frame within which compliance should be achieved
- the action required to remedy the breach of the legislation and the problem identified in the contravention box is clearly described
- an official hard copy of the notice should be used (taken from the MOC) and not a photocopied, sample or draft notice
- all sections have been completed correctly and any irrelevant areas deleted as necessary
- the notice includes all required information on rights of appeal and on the applicable procedure and time limits, and a copy of the notice that was served has been retained and/ or scanned as a permanent record.

If any of the above checks are not complied with, the AO must ensure action is taken to secure compliance before proceeding to serve a formal Statutory Notice.

4.5 Statutory Notices for Hygiene Contraventions

4.5.1 The Food Hygiene (Scotland) Regulations 2006

The Food Hygiene (Scotland) Regulations 2006 provide 3 notices for hygiene non-compliances:

- Remedial Action Notice (Regulation 9(1))
- Hygiene Improvement Notice (Regulation 6)
- Hygiene Emergency Prohibition Notice and Order (Regulation 8)
4.5.2 Service details

Formal Notices provided for under The Food Hygiene (Scotland) Regulations 2006 and the Food Safety Act 1990 can be served by any AO.

FSS policy is that only OVs or competent MHIs that have successfully completed the unannounced inspections training should serve and withdraw formal notices.

Regulation 9(5) Detention Notices (ENF 11-26) served under The Food Hygiene (Scotland) Regulations 2006, should be served on the FBO, or their duly authorised representative.

The Food Safety Act Detention Notice (ENF 11-1) should be served on the person in charge of the food.

4.5.3 Formal service and delivery of notices

When drafting formal notices, it is very important to ensure that they are directed at the correct legal entity responsible for any potential offences that can be committed.

4.5.4 Finding company addresses

Checks on a company’s registered office details may be done by logging on to Companies House website at:

https://www.gov.uk/government/organisations/companies-house

And clicking on to the free company details link under the ‘find company information’ heading.

The organisation can also be contacted on 03031234500, or by email at enquiries@companies-house.gov.uk between 08:30 and 18:00, Monday to Friday.
### 4.5.5 Types of Hygiene Notices

<table>
<thead>
<tr>
<th>Type of Notice</th>
<th>Legislation</th>
<th>Purpose</th>
<th>Should be served upon</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hygiene Improvement Notice ENF 11-23</td>
<td>Regulation 6 Food Hygiene (Scotland) Regulations 2006</td>
<td>To seek compliance with hygiene deficiencies that do not require immediate rectification or for hygiene deficiencies where RANs are not available and the health risk condition is not fulfilled.</td>
<td>FBO</td>
</tr>
<tr>
<td>Detention notice under the Hygiene Regulations ENF 11/26</td>
<td>Regulation 9 (5) Food Hygiene (Scotland) Regulations 2006</td>
<td>To detain food or live animas while samples are being taken, or where further examination is required.</td>
<td>FBO or Duty Authorised Representative</td>
</tr>
<tr>
<td>Detention of Food Notice ENF 11/1</td>
<td>Section 9 Food Safety Act 1990 [via Regulation 23 Food Hygiene (Scotland) Regulations 2006]</td>
<td>To detain food while further investigation is carried out.</td>
<td>The person in charge of the food (the FBO)</td>
</tr>
<tr>
<td>Certification of Meat Notice ENF 11/25</td>
<td>Regulation 27 Food Hygiene (Scotland) Regulations 2006</td>
<td>To certify that food has not been produced, processed or distributed in accordance with the Hygiene Regulations and fails to comply with the food safety requirements.</td>
<td>The FBO or person in charge of the food.</td>
</tr>
<tr>
<td>Seizure of Food Notice</td>
<td>Section 9 Food Safety Act 1990 [via Regulation 23]</td>
<td>To seize food in order that it may be taken before</td>
<td>The person in charge of the food (the FBO)</td>
</tr>
</tbody>
</table>
### 4.6 Remedial Action Notices

#### 4.6.1 When to use a Remedial Action Notice (ENF 11/24)

The Remedial Action Notice (RAN) may only be used:

- when any of the requirements of the Hygiene Regulations* are being breached, or
- when inspection under the Hygiene Regulations is being hampered


It should be used specifically where the AO considers that the operator should take immediate action to achieve compliance, or where the rate of operation of the plant is detrimental to its ability to comply with the Hygiene Regulations.

<table>
<thead>
<tr>
<th>ENF 11/27</th>
<th>Food Hygiene (Scotland) Regulations 2006</th>
<th>the court to be condemned</th>
<th>Remedial Action Notice</th>
<th>ENF 11/24</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulation 9</td>
<td>Regulation 9 Food Hygiene (Scotland)</td>
<td>To seek compliance with</td>
<td>FBO or Duly Authorized</td>
<td>ENF 11/24</td>
</tr>
<tr>
<td></td>
<td>Regulations 2006</td>
<td>hygiene matters that</td>
<td>Representative</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>pose an immediate risk</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>to public health</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hygiene</td>
<td>Regulation 7 Food Hygiene (Scotland)</td>
<td>Prohibition of a food</td>
<td>FBO</td>
<td></td>
</tr>
<tr>
<td>Prohibition</td>
<td>Regulations 2006</td>
<td>business proprietor or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Order ENF 11/24</td>
<td></td>
<td>manager from participating in the management of any food business</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Emergency</td>
<td>Regulation 8 Food Hygiene (Scotland)</td>
<td>To obtain the backing of the court to deal with circumstances that pose an imminent risk of injury to health</td>
<td>FBO</td>
<td></td>
</tr>
<tr>
<td>Prohibition</td>
<td>Regulations 2006</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Notice and</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Order ENF 11/18</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ENF 11/28</td>
<td></td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>
The OV or trained MHI must verbally request that the FBO rectifies the situation and serve the notice if compliance is not met. It is essential to gather the necessary evidence at the time the contravention is identified to justify its service in case an appeal against the RAN is lodged by the FBO.

The OV or trained MHI must verbally inform the FBO of the intention to serve the notice and record the information in the enforcement programme.

4.6.2 Purpose of a RAN

A RAN places a legal requirement on a FBO to take immediate action to achieve compliance with the Hygiene Regulations. The AO must specify on the notice whether the RAN is intended to:

- prohibit the use of any equipment or any part of the establishment specified in the notice,
- impose conditions upon or stop a process,
- require the rate of operation to be reduced to such extent as specified in the notice, or to be stopped completely

A RAN can be used to direct the FBO to rectify both hygiene and structural / maintenance deficiencies, which fall under (EC) 852 and 853/2004 and (EC) 2073 and 2075/2005 or the domestic hygiene regulations themselves and that require immediate action.

In the case of maintenance and structural problems, that do not pose an imminent threat to public health and can be rectified in the longer term, a Hygiene Improvement Notice should be used. This would be served under Regulation 6 of the Food Hygiene (Scotland) Regulations 2006.

4.6.3 Identification of the non-compliance

Where the RAN is being served under section 9(1) (a), because a requirement of the Hygiene Regulations is being breached, the AO is required to:

- specify which requirement/s of the Hygiene Regulations have been breached in the "contravention” box of the RAN. It is not sufficient to merely repeat the legal requirement set out in the legislation, as this does not specify the precise nature of the breach;
- cite the relevant legal reference(s) of the Hygiene Regulations, ensuring this identifies the exact provision that places an obligation on the FBO. This should include the general obligations to comply with the relevant provisions in the Annex(es) to the EU Regulation, and any specific requirement contained in the Annex, for example, Regulation (EC) 853/2004, Article 3 and Annex III, Section I, Chapter IV, Paragraph 7(b) (i),
• if the FBO is breaching more than one legal provision by their conduct, cite the most relevant and specific applicable provision. Where there are no specific requirements, use the more generic references which apply to the scenario in question,

• describe the measure(s)/ action(s) which, in your opinion, the FBO must take to remedy the breach identified in the “contraventions” box of the notice. If simply quoting the legal requirements may leave room for interpretation, the wording must be specific enough for the FBO to understand what are the requirements of the notice and for the AO to verify compliance,

• ensure that the contravention(s), legal reference(s) and action(s) all link to one another; the measure(s) to be taken must be relevant to the contraventions identified earlier in the notice.

