

Chapter 7

Enforcement

[Section 1 Introduction](#)

[Section 2 Legislation, enforcement roles and provisions](#)

[Section 3 Surrender, detention, seizure and condemnation](#)

[Section 4 Hierarchy of enforcement](#)

[Section 5 Risk based enforcement](#)

[Section 6 Annexes](#)

1. Introduction

[1.1 Purpose](#)

[1.2 Definitions](#)

[1.3 Legal Definition and Guidance](#)

1.1 Purpose

1.1.1 FSS enforcement role

Food Standards Scotland (FSS) has responsibility for the enforcement of legislation in Scotland relating to public health, animal welfare at slaughter and animal health controls in approved establishments under veterinary control.

Enforcement action is taken in accordance with the FSS Enforcement Policy ([Annex 2](#)).

Principles of good enforcement are set out and detailed in the FSS Enforcement Concordat ([Annex 3](#)).

1.2 Definitions

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

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.

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.

Regulation: Regulation 178/2002, Article 3, Paragraph 6.

Court

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

Justice of the Peace

Scottish Manual for Official Controls | Amendment 19

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

Duly authorised representative

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

Authorised Officers

Officers designated by the Competent Authority to carry out official controls. This includes both OVs and MHIs.

Official Auxiliaries:

Means a representative of the competent authorities trained in accordance with the requirements established under Article 18 and employed to perform certain official control tasks or certain tasks related to other official activities; this only refers to MHIs.

Regulation: Regulation 2017/625

1.3 Legal definitions and Guidance

1.3.1 Regulation

The table below identifies where the definitions can be found in the main pieces of retained legislation that FSS enforce.

Legislation		Location of definitions
(European) Regulations	178/2002	Articles 2 and 3
	852/2004	Article 2
	853/2004	Article 2 and Annexes I, II, III
	2017/625	Article 3
	2019/624	Article 2
	2019/625	Article 2
	2019/627	Article 2
	999/2001	Article 3, Annex I
	1069/2009	Article 3
	142/2011	Annex I
	2073/2005	Article 2
1099/2009	Article 2	
The Food Safety Act 1990 (as amended)		Sections 1, 2 and 53

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	Regulation 2 “Interpretation “
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1.3.2 Guidance documents

- EU Commission Guidance on Implementation of HACCP
- EU Commission Guidance on Implementation of Regulation 852/2004
- EU Commission Guidance on Implementation of Regulation 853/2004
- 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
- Regulation 178/2002 Guidance Notes for Food Business Operators on Food Safety, Traceability, Product Withdrawal and Recall
- Commission Notice on the implementation of food safety management systems covering prerequisite programs (PRPs) and procedures based on the HACCP principles, including the facilitation/flexibility of the implementation in certain food businesses C/2016/4608
- Food Law Code of Practice and Practice Guidance
- 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](#)

[2.2 Premises files](#)

[2.3 Division of enforcement responsibilities](#)

[2.4 Communication with FBOs](#)

[2.5 Recording and monitoring enforcement action. Systems-Based Enforcement approach](#)

[2.6 Gathering and preserving evidence](#)

[2.7 Dealing with persons wanting to pass information](#)

2.1 Legislation and enforcement provisions

2.1.1 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.

The aim is to provide guidance to food authorities on enforcement issues under the relevant legislation. FSS is a food enforcement authority and the principles set out in the Code have been mirrored in this chapter.

2.1.2 Requirement to enforce

FSS, as the Competent Authority (CA), 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 a responsibility of the CA to lay down the rules on measures and penalties to be applied when infringements of food law are detected.

Reference: Regulation 178/2002, Article 17, Paragraph 2.

When the CA identifies non-compliance, it shall take:

- any action necessary to determine the origin and extent of the non-compliance and to establish the operator's responsibilities, and
- appropriate measures to ensure that the operator remedies the situation and prevents further occurrences of such non-compliance.

When deciding which action to take, the CA shall take account of the nature of the non-compliance and the operators past record with regard to the non-compliance.

Reference: Regulation 2017/625, Article 138.

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

2.1.3 Retained European law and enforcement provisions

EU legislation which applied directly or indirectly to the UK before leaving the EU on 31 December 2020 has been retained in UK law as a form of domestic legislation known as 'retained EU legislation'. This is set out in sections 2 and 3 of the [European Union \(Withdrawal\) Act 2018](#) (EUWA) (c. 16). Section 4 of the 2018 Act ensures that any remaining EU rights and obligations, including directly effective rights within continues to have effect in domestic law.

The EUWA, as amended, converted directly applicable EU legislation (Regulations and Decisions) as it stood at the end of the transition period (11 pm on 31 December 2020) into domestic law. It preserves legislation previously made in the UK to implement EU obligations.

The legislation generally has the same effect that it had before the end of the transition, unless or until it is changed by Parliament. Some has been amended by Statutory Instruments (SIs) made under the EUWA. This is because the EUWA created powers to make secondary legislation to correct deficiencies in 'retained EU law' to ensure that the legislation worked properly at the end of transition.

To search for retained EU law, visit <https://www.legislation.gov.uk> and use the 'All UK Legislation (including originating from the EU)' search option.

The following EU Regulations are examples of 'retained EU law':

Food Safety

- **Regulation 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),

Scottish Manual for Official Controls | Amendment 19

- basic principles – FBO responsibility for food safety,
- traceability requirements.

Official controls

- The Official Controls Regulation (OCR) –**Regulation 2017/625** - harmonises rules for the performance of official controls and other official activities undertaken by the CA to ensure food and feed safety, including animal health and animal welfare. The OCR repealed and replaced Regulations (EC) 882/2004 and (EC) 854/2004 and became directly applicable in Member States as of 14 December 2019, along with the associated delegated (Commission Delegated Regulation 2019/624) and implementing (Commission Implementing Regulation 2019/627) regulations which set out the specific rules on official controls on products of animal origin (POAO). Key points covered are:
 - organisation of official controls,
 - crisis management,
 - imports from third countries,
 - financing / charges,
 - national enforcement measures,
 - Commission controls – for example, audits in Member States.

Retained EU Hygiene Regulations

- **Regulation 852/2004** on the hygiene of foodstuffs.
 - Key points:
 - applies to all food businesses,
 - looks for good hygiene practice and HACCP based procedures,
 - concept of industry guides;
- **Regulation 853/2004** laying down specific hygiene rules for food of animal origin.
 - Key points:
 - requirements beyond Regulation 852/2004 for food of animal origin,
 - approval of meat premises,
 - identification marking,
 - objectives of the HACCP based procedures,
 - food chain information;
- **Regulation 2073/2005** on microbiological criteria for foodstuffs;

- **Commission Implementing Regulation 2015/1375** laying down specific rules on official controls for *Trichinella* in meat.

Examples of enforcement of the Retained EU Regulations are given in [Annex 1](#).

2.1.4 Amendments of retained EU law

The retained EU law will have effect subjects to amendments made by way of regulations by the UK government and Scottish administration under a power enabling them to correct “defects” of EU law that would otherwise cause the measure not to operate effectively in a purely UK context (e.g. an obligation to notify the European Commission). Section 8 of the EUWA grants these powers to Ministers to amend retained EU law to deal with any deficiency.

Amendments to retained EU legislation made by UK legislation are treated by [legislation.gov.uk](#) in the same way as amendments to any other type of UK legislation. The amendments are published in [Changes to Legislation](#) as soon as possible.

For example at the following [link](#) it is possible to see all the changes that affects Regulation 853/2004.

2.1.5 Domestic regulations

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

Note: These provide enforcement powers in respect of the obligations that apply in Regulations 852/2004, 853/2004, 2073/2005 and 2015/1375, together with OCR 2017/625 and all the accompanying delegated and implementing acts (OCR package): Regulations 2019/624, 2019/625, 2019/627 and 2020/2235.

- **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 2017/625.

- **The General Food Regulations 2004 (Scotland):**

Provide enforcement powers in respect of the obligations that apply in retained Regulation 178/2002.

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 [Legislation.gov.uk](#)

- For **CCTV Regulation** please refer to Chapter 2.3 Animal Welfare.

2.2 Premises File

2.2.1 File contents

A premises file must be maintained by the Official Veterinarian (OV) at meat establishments with routine FSS attendance. 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.

Letters, formal notices and other correspondence served on FBOs of establishments with non-routine FSS attendance 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 (Plant No – Operations – Audits).

2.2.2 Security

The premises file and all enforcement documentation 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).
- Game handling establishments (wild game dressing and cutting).
- Standalone FSS-approved cutting plants.
- Establishments approved as “slaughterhouses” for activities limited to the dressing of carcasses.
- 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 carcasses 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 853/2004 that are co-located. This is with the exception of operations that fall under Regulation 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 only by Regulation 852/2004 are carried out will be under the control of the LA. The LA must reach agreement with the FSS Technical Lead as to the split of enforcement responsibilities and refer to this in their approval recommendation for inclusion in the approval document. More details can be found in the [Scottish National Protocol for Approvals](#).

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.

AOs should work with the FBO to establish agreed lines of communication between the FSS and the FBO 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 AOs must have available at the establishment the contact details for the FBO. For example:

- full name(s),
- establishment address(es),
- telephone numbers and when possible email addresses,
- full limited company name and registered office address
(<https://www.gov.uk/government/organisations/companies-house>).

Where any ownership, legal status or approval details change at an establishment, the FBO is obliged to inform the CA:

Reference: Regulation 852/2004, Article 6, Paragraph 2.

This information should subsequently be provided to:

- FSS Finance (Finance@fss.scot),
- FSS Operations Approvals and Certification Team (approvals@fss.scot), and to
- the Inspection team at the plant.

This will ensure that the AO 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 AO is responsible for:

- advising the FBO on compliance with legal requirements, although the AO 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. Systems-Based Enforcement approach

Enforcement is a key tool for FSS in achieving the strategic outcomes of improving legislative compliance in approved meat establishments.

Enforcement action taken by AOs must be recorded accurately on the OWS Enforcement Module as per [Guide](#).

By accessing the Enforcement Module the AO will be able to check, audit, add, update, escalate and close enforcement entries.

The purpose of the Module is to generate records of live and historic enforcement interventions and to help AOs in their:

- assessment and prioritisation of the enforcement action;
- communication of enforcement actions to other members of the inspection team, and FSS auditors and Unannounced Audit Inspection (UAI) officers;
- tracking and monitoring of enforcement action to evaluate the adequacy of FBO's Food Safety Management System.

2.5.1 Systems Based Enforcement

The OWS Enforcement Module is based on the approach called Systems Based Enforcement (SBE), which offers the opportunity to identify and address the root cause of a multitude of recurring issues across different systems.

This is achieved primarily through the use of different levels of enforcement:

- 'Intervention', 'verbal advice' and 'Risk assessed (no enforcement action)' to record informal minor or low level risk issues and

- escalation to informal or formal enforcement actions to enforce the entire overarching system, if there are repeated failings and evidence that the system itself is inadequate.

Core Principles of SBE

The systems within the SBE are as follows:

1. Animal Health & Identification
2. Animal Welfare
3. Cross-contamination
4. Temperature controls
5. Micro testing
6. Traceability
7. Labelling
8. HACCP
9. Cleaning
10. Structure and Maintenance
11. Staff Training
12. Staff Supervision
13. Waste Management
14. Pest Control
15. Water Quality
16. Personal Health & Hygiene

Responsibility for daily recording of non-compliances and associated actions taken by FSS lies with the entire OCs team (including Official Auxiliaries - OAs). Entries to the OWS Enforcement Module should be made by all FSS team members, which will provide a full picture of compliance at all stages of processing.

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 OWS Enforcement Module must be discussed with the FBO by the team member raising the issue, in a transparent and open way, in line with the FSS Enforcement Policy. The team member should also seek to agree to a deadline with the FBO, along with the details of any evidence gathered.

The report generated from the OWS Enforcement Module is called the establishment's Enforcement Programme and this should be reviewed at the monthly meeting with the FBO, as a minimum.

Details on how to record an entry on the OWS Enforcement Module and on how to generate the Enforcement Programme can be found in [OWS Enforcement Module Guide](#).

Guidance on use of SBE

It is expected that most non-compliances identified will be of very low risk to public health or animal welfare, such non-compliances should be recorded as “intervention” in the OWS Enforcement Module. When the risk is low (rather than very low) “verbal advice” should be used instead. “Written advice” will be appropriate when the risk is medium, and “formal enforcement (notices)” when the risk is high.

The OV should check the OWS Enforcement Module daily and discuss any new entries with the inspection team. All entries must be risk assessed by the OV using both professional judgement and a risk matrix if necessary, to decide upon appropriate action following the hierarchy of enforcement (see [section 4](#) and [5](#) for further guidance).

