

FOOD STANDARDS SCOTLAND

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**Interventions
Food Law Code of Practice
(Scotland)**



Presented to Scottish Parliament pursuant to section 40(1) of the Act¹, regulation 24(1) of the Food Hygiene (Scotland) Regulations 2006² and regulation 6(1) of the Official Feed and Food Controls (Scotland) Regulations 2009³

¹ 1990 CHAPTER 16

² SSI 2006 No. 3

³ SSI 2009 No. 446

Foreword

The Interventions – Food Law Code of Practice (Scotland) 2019 (hereafter referred to as the Interventions Code 2019) is issued under section 40 of the Food Safety Act 1990, Regulation 24 of the Food Hygiene (Scotland) Regulations 2006, and Regulation 6 of the Official Feed and Food Controls (Scotland) Regulations 2009. Scottish Ministers are empowered to issue Codes of Practice concerning the execution and enforcement of Food Law by Food Authorities. In turn, Food Authorities (may also be referred to as Enforcement Authorities and Local Authorities) are required to have regard to the Code when discharging their duties, and implement the provisions of the Code that apply to them. The Interventions Code 2019 does not apply to establishments at the level of Primary Production or Approval.

In February 2014 the Scottish Food Enforcement Liaison Committee (SFELC) set up a Working Group to address recommendation 57 of the Scudamore Report commissioned by Scottish Ministers following the horse meat incident. The group were tasked with examining the existing arrangements in Annex 5 of the Food Law Code of Practice (Scotland) and to assess whether an alternative regime would deliver more effective prioritisation of Food Law enforcement in Scotland.

The key findings of the group were:

‘The Group’s unanimous view was that the conflation of food safety and standards into one food law inspection will benefit local authorities, consumers and the industry. It will ensure that the profile of food standards will be raised whilst reducing duplication and bureaucracy caused by two inspection schemes. Importantly, Local Authorities will be able to target resources on high risk and non-compliant businesses.’

The Interventions Food Law Code of Practice (Scotland) 2019 has been created to incorporate the following changes;

- Introduction of the Food Law Rating System. (FLRS).
- Alignment with Food Standards Scotland’s Regulatory Strategy.
- Alignment to reflect Food Standards Scotland’s Strategy to 2021 and the Scottish Government’s approach to Better Regulation as set out in the Scottish Regulators’ Strategic Code of Practice.

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1. Introduction

The statutory basis for the Interventions Code 2019 and overarching duties on Local Authorities is as follows:

1. The Interventions Code 2019 is issued under section 40 of the Food Safety Act 1990 (“the Act”), Regulation 24 of the Food Hygiene (Scotland) Regulations 2006 and Regulation 6 of the Official Feed and Food Controls (Scotland) Regulations 2009 which empowers the Scottish Ministers to issue Codes of Practice concerning the execution and enforcement of Food Law by Food Authorities. It replaces all Codes previously made under the Act and applies to Scotland only.
2. In Scotland, Food Standards Scotland (FSS) has statutory responsibilities including policy development in relation to food, advising Ministers on the arrangements necessary to meet EU requirements and on any additional national measures that are appropriate for the protection of public health or other consumer interests. Ministers may issue codes of recommended practice for the guidance of Food Authorities, as regards the execution and enforcement of this, the applicable laws and of regulations and orders made under it. Food Authorities are required under that legislation to have regard to this Code when discharging their duties.
3. FSS seeks to work in partnership and to assist Local Authorities in implementing the Code. Whilst section 40(2)(a) of the Food Safety Act 1990 requires a Food Authority to have regard to the relevant provisions of the Code, section 40(3) does allow FSS to consult the Scottish Ministers in relation to non-compliance with the Code, to order the issue of a direction to that Food Authority requiring it to take steps to comply with the Code. Failure to comply with a Ministerial Direction by a Food Authority may be sanctioned by order of the Court of Session (see section 45 of the Court of Session Act 1988).
4. Food Authorities that do not have regard to relevant provisions of this Code may find their decisions or actions successfully challenged, and evidence gathered during a criminal investigation being ruled inadmissible by a court.
5. All references to legislation in this Code are made on the basis that the legislation may be subject to amendment and or revocation. The user and or reader of this Code, and any relevant corresponding guidance, must always ensure that the current legislation is referred to, in respect to any action taken in regard to Official Controls detailed in this Code; and seek their own legal advice as appropriate. Appendix One lists the key items of legislation referred to in this Code. Guidance on Scottish Food and Feed law is available on the FSS website.
6. For the purposes of this Code the terms Food Authority, Enforcement Authority and Local Authority are interchangeable, subject to any definitions in Food Law.

1.1. The Interventions Code 2019

The Interventions Code 2019 sets out instructions, processes and criteria to which Food Authorities are required to have regard when they carry out Official Controls relating to all **Registered** businesses (see Figure 1 and sub-section 5.1). The Interventions Code 2019 **does not apply to establishments at the level of Primary Production or Approval and these business groups will be addressed in future Code publications.**

Figure 1 - Registered Food Businesses.

Food Business Type	
• Manufacturer	• Head Office Business
• Caterer	• Public Houses
• Processor	• Licenced Business not providing catering
• Retailer	• Business providing limited refreshments
• Manufacturers	• Child minders.
• Exporters (NPOAO)	• Supported Living Business.
• Importers	• Business producing low risk food based from a domestic dwelling
• Wholesaler	• Bed & Breakfasts
• Distributor	• Packers
• Food Broker	

The Interventions Code and the accompanying associated guidance (see Annex 4) should reflect and help to enable the framework set out in Food Standards Scotland's Strategy to 2021, in particular Outcome 4 – Responsible Food Businesses Flourish.

The Interventions Code is part of a wider project by Food Standards Scotland to review and overhaul the Food Law Code of Practice . The review consists of three phases;

Phase One

The production and publication of the Food Law Code of Practice (Scotland) 2019 which updated the Food Law Code of Practice (Scotland) 2015. to reflect changes in legislation and practice since 2015 and to ensure it is in alignment with Food Standard Scotland's Regulatory Strategy.

Phase Two

The Interventions Code 2019 introduces the Food Law Rating System (FLRS). FLRS combines the rating systems for Food Hygiene and Food Standards into one Food Law Intervention scheme based upon a new Food Business Performance Model that will target resources on high to medium risk and non-compliant businesses. (please see Figure 2)

Figure 2 – FLRS - The Performance Ladder and Compliance Matrix (please see section 5)

Group 1 Business	Performance Levels	Band	Intervention Frequency
<ul style="list-style-type: none"> Manufacturer of High Risk Foods. Manufacturer, Caterer, Processor or Retailer that undertakes a specific method of processing that has the potential to increase the risk to public health beyond that of normal preparation, storage or cooking. Manufacturers of Foods for Specific Groups. All Exporters. Manufacturers, Processors, Importers, Wholesaler, Distributor, Food Broker, Packers of Food at enhanced risk of food fraud, substitution, adulteration or contamination. 	Sustained Compliance	1A	18 Months
	Compliant and confident in compliance going forward	1B	12 Months
	Minor Non-compliance and/or gaps in confidence in compliance going forward	1C	6 Months
	Significant Non-Compliance and/or no confidence in compliance going forward	1D	3 Months
	Sustained non-compliance and/or Issues of Public Health Significance or Fraudulent Activity	1E	Intensive Intervention. 1 month.
Group 2 Business	Performance Levels	Band	Intervention Frequency
<ul style="list-style-type: none"> All other Manufacturers, Processors, Caterers, Importers, packers, wholesalers and distributors not in Group 1. Head Office Business that undertakes a regional/national decision making function. Retailers handling open high-risk foods. 	Sustained Compliance	2A	24 Months
	Compliant and confident in compliance going forward	2B	18 Months
	Minor Non-compliance and/or gaps in confidence in compliance going forward	2C	12 Months
	Significant Non-Compliance and/or no confidence in compliance going forward	2D	3 Months
	Sustained non-compliance and/or Issues of Public Health Significance or Fraudulent Activity	2E	Intensive Intervention. 1 month.
Group 3 Business	Performance Levels	Band	Intervention Frequency
<ul style="list-style-type: none"> All other retailers, Food Brokers, Importers, packers, wholesalers and distributors not in Group 1 or 2. Public Houses and similar Licenced Business not providing catering. Business providing limited refreshments (e.g. tea, coffee, soft drinks) as an adjunct to main activity. Child minders. Supported Living Business. Business producing low risk food based from a domestic dwelling. Bed & Breakfasts. 	Sustained Compliance or Businesses where information available at point of registration, indicates there is minimal inherent risk	3A	No Proactive Intervention or 60 months.
	Compliant and confident in compliance going forward	3B	36 Months
	Minor Non-Compliance and/or gaps in confidence in compliance going forward	3C	24 Months
	Significant Non-Compliance and/or no confidence in compliance going forward	3D	3 Months
	Sustained non-compliance and/or Issues of Public Health Significance or Fraudulent Activity	3E	Intensive Intervention. 1 month.