• If a RAN is served under Regulation 9(1) (d), conditions can only be imposed on a process in the establishment, and the process in question must be specified. Examples of a process might be “evisceration”, “dressing”, and “skinning”.

FBOs have a responsibility to monitor significant hazards in a process, determine where a process is out of control, identify the root cause of such non-compliances and rectify them through corrective actions, as part of their HACCP based procedures. However, in many cases FBOs will have failed to monitor, failed to undertake the corrective actions identified in their HACCP plan and their HACCP validation and verification procedures may have also failed. HINs can be used to require compliance with the systemic HACCP deficiencies and RANs can be used to address any hygiene risks evident as a result of the FBOs failure to have taken any appropriate corrective actions.

It is sometimes difficult to determine the root cause of non-compliance where the causes are varied. In such circumstances, the AO should specify the measure(s)/action(s) they believe are required to remedy the issue and require that the FBO achieves any objectives the regulations set out.

In some cases – for example, where a slaughter process is clearly out of control, where the root cause of a serious problem is unknown, or where an AO has already served a RAN which has been breached by the FBO – the AO should consider serving a RAN which prohibits the carrying out of a process (under Regulation 9(1) (d)) or requiring the FBO to stop operations completely (under Regulation 9(1) (e)).

4.6.4 Service and withdrawal

A separate RAN should normally be served on the FBO in respect of each specific deficiency, or for each item of equipment or machinery. In some
circumstances, the effect of serving the Notice may be to stop the entire operation.

A RAN may be used to stop the operation completely in circumstances such as pest infestation, failure of sterilisers, inadequate overnight cleaning, failure of the hot water supply, lack of potable water supply or where the behaviour of the FBO is hampering adequate health inspection.

**Note:** Where the notice has the effect of stopping the operation completely, the OV or trained MHI must consult with their line manager to ensure that the action requested of the FBO is proportionate to the risk.

Service and withdrawal of a Remedial Action Notice must be done by an OV or suitably trained MHI. Once the non-compliance has been addressed, the notice should be formally withdrawn. If the same non-compliance reoccurs, normal enforcement escalation should be followed.

The AO who observes the deficiency should serve the formal notice. If the Notice has been served by post on the FBO, a copy of the Notice should be handed to someone at the plant address by the AO that observed the deficiency.

4.6.5 **Tagging**

All equipment that has been the subject of a RAN must be clearly identified and tagged using a numbered security seal, and accurately cross-referenced to a RAN.

4.6.6 **Notice reference number**

The AO must enter the reference number of the notice as per procedure: use the ENF 11/5 reference number, if there is a related non-compliance. If more notices (even if different types, e.g. one HIN and one subsequent RAN) are served for the same issue, from the second one, start adding a sequential number to the normal reference, for example:

- XXXX/17/015 – for the first notice
- XXXX/17/015-02 – for the second one.

If no relation to ENF 11/5, the reference number should be made of: four digits of approval number/ AO initials/ RAN/ four digits of the year/ sequential number for the year. Example: 9999/JM/RAN/2017/01.
4.6.7 Who to serve the notice on
The notice may be served on the FBO in person if present at the plant, or on a duly authorised representative of the FBO, where it is clear who this individual is.

4.6.8 Alternative service methods
Where it is not possible to identify the name and address of the person on whom the notice should be served, it can be served by addressing it to the FBO in their capacity as “occupier” of the establishment at which corrective action is required (naming the establishment). The notice may then either be handed to someone else at the establishment who appears to be in charge, or by attaching the notice or a copy of it to some conspicuous part of the establishment.

The provisions relating to the service of notices are contained within Regulation 28 of The Food Hygiene (Scotland) Regulations 2006. They correspond with the provisions of Section 50 of the Food Safety Act 1990.

4.6.9 Information for notices
The following information is to be included on the reverse of the AO copy:

- the name of the plant representative to whom any copy notices have been handed (in circumstances where the original has been posted to the FBO at the plant or served at the registered office address of a limited company)
- any comments made by the plant representative when handed the notice
- details of any food detained at the same time as the service of the RAN
- the reference number of the Detention Notice served
- details of any appeal that is lodged by the FBO in respect of the service of the RAN

4.6.10 Rights of appeal
The FBO has the right of appeal (Regulation 20 (Scotland)) to a Sheriff regarding the decision of the AO to serve a Remedial Action Notice. If the occupier appeals, the AO must notify FSS Aberdeen, Operations and the area VM. The provisions of the Remedial Action Notice remain in force until such time as the appeal is upheld.

4.6.11 If removed or defaced or destroyed
The notice is the property of the FSS. If the AO discovers that any notice affixed to an establishment has been removed, defaced, or destroyed, the notice should be replaced as soon as possible and the events recorded in the FSS notebook or daybook.
4.6.12 Failure to comply

Failure to comply with a RAN is an offence (Regulation 9 (7) The Food Hygiene (Scotland) Regulations 2006). If the operator has failed to comply with such a notice, complete a Referral for Investigation report - ENF 11/6.

4.6.13 Corroborative evidence rules

Where possible, service of a notice should be evidenced or corroborated in some way. If a notice is served by hand, then a second AO should be present when it is served to corroborate this fact. Both, the AO who served the original notice and the corroborating officer should sign a copy of the notice and indicate the date and time of service, and should also make a note of the details of service in the Plant Daybook and/or their FSS personal notebook. A witness is required to observe any AO fixing a notice to the premises.

When posting a notice, the OV should obtain a proof of postage certificate and retain this as evidence. Where this is not possible, they should record the details of where the notice is posted and the postage address in their pocket book and have a colleague corroborate the postage and countersign the entry. Where no colleague is available to corroborate postage, record details of posting in the same way as above and photograph the envelope.

4.6.14 Multiple contraventions

Where different contraventions have been identified, a different notice should be served for each and every separate contravention.

A notice containing multiple contraventions:

- will be more complicated to draft and it is more likely that an FBO may be confused by what the AO is trying to convey; this may affect the validity of the Notice as it is important that enforcement requirements placed upon an FBO are clear
- will require actions that must be capable of curing all the issues cited in the contravention section
- cannot be withdrawn if there are certain issues still outstanding even if some aspects have been complied with
- cannot be referred for investigation as certain aspects of the notice may have been complied with
- if appealed, will result in all of the issues being the subject of the appeal, even where some may have been complied with

In limited circumstances, it may be acceptable to cite more than one issue and legal reference on a RAN provided that:
the legal references and contraventions relate to the same system, for example: maintenance, cleaning of the premises etc.

the actions the AO requires the FBO to take are capable of curing all the contraventions identified earlier in the notice

4.6.15 Withdrawal of a RAN

A RAN is often used to correct problems with operational practices that pose a potential risk to the safe production of food. They may be left in place until the AO is satisfied that the FBO has complied with the legal requirement.

If the officer is satisfied that the actions required by the Notice have been complied with, it must be withdrawn and it is not appropriate to leave the notice in place for long periods after this point as it does not offer certainty for the FBO as to whether they will face any future legal proceedings, since they are now complying with the Hygiene Regulations.