Multiple low risk non-compliances (recorded as intervention and / or verbal advice) could indicate a failure in one or more of the systems. OVs should regularly review all entries recorded and consider whether there is enough evidence to suggest a system is failing. When this occurs, written advice should be produced to request amendments to the system control procedures, with cross reference to the individual issues that indicated a failure of the system. Similarly, medium or high risk non-compliances may also indicate a failure in a system and the OV should also request a review of the control procedures via written advice at least.

The FBO must be informed by the OV of all non-compliances escalated on the Enforcement Programme and the action needed to rectify them, with an agreed deadline.

2.5.2 On-going enforcement action and escalation

When attending any establishment, either on a temporary basis or routinely, the incumbent OV, Veterinary Auditor, OA (including UAI qualified OAs) must:

- familiarise themselves with all on-going enforcement action;
- maintain the momentum of existing enforcement action, follow-up on progress and, if agreed deadline for completion has passed, either close off or escalate through the appropriate hierarchy of enforcement.

2.5.3 Completing the enforcement module

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

The responsibility to update the Enforcement Module in standalone cutting plants lies on the Authorised Officer attending the premises. The AO must liaise with the OV responsible for those premises to discuss non-compliances and enforcement action.

The auditors will be responsible to update the Enforcement Module of any premises with the non-compliances identified during the course of the FSS Audit.

The OWS Enforcement Module must be updated as necessary every time enforcement action is taken.

2.5.4 Monitoring progress

The AO should regularly monitor progress towards compliance to identify whether the deficiency is likely to be rectified within the agreed timescale. 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 Hygiene Improvement Notice (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 FBO's control.

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.

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.

2.5.5 HACCP based non-compliances

Where numerous contraventions are observed in an area, and these are the result of the FBO's failure to have effectively implemented and maintained their food safety management systems, the entry made in the enforcement section 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 with the non-compliance that results from its failure to show cause and effect.

2.5.6 Structural work

Where structural work must be undertaken, the "corrective action" section of an advisory letter or 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 Gathering and preserving evidence

2.6.1 Introduction

In Scotland, a crime is defined by Scots Law or an offence under statute and common law. Where an AO may suspect a crime or offence has been committed, it is essential that evidence is properly gathered and preserved pending potential investigation by the Scottish Food Crime and Incidents Unit (SFCIU) or referral to another law enforcement agency.

The AO must gather evidence at the time the crime/offence is discovered, as it may be impossible to gather evidence retrospectively. It is always advisable and useful to obtain corroboration and assistance from other members of the Inspection Team.

Under Scots law, before conviction of a criminal offence, there must be corroborated evidence to prove two essential facts:

- a crime was committed,
- it was committed by the accused.

Corroboration simply means evidence from two sources. It can be in the form of eye-witnesses, admissions or surrounding facts and circumstances, but does not require that every piece of evidence has to be spoken to by two witnesses.

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

2.6.2 Best evidence rule

A fundamental rule of Scots law is that best evidence be presented to courts in relation to criminal proceedings. Whenever possible, any original items of evidence should be preserved, e.g. the original form of a document, rather than a photocopy. If the evidence is a part of a carcass, Specified Risk Material (SRM) or a broken limb, it should be preserved by the AO (for example by freezing).

If it is not practicable or possible to preserve the evidence (e.g. if perishable goods are involved and no facilities are available to freeze the product or keep it secure), the AO should contact the area Operations Manager (OM) and follow the protocol 'Maintaining Integrity of Evidence during Transport', detailed in [Annex 11](#).

Photographs and/ or samples should be obtained where it is impracticable to seize or retain physical evidence, e.g. where perishable goods are destroyed on testing. It may be the case items can be returned to the owner against their signature on a production label. SFCIU will advise.

FBOs 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 the Veterinary Advisor, which can contact SFCIU for advice/guidance.

2.6.3 FSS Official Notebook

All AOs are allocated an FSS official notebook for recording significant events and findings.

The notebook is essential for recording evidence and details of incidents at times when the plant daybook is not readily available. 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 notebook is not to replace the plant daybook for recording day-to-day activities, but should supplement completion of the daybook.

- **Making notebook entries**

An AO should make full use of their notebook to record factual, contemporaneous notes. Official notebooks are used to accurately record an incident and provide an account of the evidence to the AO's own recollection. The information in the notebook will be used when noting a statement from an AO and may be referred to when giving evidence in court.

It is therefore incumbent upon AOs to make their own notes as they may not refer to notes made by others in court proceedings. 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.

- **Security of notebooks**

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

- **Return of notebooks**

Notebooks remain the property of FSS and **must** be returned to FSS Head Office in Aberdeen prior to staff leaving employment.

In the case of a notebook being damaged beyond use or completed, a replacement should be obtained. When the notebook is no longer required for reference in outstanding cases, it can be forwarded to FSS Aberdeen for secure storage, for the attention of SFCIU, via post, recorded delivery. New notebooks can be requested through OMs.

2.6.4 Evidence bags/production labels

Evidence bags and production labels are for use in gathering evidence in anticipation of referral for investigation.

Self-sealing evidence bags are provided at FSS approved premises, each of which bear individual serial numbers and barcodes. The bags have integrated labels for inputting relevant details, including: description of article; time, date and where seized; name and signature of witnesses. Production labels are completed with similar information (Example of a production label can be found at [Annex 10](#)).

If larger bags are required to accommodate bulky productions but do not have integrated labels, these can be sealed with a zip tag bearing a serial number and a production label tied to the bag.

Bagged and labelled productions should be securely stored and details recorded in a local register until such time as they can be handed to FSS investigators or otherwise disposed of. Please see [Annex 12](#) for a Seal Register template.

When using an evidence bag, the AO should:

- update accurately the [Evidence Bags Register](#) on SharePoint,
- record the details of the evidence stored and the bag serial number in the daybook and/or personal notebook.

Lead OVs should:

- ensure that evidence bags are present in plant and that there is a lockable facility for their storage;
- contact FSS Admin (adminteam@fss.scot) to request for more supplies of evidence bags if running out.

2.6.5 Evidence gathering

An AO should not attempt to conduct a full investigation into matters which are likely to be referred for formal investigation (see [4.9.1](#)) as specific training is needed to ensure that evidence is gathered in accordance with Scottish Criminal Law. An AO may continue to gather evidence towards the FBO achieving compliance, including the issuing of Remedial Action Notice (RAN) or other sanction, where appropriate.

SFCIU have trained investigators, who are responsible for noting statements, questioning suspects etc. AOs should not be cautioning or interviewing suspects, or taking formal statements from potential witnesses, but should take a note of any explanations offered.

AOs should otherwise confine the extent of their evidence gathering to:

- noting observations made at the time;
- securing physical evidence such as carcasses, samples, etc.;
- taking photographs where appropriate; and
- seizing relevant documents which come into their possession.

2.6.6 Photographic evidence

Taking photographs in approved premises is a fundamental part of the evidence gathering process and should be taken using a digital camera provided by FSS or the camera of an official work phone.

The AO shall inform the FBO of the intention to take photographs to gather evidence, as a matter of courtesy, however the FBO should be reminded that it is an offence of obstruction if they attempt to prevent the AO from doing so.

The use of video to record high speed operations, operational practises, animal welfare issues etc., is recommended. Verbal comments made during recordings will require to be transcribed and admitted in evidence.

Photographs and video recordings of an incident are likely to provide a more complete record than an officer's recollection and subsequent notes or statement. However, details should still be recorded in official notebooks to supplement this evidence, notwithstanding that digital photographs and recordings may be corrupted and lost during download or image transfer.

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.

When using an FSS digital camera, there is no requirement to save the memory card as a production, as it is of no evidential value and can be reused.

The AO shall remember to:

- set up the date and time in the FSS digital camera correctly, before taking photographs or videos;
- report any damage or loss of the FSS digital camera to the Area OMs immediately.

2.6.7 Supporting Evidence Photographic Report

A "Supporting evidence photographic report" ([Annex 6](#)) has been introduced to provide a contemporaneous record of images taken whilst gathering evidence. All images relating to that case, together with the corresponding photographic evidence report, should be saved in Sharepoint. OneDrive can be used for temporary storage of files while transferring into Sharepoint.

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

2.6.8 Samples: physical confirmation of the failure

A variety of samples may be gathered as evidence, for example:

- contaminants (e.g. foreign objects);
- samples of meat / offal / SRM;
- trimmings of faecal or other contamination;
- heads of animals;
- whole carcasses or joints;
- bodies of dead animals.

The OV shall not carry out any post mortem examination or collection of samples from a dead animal, if he/she suspects a notifiable disease (see Chapter 6 for the procedure in case of suspicion of notifiable disease).

In case of suspect breach of animal welfare legislation outside the abattoir, the OV shall follow the procedure described in Chapter 2.3 section 2.4 "Referral to LA/APHA".

The AO should inform the FBO of their intention to gather samples and enlist the services of a colleague to corroborate (if available). Samples should be properly bagged and labelled.

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 the seized samples 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). [Annex 14](#) of this chapter provides a template for evidence stored in plant freezers.

2.6.9 Temperature readings: factual figures

The AO should ensure that the thermometer/probe used for evidential purposes is periodically calibrated, and, where required for evidence in court, is recalibrated. The calibration certificate must be kept safe and it will be required as an exhibit in prosecution cases.

All relevant temperatures must be recorded where necessary (e.g. ambient, surface, probe (internal) and between packs). It is useful to ask a colleague to help record these details at the time the readings are taken.

AOs should ensure that when asked, they can explain what temperature related to which carcass/ other chilled or frozen meat, together with its location.

2.6.10 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 Area OM. Do not take light meter readings when no processing is being carried out.

2.6.11 Humidity readings: factual figures

When gathering evidence of poor humidity conditions, the AO should ensure to use a calibrated hygrometer and to recalibrate it if the readings are required as evidence in court, in order to demonstrate that it was accurate on the day it was used. The hygrometer can be obtained through the area OM.

2.6.12 Disclosure of unused material

When gathering evidence, it is important from the outset to understand that all material may be subject to disclosure in criminal proceedings, and, to a lesser extent, in requests for information made under the Freedom of Information (Scotland) Act 2002.

In criminal proceedings, the Criminal Justice and Licensing (Scotland) Act 2010, places an obligation on the Crown to disclose information which:

- is likely to form part of the Crown case,
- would materially weaken or undermine the Crown case,
- would materially strengthen an accused's case.

In Solemn cases, there is an obligation to reveal any additional information which may be relevant to the case for or against an accused. Information subject to disclosure 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 (including those not listed in evidence)
- instructions to expert witnesses or analysts

In effect, any material relevant to a case but not used by the prosecution may still be subject to disclosure. When making notes (in notebooks, daybooks etc.), compiling emails, sending official texts, etc., it should be understood 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 the material content is 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.

This Act requires that all material relevant to a course of enforcement is recorded, retained and 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 Dealing with persons wanting to pass information

2.7.1 Introduction

The provision of information by individuals is vital to identify matters of criminality and also emerging risks and trends in the food or animal feed supply chains. The information can be used to identify and direct investigations into those involved in criminality or are committing serious non-compliance breaches, which can put consumers health at risk or damage the reputation of businesses or specific sectors. In general, where individuals openly offer information on criminality or serious non-compliance breaches and are willing to provide a statement, their contact details should be noted and forwarded, along with any explanation offered, to SFCIU on foodcrime@fss.scot (see [4.9.2 Referral process](#)).

Where individuals wish to provide information in confidence, the procedure detailed in [2.7.3](#) shall apply.

2.7.2 Food Crime Intelligence Bureau (FCIB)

The Food Crime Intelligence Bureau (FCIB) within the Scottish Food Crime and Incidents Unit (SFCIU), undertakes the intelligence function for FSS.

In this role, the FCIB has a cadre of trained officers who regularly deal with and manage individuals who provide confidential information.

FCIB has processes in place to ensure the confidential information provided is securely stored, assessed and actioned. Also, paramount in this process is the protection of the identity of the source of the information.

There is a duty of care placed upon the organisation to ensure the source of the information is protected from retribution, or similar, from the subject(s) of the information.

Any information provided is dealt with in a confidential manner and the FCIB will not disclose the source details under any circumstances, unless lawfully required to do so.