COMPLIANCE CATEGORY	FOOD SAFETY AND PRACTICE PERFORMANCE	Serious (wilful and/or sustained serious) non-compliance. Any non-compliances that are an immediate risk to consumer health, allow consumers to make unsafe food choices or could give rise to fraudulent gain	Significant non-compliance Any non-compliances which may adversely affect consumer health or which might do so if not remedied quickly. Failure to comply with product or process specific requirements. Food Standards non-compliances where the consumer is misinformed or prejudiced.	Minor non-compliance Technical non-compliances which do not adversely affect consumer health or consumer choice but which require to be remedied.	Generally compliant No non-compliances or only very minor non-compliances which the LA has decided should not be pursued until the next intervention.	Full and continuing compliance and/or evidence of going beyond legislative requirements Evidence of a proactive approach. Evidence of compliance with third party programmes which are recognised as additional or beyond legislative requirements.
	CROSS CONTAMINATION PERFORMANCE					
	STRUCTURAL PERFORMANCE					
	FOOD INFORMATION PERFORMANCE					
	COMPOSITION PERFORMANCE					
	FOOD SAFETY MANAGEMENT SYSTEM	Serious lack of control of food safety and/or standards. No appropriate FSMS or failure to follow FSMS.	No appropriate FSMS or general/significant failure to follow FSMS. Significant lack of control of food safety and/or standards.	An appropriate FSMS (HACCP based) is in place and is followed but with minor gaps in scope/use.	Fully Documented appropriate (HACCP based) FSMS in place and followed.	Fully Documented appropriate (HACCP based) FSMS in place and followed with additional 3rd party accreditation.
	CONFIDENCE IN MANAGEMENT	No confidence. Unwilling to engage with obligations. Serious formal action required at this visit	Little confidence. Willing, but largely unable, to engage with obligations.	Some confidence. Engage with obligations but gaps in technical awareness. Reliant on LA. New Business or FBO.	Confident. Obligations are routinely met. Able to identify and control emerging issues. Good technical awareness.	Full and continuing compliance. Confident. Proactive approach to food safety management. Own or access to technical expertise. Implementation of externally audited FSMS at least equivalent to HACCP.
	AVERAGE SCORE	5	4	3	2	1

COMPLIANCE LEVEL

The Interventions Code amends the sections listed below of The Food Law Code of Practice (Scotland) 2019 (please see Annex 5 for further information).

- Sub-section 6
- Sub-section 27
- Sub-section 28
- Sub-section 33
- Annex 5

Phase Three

The key aim is to develop a process to simplify future updates by producing further individual publications of the Food Law Code of Practice. It is important that the Code continually reflects current legislation as it sets out the instructions and criteria that Food Authorities are required to have regard to in their delivery of Official Controls.

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2. Registration of Food Business Establishments

2.1. Introduction

1. Under Article 6(2) of Regulation (EC) No 852/2004, Food Business Operators must register their establishments with the appropriate Food Authority as Competent Authority.
2. Food Business Operators must normally register each separate unit of their Food Businesses that fall within the scope of Regulation (EC) No 852/2004, but see sub-section 6.8⁴ of this Code for exceptions to this with regard to moveable Food Business Establishments.
3. Responsibility rests with Food Authorities for recording and maintaining accurate details of Food Business Establishments which have been registered with them under Regulation (EC) No 852/2004.

2.1.1. Exemptions

1. In determining whether or not a particular establishment is subject to Regulation (EC) No 852/2004 only (and is hence required to be registered) consideration should be given to whether the business concerned is a 'Food Business' as defined in Regulation (EC) No.178/20025 on general Food Law and to both Recital (9) and Article 1(2) of Regulation (EC)No 852/2004 which set out the circumstances under which the Regulation, and hence the requirement to register under Article 6(2), would not apply.
2. It should be noted that Food Brokers are required to be registered, even if they never actually receive, handle or supply food.

2.1.2. Registration of New Food Business Establishments

1. Under Article 31(1)(a) of Regulation (EC) No 882/2004 the Competent Authority is required to establish procedures for Food Business Operators (FBOs) to follow when applying for the registration of their establishments. The following sub-sections set out these procedures.

2.1.3. Time Frame for Registration

1. Food Business Operators should register their Food Business Establishments with the appropriate Food Authority at least 28 days before food operations commence.

2.1.4. Registration Form

1. Food Business Operators must provide the relevant Food Authority with full details of the activities undertaken when registering their establishments. A model registration form as detailed in Annex 2 should be made available to, and completed by the Food Business

⁴ Food Law Code of Practice (Scotland) 2019

⁵ 41 Regulation (EC) No. 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (as amended)

Operator, for each establishment under their control and submitted to the relevant Food Authority.

2. Once a Food Business Operator has provided the relevant Food Authority with full details of the activities undertaken the Food Authority should assign the appropriate business grouping in accordance with sub-section 3 of the Interventions Code 2019.

2.1.5. Sites on which there is more than one Food Business Establishment

1. Establishments under the control of the same Food Business Operator

Sites will exist where there are two or more Food Business Establishments under the control of the same Food Business Operator. For example, in the case of a shopping centre in which there are two or more Food Business Establishments under the control of the same Food Business Operator, such operators must ensure that each establishment under their control is registered separately. Food Business Operators should therefore complete a registration form for each separate establishment.

2. Establishments under the Control of Different Food Business Operators

Sites will also exist on which there are two or more Food Business Establishments under the control of different Food Business Operators. For example, a supermarket may have a coffee shop on site under the control of a different Food Business Operator such as a coffee shop chain. In such cases, the coffee shop will not be covered by the supermarket's registration and must be registered in its own right by its operator. Coffee shops, snack bars etc. operated by the supermarket itself would be covered as part of the supermarket's registration.

2.2. Lists of Food Business Establishments

2.2.1. Requirements of Regulation (EC) No 882/2004

1. Article 31(1)(b) of Regulation (EC) No 882/2004 requires the appropriate Competent Authority to draw up a list of Food Business Establishments that have been registered, and permits existing lists to be used for this purpose.
2. The register of Food Business Establishments held by each Food Authority in accordance with the now revoked Food Premises (Registration) Regulations 1991, will satisfy this requirement and may be carried forward. Food Business Operators will not, therefore, need to re-register Food Business Establishments under their control which have already been registered with a Food Authority. Food Authorities must maintain their lists in accordance with the requirements of Article 31(1)(b) of Regulation (EC) No 882/2004.
3. Food Authorities should also ensure that an up-to-date list of Food Business Establishments registered with them is available for inspection by the general public at all reasonable times, in accordance with data protection law. The list should contain the following information about each Food Business and should be consistent with the information held in the Food Authority's database:

- a. Name of the Food Business Operator,
 - b. Name of the Food Business Establishment,
 - c. Address of the Food Business Establishment,
 - d. Particulars and nature of the Food Business.
4. Food Authorities may give or send a copy of their list or any entry on it to any person who makes a request for such information. All requests for information on Food Business Establishments should be handled with due regard to Freedom of Information and Data Protection legislation.

2.3. Action on Receipt of Completed Registration Form

1. On receipt of a completed registration form, Food Authorities should record the date of receipt on the form. They should ensure that if there are any activities indicated on the form outside of their enforcement remit, a copy of the form is sent without delay to the relevant Competent Authority.
2. Food Authorities should enter relevant information from the registration form on to the Food Business Establishment database the Food Authority maintains. The registration form should then be stored in a file in respect of that Food Business Establishment.
3. Food Authorities should keep application forms relating to businesses in a format that maintains their admissibility as evidence if required.
4. If any information is omitted from a registration form submitted by a Food Business Operator, the Food Authority should return the form to the Food Business Operator for full completion.
5. On receipt of a completed application form, Food Authorities should also schedule an inspection of the establishment in accordance with sub-section 3 of the Food Law Code of Practice (Scotland) 2019.