Notification of withdrawal of a RAN must be effected in the same way that the notice was served. If the FBO is a limited company, and the Notice was served at the company’s registered office address (with a copy of the Notice having been handed to a member of staff in charge at the production plant), then the withdrawal notice must also be sent in the post to the registered office address, and a second copy should be handed to someone appearing to be in charge / duly authorised representative at the plant.

4.7 Hygiene Improvement Notices

4.7.1 When to use a Hygiene Improvement Notice (ENF 11/23)

The Hygiene Improvement Notice (HIN) should be used:

- where there is a record of non-compliance with breaches of the regulations
- where the history of compliance by the FBO is such that the AO has reason to believe that an informal approach will not be successful
- where formal action is proportionate to the risk to public health

A HIN should not be used for non-hygiene related matters, for example, failure to comply with the provisions of the Animal By-Product Regulations, WATOK or TSE Regulations.

Note: the only exceptions are the ABP provisions enforced under Chapter VI (Food Waste) of Annex II, (EC) 852/2004.
The Code of Practice requires that both verbal and written advice be given to a FBO prior to a HIN being served. However, the Code also acknowledges that there may be circumstances where the AO believes this informal approach will be unsuccessful. If these informal stages are to be bypassed, the AO must have suitable evidence to demonstrate that the FBO has ignored previous informal advice in this area, prior to circumventing these requirements.

4.7.2 Purpose of a HIN

The purpose of a HIN is to place a legal requirement on a FBO to take action to achieve compliance with the EU Food Hygiene Regulations.

A HIN may require the FBO to:

- address any hygiene deficiency that does not require immediate action
- repair a structural defect with the building
- to build or construct additional facilities to cope with an increased throughput
- address failures to implement and maintain a sound HACCP based system

The identified action must be stated on the HIN.

4.7.3 When not to issue a HIN

A HIN cannot be used to impose a continuing burden, and should not be used in the following circumstances:

- where the contravention might be a continuing one, for example, wooden pallets stored in the presence of unprotected fresh meat and the Notice would only secure an improvement at that point in time
- where breaches exist that pose a potential and imminent risk to health and urgent action is needed; in these cases it is more appropriate to use a Remedial Action Notice (RAN); and in more serious situations an Hygiene Emergency Prohibition Notice
- for the failure to implement good hygiene practice

An HIN cannot be issued unless a contravention of the Hygiene Regulations is identified.

4.7.4 Service

Service of a HIN is by an OV or suitably trained MHI.

HINs must be served on the FBO.
Note: Where the FBO is a limited company, the envelope (but not the notice itself) is to be addressed to the limited company c/o The Company Secretary at the Registered Office.

The AO who observes the deficiency should serve the formal notice. If the Notice has been served by post on the FBO, a copy of the Notice should be handed to someone at the plant address by the AO that observed the deficiency. Details of how the notice was served should be recorded on the back of the HIN.

4.7.5 Service checklist

When serving a HIN the AO must:

- have in their possession all the evidence to justify its service
- verbally inform the FBO of the intention to serve the notice
- state why it is served and the action needed to remedy the breach
- sign, date and if possible type the HIN
- When filling in the reference number the AO must follow the agreed format, as detailed in section 4.6.6 of this chapter.

4.7.6 Drafting and serving a notice to a sole trader

Ensure that the name of the individual on the formal Notice clearly identifies the individual acting as the FBO, beyond doubt, and will need to include both their forename(s) and surname.

Where family members have the same names, try to include any additional names that the person may have, to avoid confusion. The notice may be served by hand on the sole trader at the plant, or addressed to them personally at the plant address.

4.7.7 Drafting and serving a notice to a partnership

Where a number of individuals act as the FBO under a partnership arrangement, a copy of the Notice must be served on each and every partner. The box identifying the FBO must include each and every partner’s full name.

The notices may be served by hand on each partner at the plant, or addressed to each of them personally at the plant address, with a covering letter explaining that the same notice has been served on the other partners in the business.
Drafting a notice to a FBO with limited liability status

Where the FBO has limited liability status, the name of the FBO will be the full name of the limited company, for example, ‘ABC Meat Ltd’. The Notice must be sent by post to the registered office or principal address of the company, with a copy of the Notice handed to the relevant person in charge at the plant. The envelope must be addressed to the limited company c/o ‘The Company Secretary’, where one exists.

Note: Whilst a company secretary is no longer a legal requirement within a limited company structure, where they exist, they are generally the person responsible within a limited company structure, who receives such notices. They are not the FBO or proprietor, and therefore should not be referred to on the formal notice.

Content of notice

The notice must specify the:

- grounds for believing the FBO is failing to comply with the regulations
- precise nature of the alleged breach
- measures needed to be taken to secure compliance
- timescale (date) for compliance
- appeal provisions, including the name and address of the relevant local court

Note: Alternative works of equivalent effect may be acceptable.

Time limits

HINs place the FBO under a legal obligation to take specified action within a set time period, during which operations may continue. The time period given as the date of compliance must not be less than 14 clear days. When calculating this, the AO must not include the day on which the notice is served. They should begin counting from the day after the day on which they intend to serve the notice, count 14 clear days and then put the date for compliance as the day after this.

Example:

Offence is identified on 1 January.

Notice to be served on 1 January.

The AO must count 14 days starting from 2 January. This will be the close of operations on 15 January. Mark the date for compliance as 16 January.
Note: The period specified for compliance by the AO must be reasonable, given the measures required, and should, wherever possible, be agreed with the recipient. Where the AO is unsure what may constitute a reasonable timeframe to specify in a HIN, it is important that they seek advice from their contract manager or VM, to avoid appeals being lodged for unrealistic timescales.

4.7.10 Drafting the notice

The AO is required to:

- describe the contravention that has been observed that constitutes a breach of the Hygiene Regulations; it is not sufficient to merely repeat the legal requirement set out in the legislation, as this does not specify the precise nature of the breach
- cite the relevant legal reference(s) within the Hygiene Regulations, ensuring that this identifies the exact point or paragraph that places an obligation on the FBO, including the general obligation for the FBO to comply with the relevant provisions within the Annexes of the legislation where applicable; for example, Article 3 and Annex III, Section I, Chapter IV, Paragraph 7(b) (i) of Regulation (EC) 853/2004
- where the contravention breaches various legal requirements, use the most relevant and specific provision where this exists; however, where there are no specific requirements, use the more generic references which apply to the FBO in question
- describe what measure(s) / action(s) in their opinion the FBO must take to secure compliance with the contravention(s) identified earlier in the notice. The wording must be specific enough for the FBO to understand exactly what is required of them, and not just quote the legal requirements again.
- ensure the contravention(s), legal reference(s) and action(s) must all link to one another; the AO must not require the FBO to undertake actions or measures that are not linked to identified contraventions earlier in the notice.
- set out a timescale which is a minimum of 14 clear days from the date the notice is served; it is important that if the AO identifies more than one legal reference and contravention that are of a similar theme, that the time frame for compliance is suitable for both issues

4.7.11 Drafting notices with more than one legal breach identified

A notice should only deal with one contravention. This will avoid any potential problems if the Notice is appealed; in which instance, all of the issues cited on the notice will be held in abeyance until the court makes a determination on the validity of the Notice.
Where different contraventions need to be remedied within different time frames; for logistical and operational reasons you cannot place separate time scales on the same notice.

The more contraventions that are cited in a Notice, the more complicated the Notice will be to draft, and it is more likely that an FBO may be confused by what the AO is trying to convey. This may also affect the validity of the Notice as it is important that enforcement requirements placed upon an FBO are clear.