2.7.3 What to do if approached by some wanting to provide information ‘in confidence’

In simple terms, what should an AO do, if approached:

- Listen to what they have to say and, if it is clear they wish to provide information in confidence, advise the FCIB is best placed to engage with them in order to protect their identity and to appropriately assess and action the information, and ask if you can pass their details to the FCIB who will deal with the source in a confidential manner;
- If they are not willing to engage with FCIB for whatever reason, note the information they are providing and pass it to the FCIB;
- DO NOT discuss the contact and information provided with colleagues, privately or collectively or with other third parties as there is a need to protect the source’s identity and not compromise the information being provided;
- DO NOT task the source to establish more information. This could compromise the source and may also verge into a legislative and formal process involving sources of information;

The FCIB can be contacted by the receiving officer or the source at:

- Secure FCIB Mailbox – foodcrime@fss.scot

- Secure voicemail – 01224 285196
- Crimestoppers/Scottish Food Crime Hotline – 0800 028 7926

3. Surrender, Detention, Seizure and Condemnation

[3.1 Voluntary surrender](#)

[3.2 On line temporary detention](#)

[3.3 Detention under the Food Hygiene \(Scotland\) Regulations 2006](#)

[3.4 Detention under the Food Safety Act 1990](#)

[3.5 Condemnation procedure](#)

[3.6 Seizure and Detention under Animal Welfare Legislation](#)

Note: See [Annex 5](#) for a flow diagram on the treatment of animals, meat and food unsuitable for the human food chain.

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, FSS should seek voluntary surrender of the meat.

Voluntary surrender may be evidenced by completing a “Rejected Meat Receipt” (PMI 4/8) to identify the carcass, part of the carcass, and offal. PMI 4/8 should be issued and signed by the OV/OA 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 carcass after processing and their consent is required.

This agreement should be completed before the meat is disposed of and it 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 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;
- Articles 65, 66 and 67 of retained Regulation 2017/625 in the event of suspicion of non-compliance and of non-compliance of animals and goods entering Great Britain.

3.2 On line temporary detention

3.2.1 Holding carcasses identified for detention

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

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

Colour	Use for
Red	Pathology
Yellow	SRM
Green	Contamination
Blue	Sample identification tag
Grey	TB carcasses

3.2.2 Labelling detained carcasses

Carcasses 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 carcass and offal, several talisman seals must be used. The individual seal numbers should be recorded with any other relevant details

for the carcass and cross-referenced on the Detention of Food Notice (see section [3.3](#) and [3.4](#)).

The seals must remain in place until the carcass and offal have been re-inspected and a decision made on the fitness of the carcass 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 AO may wish to undertake a further examination of the carcass to identify any signs of oedema/ emaciation, fever or other pathological condition that may not be evident when the carcass is still warm
- the AO may wish to carry out an investigation into the origin, marking, age, fitness, suitability of any meat or animal under the FBO's control
- the FBO prefers to carry out rectification work / removal of arthritic limbs when carcasses are chilled

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

3.2.5 Assessment of the detention facilities and confidence in management

Detention facilities may 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.

Scottish Manual for Official Controls | Amendment 19

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.

Reference: See chapter 9 on "Forms" for ENF 11/1 and ENF 11/26.

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 carcasses 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 CA 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 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 retained Regulations.

In order to prove that the OV instructed the FBO to detain the meat and to 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

Detention Notice ENF 11/26	
Relevant legislation	Served under Regulation 9(5) of The Food Hygiene (Scotland) Regulations 2006

Scottish Manual for Official Controls | Amendment 19

<p>General principle</p>	<p>It provides powers to the AO to detain any live animal or food of animal origin, either on the premises, or at another location that must be specified in the notice.</p>
	<p>It is intended to be used in circumstances where:</p> <ul style="list-style-type: none"> • 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).
<p>Service of Notice</p>	<p>The AO should:</p> <ul style="list-style-type: none"> • discuss the reason for service of the Detention Notice with the FBO; • ensure that (a) the detained food is accurately identified using an individually numbered talisman seal or by using FSS detention tape for boxed meat, or (b) the detained animal(s) is (are) accurately identified and separated from other animals; • once identified, ensure that the detained meat is secured so that it cannot be tampered with; <p>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. It is essential that the issue for which the food is detained is monitored.</p> <ul style="list-style-type: none"> • record the live animal or food identification details on the Detention Notice; • record details of the date and time of service of the notice on the back of the form and in the personal notebook or 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.
<p>Service details</p>	<p>The notice:</p>

Scottish Manual for Official Controls | Amendment 19

	<ul style="list-style-type: none"> • should be served by hand on the FBO or their duly authorised representative, • may be hand written, • must be served as soon as practicable. <p>The AO should always retain a copy of the Notice served.</p>
Time period	<p>No time period exists within which the examination must take place, however, this must be completed as soon as practicable.</p> <p>Detention under the provisions of Regulation 9 (5) of the Food Hygiene (Scotland) Regulations is intended to be used for short term issues to allow a further examination to take place, or samples to be taken.</p>
Right of appeal	No right of appeal exists.
Final decision	<p>1) If the AO is satisfied that the animal or food can be released or health marked (<u>fit for human consumption</u>), the notice may be withdrawn by the AO by completing the <i>withdrawal section</i> at the base of the Detention Notice.</p> <p>2) If after further examination the AO considers that the meat is <u>unfit for human consumption</u> or that the animal should not enter the food chain:</p> <ul style="list-style-type: none"> • it is useful to set out the rationale for this action in writing to the FBO by completing and serving a “Certification of Meat failing to comply with the Hygiene Regulations” (ENF 11/25); • the AO should seek voluntary surrender of the meat for disposal as an animal by-product (ABP) (e.g. by using the “Agreement to Destroy Food” form – ENF 11/7). <p>Where voluntary surrender is not forthcoming:</p> <p>(a) the AO should send a letter to the FBO explaining why they are declaring the meat unfit and serve an ABP Notice requiring the disposal of the meat under the domestic ABP Regulations (ENF 11/12 “Notice for the disposal of Animal By-Products”);</p> <p>(b) if the meat has been already health marked and it subsequently deteriorates and becomes unfit, the AO must seize the food under the provisions of Section 9 (3) (b) of the Food Safety Act 1990 (as amended) (ENF 11/27 “Seizure of Food”) and take it before a Justice of the Peace or Sheriff to be condemned.</p>

AO checklist when the detained food is not released	<p>The AO must specify on the reverse of the Detention Notice:</p> <ul style="list-style-type: none"> • 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.
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3.4 Detention of Food under the Food Safety Act 1990

Detention of Food Notice ENF 11/1	
Relevant legislation	<p>Served under Section 9(3)(a) of the Food Safety Act 1990.</p> <p>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.</p>
General principle	<p>It provides powers to the AO to detain, inspect and seize suspect food that is thought may not comply with the food safety requirements and is intended for human consumption</p> <hr/> <p>When FBO is:</p> <ul style="list-style-type: none"> • unwilling to surrender meat that the AO has judged unfit, or • 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. <p>It is intended to be used for further investigation into whether the food complies with the food safety requirements:</p> <ul style="list-style-type: none"> • Article 14 of the Regulation 178/2002 identifies the food safety requirements; • Regulation 27 (2) and (3) of the Food Hygiene (Scotland) Regulations 2006 specify that, where food has not been 'produced, processed, or distributed' in accordance with the Hygiene 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;

Scottish Manual for Official Controls | Amendment 19

	<ul style="list-style-type: none"> Regulation 2019/627 Articles 40, 41, 43 and 45 identify the circumstances where meat is required to be declared unfit for human consumption.
Service of Notice	<p>Prior to serving a notice, the AO must have in their possession all the evidence to justify its service.</p> <p>The Detention of Food Notice should be served by hand on the person in possession of the meat ('the owner').</p> <p>A copy of the Notice can be forwarded to the monetary owner, if different.</p> <p>Note: Monetary owner could be the owner of the animal from which the meat was produced (e.g. the farmer).</p> <p>The AO must ensure that all detained food is suitably and securely stored to minimise any deterioration or tampering; for examples, a lockable room, or by means of a security talisman tag on the chiller door.</p>
Content of Notice	<p>The notice must specify:</p> <ul style="list-style-type: none"> 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), the reason why the food does not comply with the food safety requirements, linking the matter to Article 14 of Regulation 178/2002, the date on which the notice 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 (see 'Time limit' section).
Number of notices	<p>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.</p>
Time limit	<p>The AO shall determine, as soon as is reasonably practicable, and in any event within 21 days, whether or not he/she is satisfied that the meat complies with the food safety requirement.</p>
Final decision	<p>1) <u>If satisfied</u>, the AO must immediately withdraw the Notice by issuing a "Withdrawal of Detention of Food Notice" (ENF 11/2) and complete the relative section at the end of the Detention of Food Notice.</p>

	<p>2) <u>If not satisfied</u>, the AO should</p> <ul style="list-style-type: none"> • set out the rationale for this action in writing to the FBO by completing and serving a “Certification of Meat failing to comply with the Hygiene Regulations” (ENF 11/25), and • seek voluntary surrender of the meat for disposal as an ABP (e.g. by using the “Agreement to Destroy Food” form – ENF 11/7). <p>The AO 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 been dealt with.</p> <p>However, if not voluntarily surrendered, the meat must be seized (ENF 11/27). The AO should also serve a “Food Condemnation Warning Notice” (ENF 11/3) to have it addressed by a Justice of the Peace to determine whether the food should be condemned or not.</p> <p>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.</p> <p>Part of the food may subsequently be seized if necessary and an Order for Condemnation of Food applied for.</p> <p>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.</p> <p>Regulation: Regulation 27 (3) the Food Hygiene (Scotland) Regulations 2006 and Food Safety Act 1990 Section 8 (3).</p>
<p>Right of appeal</p>	<p>No right of appeal exists for a Detention of Food Notice under the Food Safety Act 1990.</p> <p>However, if a Detention of Food Notice is withdrawn or a condemnation order is refused, and the food is released for human consumption, compensation is payable to the owner of the food for any depreciation in its value which can be shown to result from the AO’s actions.</p>
<p>AO checklist when the detained food is not released</p>	<p>The AO must specify on the reverse of the Detention Notice:</p> <ul style="list-style-type: none"> • 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.

The AO should record the Notices served on OWS as per [guidance](#).

See section 5 of chapter 2.8 on 'Animal by-products' for further information.

3.5 Condemnation procedure

3.5.1 Conditions for the application of a Condemnation Order from the court

The Condemnation Order is only applicable to food already health or ID marked, and when the FBO refuses to voluntarily surrender the food.

Reference: Regulation 2019/627 Articles 41, 42, 43 and 45.

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 the OV should:

- 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 (see section 3.5.4).

3.5.2 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.

3.5.3 Action to take

The OV is to follow the steps in the table below. All the forms can be found in Chapter 9.

References: The Food Safety Act 1990 Section 9 (3) (b), Section 9(4) (b). The Food Law Code of Practice.

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).
Complete and serve Certification of Meat Notice (ENF 11/25)	Once the AO 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.

Scottish Manual for Official Controls | Amendment 19

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<p>Complete and serve a Seizure of Food Notice (ENF 11/27)</p>	<p>If the FBO refuses to voluntarily surrender the food, complete a Seizure of Food Notice (ENF 11/27), serve it to the FBO and a copy to the owner of the food, where relevant.</p>
<p>Engage for legal advice</p>	<p>The Technical Lead will contact Scottish Government Legal Directorate should legal advice be required.</p>
<p>Contact the local police</p>	<p>The Technical Lead will liaise with the FSS investigators and establish which court covers the area for the establishment where the detained food is held.</p>
<p>Contact the court</p>	<p>In Scotland, the court process will not commence without the correct documentation being generated by the designated investigators. They will liaise with the Clerk to the court on the appropriate date, time and venue for the hearing.</p> <p>The OV and any other witnesses should inform FSS investigators of dates when they are available for court. The OV and witnesses should bear in mind the comments of the Food Law Code of Practice on the speed with which the case should go to court.</p>
<p>Complete and serve Food Condemnation Warning Notice (ENF 11/3)</p>	<p>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 (e.g. the farmer).</p> <p>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.</p>
<p>Attend the hearing</p>	<p>On attending the hearing, the AO should take:</p> <ul style="list-style-type: none"> • 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 (ENF 11/25); • copies of the Detention (ENF 11/1 or 11/26) and/ or Seizure Notice (ENF 11/27) and a record of service; • copies of the Condemnation Warning Notice (ENF 11/3) and record of service; • three copies of the Complaint for Condemnation of Food Order (ENF 11/15), filled in advance, for the Sheriff to sign;

Scottish Manual for Official Controls | Amendment 19

	<ul style="list-style-type: none"> • three copies of the Order for Condemnation of Food (ENF 11/16) filled in advance, for the Sheriff to sign; • contemporaneous notes which may be referred to (personal 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). <p>Explain clearly when presenting the evidence in court:</p> <ul style="list-style-type: none"> • 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.
<p>If successful: maintain supervision to ensure meat is disposed of</p>	<p>If the Sheriff issues an ‘Order for Condemnation of Food’, upon receipt of the Order, ensure that the person in charge of the meat (and the owner if notified) receives a copy. Ensure that the details of disposal have been recorded in their notebook and that a copy of the ABP commercial document has been filed.</p>
<p>If unsuccessful: meat is health-marked and restored to owner</p>	<p>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 or the owner of the food to put any complaint in writing to the Head Veterinarian.</p>
<p>Official Detention of non-compliant meat from third countries</p>	<p>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’ for further details.</p>

3.6 Seizure and Detention under Animal Welfare Legislation

Officers authorised to execute and enforce the retained EU Protection of Animals at the time of Killing legislation (Regulation 1099/2009) and the Welfare of Animals at the Time of Killing (Scotland) Regulations have powers under Regulation 20 to:

- seize and detain any carcase or part of a carcase for further examining, investigating or testing,
- seize and detain any equipment or instrument for further examining, investigating or testing,
- seize any computers and associated equipment for the purpose of copying data, but only if the AO has a reasonable suspicion that an offence under these Regulations has been committed and provided that they are returned as soon as possible.