2.3.1. Establishments that are rated Group 3 Band A

1. A business can be rated as a Band 3A either following initial intervention or where the food registration form gives sufficient information to make determination that there is minimal inherent risk. The Lead Food Officer can then decide to either place the business on a 60 month intervention frequency or choose not to undertake a proactive intervention.
2. In the case of a no proactive intervention the business should be informed accordingly. This can be undertaken as part of the receipt of registration (see sub-section 3.3).
3. In addition the Lead Food Officer has discretion to use historical information to determine whether a business can be awarded Sustained Compliance for a Band 3A. This would include a business that has previously been included in an Alternative Enforcement Strategy in accordance with section 4.12 and 27.16 of the Food Law Code of Practice (Scotland) 2019.

2.3.2. Registration Certificates / Confirmation of Receipt

1. Certificates of Registration for Food Business Establishments should not be issued to Food Business Operators because of their potential to mislead consumers into believing that a Food Business Establishment is fully compliant with Food Law. Food Authorities may, however, choose to confirm safe receipt of registration forms and the entry of an establishment on to the list of registered Food Business Establishments. Any such confirmation should remind the Food Business Operator to advise the Food Authority of any subsequent changes to the business, in accordance with Article 6(2) of Regulation (EC) No 852/2004.

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2. Changes to Activities after Registration

1. Under Article 6(2) of Regulation (EC) No 852/2004, Food Business Operators must ensure that the appropriate Competent Authority always has up-to-date information on their Food Business Establishments and must notify the relevant Competent Authority of any significant changes of activities or closure.
2. Any changes to the details previously supplied e.g. a change of operator, a change to the activities carried out in relation to food, the closure of an establishment, etc., should be notified by the Food Business Operator to the relevant Food Authority. Notification of a change to the operator of a Food Business Establishment should be made by the new Food Business Operator.
3. On receipt of a notification of a change of activities Food Authorities should update the list of registered Food Business Establishments as appropriate, and record the details on the file relating to that Food Business Establishment.

2.4. Moveable Establishments

2.4.1. Markets

1. In the case of caterers and retailers who operate vehicles and stalls (whether or not these stalls are provided by the controller of the market) and are used for transporting or preparing food or the sale of food to consumers within the area of a market, the Food Business Operator shall register the establishment in which their stocks of food to be sold are ordinarily kept with the relevant Food Authority.
2. If the controller of a market is the provider of permanent units (establishments) (and not simply stalls) within a market, the Food Business Operators operating their food businesses from those establishments should register each establishment with the relevant Food Authority.

2.5. Non-Registered Establishments Thought to Be Engaged in Activities Subject to Regulation (EC) No 852/2004

1. In such circumstances the Food Authority should ask the Food Business Operator to complete a registration form as soon as possible and satisfy itself that the Food Business Establishment is operating in compliance with the other provisions of Regulation (EC) No 852/2004 as appropriate.
2. The purpose of registration is to enable the Competent Authorities to have business details available, from external sources if necessary, so that businesses can subsequently be factored into the undertaking of Official Controls.
3. Officers are directed to sub-section 14⁶ for general guidance on enforcement.

⁶ Food Law Code of Practice (Scotland) 2019

4. Officers should be careful to ensure that such establishments are subject to Regulation (EC) No 852/2004.

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3. Interventions

3.1. Introduction

1. This Code deals with Interventions of Food Law. It defines the different types of Interventions that Food Authorities may use, how they are planned, programmed and the circumstances in which they should be applied.
2. Each Food Authority should complete an annual Service Plan which details the Interventions programme for the coming year. They must ensure such a programme is adequately resourced and the overall plan is subject to approval timeously at the appropriate governance level within the Local Authority.
3. The Service Plan should include a statement in relation to the Food Authority's approach or policy on Interventions, Enforcement, and Service Delivery. The Interventions Programme should include the Food Business Establishment profile, the number of Interventions programmed, an estimate of the number of revisits that will be made and an estimation of resources required. The programme should also detail any targeted Intervention activity that the Food Authority intends to carry out including any extra resources this may require. The Food Authority should also identify any priorities relating to nationally or locally driven outcomes, such as compliance with new legislation or improved compliance with existing legislation and other central government initiatives, including compliance with this Code.
4. Interventions are key to improving compliance with Food Law. The Interventions Code 2019 allows Interventions to be applied in a risk based manner such that more intensive regulation is directed at those Food Business Establishments that a present the greatest risk to public health or misleading of the consumer and have the poorest levels of performance.
5. Interventions are defined as activities that are designed to monitor, support and increase Food Law compliance within a Food Business Establishment. They include, but are not restricted to 'Official Controls'.
6. 'Official Controls' are defined at EU level at Article 2(1) of Regulation (EC) No 882/2004. They are any form of control for the verification of compliance with Food Law.
7. Methods and techniques for carrying out tasks related to Official Controls are specified at Article 10 of Regulation (EC) No 882/2004. These include inspection, monitoring, surveillance, verification, audit, sampling and analysis.
8. In addition to Official Controls, Interventions also include other activities that are effective in supporting Food Businesses to achieve compliance with Food Law such as the provision of targeted education and advice that takes place at Food Business Establishments or information and intelligence gathering.

9. Interventions that are Official Controls must provide sufficient information to Food Authorities to establish that food related activities carried out at Food Business Establishments comply with Food Law. In line with the general obligations set out at Article 3 of Regulation (EC) No 882/2004, they should be carried out at all stages of production, processing and distribution to establish whether the requirements of relevant Food Law are being met.
10. An Interventions Programme is central to a local regulatory and enforcement regime, and Food Authorities must ensure that such a programme is appropriately and adequately resourced.

3.2. Intervention Types

1. Interventions which are Official Controls include:
 - a. Inspections
 - b. Monitoring
 - c. Surveillance
 - d. Verification
 - e. Audit
 - f. Sampling where the analysis and or examination is to be carried out by an Official Laboratory.
2. Other interventions, i.e. those which do not constitute Official Controls include:
3. Education, advice and coaching provided at a Food Business Establishment.
4. Information and intelligence gathering (including sampling where the analysis or examination is not to be carried out by an Official Laboratory).
5. It is recognised that more than one type of Intervention may be carried out during a single visit to a Food Business Establishment. It is also recognised that the Intervention approach used may be influenced by the findings during a visit to an establishment. With regard to FLRS an Inspection requires to be undertaken that assesses all 7 Compliance Categories, in order to determine the performance banding of the business. (please see section 5).

3.3. Unannounced Official Controls

1. In accordance with Article 3(2) of Regulation (EC) No 882/2004, the general principle is that all Official Control Interventions must be un-announced. Regulation (EC) No 882/2004 Article 3(2) states that:

“Official Controls shall be carried out without prior warning, except in cases such as audits where prior notification of the Feed or Food Business Operator is necessary”

2. A Food Authority’s Intervention Programme should provide for Food Business Establishments to be subject to Intervention at times when they are open for business, whether or not that coincides with the Food Authority’s normal hours of work. Food Business Establishments that only operate at night, at weekends or in the early hours of the morning should be subject to Interventions at these times. Professional judgement should be applied in respect of establishments subject to 24 hour opening in determining the most appropriate time(s) to carry out an Intervention at such establishments.
3. In certain exceptional circumstances, there may be occasions when it is advantageous to give advance notice, particularly when the purpose of an Intervention is to observe and / or evaluate a particular process in operation. Authorised Officers should exercise discretion in this area guided by the overriding aim of ensuring compliance with Food Law (see also Section 7⁷ of the Code on obtaining entry to Crown Premises). In such circumstances (with the exception of relevant Crown Premises) it will be necessary to schedule unannounced visits within the Intervention Programme. Under no circumstances should all Interventions at an establishment be pre-announced.
4. A Food Authority’s approach to Interventions out-of-hours should be documented in its Food Service Plan.
5. If a Food Authority has difficulty complying with this requirement in relation to specific establishments, this should be raised with FSS.

3.4. Records pertaining to Official Control Interventions (see sub-section 6)

1. Sufficiently detailed notes including the appropriate aide memoire, any contemporaneous notes, or similar, of Official Control Interventions must be produced and retained. These shall include:
 - a. Identifying the full scope of the Official Control Intervention.
 - b. Demonstrate the evidence identified and or examined to demonstrate both compliance and non-compliance with Food Law.