The actions the FBO must take that are specified by the AO in the Notice must be capable of curing all the issues cited in the contravention section; failure to do so will make it more problematic to ensure that the actions the FBO must take, will secure compliance with the relevant legal provisions.

It may be acceptable to cite more than one legal reference or issue on a notice, provided that:

- the legal references link to all the contraventions described by the AO
- they relate to the same theme
- the actions the AO requires the FBO to take are capable of curing all the contraventions identified in the notice and ensure all legal obligations are adequately dealt with

4.7.12 Posting

Ideally, all HINs should be posted at a Post Office and a certificate of posting obtained. Where it is impractical to gain access to a Post Office the notice should be posted in a post box, corroboration obtained by a colleague where they are available, and a record made in the AO’s FSS personal notebook which should be countersigned.

4.7.13 Right of appeal

Recipients have a right of appeal against Hygiene Improvement Notices to the Magistrates’ Court. During the appeal period the requirements of the notice are suspended.

In the event of an appeal by someone who is aggrieved by the service of the HIN, the AO is to inform FSS Operations immediately (area VM), who will arrange legal representation through FSS Legal for the appeal hearing.

4.7.14 Requests for notice extension

If the FBO were to request an extension to a HIN, this must be in writing and requested prior to the expiry of the notice. This will be an informal arrangement between the AO and FBO as there is no legal basis for the AO
to extend the notice. It will constitute an informal undertaking by the AO not to refer the matter for investigation unless the FBO continues to be non-compliant after the agreed extension date.

Where there is a genuine reason for such an extension and the criteria in the Code of Practice are met, the AO should discuss with the FBO the length of time required to comply and confirm their agreement to the extension in writing. The AO should withdraw the existing notice and issue a new HIN with a revised time frame that:

- exceeds the minimum 14 clear days
- concludes on an agreed date that the FBO/AO believe that compliance may be achieved.

The AO must consider again whether the conditions prevailing at the plant still warrant the issuing of a new notice. Where this is the case, new evidence should be gathered to justify its service.

The OV must retain the written request for the extension as well as the original notice. This will ensure that where any complaints or appeals are lodged against the timescales in the second notice, the OV can demonstrate the overall timeframe provided in both notices and the proportionality of their actions.

The AO must review the works carried out by the FBO after the agreed extension date specified in the letter has expired and either withdraw the Notice or refer the breach of the Notice and the specific non-compliance for investigation; see below.

**4.7.15 Failure to comply**

Failure to comply with a HIN is an offence.

If the FBO has failed to comply with a notice, complete a Referral for Investigation report for the breach of the formal notice as well as a breach of the substantive offence that led to the notice being served in the first place.

**Reference:** See the topic 4.10 on ‘Referral for investigation’ for additional information.

**4.7.16 Compliance and withdrawal**

After the service of a HIN, the AO must check that it is complied with by the stated date.

Where compliance is achieved, the AO must confirm formally in writing that they are satisfied with the works carried out and must withdraw the HIN.
Measures that achieve the same outcome as those specified in the notice must be accepted as achieving compliance.

A template is available in Annexes 4a and 4b to this chapter that can be used as the basis of a letter to the FBO where:

- the AO is satisfied that the action required in the HIN has been carried out and compliance has been achieved to their satisfaction, or
- the AO has served the HIN in error and/or it has to be withdrawn due to a technicality

**Note:** Please delete the paragraph that is not applicable.

**Reference:** See annexes 4a and 4b on “Hygiene Improvement Notice letter template”.

### 4.8 Hygiene Emergency Prohibition Notices

#### 4.8.1 Caution

Hygiene Emergency Prohibition Notices (HEPN) can only be issued after authorisation from FSS Legal.

#### 4.8.2 When to use

Issuing a Hygiene Emergency Prohibition Notice (HEPN) should only be considered after discussion with the FSS area VM, and where there is a real and imminent risk of injury to health that is so serious that action requires the backing of the court, for example, contamination of the potable water supply.

**Reference:** Specific examples and further guidance are given in the Code of Practice made under Regulation 24 of the Food Hygiene (Scotland) Regulation 2006.

The HEPN must be served on the FBO by using the same procedures as outlined in the topic “Hygiene Improvement Notices “.

**Note:** The limited timescales are set out in the subsequent topics.

### 4.9 Hygiene Emergency Prohibition Orders

#### 4.9.1 Application process

The table below provides an overview of the application process for a Hygiene Emergency Prohibition Order (HEPO).
Stage | Description
--- | ---
1 | The AO must give the proprietor at least **1 full days’ notice** of their intention to apply for a Hygiene Emergency Prohibition Order (HEPO) by serving a HEPN on the FBO. An HEPN has an immediate prohibition effect and once served the AO should contact the local court to immediately arrange for a hearing.  
**Note:** A copy of the HEPN must be affixed in a conspicuous position to the premises at which the notice relates.

2 | The AO applies for an HEPO from the Sheriff court. The application must be made within three days of the service of the notice. The day of the service of the notice is regarded as day one. There is no legal requirement for the application to be heard in three days, although the court should be asked to list the hearing at the earliest opportunity. Once made the HEPO supersedes the HEPN. The AO must also affix a copy of the HEPO in a conspicuous position to the premises at which the HEPO relates.  
**Note:** The procedure for application of a HEPO in Scotland will be by way of a “Summary Application” prepared by a Solicitor. If successful, an “Interlocutor” (a statement of the Sheriff’s decision) will be issued and can be relied on to enforce the HEPO.

3 | Once the FBO applies, in writing, for the HEPO to be lifted, the application must be determined as soon as practicable and within 14 days. Once the AO is satisfied that the proprietor has taken significant steps to remove the health risk(s) specified in the notice, the AO should sign the withdrawal certificate at part 5 of the HEPN.  
**Regulation:** The Food Hygiene (Scotland) Regulations 2006, Regulation 8.

4.9.2 **Sources of advice**
Advice should be sought from FSS Legal through the area VM, who will assist in the preparation of the case prior to the court's hearing of an HEPO.

4.9.3 **Evidence**
Monitoring of the prohibition and any action taken by the proprietor must be recorded. Suitable evidence should be gathered prior to serving the HEPN for production in court.

4.9.4 **Procedure**
The table below shows the steps for an AO to follow when applying for an HEPO.
Chapter 7 – Enforcement
Food Standards Scotland

<table>
<thead>
<tr>
<th>Stage</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact local court to arrange hearing</td>
<td>The hearing must take place within three days of service of the HEPN. On establishing dates and times, the AO must notify the FBO by serving a Notice of Intention to Apply for a Hygiene Emergency Prohibition Order.</td>
</tr>
</tbody>
</table>
| Prepare for hearing | Prior to the hearing the AO should:  
  - read all the relevant papers  
  - prepare to be questioned as a witness  
  - bring all relevant evidence to court  
  The AO should also prepare three copies of:  
  - the HEPN  
  - the Notice of Intention to Apply  
  - the Complaint for a Hygiene Emergency Prohibition Order  
  - the draft Hygiene Emergency Prohibition Order duly completed and ready for signing by the Sheriff.  
  The AO must monitor the premises whilst awaiting the hearing and record any breaches of the notice or changes in circumstances at the plant. |
| At the hearing | It is crucial that the AO has gathered significant evidence at the time the HEPN was served and that this evidence is presented to the court. |
| Court will decide whether to issue the HEPO or not | If the order is made the AO should produce a draft completed order for signing by the Sheriff. The order must then be served on the FBO as soon as possible and a copy affixed to the premises in a conspicuous place.  
  Any breaches of the order whilst in force should be recorded and evidence collected. The matter should then be referred for investigation. |
| Risk is removed | The AO must then formally cancel the HEPO by writing to the FBO.  
  The withdrawal of such a HEPO must not be unreasonably withheld.  
  Once the order has been complied with, the business can recommence its operation. |