An AO must, as soon as is reasonably practicable:

- provide the person responsible for items seized with a Welfare Seizure and Detention Receipt (ENF 11/36) identifying those items; and
- after deciding the items are no longer required, return them, apart from those to be used as evidence in court proceedings.

Where items have been seized for use in evidence in court proceedings and it is subsequently decided:

- no court proceedings are to be brought or those items are no longer needed as evidence in court proceedings; or
- the court proceedings are completed and no order in relation to those items has been made by the court,

the AO must return the items as soon as is reasonably practicable.

For seizures under **The Mandatory use of closed circuit television in slaughterhouses (Scotland) Regulations**, please see Section 3 on Chapter 2.3 Animal Welfare.

4. Hierarchy of Enforcement

[4.1 Introduction](#)

[4.2 Informal enforcement action: Intervention and Verbal Advice](#)

[4.3 Informal enforcement action: Written Advice](#)

[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 Formal caution: Hygiene Emergency Prohibition Notices \(HEPN\) and Hygiene Emergency Prohibition Orders \(HEPO\)](#)

[4.9 Welfare Enforcement Notice](#)

[4.10 Referral for investigation](#)

[4.11 Change of FBO during enforcement action](#)

[4.12 Warrant to enter premises](#)

[4.13 Case reporting and disposal](#)

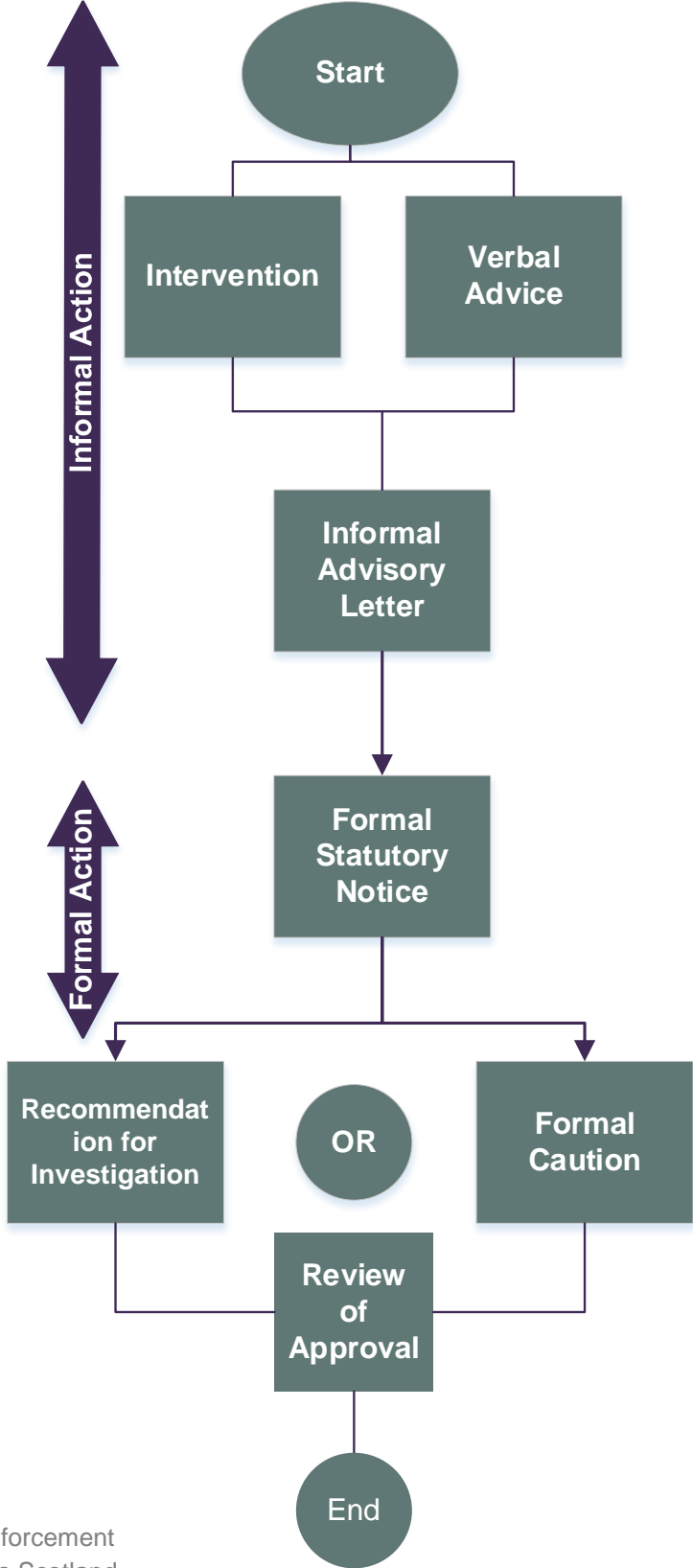
[4.14 Operational Delivery Incident Management Protocol](#)

[4.15 Review of approval](#)

4.1 Introduction

4.1.1 The hierarchy of enforcement

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



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 risk to public or animal health or welfare,
- 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 compliance level
- FSS Enforcement Policy.

4.1.3 Enforcement - informal and formal action

Intervention, 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, referrals for investigation and review of approvals.

The AO should ensure they are familiar with the 'Compliance spectrum' approach ([Annex 8](#)) and the extent of any deliberate or wilful non-compliance, before considering the need for formal enforcement action or whether a more educative and enabling approach to securing business compliance may be more appropriate.

The AO should be able to differentiate between FBOs which are generally compliant or actively working to improve performance and those who are deliberately choosing not to comply. This can help to inform the choice of interventions, e.g. whether or not to take early formal enforcement action.

If the AO considers that the FBO is not willing to comply and / or there is a high risk associated with the non-compliance, the following actions are some examples that can be taken to secure compliance:

- 1) Increase of FSS attendance after discussion with area OM, area Technical Lead, Head of Field Operations (HOFO) and Head Veterinary (HV): additional AOs (MHIs/OVs) can be utilised to carry out additional checks; the full cost will be charged to the FBO;
- 2) Service of RANs (see [section 4.6](#)) asking for specific actions (e.g. split of all sheep carcasses where the AO doesn't have confidence that age checks are adequate);
- 3) Meetings between FBO and HOFO, HV and area Veterinary Advisor to discuss and underline the required actions to achieve compliance;
- 4) Review of approval.

If the non-compliance is of major risk to public/ animal health or welfare, the AO can avail to request through the area Veterinary Advisor and the HV an 'Incident-

Enforcement Assessment' Team Meeting involving FSS Incidents team, to decide best course of action.

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 Regulation 2017/625, Article 18 paragraphs 2(a), 2(c) and 4;
- where there are grounds for declaring the meat unfit for human consumption, or in the OV's 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 Regulation 2019/627 Articles 40, 41, 43 and 45; where the meat fails to comply with the provisions of Article 14 (5) of Regulation 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 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 Regulation 853/2004, in establishments meeting the requirements of Article 4 of Regulation 853/2004. Where the product has not been so manufactured, then any application of this mark to meat will contravene Regulation 853/2004, Article 5.2.

This breach will constitute an offence under Regulation 17 of the Food Hygiene (Scotland) Regulations 2006 and potentially warrant the service of a RAN under Regulation 9(1) of the same Regulations, immediately prohibiting the use of the mark.

4.2 Informal enforcement action: Intervention and Verbal Advice

4.2.1 When to record intervention or verbal advice

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

Isolated and minor issues when AO action is required can be logged on the OWS Enforcement Module as interventions. Slightly more significant breaches but still with low risk, should be recorded as verbal advice. The term should not be confused with verbal communication which should go hand in hand with all stages of 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, although this does not necessarily mean that verbal advice will be recorded in the OWS Enforcement Module. It is advised that, when written advice or formal notice is to be issued with a slight delay from the date the non-compliance was identified due to management checks required, the AO records a verbal advice also.

Best practice is to follow any verbal discussion with an email, especially where the breach in question is of a technical nature, to confirm the discussion/ meeting and have valid evidence that this occurred.

It is important that the AO does not continue to give intervention or verbal advice where this is being ignored, without escalating enforcement action as required.

If in doubt the AO should consult the Area Technical Lead.

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 – Remedial Action Notice, Animal Welfare – Welfare Enforcement Notice, Improvement Notice or Referral for Investigation).

4.2.2 Records

All interventions and verbal advice should be recorded on the OWS Enforcement Module as per [guidance](#).

4.3 Informal enforcement action: Written Advice

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 intervention and / or verbal advice;

- where there is a contravention of the Regulations which does not have an immediate impact on public health or animal welfare;
- where accumulation of intervention and verbal advice indicate a failure in a system as per SBE approach (see [Section 2.5.1](#)).

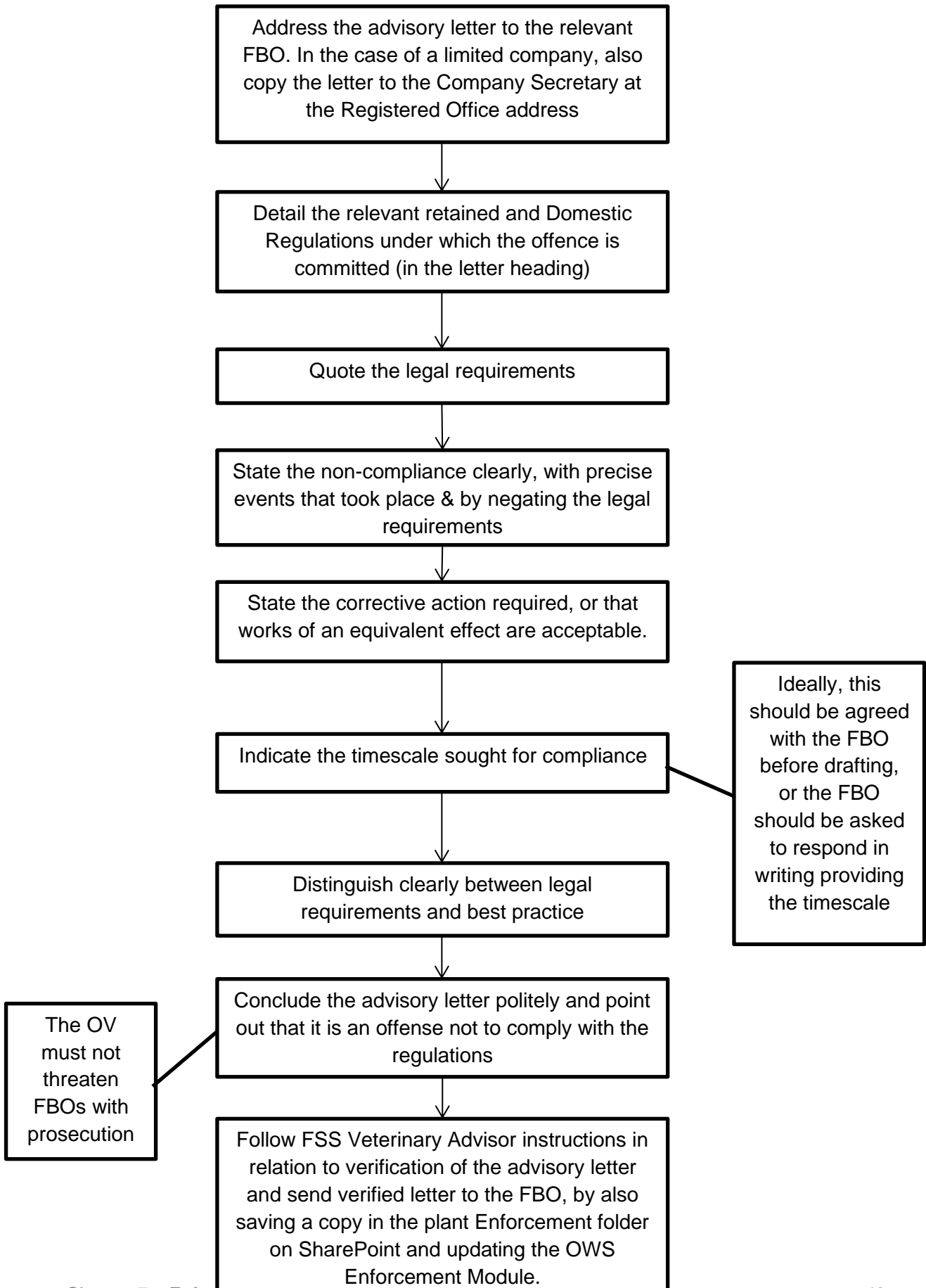
The AO should inform the FBO of the intention to write an advisory letter. Ideally, the AO should meet with the FBO or their representative before issuing an advisory letter to discuss all the issues, including the timescale for completion. It is good practice to ask the FBO to confirm in writing their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

In advisory letters, the AO must not threaten the FBO with 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](#)). In the case of advisory letters sent to limited companies, these must be addressed to the FBO c/o The Company Secretary at the Registered Office address and handed to plant management either in person or via email.