3.5. Food Law Intervention

1. Food Law Interventions are part of the system for ensuring that food meets the requirements of Food Law, including microbiological quality, absence of pathogenic micro-organisms and safety for consumption, including proper presentation, labelling and advertising so as not to confuse or mislead; compliance with compositional standards; and the absence of non-permitted or excessive levels of additives, contaminants and residues.

⁷ Food Law Code of Practice (Scotland) 2019

2. Each Food Authority should document, maintain and implement an Interventions Programme that includes all relevant establishments for which the Food Authority has enforcement responsibility for Food Law.
3. The programme should be based on the performance bandings that have been determined in accordance with FLRS.(please see section 5)
4. A full Inspection has been the traditional method to ensure Food Business Operators comply with Food Law. In accordance with FLRS and an Inspection is th appropriate intervention to utilise in this respect.

3.6. Definitions

1. Article 2 of Regulation (EC) No. 882/2004 provides the following definitions of Official Controls:

***‘Inspection’** means the examination of any aspect of feed, food, animal health and animal welfare in order to verify that such aspect(s) comply with the legal requirements of feed and food law and animal health and welfare rules.*

***‘Monitoring’** means conducting a planned sequence of observations or measurements with a view to obtaining an overview of the state of compliance with feed or food law, animal health and animal welfare rules.*

***‘Surveillance’** means a careful observation of one or more feed or food businesses, feed or food business operators or their activities.*

***‘Verification’** means checking by examination and the consideration of objective evidence, whether specified requirements have been fulfilled.*

***‘Audit’** means a systematic and independent examination to determine whether activities and related results comply with planned arrangements and whether these arrangements are implemented effectively and are suitable to achieve objectives.*

***‘Sampling for analysis’** means taking feed or food or any other substance (including from the environment) relevant to the production, processing and distribution of feed or food or to the health of animals, in order to verify through analysis compliance with feed or food law or animal health rules.*

3.7. Inspections and Audits

3.7.1. Carrying out a Food Law Inspection

1. A Food Law Inspection should allow assessment of all the relevant FLRS Compliance Categories.
2. During a Food Law Inspection where the inspecting authorised officer determines that one or more of the compliance categories would be a score of 5 and therefore a business

would be rated as Band E, only these relevant categories would be expected to be assessed. All relevant remaining categories should be assessed after the business is no longer subject to intensive intervention.

3. A Food Law Inspection form is detailed within Annex 6 of the Food Law Code of Practice (Scotland) 2019 and should be completed for each Food Law Intervention. Food Authorities can develop their own Food Law Intervention Inspection form providing all elements of the relevant compliance categories are considered and assessed.
4. With respect to Official Controls undertaken to verify compliance with Food Law an Authorised Officer can use the full range of Interventions types, detailed in section 3.6. Within the context of FLRS an Intervention which assess all of the seven compliance categories is required in order to provide a performance band . The only exception to this would be where an officer is unable to conduct this assessment due to having to deal with a serious issue (or issues) and the business is rated as being a band E where intensive intervention is required. (please see section 5)
5. An audit may be carried out where a Food Business Operator has put in place a documented food safety management system to address the requirements of Article 5 of Regulation (EC) No 852/2004. Authorised Officers will require an awareness of the food safety management system operated by the business, in order to plan an appropriate audit. An audit may include:
 - a. Audit of a complete food safety management system;
 - b. Audit of selected elements of a food safety management system, where the system is complex;
 - c. Audit of part of a system in relation to a particular product; or
 - d. Audit of certain organisational arrangements, for example, temperature monitoring (see sub- section 20⁸ regarding food temperature checks).
6. For an Intervention, by audit, an Authorised Officer cannot revise the Intervention rating of the establishment in accordance with Food Law Rating System.

3.7.2. Initial Inspections of New Food Establishments

1. **This sub-section does not apply to establishments at the level of Primary Production or Approval.**
2. Food Authorities should make use of information supplied to them by Food Business Operators in connection with the registration in accordance with Article 31 of Regulation (EC) No 882/2004 in order to determine when to carry out the initial inspection.
3. New Food Business Establishments that come to the attention of the Food Authority for the first time should be subject to an initial inspection following which the Business Group

⁸ Food Law Code of Practice (Scotland) 2019

and subsequently the performance banding for the establishment should be determined. The exception would be Band 3A in circumstances where the food registration form gives sufficient information to make determination that there is minimal inherent risk.

4. An Authorised Officer carrying out the initial inspection of a new Food Business Establishment must:
 - a. Establish the scope of the business and the relevant Food Law that applies to the operations taking place;
 - b. Thoroughly and systematically gather and record information from the observation of practices, procedures and processes, including procedures based on HACCP principles and discussion with food handlers, contractors, Food Business Operators and managers,
 - c. Determine whether it is necessary to collect samples of raw materials, ingredients, additives, intermediates, finished products or materials and articles in contact with food for analysis and/or examination,
 - d. Identify any actual or potential breaches of Food Law and if appropriate, gather and preserve evidence,
 - e. Determine relevant enforcement action and communicate to the Food Business Operator an intention to carry out such action(s).

3.7.3. Samples

1. All samples which are sent to an Official Laboratory whether informal or formal constitute Official Control samples.
2. Sub-section 38.19 provides the definition of “formal” samples which is relevant to any possible legal proceedings in the Courts relating to the results of analysis and/or examination of samples.

3.8. Frequency of Intervention at Establishments

1. The performance bands determine:
 - a. The interval that should elapse between one Intervention at a Food Business Establishment and the next; and
 - b. The priority of the next Intervention at that Food Business Establishment, relative to the other Food Business Establishments in the Food Authority’s planned Intervention Programme.

⁹ Food Law Code of Practice (Scotland) 2019

2. The Food Authority Service Plan must contain details on how new Food Business Establishments are to be included in the Authority's planned Intervention Programme.

3.9. Establishments Subject to FLRS

1. Intervention Programmes should be planned so that establishments receive an Intervention no later than 28 days after the scheduled date, unless they are rated Band E, as detailed in FLRS. In circumstances outside the control of the Food Authority, such as seasonal business closures, Food Authorities have the discretion to reschedule an Intervention.
2. Any other additional Intervention, such as audit, revisit, sampling or education and training should be recorded against the establishment for the purpose of monitoring but should not be used as the programmed Intervention as determined by FLRS.

3.10. Revising the Intervention type and Intervention rating

1. The performance level of a Food Business Establishment may only be revised at the conclusion of a programmed Intervention and in accordance with FLRS (or any amendment thereto that may be notified to Food Authorities by the FSS). The only exception to this is when an Authorised Officer determines that during an intervention a business should be rated as a Band E and would be subject to intensive intervention.
2. An Authorised Officer must have gathered sufficient information to justify the performance band and sufficient evidence for the reasons must be recorded on the establishment file and management information software.
3. Where new information arises, in the case of a justified complaint or unsatisfactory sampling result, the Food Authority should consider whether it is appropriate to conduct an Intervention to investigate the matter.
4. An explanation for the choice of Intervention should be documented in the Food Business Establishment file and management information software in every case.
5. If when conducting a planned Intervention an Authorised Officer establishes that the nature of a food business has changed substantially or the level of compliance has deteriorated or improved, the Intervention frequency and/or grouping should be changed in accordance with FLRS and the Intervention rating revised as necessary. Equally, where new information arises, in the case for example of a justified compliant or poor sampling result, the Food Authority should reconsider both the scheduling and appropriateness of the next planned Intervention for that establishment.

3.11. Timing of Interventions

1. To determine the appropriate timing of interventions, Food Authorities should have regard to all relevant and available information. This includes:
 - a. The hours of operation of the Food Business Establishment.

- b. Seasonal factors (where applicable).
2. A Food Authority's Intervention Programme should provide for Food Business Establishments to be subject to Intervention at times when they are open for business, whether or not that coincides with the Food Authority's normal hours of work. Food Business Establishments that operate at night, at weekends or in the early hours of the morning should be subject to Interventions at these times. Professional judgement should be applied in respect of establishments subject to 24 hour opening in determining the most appropriate time(s) to carry out an Intervention at such establishments.
 3. The Food Authority's approach to Interventions out-of-hours should be documented in its Food Service Plan.