4.10 Referral for investigation

4.10.1 Appropriate uses

A referral for investigation is required in the following circumstances:

- repeated presentation of SRM (See: Chapter 2.7 on SRM controls)
• SRM being consigned from the premises still attached to the meat (except in the case of VC being consigned to approved cutting premises)
• failure to test bovine animals which require BSE testing
• serious and/or repeated contraventions of the Animal Welfare Act and Regulation (EC) No 1099/2009 (WATOK)
• breaches of the European Regulations and / or the Food Safety Act leading to an imminent risk to public health
• continual failure to comply with the requirements of Regulations, including ABP regulations
• obstruction of FSS personnel engaged in official duties
• failure to comply with all formal notices
• breaches of Detention Notices

4.10.2 Evidence
The AO must collect adequate evidence at the time of the offence before referring the matter for investigation.

The AO must identify the contravention and complete the enforcement programme.

Regard should be given to the Enforcement Policy and relevant codes of practice prior to any referral for investigation being put forward.

4.10.3 Referral to FSS Legal
Where the AO considers that an incident requires investigation, the matter will be referred to FSS area VM, who will assess if an investigation needs be undertaken.

Note: The process to follow when making a referral for investigation is detailed in topic 4.11 on ‘Protocol for a referral for investigation’, in the table onwards.

4.10.4 Decision to prosecute
Following a referral for investigation, a case conference will be convened to establish next steps; the possible outcomes are:
• Not within FSS remit
• Refer to another SRA
• No action taken – case closed
• Refer back to reporting officer / service delivery partner for action/ further information
• Issue FSS Formal Warning
• Investigation report will be submitted to the PF who will then confirm if case goes forward to court.

4.10.5 Caution
Formal cautions do not exist in Scotland. Instead the Procurator Fiscal may decide to issue a “Warning” or a “Fiscal Fine” (fixed penalty fine). If the accused pays a fine, a prosecution will not follow and this will not count as a conviction.

4.10.6 Rules of evidence
The AOs main task will be to gather of facts and evidence at the time of the offence, which may be used in court at a later stage. An AO must not attempt to conduct a full investigation as specific training is needed to ensure that the investigation is carried out in compliance with the Police and Criminal Evidence Act 1984 (PACE) (or equivalent) requirements. Only specially trained FSS Investigation Officers conduct investigations. AOs must not attempt to caution or interview suspects or to take statements.

Note: Remember the requirement for corroboration in the Scottish courts.

4.10.7 Statements
Statements will be taken by an FSS Investigation Officer. They are a record of specific events an individual witnessed in a chronological order. They must refer to all relevant evidence and produce these as exhibits for the case, e.g.:

• photographs
• samples
• copies of notices and advisory letters
• copies of daybook and notebook entries
• email correspondence with the FBO
• notes from the FBO – FSS meetings when the matters related to the case were discussed

Exhibits are usually identified by the initials of the AO and then consecutively numbered. The IO will assist with numbering when preparing the final statement.

Note: Where the AO is satisfied that the action required or work specified in a formal notice has been completed, the date that it was completed should be specified in a witness statement and on the back of the copy notice.
4.11 Protocol for a referral for investigation

4.11.1 Protocol for a referral for investigation

The table below outlines the process and rationale for a referral by the AO for formal investigation.

<table>
<thead>
<tr>
<th>Process</th>
<th>Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td>The AO is to discuss the issue with the rest of the inspection team,</td>
<td>This will ensure that the entire inspection team is aware of all formal enforcement action</td>
</tr>
<tr>
<td>where relevant when the contravention occurs, and prior to completing</td>
<td>taking place at the plant. All members of the Inspection Team are Authorised Officers and must</td>
</tr>
<tr>
<td>the ENF 11/6 “Referral for Investigation”.</td>
<td>assist in all enforcement action as and when required, including acting as a witness in court</td>
</tr>
<tr>
<td></td>
<td>if necessary.</td>
</tr>
<tr>
<td>The AO is to ensure the inspection team is aware of any proposed</td>
<td>This will forewarn and forearm colleagues that a contravention has been referred for</td>
</tr>
<tr>
<td>enforcement action before the FBO is advised of referral.</td>
<td>investigation.</td>
</tr>
<tr>
<td></td>
<td>The team as a whole will be more effective in identifying similar breaches, so that MHI</td>
</tr>
<tr>
<td></td>
<td>colleagues will never unknowingly condone activities that the AO is attempting to stop.</td>
</tr>
<tr>
<td></td>
<td>If advice is needed on the correct enforcement approach, the AO should consult their Line</td>
</tr>
<tr>
<td></td>
<td>Manager at an early stage. All relevant evidence must be supplied to enable the referral for</td>
</tr>
<tr>
<td></td>
<td>investigation to be considered. In particular, photographs must be taken to assist the court,</td>
</tr>
<tr>
<td></td>
<td>especially where the nature of the offence may be difficult to visualise and where the</td>
</tr>
<tr>
<td></td>
<td>photograph proves elements of the offence.</td>
</tr>
<tr>
<td>The OV is to provide a summary at team meetings, detailing the stage</td>
<td>Early advice will provide the necessary support to quickly address any queries regarding</td>
</tr>
<tr>
<td>to which the investigation has progressed.</td>
<td>enforcement approach.</td>
</tr>
<tr>
<td>If advice is needed on the correct enforcement approach, the AO</td>
<td>Remember that at this stage it is just a recommendation – the FBO is innocent until</td>
</tr>
<tr>
<td>should consult their Line Manager at an early stage.</td>
<td>proven guilty in a court of law.</td>
</tr>
<tr>
<td>AO decision made to refer the case for formal investigation.</td>
<td></td>
</tr>
<tr>
<td>The AO is to collect all evidence relating to the referral</td>
<td>All relevant evidence must be supplied to enable the referral for investigation to be</td>
</tr>
<tr>
<td></td>
<td>considered. In particular, photographs must be taken to assist the court, especially where</td>
</tr>
<tr>
<td></td>
<td>the nature of the offence may be difficult to visualise and where the photograph proves</td>
</tr>
<tr>
<td></td>
<td>elements of the offence.</td>
</tr>
<tr>
<td>The AO is to send all evidence along with the ENF 11/6 and the latest</td>
<td>Hygiene offences carry a 12-month time limit from when they are discovered by the AO; within</td>
</tr>
<tr>
<td>FBO audit report, to FSS Operations and FSS area VM within 10 working</td>
<td>which charges should be laid at the court. The time limit between identifying obstruction</td>
</tr>
<tr>
<td>days of the offence being identified and the AO’s decision being made to</td>
<td>contraventions and laying charges at the court is 6 months. The time</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Process</td>
<td>Rationale</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------</td>
</tr>
<tr>
<td>If compliance is achieved after a referral for investigation has been</td>
<td>This will demonstrate the effectiveness of the operator’s ’Due Diligence’ systems and identify any defences or mitigation that the operator may wish to put forward.</td>
</tr>
<tr>
<td>made, the OV must record this in the plant’s Daybook (or/and personal</td>
<td></td>
</tr>
<tr>
<td>FSS notebook), including compliance with any formal notice.</td>
<td></td>
</tr>
<tr>
<td>Where additional information is required, FSS FCIU will request further</td>
<td>Where evidence is lacking, the issue is complex, the approach taken by the AO requires further explanation. FSS FCIU may contact relevant colleagues (for example: OV, VM, Contract Manager) so that a comprehensive and informed picture can be gained of the issues surrounding the referral.</td>
</tr>
<tr>
<td>details, to gain a better understanding of the issues involved.</td>
<td></td>
</tr>
<tr>
<td>This may include checking that:</td>
<td></td>
</tr>
<tr>
<td>• all the necessary evidence has been gathered</td>
<td>To prove the elements of the offence beyond all reasonable doubt.</td>
</tr>
<tr>
<td>• the correct course of action has</td>
<td>To stand up to legal scrutiny.</td>
</tr>
</tbody>
</table>
been taken

- all formal notices have been correctly drafted and served
  To make sure that all the procedural requirements relating to enforcement have been followed.