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:



4.4 Formal enforcement action: Statutory Notice

4.4.1 Preparation for formal action

Before taking formal enforcement action, the AO should:

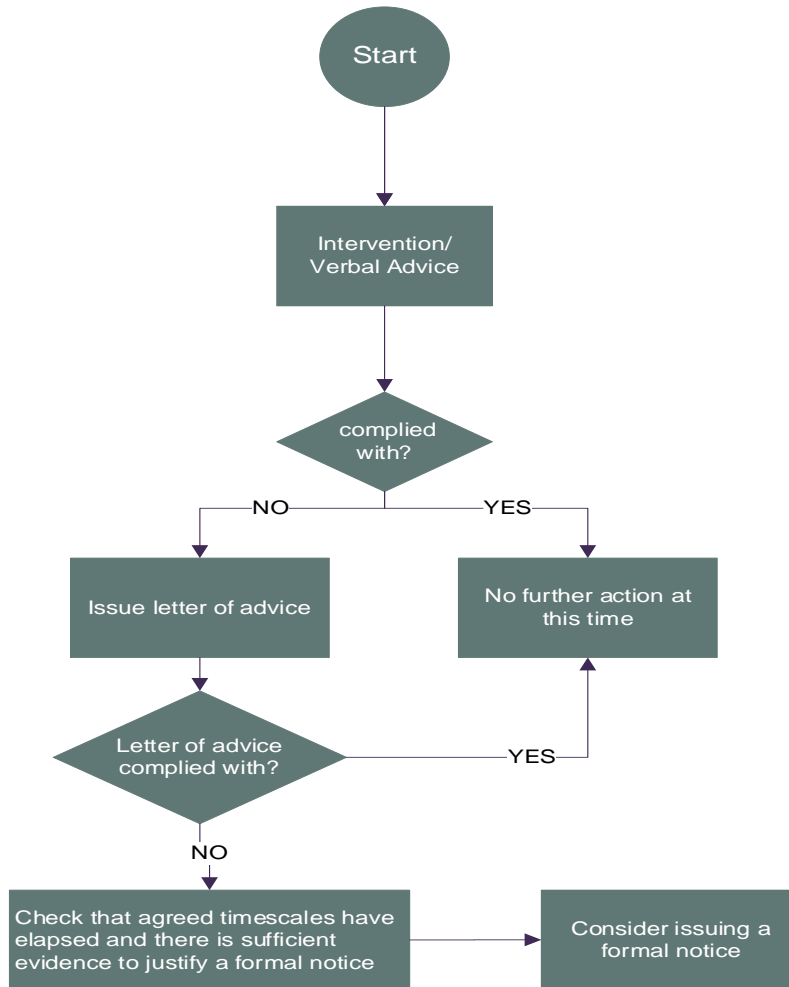
- advise the FBO verbally of this intention;
- be aware of all on-going enforcement action by reviewing entries on the OWS Enforcement Module;
- have regard to the FSS Operations Enforcement Policy ([Annex 2](#));
- ensure that evidence has been secured to demonstrate that the contravention still exists, that will warrant the escalation of enforcement action (see [section 2.6](#) for details).

4.4.2 Statutory notices

Statutory Notices are legal documents that inform the recipient of their legal rights, obligations or duties under a particular piece of legislation. Notices generally reflect the wording of the legislation and also allow the AO to complete sections as free text. 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:



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:

Checklist when serving Statutory Notices
An official hard copy of the notice should be used (taken from Chapter 9 of the SMOC) and not a photocopied, sample or draft notice.
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 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 and relevant timeframe 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.
All sections have been completed correctly and any irrelevant areas deleted as necessary.
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 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

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

- Remedial Action Notice [Regulation 9(1)],
- Hygiene Improvement Notice (Regulation 6),
- Hygiene Emergency Prohibition Notice and Order (Regulation 8),
- Detention Notice [Regulation 9 (5)],
- Certification of Meat failing to comply with Hygiene Regulations Notice (Regulation 27),
- Order for Condemnation of Food (Regulation 23).

“The Hygiene Regulations” as defined by Regulation 2 of the Food Hygiene (Scotland) Regulations 2006 means:

- the “Community Regulations”, including the retained Hygiene Regulations (852/2004, 853/2004, 2073/2005 and 2015/1375), Regulations 2017/625, 2019/624 and 2019/627 (the completed list of the Community Regulations can be found in the schedule 1 of the Food Hygiene (Scotland) Regulations 2006), and
- the Food Hygiene (Scotland) Regulations 2006 themselves.

Section 9 of the Food Safety Act 1990, via the provisions of Regulation 23 of the Food Hygiene (Scotland) Regulations, provides the following notices when food fails to comply with food safety requirements:

- Detention of Food Notice [Section 9 (3) (a)]
- Seizure of Food Notice [Section 9 (3) (b)]

4.5.1 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.

However, FSS policy is that only OVs or competent OAs that have successfully completed the UAI training should serve and withdraw formal 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 (see section [4.5.2](#) for details).

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

Notices can be served in two different ways: in person and/or by post. Where possible, service of a notice should be corroborated.

If a notice is served by hand, then a second AO would ideally 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
- 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.

Notices can be sent by post depending on the type of notice and of the business. In legal terms, a notice that is sent by **first class** post to the correct person at the correct address is deemed as served.

Thus it is essential to check the correct company's registered office details 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@companieshouse.gov.uk between 08:30 and 18:00, Monday to Friday.

Notices should never be sent by Recorded Delivery or Special Delivery or any signed for postal service. If the person of whom the notice is served refuses to sign, then legally it can be argued that the notice has not been served.

Obtaining a **certificate of posting** is a good practice, as this shows time and date when sent and does not require a signature of the recipient.

4.5.2 Types of Hygiene Notices

Type of Notice	Legislation	Purpose	Should be served upon
Hygiene Improvement Notice ENF 11-23 Section 4.7	Regulation 6 Food Hygiene (Scotland) Regulations 2006	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.	FBO
Remedial Action Notice ENF 11/24 Section 4.6	Regulation 9 Food Hygiene (Scotland) Regulations 2006	To seek compliance with hygiene matters that pose an immediate risk to public health	FBO or Duly Authorised Representative
Welfare Enforcement Notice ENF 11/34 Section 4.9	The Welfare of Animals at the Time of Killing (Scotland) Regulations 2012, Regulation 21	To seek compliance with animal welfare matters that pose an immediate risk to animal welfare	FBO
Detention of Food Notice ENF 11/1 Section 3.4	Section 9 Food Safety Act 1990 [via Regulation 23 Food Hygiene (Scotland) Regulations 2006]	To detain food while further investigation is carried out.	The FBO or person in charge of the food.
Detention notice under the Hygiene Regulations ENF 11/26 Section 3.3	Regulation 9 (5) Food Hygiene (Scotland) Regulations 2006	To detain food or live animals while samples are being taken, or where further examination is required.	FBO or Duly Authorised Representative
Certification of Meat failing to comply with Hygiene Regulations Notice ENF 11/25 Section 3.5.3	Regulation 27 Food Hygiene (Scotland) Regulations 2006	To certify that food has not been produced, processed or distributed in accordance with the Hygiene Regulations and	The FBO or person in charge of the food.

Scottish Manual for Official Controls | Amendment 19

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		fails to comply with the food safety requirements	
Seizure of Food Notice ENF 11/27 Section 3.5.3	Section 9 Food Safety Act 1990 [via Regulation 23 Food Hygiene (Scotland) Regulations 2006]	To seize food in order that it may be taken before the court to be condemned	The FBO or person in charge of the food.
Hygiene Prohibition Order	Regulation 7 Food Hygiene (Scotland) Regulations 2006	Prohibition of a food business proprietor or manager from participating in the management of any food business. There is no template available for this notice as it is served by the Court	FBO
Hygiene Emergency Prohibition Notice (ENF 11/28) and Order (ENF 11/18) Sections 4.8	Regulation 8 Food Hygiene (Scotland) Regulations 2006	To obtain the backing of the court to deal with circumstances that pose an imminent risk of injury to health	FBO

4.6 Remedial Action Notice

Remedial Action Notice - RAN ENF 11/24	
Relevant legislation	Regulation 9 of The Food Hygiene (Scotland) Regulations 2006
General principle	<p>A RAN may be served when:</p> <ul style="list-style-type: none"> • any of the requirements of the Hygiene Regulations are being breached, or • inspection under the Hygiene Regulations is being hampered. <p>A RAN places a legal requirement on a FBO to take immediate action to achieve compliance with the Hygiene Regulations.</p> <p>For that reason, it should be used specifically:</p>

Scottish Manual for Official Controls | Amendment 19

	<ul style="list-style-type: none"> • 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.
<p>Purpose</p>	<p>The AO must specify on the notice whether the RAN is intended to:</p> <ul style="list-style-type: none"> • prohibit the use of any equipment or any part of the establishment specified in the notice, • impose conditions upon or stop a process, or • require the rate of operation to be reduced to such extent as specified in the notice, or to be stopped completely. <p>A RAN can be used to direct the FBO to rectify both hygiene and structural / maintenance deficiencies, which fall under Regulations 852/2004, 853/2004, 2073/2005 and 2015/1375, the OCR and its package or the domestic Hygiene Regulations themselves and that require immediate action.</p> <p>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 HIN, served under Regulation 6 of the Food Hygiene (Scotland) Regulations 2006, should be used.</p>
<p>Content of Notice</p>	<p>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:</p> <ul style="list-style-type: none"> • 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. <p>This should include the general obligations to comply with the relevant provisions in the Annex(es) to the retained EU Regulation, and any specific requirement contained in the Annex [e.g. Regulation 853/2004, Article 3 and Annex III, Section I, Chapter IV, Paragraph 7(b) (i)].</p> <ul style="list-style-type: none"> • 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.