3.12. Need to Defer Planned Intervention

1. Circumstances may arise where FSS requires Food Authorities to defer their Interventions in order to take urgent action over a period of time.
2. Such situations may include those where there is evidence that:
 - a. An unsafe practice is occurring or has occurred which represents a significant hazard to public health;
 - b. A particular food handling or food preparation practice is found to entail a previously unsuspected hazard to public health;
 - c. A foodstuff previously thought to be safe is found to be hazardous to public health;
 - d. A food with widespread distribution is found to be contaminated and thereby presents a significant hazard to public health;
 - e. A Food Authority requires assistance in delivering Official Controls, for example, in relation to: large scale public events (e.g. sporting events, music festivals etc.); adverse weather; emergency situations; significant food incidents.
 - f. As a result of an FSS direction on behalf of Scottish Ministers.
 - g. A food with widespread distribution is the subject of fraud in labelling or presentation.
3. Where such a situation arises FSS, by means of a communication issued in accordance with sub-section 11.2¹⁰, may require Food Authorities to take specific action. Food Authorities are required to have regard to and to act on, any such communication.
4. Discussions will normally take place with SFELC before Food Authorities are asked to defer their Interventions. In all cases, FSS will, before taking action under this section, consider whether urgent action by Food Authorities is necessary to protect public health or the interests of consumers.

¹⁰ Food Law Code of Practice (Scotland) 2019

5. Food Authorities will be asked to provide information to FSS about the action that they have taken, in response to requests under this section and any action taken should be documented.(also see section 12¹¹).

3.13. Larger Food Establishments

1. Larger Food Business Establishments may have smaller Food Business Establishments on site under the control of different Food Business Operators e.g. coffee shops. Such establishments are subject to separate registration (see sub-section 6.4.6¹²) and hence separate Interventions are required as appropriate. Food Authorities may, however, wish to co-ordinate their activities in such a way that they may carry out programmed Interventions of these smaller establishments whilst they are on site to inspect the main Food Business Establishment.

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¹¹ Food Law Code of Practice (Scotland) 2019

¹² Food Law Code of Practice (Scotland) 2019

4. How Interventions Should Be Carried Out

4.1. Interventions – General

1. Authorised Officers should use an appropriate Intervention form, to gather and record sufficient information to be gathered and recorded regarding the scope and nature of the food operation in order to make judgements about legal compliance
2. The Intervention form is intended to assist Authorised Officers and Food Business Establishments by introducing a structured approach to the consistent with quality assurance practice.
3. The Intervention process should begin with a review of the information held on record by the Food Authority in relation to the Food Business Establishment. (See sub-section 2.413)
4. At an appropriate point at the beginning of the Intervention, the Authorised Officer should discuss with the Food Business Operator or representative the purpose and scope of the Intervention, whether there have been any changes in activities since the last visit and what the Authorised Officer intends to do. The Authorised Officer should document the outcome of the conversation.
5. An Intervention should include the identification of all the food related activities undertaken by the business, the areas of the establishment used for the preparation, production and storage of foodstuffs, any processes used and the staff involved.
6. Staff of Food Business Establishments who have been given specific responsibilities for ensuring compliance with relevant legal requirements may be questioned in order to verify that they understand their duties and are carrying them out effectively. The Authorised Officer should document this conversation.
7. The Authorised Officer should make an assessment of whether to take samples, and if so what to sample. This is an integral part of every inspection but particularly in Manufacturing, Packing and Catering Food Business Establishments. The Authorised Officer should document the reasons for the decision to take any samples.
8. Interventions may also be for purposes connected with the Home Authority, Originating Authority, or Primary Authority (England only), for example, advising Food Business Operators on Food Law and ways in which they can comply with it.
9. The Authorised Officers should offer guidance on how to achieve compliance with Food Law where it is appropriate or is requested, and should encourage Food Business Operators through an educative approach to adopt best and/or good practice. When offering guidance to Food Business Operators the Authorised Officers should:

- a. take care not to offer any guidance that falls outside the scope of that Officer's competence or expertise;
 - b. ensure that Food Business Operators understand that the guidance given is made in reliance on the accuracy of the information provided by the Food Business Operators; and
 - c. document any guidance given to Food Business Operators.
10. At the conclusion of every Intervention, the Authorised Officer should document and discuss any contravention of Food Law with the Food Business Operator highlighting:
- a. any corrective action necessary;
 - b. the time-scale for corrective action; and
 - c. any further action the Authorised Officer intends to take and any recommendations of best and/or good practice that the Authorised Officer considers appropriate.
11. In the closing discussion and in subsequent reports or correspondence, Authorised Officers should clearly differentiate between action required to comply with legal requirements and recommendations of best and/or good practice.
12. The Authorised Officer should, on request, advise and discuss with the Food Business Operator, the Intervention or rating applied to the business. The Authorised Officer should document the outcome of such discussion.
13. The Authorised Officer may wish to consider if further intervention strategies may be appropriate e.g. sampling, education or training.

4.2. Clothing and Equipment

1. Food Authorities should provide Authorised Officers with clean protective clothing, including but not limited to head gear and footwear, consistent with good industry practice when they carry out an Intervention.
2. Food Authorities should require Authorised Officers to wear clean and appropriate protective clothing, give any relevant information on their health status when requested and adhere to any reasonable precautions that are required by the business. Authorised Officers should wear appropriate protective clothing etc. if it is provided by the Food Business.
3. Food Authorities should provide their Authorised Officers with the equipment and facilities necessary to enable them to carry out their Intervention in accordance with Food Law and this Code.

5. Food Law Rating System

5.1. The Ladder

Group 1 Business	Performance Levels	Band	Intervention Frequency
<ul style="list-style-type: none"> Manufacturer of High Risk Foods. Manufacturer, Caterer, Processor or Retailer that undertakes a specific method of processing that has the potential to increase the risk to public health beyond that of normal preparation, storage or cooking. Manufacturers of Foods for Specific Groups. All Exporters. Manufacturers, Processors, Importers, Wholesaler, Distributor, Food Broker, Packers of Food at enhanced risk of food fraud, substitution, adulteration or contamination. 	Sustained Compliance	1A	18 Months
	Compliant and confident in compliance going forward	1B	12 Months
	Minor Non-compliance and/or gaps in confidence in compliance going forward	1C	6 Months
	Significant Non-Compliance and/or no confidence in compliance going forward	1D	3 Months
	Sustained non-compliance and/or Issues of Public Health Significance or Fraudulent Activity	1E	Intensive Intervention. 1 Month.
Group 2 Business	Performance Levels	Band	Intervention Frequency
<ul style="list-style-type: none"> All other Manufacturers, Processors, Caterers,, Importers, packers, wholesalers and distributors not in Group 1. Head Office Business that undertakes a regional/national decision making function. Retailers handling open high-risk foods. 	Sustained Compliance	2A	24 Months
	Compliant and confident in compliance going forward	2B	18 Months
	Minor Non-compliance and/or gaps in confidence in compliance going forward	2C	12 Months
	Significant Non-Compliance and/or no confidence in compliance going forward	2D	3 Months
	Sustained non-compliance and/or Issues of Public Health Significance or Fraudulent Activity	2E	Intensive Intervention. 1 Month.
Group 3 Business	Performance Levels	Band	Intervention Frequency
<ul style="list-style-type: none"> All other retailers, Food Brokers, Importers, packers, wholesalers and distributors not in Group 1 or 2. Public Houses and similar Licenced Business not providing catering. Business providing limited refreshments (e.g. tea, coffee, soft drinks) as an adjunct to main activity. Child minders. Supported Living Business. Business producing low risk food based from a domestic dwelling. Bed & Breakfasts. 	Sustained Compliance or Businesses where information available at point of registration, indicates there is minimal inherent risk	3A	No Proactive Intervention or 60 months.
	Compliant and confident in compliance going forward	3B	36 Months
	Minor Non-Compliance and/or gaps in confidence in compliance going forward	3C	24 Months
	Significant Non-Compliance and/or no confidence in compliance going forward	3D	3 Months.
	Sustained Non-Compliance and/or Issues of Public Health Significance or Fraudulent Activity	3E	Intensive Intervention. 1 month.

5.2. Description

1. Each business group (1,2,3) contains a selection of businesses, a set of five performance bands (A to E) which maps to a corresponding intervention frequency.
2. Each business will remain within its designated group (unless the business processes or activity change) and will move up and down the Ladder, based on the performance level which will determine its banding and next intervention frequency.