- all formal notices must only request the FBO undertake a course of action required by the Regulations
  To ensure that the notice is legally compliant and defendable in case of an appeal.

- Time limits within which recommendations should be put forward by the AO after an offence has been identified.
  To ensure that long delays are not holding up the recommendation process and the FSS does not have to defend any “abuse of process arguments” by the defence alleging delays in investigating offences

- The hierarchy of enforcement has been followed and the approach to enforcement has been both reasonable and proportionate to the contravention identified.
  To ensure that all Codes of Practice, the FSS Operations Enforcement Policy have been complied with.

- all formal notices have been correctly drafted and served
  To make sure that all the procedural requirements relating to enforcement have been followed.

### 4.12 Referral for investigation: FSS FCIU

#### 4.12.1 FSS protocol

The table below outlines the process and rationale for formal investigation by the FSS.

<table>
<thead>
<tr>
<th>Process</th>
<th>Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td>FSS FCIU will review the referral and formally interview the alleged defendant(s) and take statements from the Inspection Team and any other potential witnesses.</td>
<td>FSS FCIU will inform the AO and the Operations Team at Aberdeen, which IO has been appointed to each case.</td>
</tr>
<tr>
<td>When the investigation is complete:</td>
<td></td>
</tr>
<tr>
<td>- FSS FCIU will review all case files relating to hygiene, SRM and animal welfare contraventions and make a decision on the appropriate course of action.</td>
<td></td>
</tr>
<tr>
<td>- If the case is submitted to the</td>
<td></td>
</tr>
<tr>
<td>Procurator Fiscal, the PF’s office will review all Scottish contraventions and make their decision on the appropriate course of action. This could be:</td>
<td></td>
</tr>
<tr>
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<tr>
<td>• not enough evidence exists to pursue the case</td>
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</tr>
<tr>
<td>• procedural errors have been identified and no further action is taken, but it is recommended that enforcement action is restarted</td>
<td></td>
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<tr>
<td>• it is not in the public interest to take formal action</td>
<td></td>
</tr>
<tr>
<td>• it may be the FBOs first breach and/or they admit the offence and take appropriate corrective action so it is felt that a formal caution may be more appropriate.</td>
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</table>

| When a decision is made NOT to take the case forward the AO/ OM/ VM/ AVM and FSS Operations will be advised of the reason by FSS legal |

**OR**

<table>
<thead>
<tr>
<th>The case is pursued with a view to prosecute the FBO and/or defendant and charges are laid with the local Sheriff Court.</th>
</tr>
</thead>
<tbody>
<tr>
<td>When a decision is made to take the case forward to court, the IO must inform the AO/ OM/ VM and FSS Operations at Aberdeen prior to informing the plant operator of this intention. This will ensure the Inspection Team is aware of the fact that the Plant Operator will be facing formal action, so that they are aware of any potential conflict.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Where the operator pleads not guilty and the case goes forward to trial, all witnesses must be made aware of where and when their presence will be required at court.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any AO who is unfamiliar with court procedure may benefit from some discussion with their AVM and/or VM or the IO before any court appearance. Arrangements can also be made for a visit to the court before the trial takes place. Witnesses will be sent a copy of their statement to review before appearing at court.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>When the case has gone to court and the outcome determined, this information will be cascaded back to the AO and FSS Operations through FSS Legal and FCIU.</th>
</tr>
</thead>
<tbody>
<tr>
<td>If the witnesses are not required to attend a guilty plea, the outcome of the case will be cascaded to all witnesses.</td>
</tr>
</tbody>
</table>
4.13 Change of FBO during enforcement action

4.13.1 New FBO

From the moment the new FBO takes over the premises they are responsible for its condition and operation. Any enforcement action initiated prior to the change of ownership should be reassessed. Where the new FBO fails to immediately address any outstanding enforcement issues, these should be pursued by the AO, through the hierarchy in the normal way.

4.13.2 Re-issue of notices

In the event of the premises changing ownership whilst a formal Notice is still in force, the existing Notice should be withdrawn because it will not be enforceable against the new FBO. If the new FBO fails to immediately address the outstanding issues a similar Notice should be issued on the new FBO with an explanation of why the Notice is being issued. Evidence must be gathered again to justify the service of the Notice.

The situation should always be reconsidered prior to re-issuing the Notice. The AO may have to justify to a court on some future occasion why they (re-) issued the Notice.

Note: Where the FBO has changed, the Approvals and Certification Team in FSS should be informed so that an assessment of the new FBO's operating practices can be conducted.

4.14 Warrant to enter premises

4.14.1 Access refused

An AO who has been refused entry to premises should contact their VM immediately for further advice. In the event that access to an establishment is refused, it may be necessary for an AO to apply to the Sherriff for a Warrant to Enter Premises, to gain access to carry out their duties.

FSS Legal should be contacted for advice on any refusal by the FBO to grant entry to an AO. Where there is a threat of violence, reference should be made to the following for guidance:

http://FSShome/human/policiesprocedures/Pages/NewBullyingandHarassmentPolicy.aspx

A report must also be made to the local police force.
Examples of when it is necessary to apply for a Warrant to Enter Premises include:

- circumstances where the AO needs to enter to find out if there has been a contravention of the Hygiene Regulations
- entry is required to find out if there is evidence of any such contravention
- reasonable access has been refused or the AO believes it will be refused and the AO has given the occupier notice of intention to apply for a warrant
- the premises are unoccupied
- asking for permission, or giving notice of asking for permission would defeat the object of the entry
- where urgent access is needed

4.14.2 Entry warrants

A warrant required in Scotland must be drafted by the Crown Office. AOs should contact FSS Legal who will make a request to the office of the local Procurator Fiscal. A “fiscal depute” will draft the warrant application and make an appearance before the Sheriff. The Crown Office offer 24 hour coverage for emergency cases.

The warrant must be executed within one month and is no longer valid once the AO has used it to gain access. It cannot be used twice. Legal advice on this and other aspects of the Warrant should be obtained before entry is attempted. In Scotland, in the first instance, the AO can obtain advice by consulting a VM.

4.14.3 Access

Advise the local police of the intention to execute the Warrant at a certain time and date. The establishment must be visited as soon as possible and, on production of the Warrant to Enter Premises, the occupier should grant access. If the occupier fails to grant access, the occupier will be in breach of the warrant. Record the events in the contemporaneous notebook and inform the VM.

4.14.4 Forced entry

The Warrant to Enter Premises allows the use of force to gain entry when necessary. However, the AOs should never attempt a forced entry themselves, but should contact the Police for assistance.