Scottish Manual for Official Controls | Amendment 19

	<ul style="list-style-type: none"> • describe the measure(s)/ action(s) which, in the AO’s opinion, the FBO must take to remedy the identified breach. 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.
	<p>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.</p> <p>Examples of a process might be “evisceration”, “dressing”, and “skinning”.</p> <p>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.</p> <p>Where the notice has the effect of stopping the operation completely, the OV or trained OA must consult with their area Veterinary Advisor to ensure that the action requested of the FBO is proportionate to the risk.</p>
	<p>RAN vs HIN</p> <p>FBOs have a responsibility to:</p> <ul style="list-style-type: none"> • 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. <p>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.</p> <p>While RANs can be used to address any hygiene risks evident as a result of the FBOs failure to have taken any appropriate corrective actions, HINs can be used to require compliance with the systemic HACCP deficiencies.</p>
	<p>Identification of the root cause</p> <p>It is sometimes difficult to determine the root cause of non-compliance where the causes are varied.</p>

	<p>In such circumstances, the AO should specify the measure(s)/action(s) that are required to remedy the issue and require that the FBO achieves any objectives the regulations set out.</p> <p>In some cases – for example,</p> <ul style="list-style-type: none"> • 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, <p>the AO should consider serving a RAN</p> <ol style="list-style-type: none"> 1) which prohibits the carrying out of a process, under Regulation 9(1) (d), or 2) requiring the FBO to stop operations completely, under Regulation 9(1) (e).
	<p>Information for notices</p> <p>The following information is to be included on the reverse of the AO copy:</p> <ul style="list-style-type: none"> • 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.
Service of RAN	<p>The OV or trained UAI inspector 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.</p> <p>The OV or UAI inspector must:</p> <ul style="list-style-type: none"> • verbally inform the FBO of the intention to serve the notice, • enter the reference of the notice as per OWS Enforcement Module Guidance into a blank copy of the notice, • complete all relevant section on the front and on the reverse page of the notice, as per ‘Content of notice’ section,

Scottish Manual for Official Controls | Amendment 19

	<ul style="list-style-type: none"> • record the information in the OWS Enforcement Module, • upload a scanned copy of the notice in the plant Enforcement folder. <p>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.</p> <p>Multiple contraventions</p> <p>The use of multiple simultaneous RANs should be avoided and replaced with a single RAN supported by an appropriate number of HINs.</p> <p>Who to serve the notice on</p> <p>The notice may be served:</p> <ul style="list-style-type: none"> • 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. <p>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.</p> <p>Corroborative evidence rules</p> <p>See section 4.5.1</p> <p>Posting</p> <p>See section 4.5.1</p> <p>If removed, defaced or destroyed</p> <p>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 personal notebook or in the daybook.</p>
Tagging	<p>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 in the notice.</p>
Withdrawal	<p>A RAN may be left in place until the AO is satisfied that the FBO has complied with the legal requirement.</p> <p>If the officer is satisfied that the actions required by the notice have been complied with, it must be withdrawn by completing section 6 of the notice.</p> <p>It is not appropriate to leave the notice in place after this point for “monitoring” since the FBO is now complying with the Hygiene Regulations.</p>

Scottish Manual for Official Controls | Amendment 19

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	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.
Failure to comply	Failure to comply with a RAN is an offence under Regulation 9 (7) of The Food Hygiene (Scotland) Regulations 2006. If the operator has failed to comply with such a notice, the AO shall complete a Referral for Investigation report - ENF 11/6 , after consultation with the area FSS Technical lead.
Right of appeal	The FBO has the right of appeal to a Sheriff under Regulation 20 of The Food Hygiene (Scotland) Regulations 2006. If the occupier appeals, the AO must notify the Area FSS Technical Lead. The provisions of the RAN remain in force until such time as the appeal is upheld.

4.7 Hygiene Improvement Notices

Hygiene Improvement Notice - HIN	
ENF 11/23	
Relevant legislation	Regulation 6 of The Food Hygiene (Scotland) Regulations 2006
General principle	<p>The HIN should be used:</p> <ul style="list-style-type: none"> • where there is a record of non-compliance with breaches of the Hygiene 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. • Where the hygiene contravention does not pose an imminent risk to public health, where the FBO's food safety management systems are deficient, or where structural, training or maintenance issues need rectifying in the longer term. <p>A HIN should not be used for non-hygiene related matters (e.g. failure to comply with the provisions of the Animal By-Product Regulations, WATOK or TSE Regulations).</p>

Scottish Manual for Official Controls | Amendment 19

	<p>Note: the only exceptions are the ABP provisions enforced under Chapter VI (Food Waste) of Annex II of Regulation 852/2004.</p> <p>The Code of Practice requires that both verbal and written advice be given to a FBO prior to a HIN being served.</p> <p>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.</p>
Purpose	<p>The purpose of a HIN is to place a legal requirement on a FBO to take action to achieve compliance with the Hygiene Regulations.</p> <p>A HIN may require the FBO to:</p> <ul style="list-style-type: none"> • 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. <p>The identified action must be stated on the HIN.</p>
When not to issue a HIN	<p>A HIN cannot be used to impose a continuing burden, and should not be used in the following circumstances:</p> <ul style="list-style-type: none"> • where the contravention might be a continuing one (e.g., 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 RAN and, in more serious situations, an Hygiene Emergency Prohibition Notice; • for the failure to implement good hygiene practice. <p>A HIN cannot be issued unless a contravention of the Hygiene Regulations is identified.</p>
Service	<p>The OV or trained OA who observes the deficiency should serve the formal notice.</p>

Scottish Manual for Official Controls | Amendment 19

	<p>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.</p>
Service checklist	<p>When serving a HIN, the AO must:</p> <ul style="list-style-type: none"> • have 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, • type (if possible), sign and date the HIN. <p>When filling in the reference number the AO must follow the OWS Enforcement Module Guidance.</p>
Who to serve the notice on	<p>Drafting and serving a notice to a sole trader</p> <p>The AO should 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.</p> <p>Where family members have the same names, the AO should include any additional names that the person may have, to avoid confusion.</p> <p>The notice may be served by hand on the sole trader at the plant, or addressed to them personally at the plant address.</p> <p>Drafting and serving a notice to a partnership</p> <p>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.</p> <p>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.</p> <p>Drafting a notice to a FBO with limited liability status</p> <p>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'.</p> <p>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</p>

Scottish Manual for Official Controls | Amendment 19

	<p>relevant person in charge at the plant. The envelope must be addressed to the limited company c/o 'The Company Secretary', where one exists.</p> <p>Note: A company secretary is no longer a legal requirement within a limited company structure, but where exists, he/she is generally the person responsible, within a limited company structure, to receive such notices. They are not the FBO or proprietor, and therefore should not be referred to on the formal notice.</p>
Content of Notice	<p>The notice must specify the:</p> <ul style="list-style-type: none"> • 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. <p>Note: Alternative works of equivalent effect may be acceptable.</p>
	Time limits
	<p>HINs place the FBO under a legal obligation to take specified action within a set time period, during which operations may continue.</p> <p>The time period given as the date of compliance must not be less than 14 clear calendar days.</p> <p>When calculating this period, 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.</p> <p><u>Example:</u></p> <p>Offence is identified on 1 January.</p> <p>Notice to be served on 1 January.</p> <p>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.</p> <p>Note: The period specified for compliance by the AO must be reasonable, given the measures required, and should, wherever</p>

	<p>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 the Area Technical Lead, to avoid appeals being lodged for unrealistic timescales.</p>
	<p>Drafting the notice</p>
	<p>The AO is required to:</p> <ul style="list-style-type: none"> • 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 Retained 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 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.
	<p>Drafting notices with more than one legal breach identified</p>
	<p>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.</p>

Scottish Manual for Official Controls | Amendment 19

	<p>Where different contraventions need to be remedied within different timeframes: for logistical and operational reasons, the AO cannot place separate timescales on the same notice.</p> <p>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 the FBO are clear.</p> <p>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.</p> <p>It may be acceptable to cite more than one legal reference or issue on a notice, provided that:</p> <ul style="list-style-type: none"> • 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.
Posting	See section 4.5.1 .
Right of appeal	<p>Recipients have a right of appeal against HINs to the Magistrates' Court. During the appeal period the requirements of the notice are suspended.</p> <p>In the event of an appeal by someone who is aggrieved by the service of the HIN, the AO is to inform the Area Technical Lead immediately.</p>
Requests for notice extension	<p>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 the 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.</p> <p>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:</p>

Scottish Manual for Official Controls | Amendment 19

	<ul style="list-style-type: none"> • exceeds the minimum 14 clear days; • concludes on an agreed date that the FBO/ AO believe that compliance may be achieved. <p>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.</p> <p>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.</p> <p>The AO must review the works carried out by the FBO after the agreed extension date specified in the letter has expired and:</p> <ul style="list-style-type: none"> • withdraw the notice, or • refer the breach of the notice and the specific non-compliance for investigation.
<p>Compliance and withdrawal</p>	<p>After the service of a HIN, the AO must check that it is complied with by the stated date.</p> <p>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.</p> <p>Measures that achieve the same outcome as those specified in the notice must be accepted as achieving compliance.</p> <p>The templates available in Annexes 4a and 4b can be used to inform the FBO that:</p> <ul style="list-style-type: none"> • the AO is satisfied that the action required in the HIN has been carried out and compliance has been achieved to their satisfaction (withdrawal), or • the AO has served the HIN in error and/or it has to be withdrawn due to a technical issue (replacement).
<p>Failure to comply</p>	<p>Failure to comply with a HIN is an offence.</p> <p>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.</p>

4.8 Formal Caution: Hygiene Emergency Prohibition Notices (ENF 11/28) and Hygiene Emergency Prohibition Orders (ENF 11/18)

Hygiene Emergency Prohibition Notices (HEPN) - ENF 11/28	
Hygiene Emergency Prohibition Order (HEPO) - ENF 11/18	
Relevant legislation	Regulation 8 of The Food Hygiene (Scotland) Regulations 2006
General principle	<p>A HEPN can be served where there is a real and imminent risk of injury to health that is so serious that action requires the backing of the court (e.g. contamination of the potable water supply).</p> <p>Specific examples and further guidance are given in section 16.2.3 of the Food Law Code of Practice made under Regulation 24 of the Food Hygiene (Scotland) Regulation 2006.</p> <p>The health risk condition is fulfilled with respect to any food business, if any of the following involves imminent risk of injury to health:</p> <ul style="list-style-type: none"> a) the use for the purposes of the business of any process or treatment; b) the construction of any premises used for the purposes of the business, or the use for those purposes of any equipment; c) the state or condition of any premises or equipment used for the purposes of the business
Service of Notice	<p>If the appropriate evidence is found, a HEPN may be served on the FBO, and this should be followed by an application to a Sheriff Court for HEPO.</p> <p>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.</p> <hr/> <p>The issue of a HEPN shall only be considered after discussion with the area Technical Lead and after authorisation from Scottish Government Legal Directorate.</p>

Scottish Manual for Official Controls | Amendment 19

	<p>The HEPN must be served on the FBO as detailed in section 4.5.1</p>
<p>HEPN service details</p>	<p>The AO must specify the prohibition on the use of the process, the treatment, the equipment and/or the premises that constitute an imminent risk of injury to health.</p> <p>An HEPN has an immediate prohibition effect.</p> <p>Monitoring of the prohibition and any action taken by the proprietor must be recorded.</p> <p>A copy of the HEPN must be affixed in a conspicuous position to the premises, at which the notice relates.</p> <p><u>Within 5 days</u> of service of an HEPN, the AO must apply to a court for an HEPO confirming the prohibition. The day of the service of the notice is regarded as day one.</p> <p>The AO shall not apply for a HEPO unless, at least 1 day before the date of the application, the officer has served the Notice of Intention to Apply for a Hygiene Emergency Prohibition Order (ENF 11/11) on the relevant FBO.</p>
<p>Contact local court to arrange hearing</p>	<p>The AO applies for an HEPO from the Sheriff court.</p> <p>The hearing must take place <u>within 5 days</u> 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 (ENF 11/11).</p> <p>There is no legal requirement for the application to be heard in 5 days, although the court should be asked to list the hearing at the earliest opportunity.</p> <p>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.</p>
<p>Prepare for hearing</p>	<p>Prior to the hearing, the AO should:</p> <ul style="list-style-type: none"> • read all the relevant papers, • prepare to be questioned as a witness,

	<ul style="list-style-type: none"> • bring all relevant evidence to court. <p>The AO should also prepare three copies of:</p> <ul style="list-style-type: none"> • the <u>HEPN (ENF 11/28)</u>, • the <u>Notice of Intention to Apply (ENF 11/11)</u>, • the <u>Complaint for a Hygiene Emergency Prohibition Order (ENF 11/17)</u>, • the <u>draft Hygiene Emergency Prohibition Order (ENF 11/18)</u>, duly completed and ready for signing by the Sheriff. <p>The AO must monitor the premises whilst awaiting the hearing and record any breaches of the notice or changes in circumstances at the plant.</p>
<p>Court will decide whether to issue the HEPO or not</p>	<p>Once made, the HEPO supersedes the HEPN.</p> <p>The AO must also affix a copy of the HEPO in a conspicuous position to the premises at which the HEPO relates.</p>
<p>Certificate to cease the effect of a HEPN or a HEPO</p>	<p>A HEPN or a HEPO shall cease to have effect on the issue by the enforcement authority of a certificate to the effect that it is satisfied that the FBO has taken sufficient measures to secure that the health risk condition is no longer fulfilled with respect to the food business.</p> <p>Once the FBO applies in writing for the certificate, the AO must determine as soon as it is reasonably practicable and in any event <u>within 14 days</u>, whether or not it is so satisfied:</p> <ol style="list-style-type: none"> 1) that the FBO has taken significant steps/ measures to remove the health risk(s) specified in the notice, the AO should sign the withdrawal certificate at part 5 of the HEPN. <p>The certificate allows the FBO to use the premises, process, treatment or equipment again, even if the court hearing has not taken place.</p> <ol style="list-style-type: none"> 2) if not satisfied, the AO must give notice to the FBO of the reasons for that determination.