5.3. Business Group Descriptions and Glossary

1. For the purposes of allocating business groups the following descriptions are to be used.
 - a. **Manufacturer** – Creates a product from a single or multiple ingredients which is ready for use by the final consumer and supplies the product to another business and/or to another outlet of the same business.
 - b. **Processor** – Creates a product from a single or multiple ingredients for further processing at another business and/or to another outlet of the same business.
 - c. **Exporter** – Manufacturer, processor, importer, packer, wholesaler or distributor who exports food to the European Union and/or a Third Country.
 - d. **Importer** – Imports food and supplies this to other businesses or direct to the final consumer.
 - e. **Packer** – Packs (or repacks) food products without any other processing and supplies the product to another business.
 - f. **Wholesaler** – Stores food at premises and sells food to other businesses.
 - g. **Distributor** – Stores food at premises and supplies this to other business. May supply on behalf of third parties.
 - h. **Retailer** – sells food direct to the final consumer. May include on site production of food but does not include premises supplying food for sale at other premises.
 - i. **Caterer** – prepares and sells food to the final consumer for immediate consumption.
 - j. **Food Broker** – Sells food to other businesses. Food need not be stored at premises.

5.4. Further advice for Group 1 Businesses

1. Manufacturer of High Risk Foods - a Food Business Establishment to which the term high risk for any aspect of Food Law can apply. This may for example be a Food Business that ordinarily could fall within the scope of Regulation (EC) No. 853/2004, but a specific exemption applies or a business that produces a specific product where the risk to the general public or specific groups is increased e.g. products containing known allergens.

2. Manufacturers of Foods for Specific Groups- A Food Business to which the Foods for Specific Groups (Scotland) Regulations 2016 apply.
3. Manufacturers, processors, importers, packers of food at enhanced risk of food fraud, substitution, adulteration or contamination. A Food Business which produces a product that is of particular enhanced risk due to its nature, substance or quality and/or where either local or national intelligence indicates an enhanced risk.
4. Specific Method of Processing.
 - a. Group 1 includes establishments that undertake a specific method of processing that has the potential to increase the risk to public health beyond that of the normal preparation, cooking or storage.
 - b. Below is a non-exhaustive list of processing types that should result in a business being included in Group 1. Authorised officers will need to make a judgement regarding additional processing types not listed below. The overriding principle to assess is whether the process itself creates an increased risk and /or the intention is to increase the shelf life of the product by applying it.
 - i. Canning or other aseptic packing of low-acid foods;
 - ii. Vacuum packing (other than of raw foods only).
 - iii. Sous-vide processes.
 - iv. Cook chill catering - a large scale catering process whereby meals or meal components are fully cooked, then cooled by controlled chilling, e.g. blast chilling, and subsequently stored at a temperature above freezing point (i.e. $\leq 3^{\circ}\text{C}$), prior to regeneration and/or service.
 - v. Fermentation of meats e.g. to produce salamis and other fermented sausages;
 - vi. Air or freeze drying e.g. dried hams, biltong, jerky;
 - vii. Application of specific chemical, biological, physical or packaging processes intended to extend the durability of food. For example:
 1. addition of salt and/or other preserving agents;
 2. control of the water activity, pH, aqueous salt concentration, redox potential
 3. packing in evacuated or modified atmosphere
 - viii. Preparation, and/or service of uncooked or lightly cooked ready to eat food of animal origin, whose nature poses a residual microbiological food safety hazard. This is intended to include caterers/manufacturers producing foods such as steak tartar, meat Carpaccio, other raw meat dishes, types of sushi or

sashimi, ceviche and burgers intended to be eaten less than thoroughly cooked through controlled procedures.

5.5. Further advice for Group 2 Businesses

1. Retailers handling open high-risk foods. This may include a Food Business that is a retailer, but also produces a small amount of ready to eat foods on site as an adjunct to its main activity or directly handles raw and ready to eat foods as part of its normal operation (e.g. fishmonger, retail only butchers).

5.6. Scope of Business, Consumers and Vulnerable Groups

1. The scope of a Food Business, including consideration of consumers and vulnerable groups should be included in the overall compliance level given for the Food Safety Management System by the Authorised Officer.

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5.7. The Compliance Matrix and Definitions

COMPLIANCE CATEGORY	FOOD SAFETY AND PRACTICE PERFORMANCE	Serious (wilful and/or sustained serious) non-compliance. Any non-compliances that are an immediate risk to consumer health, allow consumers to make unsafe food choices or could give rise to fraudulent gain	Significant non – compliance Any non-compliances which may adversely affect consumer health or which might do so if not remedied quickly. Failure to comply with product or process specific requirements. Food Standards non-compliances where the consumer is misinformed or prejudiced.	Minor non – compliance Technical non-compliances which do not adversely affect consumer health or consumer choice but which require to be remedied.	Generally compliant No non-compliances or only very minor non-compliances which the LA has decided should not be pursued until the next intervention.	Full and continuing compliance and/or evidence of going beyond legislative requirements Evidence of a proactive approach. Evidence of compliance with third party programmes which are recognised as additional or beyond legislative requirements.
	CROSS CONTAMINATION PERFORMANCE					
	STRUCTURAL PERFORMANCE					
	FOOD INFORMATION PERFORMANCE					
	COMPOSITION PERFORMANCE	Serious lack of control of food safety and/or standards. No appropriate FSMS or failure to follow FSMS.	No appropriate FSMS or general/significant failure to follow FSMS. Significant lack of control of food safety and/or standards.	An appropriate FSMS (HACCP based) is in place and is followed but with minor gaps in scope/use.	Fully Documented appropriate (HACCP based) FSMS in place and followed.	Fully Documented appropriate (HACCP based) FSMS in place and followed with additional 3rd party accreditation.
	FOOD SAFETY MANAGEMENT SYSTEM					
	CONFIDENCE IN MANAGEMENT	No confidence. Unwilling to engage with obligations. Serious formal action required at this visit	Little confidence. Willing, but largely unable, to engage with obligations.	Some confidence. Engage with obligations but gaps in technical awareness. Reliant on LA. New Business or FBO.	Confident. Obligations are routinely met. Able to identify and control emerging issues. Good technical awareness.	Full and continuing compliance. Confident. Proactive approach to food safety management. Own or access to technical expertise. Implementation of externally audited FSMS at least equivalent to HACCP.
	AVERAGE SCORE	5	4	3	2	1
COMPLIANCE LEVEL						

5.8. Description

1. The Compliance Matrix is the average scoring mechanism for FLRS and it determines the performance band of a Food Business Establishment on the Ladder.

5.8.1. Compliance Categories

1. The y-axis of the Compliance Matrix details the breakdown of the Compliance Categories. There are 7 categories:
 - a. Food Safety Systems and Practice Performance.
 - b. Cross Contamination Performance.
 - c. Structural Performance.
 - d. Food Information Performance.
 - e. Composition Performance.
 - f. Food Safety Management Systems.
 - g. Confidence in Management.

5.8.2. Compliance Level

1. The x-axis of the Compliance Matrix details the compliance levels. Each Individual compliance category is awarded a corresponding compliance level.
2. The individual scores attributed for each of the compliance categories are averaged and rounded up or down to the nearest whole number. That whole number equates directly to the performance band within the appropriate Business Group of the Ladder.
 - a. 1 – Risk Band A
 - b. 2 – Risk Band B
 - c. 3 – Risk Band C
 - d. 4 – Risk Band D
 - e. 5 – Risk Band E

5.9. Compliance Levels Glossary of Definitions

1. **Serious** - any non-compliances that are an immediate risk to consumer health, allow consumers to make unsafe food choices or could give rise to fraudulent gain
2. **Significant** - any non-compliances which adversely affect consumer health or which might do so if not remedied quickly. Failure to comply with product or process specific requirements. Food Standards non-compliances where the consumer is misinformed or prejudiced.