4.15 Operational Delivery Incident Management Protocol
Please see Annex 13 of this chapter for the full Operational Delivery Incident Management Protocol.
5. **Risk Based Enforcement**

5.1 Why a ‘risk based’ approach: legal references

5.2 Risk management

5.3 Risk assessment: defining impact and likelihood

5.4 Recording procedure

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### 5.1 Why a ‘risk based’ approach: legal references

#### 5.1.1 Introduction

The FSS has adopted a risk based system of assessing public health and animal welfare risk in line with both legal requirements and codes of enforcement practice.

#### 5.1.2 Risk analysis and risk assessment

European food safety and hygiene legislation makes various references to the competent authority applying a risk based approach to the delivery of official controls.

Regulation (EC) 178/2002, Article 6, Paragraphs 1 and 2 state:

“**in order to achieve the general objective of a high level of protection of human health and life, food law shall be based on risk analysis, except where it is not appropriate to the circumstances or the nature of the measure**, and that ‘**Risk assessment shall be based on the available scientific evidence and undertaken in an independent, objective and transparent manner**’”

#### 5.1.3 Intensity of official controls

Regulation (EC) 854/2004, Recital 6 states:

“The nature and intensity of the official controls should be based on an assessment of public health risks, animal health and welfare, where appropriate, the type and throughput of the processes carried out and the FBO concerned”

Article 4, Paragraph 9 states:
“The nature and intensity of auditing tasks in respect of individual establishments shall depend upon the assessed risk. To this end the competent authority shall regularly assess:

a) public and, where appropriate, animal health risks
b) in the case of slaughterhouses, animal welfare aspects
c) the type and throughput of the process carried out, and
d) the FBOs past record as regards compliance with food law’ “

(EC) 854/2004, Article 4, also requires the competent authority to carry out official controls to verify the FBOs compliance with (EC) 852/2004, (EC) 853/2004 and (EC) 1069/2009.

5.1.4 Risk based enforcement

Regulation (EC) 882/2004, Article 54 states:

Where the competent authority identifies non-compliance, it shall take action to ensure the FBO remedies the situation, however, they must also take account of the nature of the non-compliance and the FBOs past record with regard to non-compliance.

5.1.5 Suspected breaches

Where breaches have been identified:

- persistent offenders should be identified quickly and face proportionate and meaningful sanctions
- regulators must act in a way that is proportionate to the risks as they understand them, except where immediate action is required

5.1.6 Risk based enforcement not risk based compliance

FBOs have a duty to comply with the general hygiene requirements laid down in Annex II to (EC) 852/2004, (see Article 4) as well as specific requirements contained in Annex II and III of (EC) 853/2004, (see Article 3).

All legal references applicable to a risk based approach apply to the competent authority and not the FBO. Therefore, whilst the FSS must take a risk based and proportionate approach to enforcement, the FBO must comply with all relevant hygiene/ welfare/ by-product requirements and may not conduct a risk assessment and decide to comply only with certain areas that they consider to be medium to high risk.
5.2 Risk management

5.2.1 Purpose of a risk management system
The purpose of a risk management system is to communicate effectively between colleagues when describing and comparing risks and to ensure that the different components of the risk assessment process have been defined. In this way we can objectively compare both food hygiene and animal welfare risks at different premises, where FBOs employ different food safety management systems and have different attitudes towards compliance.

5.2.2 Defining risk
The risk assessment consists of two independent components:

- likelihood – “Y”- how likely is it, that the risk is realised
- impact – “Z”- how bad the outcome could be if it were realised

When describing risk, it is helpful to use the “XYZ “model to help avoid ambiguity:

- that is, the “risk “ that a specific event or issue [X] occurs in the plant
  - for example, the risk of microbiological contamination through offal being dragged across the floor
- because of a set of circumstances [Y] the “likelihood “
  - for example, that there will be massive microbiological contamination on dirty slaughterhouse floors and offal are being removed by new staff member who has had no training
- resulting in [Z] the “impact “
  - for example, food poisoning of consumers, from bacteria on offal leading to death in vulnerable groups

5.2.3 Examples of how to describe risk
Some more examples using the “X, Y, Z” model is set out below:

High risk

- “the risk that carcases with faecal contamination are produced [X], because the FBO does not have adequate systems in place to prevent dirty livestock from being slaughtered [Y], resulting in consumers getting food poisoning [Z]” – Public Health Risk
- “the risk that lairage animals cannot lie down, stand up or turnaround without difficulty [X], because the FBO has used untrained staff without the
necessary knowledge and experience to lairage animals [Y], resulting in animals being overcrowded and experiencing avoidable suffering [Z]” – Animal Welfare Risk

Low risk

- “the risk that wrapped and packaged meat will become cross contaminated from contact with a wall with a cracked tile [X], because the FBO has not implemented an adequate maintenance programme to replace broken tiles that cannot be effectively cleaned [Y], resulting in the potential for consumers getting food poisoning [Z]” – Public Health Risk

- “the risk that wrapped vacuum packed meat will become contaminated from contact with used packaging and from other environmental contamination [X], because the wrapped meat is removed from a non-waxed box, that is not easy to clean, re-labelled and replaced in the same box [Y], resulting in the potential for consumers getting food poisoning [Z]” – Public Health Risk

5.3 Risk assessment: defining impact and likelihood

5.3.1 Categorising impact

Impact can be categorised as:

1 = minor risk, technical breach with minimal or no implications
2 = moderate risk
3 = major risk
4 = catastrophic risk

5.3.2 Rate the impact

- Assess and describe the “Reasonably Foreseeable Worst Case Impact” (RFWCI) for the event, but not the “worst possible case scenario”.
- Rate the impact: 1 for a minor impact and 4 for a catastrophic impact.
- It is not a requirement to foresee bizarre events, or acts of God.
- It is, however, a requirement to understand that many risks are ‘reasonably foreseeable’ through a pro-active approach to risk management.

5.3.3 Scoring the impact

The impact rating will be determined by:

- the species of meat being processed
- the bacteria associated with that type of meat
the intended customers of the FBO
whether the customers are part of a vulnerable group

5.3.4 Categorising likelihood
Likelihood can be defined and categorised as:
1 = unlikely – do not expect to happen
2 = possible – may occur occasionally
3 = likely – will probably occur
4 = has happened or is almost certain to occur

5.3.5 Likelihood factors
- Has the event occurred, or could it occur at any moment?
- Intensity (speed of the line, pressure by management for operatives to do the job, operative being paid per carcase and not by time).
- Numbers of staff (for example, volume of staff to train, competencies, turnover).
- Duration (how long does the activity take, does it require a long concentration span?).
- Accident, incidents, near misses (past history of the FBO).
- Supervision of staff.
- Environment, age of equipment, ventilation, maintenance.
- Complexity of operation – multi species.

5.3.6 Recording likelihood data
When describing the likelihood factors, the account must be backed up with objective evidence. The likelihood should describe an unambiguous data driven account.

Gather and retain suitable evidence to demonstrate that the likelihood factors have been accurately considered.

5.3.7 Assessing likelihood
Impact and likelihood are treated as independent variables when undertaking a risk assessment.

Care should be taken to ensure that once the RFWC impact has been considered, you do not assess the likelihood of the RFWC factor (Z), for example, food poisoning and death occurring in consumers.
It is the likelihood of the risk being realised (X) that must be assessed; for example, assess the likelihood of carcases becoming contaminated within the plant that could potentially lead to the RFWC (Z) factor.

5.3.8 Rating likelihood

- Look at the likelihood data for the risk.
- Check that the data is related to the concern [X] and not the impact [Z].
- Rate the likelihood.

5.3.9 Risk matrix

The risk score is a multiple of the reasonably foreseeable worst case impact and likelihood factors that prevail at the specific plant in question resulting from the food safety management systems the FBO has in place.