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.
Offence	Any person who knowingly contravenes a HEPN or a HEPO is guilty of an offence.

4.9 Welfare Enforcement Notice

Welfare Enforcement Notice – ENF 11/34	
Relevant legislation	The Welfare of Animals at the Time of Killing (Scotland) Regulations 2012, Regulation 21
General principle	<p>The WEN should be used:</p> <ul style="list-style-type: none"> • To require steps to be taken to remedy contraventions of the regulations • To require the rate of operations to be reduced until steps have been taken to remedy contraventions of the regulations • To stop an activity, process or operation or the use of facilities or equipment until steps have been taken to remedy contraventions of the regulations
Purpose	<p>The purpose of a WEN is to place a legal requirement on a FBO to take action to achieve compliance with the welfare regulations.</p> <p>The identified action must be stated on the WEN.</p>
When not to issue a WEN	<p>Where minor contraventions are witnessed, the AO will issue an intervention, verbal or written advice to the Business Operator (BO), stating the contravention that has been witnessed and confirm findings in writing.</p> <p>When the FBO complies as a result of informal enforcement.</p>
Service	<p>The OV or trained OA who observes the deficiency should serve the formal notice.</p> <p>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 WEN.</p>

Scottish Manual for Official Controls | Amendment 19

Service checklist	<p>When serving a WEN, the AO must:</p> <ul style="list-style-type: none"> • have 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, • type (if possible), sign and date the WEN <p>When filling in the reference number the AO must follow the OWS Enforcement Module Guidance.</p>
Who to serve the notice to	<p>Drafting and serving a notice to a sole trader</p> <p>The AO should 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.</p> <p>Where family members have the same names, the AO should include any additional names that the person may have, to avoid confusion.</p> <p>The notice may be served by hand on the sole trader at the plant, or addressed to them personally at the plant address.</p> <hr/> <p>Drafting and serving a notice to a partnership</p> <p>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.</p> <p>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.</p> <hr/> <p>Drafting a notice to a FBO with limited liability status</p> <p>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'.</p> <p>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.</p>

Scottish Manual for Official Controls | Amendment 19

	<p>Note: A company secretary is no longer a legal requirement within a limited company structure, but where exists, he/she is generally the person responsible, within a limited company structure, to receive such notices. They are not the FBO or proprietor, and therefore should not be referred to on the formal notice.</p>
Content of Notice	<p>The notice must specify the:</p> <ul style="list-style-type: none"> • 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. <p>Note: Alternative works of equivalent effect may be acceptable.</p>
	Time limits
	<p>WENs can be served as RAN or HIN type and the same timeframes for completion apply as for RAN and HIN. For more details on time limits please refer to RAN and HIN relevant sections.</p>
	Drafting the notice
	<p>The AO is required to:</p> <ul style="list-style-type: none"> • describe the contravention that has been observed that constitutes a breach of the Welfare 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 Retained welfare 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. • 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;

	<ul style="list-style-type: none"> • 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
	Drafting notices with more than one legal breach identified
	<p>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.</p> <p>Where different contraventions need to be remedied within different timeframes: for logistical and operational reasons, the AO cannot place separate timescales on the same notice.</p> <p>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 the FBO are clear.</p> <p>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.</p> <p>It may be acceptable to cite more than one legal reference or issue on a notice, provided that:</p> <ul style="list-style-type: none"> • 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.
Posting	See section 4.5.1 .

Scottish Manual for Official Controls | Amendment 19

Right of appeal	<p>Recipients have a right of appeal against WENs to the Sheriff under regulation 25(1) (b) of the Regulations. During the appeal period the requirements of the notice are suspended.</p> <p>In the event of an appeal by someone who is aggrieved by the service of the WEN, the AO is to inform the Area Veterinary Advisor immediately.</p>
Requests for notice extension	<p>If the FBO were to request an extension to a WEN, this must be in writing and requested prior to the expiry of the notice. This will be an informal arrangement between the AO and the 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.</p> <p>Where there is a genuine reason for such an extension and the criteria in the Enforcement Policy 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 WEN with the revised agreed timeframe.</p> <p>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.</p> <p>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.</p> <p>The AO must review the works carried out by the FBO after the agreed extension date specified in the letter has expired and:</p> <ul style="list-style-type: none"> • withdraw the notice, or • refer the breach of the notice and the specific non-compliance for investigation.
Compliance and withdrawal	<p>After the service of a WEN, the AO must check that it is complied with by the stated date.</p> <p>Where compliance is achieved, the AO must serve a Welfare Completion Notice (WCN) ENF 11/35 to confirm that they are satisfied the BO/ person has taken the steps specified to correct the contravention. Measures that achieve the same outcome as those specified in the notice must be accepted as achieving compliance.</p>

Failure to comply	<p>Failure to comply with a WEN is an offence.</p> <p>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.</p>
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4.10 Referral for investigation

4.10.1 When to refer for investigation

There are circumstances when powers available to AOs are insufficient to deal appropriately with ongoing non-compliances or apparent offending. The following are suggested criteria which would merit referral for investigation to SFCIU:

- SRM being consigned from the premises still attached to the meat (except in the case of OTM 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 1099/2009 (WATOK);
- breaches of the retained 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;.
- where Food Fraud/Food Crime is suspected, i.e. *“serious dishonesty that impacts detrimentally on either the safety or the authenticity of food”*.

When any of the above suggested criteria occurs, OV/AO should discuss findings with the Area Technical Lead. The Technical Lead can engage SFCIU to determine suitability of the referral and consult on evidence gathering advice.

4.10.2 Referral process

The following outlines the process of referral for investigation:

1. Secure evidence: When identifying a situation that appears to meet the criteria for referral, the AO will ensure that potential evidence is secured (see [section 2.6](#)).

2. Engage and inform attending FSS team: All members of the inspection team are AOs and are expected to assist in any enforcement action, including gathering evidence and acting as a witness in court proceedings.
3. Consult Technical Lead: OV/OA must discuss findings with the area Technical Lead to ensure evidence gathered meets the criteria for referral. The technical Lead may consult SFCIU on the case and other referral matters such as how to obtain best evidence.
4. Complete ENF 11/6 Referral for Investigation form: The AO will complete the relevant part of the form and send to the area Technical Lead at the earliest opportunity. Technical Lead will forward to SFCIU (foodcrime@fss.scot). Email will include all supplementary evidence, including links to documents stored on Sharepoint or eRDM when applicable.
5. Inform FBO: The FBO should be advised of the referral for investigation, providing them with opportunity to rectify the matter(s), this should be noted in the Daybook by the AO
6. Ensure adequate communication: The AO will ensure that other attending AOs are aware of the issues subject to referral so they are alert to the potential for further breaches and work with the FBO towards achieving compliance. A note should be made in the Daybook describing details for the referral and OWS Enforcement module should be updated
7. Receipt of referral by SFCIU: SFCIU will receive the referral and allocate the case to an investigator. The SFCIU Senior Investigator will review the referral and consult with FSS Operations as required to consider whether a formal investigation is appropriate and consistent with FSS policies.
8. SFCIU communication of results and recommendations: SFCIU will update the ENF 11/6 form received with details of the investigation and send to the Area Technical Lead and Head Veterinarian. SFCIU may list recommendations to assist the FBO towards compliance for FSS Operations to consider.
9. Return of form from Operations to SFCIU: Technical Lead will review the information received in the ENF 11/6, including any recommendation, communicate information to the inspection team, complete the last part of the form, and send back to SFCIU.

Note: There is a general rule that summary prosecution of statutory offences must be started within six months of the date of the offence, unless a statute makes a different provision on time. A referral should be made at the earliest opportunity to ensure an investigation can be concluded and offences reported in early course to avoid being time-barred from court proceedings.

4.10.3 Conduct of investigation

Generally speaking, referrals for investigation to SFCIU are dealt with as follows:

1. On accepting a referral, SFCIU will appoint an Investigating Officer (IO). It is good practice, particularly in complex or multifaceted issues, for the IO to convene a case conference with FSS Operations to discuss aspects of the case e.g. provide clarification, agree parameters, expectations of outcomes, etc. Meeting(s) may involve the OV, Technical Lead, MHI or others considered essential to discussions/decisions.
2. The IO will obtain statements from the Inspection Team and other relevant witnesses, and may undertake scene examinations, take photographs, seize further productions and interview suspects.
3. The IO will also consider previous case files relating to non-compliance issues or alleged offences at the plant, which may identify antecedents relevant to the investigation and help inform decisions on how best to proceed.
4. Following investigation, the IO will complete the headed sections under 'Details of Investigation' on ENF 11/6 and submit to the SFCIU Senior Investigator, who will confirm if the circumstances merits a report to the Procurator Fiscal. The IO is responsible for submitting reports to the Procurator Fiscal, including full statements and productions in the case.
5. The SFCIU Senior Investigator will also complete ENF 11/6 with any other recommendations and forward to the FSS Operations Technical Lead to consider. A final SFCIU/Operations meeting should then be convened to review the recommendations and agree a final resolution to the matters under investigation.
6. FSS Operations will advise the AO and inspection team at the plant of any recommendations arising from the IO investigation, including if a report is to be submitted to the Procurator Fiscal. This will ensure consistency of approach with the FBO in bringing them back into compliance or rectifying the issues which led to offending.

AOs are reminded that evidence reported to the Procurator Fiscal for consideration of proceedings should be deemed sub judice (i.e. under judicial consideration and therefore prohibited from public discussion, including with the FBO).

4.10.4 Statements

Statements will be taken by an Investigation Officer (IO) and must be clear, relevant, factual and comprehensive, showing full information of the likely evidence of the witness. The content of the statement should be in chronological order, include detail

of FBO compliance or otherwise and make reference to all productions the witness can speak to seizing or reviewing, e.g.:

- photographs,
- articles/samples seized,
- copies of notices and advisory letters,
- copies of daybook and notebook entries,
- correspondence with the FBO.

Material which may be detrimental to the prospect of a conviction must not be omitted from a statement. At any stage up to the date of a trial, the IO may be asked to obtain supplementary statements from witnesses.

4.11 Change of FBO during enforcement action

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 (i.e. a re-approval) can be conducted.

4.12 Warrant to enter premises

Access refused

There are occasions when, despite best efforts to secure compliance, an FBO may refuse, or is likely to refuse, an AO entry onto FSS approved premises to perform their statutory functions.

In terms of the Food Safety Act 1990 (Section 32), the General Food Regulations 2004, Regulation 7(2) and the Food Hygiene (Scotland) Regulations 2006 (Regulation 14), an AO, at all reasonable hours, can enter premises for the purpose of:

- ascertaining whether there is or has been on the premises any contravention of the Act/Regulations;
- ascertaining whether there is on the premises any evidence of any such contravention; and
- the performance by the Agency of its functions under the Act/Regulations.

A sheriff, magistrate or justice of the peace may sign a warrant authorising an AO to enter the premises, if need be by force:

- where admission to premises has been refused, or is likely to be refused, and a notice of intention to apply for a warrant has been given to the occupier, or
- that the application for admission, or the giving of such a notice, would defeat the object of the entry, or the case is one of urgency, or the premises are unoccupied or the occupier is temporarily absent.

An AO should seek advice from their technical lead where an FBO has refused or is likely to refuse entry to an FSS approved premises, or other condition preventing legislated access. Obstruction may merit referral for investigation to SFCIU and the referral process described on 4.10 above should be considered.

If there is no prospect of achieving the FBO's cooperation or compliance, the AO should complete form ENF 11-19 (Notice of Intention to Apply for a Warrant of Entry) and send to the FBO by recorded delivery.

A warrant should then be applied for, however this process can be halted at any time should the FBO comply and allow access to the premises until the purpose for which entry is required is satisfied.

Application for warrant to enter premises (ENF 11/20)

AOs should contact the Scottish Government Legal Directorate and provide sufficient information and/or intelligence on the conditions that prevent entry onto FSS approved premises to enable an application for a warrant of entry to be made to the Procurator Fiscal within the Sheriffdom where the premises is located. The Procurator Fiscal will then draft a warrant for authorisation by a Sheriff. (The Crown Office offer 24 hour coverage for emergency cases).

Note: The AO may be required to attend court to swear the information on oath to satisfy the Sheriff there are reasonable grounds to grant the warrant of entry.

A warrant of entry authorises the applicant (i.e. AO), accompanied by other persons considered necessary by the applicant (e.g. other officers of FSS, APHA, police, etc) to enter the premises on one occasion within a month of the date the warrant was granted, by force if necessary, until the purpose for which entry is required is satisfied.

Execution of warrant to enter premises (ENF 11/21)

The execution of the warrant should not be delayed unnecessarily. FCIB requires to be consulted in advance to establish if there is any intelligence to suggest potential risk to staff from the FBO or other party associated with the premises.