3. **Minor** – technical non compliances which do not adversely affect consumer health or consumer but which require to be remedied
4. **Generally Compliant** - no non-compliances or only minor non-compliances which the LA has decided should not be pursued until the next intervention.
5. **Beyond legislative requirements- Third party programmes which are recognised as additional to or beyond legislative requirements.** - evidence of a proactive or above and beyond approach.
6. **No appropriate FSMS or failure to follow FSMS** – Serious lack of control of food safety and/or standards.
7. **No appropriate FSMS or general/significant failure to follow FSMS** – Significant lack of control of food safety and/or standards.
8. **Appropriate (HACCP based) FSMS** - A documented food safety management system in which the process steps and critical control points have been identified and are appropriate to the **scope and size of the business, however there may still be some minor gaps in scope/use and also takes cognisance of vulnerable groups where applicable.**
9. **Fully Documented Appropriate (HACCP based) FSMS** – A fully documented food safety management system appropriate to the scope and size of the business covering the full range of process steps and critical controls relevant to the food operation with no gaps in scope or use.
10. **Fully Documented Appropriate (HACCP based) FSMS in place and followed with additional 3rd party accreditation** – same as above but 3rd party accreditation does not include an internal audit or local authority intervention.
11. **Technical awareness** - Ability of FBO to identify, resolve and control scientific, process or legal issues affecting their business. Includes consideration of any external assistance the FBO has in place.
12. **Technical expertise** - Professional Food Law, scientific and legal advice.

5.10. Scoring System and Rules

5.10.1 Establishment rated a Band E

1. Any Food Business with a single Serious (5) Non- compliance automatically gets rated a Band E. The reassessment of a Business in Band E can occur at a visit earlier than the 1 month if the officer is satisfied the serious non-compliance has been rectified. This is only applicable to Band E.
2. In most cases these will be serious situations that require immediate action such as serving a Hygiene Emergency Prohibition Notice, Voluntary Closure or Remedial Action

Notice to prohibit part or all of an operation. This would also include situations that involve Detention and Seizure of food for non-compliance(s) for Food Safety or Food Information Law. It should not be used for significant issues including those that may still require enforcement action for e.g. serving a Hygiene Improvement Notice.

3. Any Food Business which at the previous intervention was rated a Band E can only be promoted to Band D regardless of the average scoring.

5.10.2 Establishment rated a Band D

1. Any Food Business with three Significant (4) compliance levels is automatically rated a Band D.

5.10.3 Establishment rated Band A

1. Any Food Business rated as a Band B on three consecutive occasions should be promoted automatically to a Band A (Sustained Compliance) for all 3 Business Groups.

5.10.4 Compliance Categories rated Non-Applicable

1. Where any of the seven Compliance Categories (**not including Food Safety Management System and Confidence in Management**) within the Compliance Matrix is deemed “non-applicable” for example no cross contamination or composition due to all products being pre-packaged then the officer should score that compliance category as “Non-Applicable”. **The average score will then be based on the average of the remaining compliance categories.**

6. Action Following an Intervention: Minimum Standards of Report Writing and Record Keeping

6.1. Reports following an Intervention

1. The outcome of an Intervention must always be reported in writing to the Food Business Operator either at the conclusion of the visit or as soon as practicable thereafter, even if the outcome was satisfactory.
2. Reports may include other legislation covered during Interventions at Food Business Establishments, e.g. health and safety at work; although matters relating to Food Law should be clearly differentiated from other law.

6.2. Establishment Record Files (also see sub-section 4.4)

1. The Food Authority's establishment record files and / or management information software, should be updated after each Intervention and should include:
 - a. Information on the size and scale of the business and its customer base;
 - b. Information on the type of food activities undertaken by the business, including any special equipment, processes or features;
 - c. Copies of any relevant correspondence with the business, including documentation associated with Approvals, complaints or licensing;
 - d. Copies of food sample analysis and / or examination results;
 - e. A system of flagging for significant or serious issues, including details of any non-compliance to be reviewed at future interventions. This was highlighted following the Public Enquiry set up by the Welsh Assembly Government to enquire into the circumstances that led to the outbreak of E.coli 0157 infection in South Wales in September 2005.
 - f. Information about the food handling practices and processes observed by the Authorised Officer during the intervention visit in particular with regard to personal hygiene and cross contamination.
2. In respect of establishments inspected for Food Law purposes:
 - a. Information describing the outcome of the Authorised Officer's assessment of the business' compliance with procedures based on HACCP principles where appropriate;
 - b. Information on training undertaken by employees, including any training on the implementation and operation of the Food Safety Management System.
 - c. The existence and assessment of the Food Safety Management System or any other documented quality system.

- d. Details of other businesses that produce or import for the business.
 - e. Details of any export of food undertaken by the business.
3. Food Authorities must maintain up to date records of the outcomes of the Interventions carried out detailing the observations noted by Authorised Officers. In particular information to support the scoring allocated under FLRS by the Authorised Officer must be retained by the Food Authority; and retained as per sub-section 3.4 and 7.3¹⁴.

6.3. Retention of Records Relating to Interventions.

- 1. Records relating to interventions should be retained in the Food Business Establishment file and associated management information software for a maximum of six years, unless required for longer retention because of Litigation, Local Government Ombudsman review, the document retention policy of the Food Authority or instruction by FSS.

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¹⁴ Food Law Code of Practice (Scotland) 2019

ANNEXES

ANNEX 1: Glossary of Terms

CCP	Critical Control Point
Competent Authority	Regulation (EC) No 882/2004 Article 2 defines competent authority as 'the central authority of a Member State competent for the organisation of official controls or any other authority to which that competence has been conferred; it shall also include, where appropriate, the corresponding authority of a third country' Article 4 describes the designation of competent authorities and operational criteria for the purposes of official controls.
<i>E. coli</i> O157	<i>Escherichia coli</i> O157
EHO	Environmental Health Officer
Enforcement Authority	Interchangeable with Food Authority and Local Authority
EU	European Union
Food Authority	Interchangeable with Enforcement Authority and Local Authority
Food Business	Food business - any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of production, processing and distribution of food. As defined in Regulation (EC) No 178/2002.
FBO	Food Business Operator - the natural or legal persons responsible for ensuring that the requirements of Food Law are met within the food business under their control. As defined in Regulation (EC) No 178/2002.
FSG	Foods for Specific Groups. Formerly PARNUTS.
FSA	Food Standards Agency
FSS	Food Standards Scotland
FLRS	Food Law Rating Scheme

Home Authority (HA)	The Home Authority for a Food Business is the Local Authority where the decision making base of a business is located. For Food Businesses with more than one branch, the Home Authority is generally the Local Authority where the head office (or another decision making centre) is located.
HACCP	Hazard Analysis and Critical Control Point
HEPN	Hygiene Emergency Prohibition Notice
HIN	Hygiene Improvement Notice
LGR	Local Government Regulation
Local Authority	Interchangeable with Food Authority and Enforcement Authority
NPOAO	Not Product of Animal Origin
Primary Authority	Agreements that exist in England but have no legal standing in Scotland in relation to food.
RAN	Remedial Action Notice.
REHIS	Royal Environmental Health Institute of Scotland.
SFELC	Scottish Food Enforcement Liaison Committee is an independent non FSS committee. Its membership is drawn from across local enforcement authorities and industry stakeholders. It supports the work of FSS by providing information and expert advice in relation to food and feed law enforcement. SFELC contributes to the development and implementation of FSS strategies and policies for fulfilling its core functions in respect of food and feed safety and consumer protection.
SFSORB	Scottish Food Safety Officers' Registration Board.
SND	Scottish National Database.

ANNEX 2: Model Application Form for the Registration of a Food Business Establishment

APPLICATION FOR THE REGISTRATION OF A FOOD BUSINESS ESTABLISHMENT

(Regulation (EC) No. 852/2004 on the Hygiene of Foodstuffs, Article 6(2))

This form should be completed by Food Business Operators in respect of new Food Business Establishments and submitted to the relevant food authority 28 days before commencing food operations. On the basis of the activities carried out, certain Food Business Establishments are required to be Approved rather than Registered. If you are unsure whether any aspect of your food operations would require your establishment to be approved, please contact **[Local Authority]** for guidance.

1. **Name of Food Business** (Trading Name) _____

2. **Address of establishment** (or address at which moveable establishment is kept)

Post Code _____ **Telephone no:** _____

3. **Full Name of Food Business Operator** _____

4. **Address of Food Business Operator** _____

_____ **Post Code** _____

Telephone No. _____ **E-mail** _____

5. **Type of Food Business** (Please tick ALL the boxes that apply):

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

6. **Type of Business:**

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

 (If Limited Company, please complete 7. below)

7. **Limited Company Name** _____ **Company No** _____

Registered Office Address _____

8. **If this is a New Business?** Yes / No If Yes, please specify the date you intend to open _____

9. **If this is a Seasonal Business?** Yes / No If Yes please specify the period during which you intend to be open each year

Signature of Food Business Operator _____

Date _____

Name _____ (BLOCK CAPITALS)

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

For Official Use Only

FLRS Group – Tick box that applies.