<table>
<thead>
<tr>
<th>Likelihood</th>
<th>Almost Certain</th>
<th>Likely</th>
<th>Possible</th>
<th>Unlikely</th>
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<tbody>
<tr>
<td></td>
<td>4</td>
<td>3</td>
<td>G</td>
<td>1</td>
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<table>
<thead>
<tr>
<th>Impact</th>
<th>Minor</th>
<th>Moderate</th>
<th>Major</th>
<th>Catastrophic</th>
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<th>Trend</th>
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<tr>
<td>Almost Certain</td>
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<tr>
<td>Likely</td>
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<tr>
<td>Possible</td>
<td>2</td>
</tr>
<tr>
<td>Unlikely</td>
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</table>

5.3.10 Trend

Assigning a trend allows you to indicate whether the risk is increasing, unchanged or decreasing, even where the overall score on the matrix remains the same.

For example, where an overall score is $4 \times 4 = 16$, the FBO may have taken some corrective action to improve the process and initial indications suggest that this has started to work. In this case the trend could change to
demonstrate an improving status, even though the overall risk score may still remain unchanged.

All risks in the red (R) and amber red (AR) zone should have appropriate countermeasures by the competent authority to manage both the likelihood and impact with actions by the FBO to address both.

5.4 Recording procedure

5.4.1 Recording requirements for risks scoring Red (ENF 11/5)

All contraventions must be recorded on the Intervention Log (ENF 11/8) and Enforcement Programme (ENF 11/5).

Reference: See chapter 9 on ‘Forms’ for the template documents.

Where the assessed risk scores Green-Amber or Amber-Red, the OV should use their professional judgement, record the issue on the ENF 11/8 and in some cases also on the ENF 11/5, is deemed necessary.

Reference: See topic 2.7 on ‘Gathering and preserving evidence’ for additional information.

5.4.2 Exception reporting requirements: low risks scoring Green (ENF 11/8)

Where it has been determined that the risk posed is low, with a score between 1 and 3:

- The non-compliance must be recorded on the Intervention Log (ENF 11/8), evidence of the low likelihood factors must be retained, to justify the low risk assessment
- The assessment which details the appropriate evidence and backs up the likelihood factors will act as ‘tangible’ evidence of the decision making process that: justifies the reason for not progressing the non-compliance and provides a rationale for colleagues to ensure a consistency of approach. This should be documented on the ENF 11/8.

Note: Where the likelihood factors have changed and the risk has increased, the non-compliance must be re-assessed and recorded in the appropriate ENF document and progressed through the hierarchy in the usual manner.

For example, an isolated maintenance issue that has no major impact on public health should be pointed out to the FBO and recorded on the ENF 11/8.
Where the unresolved maintenance issue becomes more serious or where other minor maintenance issues emerge that individually may not pose a major risk to public health, but cumulatively may lead to the deterioration in the fabric of the building, this will be indicative of a failure by the FBO to have in place and implement a suitable maintenance programme.

In such circumstances it would be reasonable for all these matters to be entered on the Enforcement Programme ENF 11/5 and escalated through to compliance.


Other non-compliances that may constitute a low risk might include:

- minor cleaning issues in non-production areas
- ABP transit bins that have been colour coded but not labelled appropriately with the category of ABP
- operatives not wearing the appropriate PPE (for example, snoods) in boxed meat areas
- other low risk issues the FBO has identified themselves through effective monitoring systems, that have not been rectified immediately, but for which the risk is being managed and a plan exists for the matter to be resolved and the appropriate improvements to their process is being implemented.

5.4.3 Verification

An audit trail must be established to demonstrate that FSS is managing risk appropriately. Veterinary Managers, during the plant reality checks, will review the Intervention Log to satisfy themselves it provides the appropriate assurance and ensure the quality of documentation.

5.4.4 Reporting considerations 1: proactive risk assessment

An initial risk assessment should be undertaken when the potential risk is first identified. Where the risk is then realised because the event has occurred, a further assessment will need to be undertaken.

It is important that initial risk assessments are not undertaken in hindsight and that all potential risks are identified.

5.4.5 Reporting considerations 2: frequency v likelihood

The likelihood rating for non-compliances should not be scored low after the risk has already been realised.

Do not confuse frequency with likelihood and score the risk low because the event has only occurred infrequently.
If an event could happen at any time, or has already occurred, the likelihood score must be **high**.

The frequency with which an event occurs is academic, once it has happened.

**5.4.6 Reporting considerations 3: FSS controls not a likelihood factor**

The likelihood of an event occurring should not result in a low score, when FSS has an inspection point at a specific stage in the process that is able to identify a problem.

The presence of an FSS inspection point should not be used to mitigate the risk score.

The likelihood of an event occurring will not be affected by the presence of FSS Operations. It is the FBOs systems and controls that are being assessed to determine the likelihood factor \(Y\), not the presence of FSS carrying out an inspection checks at a particular point in the process.

**5.4.7 Other factors to be considered**

FSS has identified certain high level outcomes that are to be achieved:

- to limit food borne illness caused by meat
- to detect and control animal diseases
- to achieve high standards of animal welfare in approved establishments
- to facilitate the international trade of animal products
- meat entering the food chain is free from SRM
- animals intended for the food chain are tested for BSE / TSE where BSE testing is required
- meat from all animals tested for BSE / TSE does not enter the food chain unless tested negative
- meat from over age animals does not enter the food chain
- evidence of deliberate fraud

Where such contraventions are identified, that compromise these outcomes, the overall risk (reputational / business / public health / animal welfare) to the organisation will be high. As such these matters should always be recorded on the ENF 11-5 and progressed through the hierarchy.
5.4.8 ENF 11/8 – Intervention Log

It is important that FSS can objectively assess the consistency of risk assessments. To ensure consistency of approach, the Intervention Log (ENF 11/8):

- must contain valid data
- must demonstrate the data can be tested and is true
- must be consistent and appropriate (for example, the impact is reasonably foreseeable, the likelihood is of the risk being realised)
- must demonstrate competent authority controls are proportionate to the risks.
6. Annexes

<table>
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<tr>
<th>Annex</th>
<th>Description</th>
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<tbody>
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<td>Annex 1</td>
<td>Examples of enforcement of the EC Hygiene Regulations</td>
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<tr>
<td>Annex 2</td>
<td>FSS Enforcement Policy</td>
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<tr>
<td>Annex 3</td>
<td>Enforcement Concordat</td>
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<tr>
<td>Annex 4a &amp; 4b</td>
<td>Templates for HIN withdrawal letters</td>
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<tr>
<td>Annex 5</td>
<td>Flow diagram: The treatment of animals, meat and food unsuitable for the human food chain</td>
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<tr>
<td>Annex 6</td>
<td>Supporting evidence photographic report template</td>
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<td>Annex 7</td>
<td>FSS letter template</td>
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<td>Annex 8</td>
<td>Compliance Spectrum</td>
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<td>Annex 9</td>
<td>Intervention Protocol</td>
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<td>Annex 10</td>
<td>FSS Production Label</td>
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<td>Annex 11</td>
<td>Protocol Maintaining Integrity of Evidence during Transport</td>
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<td>FSS Seal Register</td>
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<td>Annex 13</td>
<td>Operational Delivery Incident Management Protocol</td>
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<td>Annex 14</td>
<td>FSS log of evidence stored in plant freezers</td>
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<tr>
<td>Annex 15</td>
<td>SDP Incident Report Form</td>
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<tr>
<td>Annex 16</td>
<td>Food Incidents Aid Memoire</td>
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