Police Scotland should be notified of the intended time and date to execute the warrant and be advised of any identified risks associated with the FBO and premises. If it is

believed there is a risk of violence, the police should be requested to attend when the warrant is executed.

On attending the premises, the AO will show the warrant to the occupier and read over the terms in full. DO NOT hand the warrant to the occupier or other party or allow them to be in a position take possession of it as it risks being destroyed. Although this would constitute an offence, a replacement may have to be applied for from the court. It is always good practise to have the warrant contained in a thick plastic sleeve so it can still be read but protected from interference. The FBO is not entitled to receive a copy of the warrant as it is an official court document.

If an occupier refuses to allow entry onto the premises, obstructs the AO from fulfilling the terms of the warrant, or the premises are otherwise secured and unoccupied, the police should be called to assist gain entry and until the terms of the warrant are fully satisfied.

Any obstruction to the execution of the terms of the warrant is an offence and any person doing so should be advised of this.

The AO should make contemporaneous notes on the execution of the warrant, including any obstruction encountered and findings from the inspection.

Forced entry

Whilst a warrant of entry authorises use of force onto secure premises, AOs should never attempt to do so by themselves.

Police Scotland have officers trained in Method of Entry and have access to specialised equipment to gain entry into secure premises and lockfast containers and should be called to assist. This will not only prevent the risk of injury but minimise potential damage to property.

4.13 Case reporting and disposal

4.13.1 Decision to prosecute

The Crown Office and Procurator Fiscal Service is the prosecuting authority in Scotland. Procurators Fiscal receive reports from the police and over 50 specialist reporting agencies (including FSS) amounting to many thousands of reports annually.

Specialist reporting agencies, such as FSS, are governed by their own primary legislation which in general ensures compliance with the law by educating and offering advice in the first instance and, when necessary, through enforcement of provisions by direct action. Procurators Fiscal view the reporting of cases to them as a last resort. This is a fundamental consideration for an IO on whether or not to recommend reporting offences.

Factors which may prevent the reporting of offences or mitigate the need to do so, include:

- there is insufficient evidence to prove the offence(s);
- procedural errors have been identified and no further action can be taken – e.g. formal notices have not been correctly drafted and served (it may be recommended that enforcement action is restarted);
- compliance is achieved after a referral for investigation has been made;
- it may be the FBO's first offence and corrective action has been taken by them;
- other sanctions can be applied by FSS which are commensurate to the level of offending.

In deciding to prosecute a case, Procurators Fiscal must be satisfied:

- a) There is a sufficiency of evidence – i.e. corroborated evidence to establish a crime had been committed and that the accused can be identified as the perpetrator.
- b) It is in the public interest to do so.

The identification of an accused is essential to prosecution. This includes corporate bodies who may be culpable in addition to individual accused persons. The identification of the correct limited company cannot be over-stated, especially where there are many subsidiary companies with similar sounding names. In some circumstances, companies may have engaged sub-contractors and it is essential to clearly investigate and identify the appropriate accused. If an accused is charged in a particular capacity (e.g.: an owner/occupier, director or a company, etc.), evidence to prove this must be included. FSS Approvals should therefore feature accurate company and director details.

4.13.2 Case disposal

Procurators Fiscal can dispose of a case in a number of ways:

- decide that it is not in the public interest to prosecute;
- impose financial direct measures (e.g. Fiscal fines);
- issue a warning letter or consider another alternative to prosecution;
- mark any case 'no action' or desert the prosecution case at any stage of the proceedings;
- proceed to prosecution.

In the case of prosecution, should an accused person plead not guilty, the matter will likely proceed to trial.

4.13.3 Giving evidence in court

Witnesses may be cited to attend a trial to give evidence at an appointed time, date

and court and will receive notification from the Procurator Fiscal if they are no longer required to attend.

Any AO unfamiliar with court procedure may benefit from some discussion with their Technical Lead or the IO before giving evidence in court.

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.

4.13.4 Use of notebook when giving evidence

With few exceptions, witnesses are not permitted to read from their prepared statement when giving evidence in court.

A notebook may be referred to in court to help recollect facts and figures that would otherwise be impossible to recall in detail after the event, unless these details feature in a document submitted as a production in the case.

Note: where an officer refers to their notebook when giving evidence in court, the defence is entitled to see what has been written and it is important that notes are concise, accurate and relevant to the case.

4.14 Operational Delivery Incident Management Protocol

FSS Operational Delivery (OD) Branch is required to set up and implement a documented procedure in line with the FSS Incident Management Framework for dealing with food incidents originating in, or impacting on, FSS Approved Meat Establishments (AME).

See [Annex 13](#) of this chapter for the full Operational Delivery Incident Management Protocol.

See the link below for the Food Incident Report Form:

[Food Incident Report Form | Food Standards Scotland](#)

4.15 Review of approval

Approval of establishments must be kept under review by the competent authority whilst carrying out official controls (Article 148 of Regulation No 2017/625). This regulation also includes the requirement to include initiating action to withdraw or suspend the approval in certain circumstances (Article 138).

Withdrawal of approval should be considered the ultimate sanction for poor performance by FBOs. The [Intervention Protocol](#) provides guidance on actions to be taken when FBOs do not put in place suitable measures to raise levels of compliance to meet legal requirements.

Scottish Manual for Official Controls | Amendment 19

The table below describes the steps to be followed, for the process to review an establishment's approval.

Legislative framework: Regulation 2017/625 Title VIII, Chapter II, Article 148, Paragraph 5	
<p>Q1. Are there serious deficiencies or have there been repeated stoppages of production? Is there intelligence of inactivity for plant or specific activities for longer than 12 months? (Evidence is gathered by the VA in a review of approval report, submitted to the HV for consideration).</p>	<p>YES to any of these – review of approval is considered and FBO is notified on intent to review approval and seeking action plan.</p> <p>NO- approval will continue.</p>
<p>Q2. Has the FBO submitted guarantees for future production within the 14 calendar days?</p>	<p>YES- go to Q3.</p> <p>NO- Review of approval report is updated and recommendation for approval to be withdrawn is put forward for decision.</p>
<p>Action plan submitted by the FBO is assessed.</p> <p>Q3. Do the guarantees mean that deficiencies will be permanently resolved immediately and that there will be no future stoppages of production (if those were an issue)?</p>	<p>YES- Approval will continue, FBO is notified.</p> <p>NO- go to Q4.</p>
<p>Q4. Do the guarantees mean that deficiencies will be permanently resolved within a reasonable time and the situation will be such that, once the deficiencies have been resolved, there will be no future stoppages of production?</p>	<p>YES- Review of approval process will be extended to allow verification of effectiveness of actions taken.</p> <p>NO- Approval will be withdrawn.</p>

Serious deficiencies – The Veterinary Advisor (VA) gathers evidence (in the form of a review of approval report, gathering outcomes of previous audits, notices, letters and photographic report/s) and submits it to the Head Veterinarian (HV), with a recommendation to initiate review of approval.

If, following assessment of submitted report, HV agrees with the recommendation of the VA, preliminary report and a draft letter are sent to Director of Policy, Science and Operations (DPSO) for sign-off. If DPSO is in agreement, the FBO is notified of

intention to review approval and requested to provide guarantees within 14 calendar days, with an action plan to address the concerns as soon as possible.

One of the following 3 options may occur next:

- FBO submits action plan within above deadline – VA assesses the suitability of the action plan and finds that it addresses the non-compliances in required timeframe (dependant on risk). If required, the VA undertakes a plant assessment (unannounced visit) to gather any more evidence considered necessary.
- FBO submits action plan within above deadline, however the NCs are not considered to be addressed in a suitable timeframe dependant on risk. The VA may choose to conduct a UAI to gather more evidence.
- FBO does not submit action plan within above deadline.

The documentation pack is updated by the VA to include (if applicable) the evidence/action plan from the FBO. In the absence of this, a comment to state that no action plan has been received should be included. The updated report is assessed by the VA & HV and a decision made if to withdraw approval or not. All evidence and draft letter with a recommendation in relation to approval status are sent to the DPSO for a decision and the FBO informed.

Engagement with the relevant LA should take place from the very first steps of this process.

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](#)

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

Food safety and hygiene legislation makes various references to the CA applying a risk based approach to the delivery of official controls.

Regulation 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 General rules on official controls

Regulation 2017/625 Article 9 (1) requires the CA to perform official controls on all operators regularly, on a risk basis and with appropriate frequency, taking account all the factors outlined in the above mentioned article.

Article 9 (2) requires the CA to performs official controls, with appropriate frequencies determined on a risk basis, to identify possible intentional violations of the rules referred to in Article 1 (2), perpetrated through fraudulent and deceptive practices.

The Intervention Protocol provides guidance to the FSS Veterinary Team on:

- monitoring performance of approved meat establishments; and

- action that should be taken in the event that a FBO does not put in place measures to raise levels of compliance with legal requirements.

The document can be found in [Annex 9](#).

5.1.4 Risk based enforcement

Regulation 2017/625, Article 138 (1) states:

When deciding which measures to take, the competent authority shall take account of the nature of that non-compliance and the operator's past record with regard to 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 Regulation 852/2004 (see Article 4), as well as specific requirements contained in Annexes II and III of Regulation (853/2004 (see Article 3).

All legal references applicable to a risk based approach apply to the CA and not the FBO. Therefore, whilst FSS must take a risk based and proportionate approach to enforcement, the FBO must comply with **all** relevant hygiene/ welfare/ by-product etc. requirements.

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 carcasses 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 lairaged 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 - technical breach with minimal or no implications
- 2 = moderate
- 3 = major
- 4 = catastrophic

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 events 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 = highly likely - 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 carcass and not by time)

- Number 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 carcasses 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.

Likelihood	Almost Certain 4				
	Likely 3				
	Possible 2	G	GA	AR	R
	Unlikely 1				
		1 Minor	2 Moderate	3 Major	4 Catastrophic
		Impact			

G	Green
GA	Green / Amber
AR	Amber / Red
R	Red

Trend	
Unknown; baseline established	-
Situation Worsening; risk increasing	R
Situation Stable; risk unchanged	A
Situation Improving; risk decreasing	G

5.3.10 Trend

Assigning a trend enables 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 4x4=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 GA/AR/R

All contraventions must be recorded on OWS. The AO should use their professional judgement, record the issue on the OWS Enforcement Module and progress the contravention through the hierarchy of enforcement.

5.4.2 Exception reporting requirements: low risks scoring G

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 OWS Enforcement Module as “Risk assessed (no enforcement action)” entry;
- 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 in the description of the non-compliance.

Note: Where the likelihood factors have changed and the risk has increased, the non-compliance must be re-assessed, escalated in the usual manner and recorded in the OWS Enforcement Module.

Where an unresolved issue becomes more serious, or where other minor issues in the same system emerge that individually may not pose a major risk to public health, but cumulatively are concerning, it would be reasonable for all these matters to be entered on the Enforcement Programme as a system-wide issue and escalated through to compliance (i.e. Systems-Based-Enforcement).

Reference: Regulation 852/2004, Annex II, Chapter I, Paragraph 1.

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

The area Technical Lead (and Veterinary Auditors at times) will continually assess the technical performance of the AOs and document findings, in line with the Internal Monitoring Policy. Checks on all enforcement entries will also be conducted regularly (via the KPIs framework) and issues highlighted for rectification to the individual officers and via their line managers. Where appropriate, refresher training or 1:1 coaching will be provided by the Technical Management Team.

5.4.4 Other factors to be considered

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

- to limit food borne illness caused by consumption of 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
- to ensure 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
- identify evidence of deliberate fraud.

Where contraventions which may compromise these outcomes are identified, the overall risk (reputational / business / public health / animal welfare) to the organisation will be high, hence risk-based action is crucial.

6. Annexes

Annex 1	Examples of enforcement of the retained Hygiene Regulations
Annex 2	FSS Enforcement Policy
Annex 3	Enforcement Concordat
Annex 4a	Letter to confirm compliance with a HIN
Annex 4b	Letter to cancel a HIN due to drafting error
Annex 5	Flow diagram: The treatment of animals, meat and food unsuitable for the human food chain
Annex 6	Supporting evidence photographic report template
Annex 7	FSS letter template
Annex 8	Compliance Spectrum
Annex 9	Intervention Protocol
Annex 10	Example of Production Label
Annex 11	Protocol Maintaining Integrity of Evidence during Transport
Annex 12	FSS Seal Register
Annex 13	Operational Delivery Incident Management Protocol
Annex 14	FSS log of evidence stored in plant freezers
Annex 15	Food Incidents Aid Memoire