Group 1 Group 2 Group 3

PRIVACY NOTICE

What we need

[Local Authority] and Food Standards Scotland (FSS) are Joint Data Controllers of the personal information you provide to us on this form. The information we collect about you includes name, postal address, email address and telephone number.

Why we need it

- As Joint Data Controllers, we need to collect this information for the purposes of Food Law Enforcement.
- Regulation (EC) No 882/2004 on Official Controls performed to ensure the verification of compliance with Food Law, requires that **[Local Authority]** and FSS coordinate effectively in the field of Environmental and Health protection, carrying out their activities with a high level of transparency, making relevant information available to the public as soon as possible.
- Each Local Authority is required to maintain an up to date list of registered Food Business Establishments in its area and divulge this information for the purposes of ensuring public health and the effective enforcement of Food Law.
- The Food (Scotland) Act 2015, enables FSS to set performance standards, report on enforcement action by others and require relevant information from **[Local Authority]**
- The Official Feed and Food Controls (Scotland) Regulations 2009, allows the exchange and provision of information by FSS and **[Local Authority]** for the execution and enforcement of relevant Food Law, and makes provision for **[Local Authority]** to provide FSS with Food Business information.
- **[Local Authority]** and FSS are required to fulfil the statutory obligations required by Article 44 of Regulation (EC) No 882/2004, which places a requirement on Local Authorities and FSS to provide the information specified in that Article and to report to the European Commission.
- FSS maintains a national database that can be accessed by both Food Standards Scotland and the Local Authority to which the information pertains. The reporting toolset allows information to be strategically analysed, allowing both organisations to adhere to the principles of the Scottish Regulators' Strategic Code of Practice.
- We will only collect the data that we need as required by the above regulations and legislations, and not collect any personal information from you that we do not need.

What we do with it

The information on this form will be retained by **[Local Authority]** and FSS for the duration of your business registration. Additionally if your business closes, or your registration details are otherwise amended then this information will continue to be retained for a maximum of six years following notification of the closure or the amendment of your registration details.

The information collected on your business relating to Food Law enforcement activity will be retained by **[Local Authority]** for a maximum of six years for Freedom of Information purposes. Food Standards Scotland collects food business information from **[Local Authority]** on a regular basis for the purposes of Food Law Enforcement. The same information will be retained by FSS for a maximum of 6 years, also for Freedom of Information purposes and the monitoring of enforcement action by Local Authorities.

FSS have put in place appropriate and adequate technical and organisational measures to protect your personal information. FSS data is located within the European Union, on cloud based services procured through the government framework agreements, and assessed against the national cyber security centre cloud security principles.

[Local Authority to insert details about their technical and organisational measures in place to protect FBO personal information.]

We want to assure you that no third parties have access to your personal information unless the Law allows them to do so.

What we may also be required to do with it

The information may be shared with other Regulators in line with the principles of the Scottish Regulators Strategic Code of Practice for compliance and risk mitigation purposes. This is limited to circumstances where the law allows such sharing of information by regulators with common interests or activities.

What are your rights?

You have a right to see the information we hold on you by making a request in writing to the email addresses below. If at any point you believe the information we process on you is incorrect you can request to have it corrected. If you wish to raise a complaint on how we have handled your information, you can contact our Data Protection Officers who will investigate the matter. If you are not satisfied with our response or believe we are not processing your information in accordance with the law you can complain to the Information Commissioner's Office (ICO).

ANNEX 3: The Compliance Matrix Aide-Mémoire Table

Food Safety and Practice Performance	Cross contamination Performance (micro/chemical/ physical)	Structural Performance	Food Information Performance	Composition Performance	Food Safety Management System	Confidence in Management
Regulation (EC) No 852/2004, Annex II.(unless otherwise stated)						
<ul style="list-style-type: none"> • Chapter I • Chapter II • Chapter III • Chapter IV • Chapter VI • Chapter VII 	<ul style="list-style-type: none"> • Chapter V • Chapter VIII • Chapter IX • Chapter X. 	<ul style="list-style-type: none"> • Chapter I 	<ul style="list-style-type: none"> • Food Information (Scotland) Regulations 2014. • Labelling requirements of product specific legislation. • All other Food Labelling legislation. 	<ul style="list-style-type: none"> • Additives/ colouring/ preservatives/ supplements legislation • Product specific composition legislation • Section 14, Food Safety Act 1990. 	<ul style="list-style-type: none"> • Article 5. 	<ul style="list-style-type: none"> • Chapter XII.
<ul style="list-style-type: none"> • General Cleanliness of all areas. • Changing facilities & Personal Hygiene. • Food contact equipment maintenance and cleanliness. • Food waste. • Transport. • General Personal Hygiene (PPE etc) 	<ul style="list-style-type: none"> • E. Coli o157 control of cross contamination guide. • Hand Washing Practices. • Chemical storage. • Cleaning/ disinfection to BS EN 1276/13697 where appropriate. • Allergen Control. • Food Handling practices. • Separation. • Use of Utensils And Equipment. • Wrapping/packaging materials 	<ul style="list-style-type: none"> • Walls/Floors Ceilings. • Drains. • Fixtures/ Fittings and their ability to be cleaned. • IVS. • Lighting. • Maintenance. • Wash Basin/ Sink provisions and Water Supply. • Staff Facilities. • Ventilation. • Pest Control. 	<ul style="list-style-type: none"> • Allergens. • Nutritional Information. • Language. • Font sizes. • Menu Descriptions • Information to the final consumer. • QUID declaration on packaging. • Minimum durability markings. 	<ul style="list-style-type: none"> • Additives/ colouring/ preservatives/ supplements. • Recipes consistency/ product specific including QUID and Allergens. • Statutory Compositional Standards • Adulteration/ Substitution. • Speciation • GM foods • Meat Contents. • Product specific composition. • Reserved descriptions. • Verification of claims. 	<ul style="list-style-type: none"> • Article 5 compliance related issues including: • Hazard Identification • Stock Control • Cleaning Schedules. • House Rules and Policies. • Product Traceability/Recall Capability • Temperature Control. • Monitoring Records • Vulnerable groups • Scope of Business • Validation and Verification. 	<ul style="list-style-type: none"> • Training (including in HACCP principles) • Compliance history. • Staff turnover. • Use Of 3rd Party Audits, Industry Guides, Technical Advice, Self Audit etc. • FBO attitude, ability and willingness to achieve Food Law compliance.

ANNEX 4: Associated Guidance

Food Law Code of Practice (Scotland) 2019:

<https://www.foodstandards.gov.scot/publications-and-research/publications/food-law-code-of-practice-scotland-2019>

E.coli O157 Control of Cross Contamination Guidance:

<https://www.foodstandards.gov.scot/publications-and-research/publications/ecoli-o157-control-of-cross-contamination>

SFELC - Guidance on the Safe Service of Less Than Thoroughly Cooked Beef Burgers:

<https://www.foodstandards.gov.scot/publications-and-research/publications/guidance-on-the-safe-service-of-less-than-thoroughly-cooked-beef-burgers>

Guidance on Temperature Control legislation:

<https://www.foodstandards.gov.scot/publications-and-research/publications/guidance-on-temperature-control-legislation>

Food Standards Training Manual:

https://www.foodstandards.gov.scot/downloads/Food_Standards_Training_Manual.pdf

DRAFT

ANNEX 5: Food Law Code of Practice (Scotland) 2019 Amendments

The Interventions Code 2019 amends the following sub-sections in the Food Law Code of Practice (Scotland) 2019 when carrying out Official Food Controls relating to **all Registered Food Businesses only** (see Figure 2). These amendments **do not apply to establishments at the level of Primary Production or Approval**.

Figure 2 - Food Law Code of Practice (Scotland) 2019 Amendments

Sub-section	Amended
Sub-section 6	6.4, 6.4.1, 6.4.2, 6.4.3, 6.4.4, 6.4.5, 6.4.6, 6.5, 6.5.1, 6.6, 6.6.1, 6.7, 6.8.3, 6.9
Sub-section 27	27.1, 27.2, 27.3, 27.4, 27.7, 27.8.1, 27.8.2, 27.8.3, 27.9, 27.16, 27.17, 27.18, 27.19, 27.20
Sub-section 28	28.1, 28.5
Sub-section 33	33.1, 33.2, 33.3