

# Chapter 7 Enforcement

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## 1. Introduction

### 1.1 Purpose

### 1.2 Relevant references

## 1.1 Purpose

### 1.1.1 VPH officers' enforcement role

Officers on VPH duties are responsible for enforcing legislation for which FSA is the competent authority in approved slaughterhouses, game handling establishment and cutting establishments in Northern Ireland.

Enforcement action is taken in accordance with FSA enforcement policy in a fair, reasonable and proportionate manner. ([HPRM Link, currently at AE1/21/1285630](#))

Separate instructions apply to enforcement action taken at these establishments for offences under legislation for which DAERA is the competent authority.

## 1.2 Relevant references

### 1.2.1 Authorised Officers (AOs)

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

### 1.2.2 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:** (EC) 178/2002, Article 3, Paragraph 6.

### 1.2.3 Duly authorised representative

Duly authorised representative is a responsible person who has the authority to act on behalf of the FBO. The dully authorised representative must be authorised in writing by the FBO. It is not compulsory for the FBO to nominate a duly authorised representative.

### 1.2.4 Legal definitions

Most legislation includes a definition section where the meaning of the terms used in that piece of legislation is defined. Authorised officers should always be mindful of these definitions when taking enforcement action. If you are in any doubt about a meaning you should refer to your manager for guidance.

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### 1.2.5 Guidance documents

The following guidance documents may be of assistance in assessing compliance with legal requirements:

- EU Commission Guidance on Implementation of HACCP.
- EU Commission Guidance on Implementation of EC 852/2004.
- EU Commission Guidance on Implementation of EC 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.
- EC 178/2002 Guidance Notes for Food Business Operators on Food Safety, Traceability, Product Withdrawal and Recall.
- Guide to Food Safety and Other Regulations for the Meat Industry (Meat Industry Guide (MIG)).
- Industry Guide on Edible Co-products and Animal By-products.
- The Wild Game Guide and Photo Annex.
- Food Law Code of Practice and Practice Guidance.

## 2. Legislation, enforcement roles and provisions

- 2.1 Legislation and enforcement provisions
- 2.2 Communication with FBOs
- 2.3 Recording and monitoring enforcement action
- 2.4 Guidance on completion of the intervention log
- 2.5 Gathering and preserving evidence
- 2.6 Information obtained from unauthorised sources

### 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:

- Article 39 of the Food Safety (NI) Order 1991;
- Regulation 22 of the Food Hygiene Regulations (NI) 2006; and
- Regulation 6 of Official Feed and Food Control Regulations (NI) 2009;

to provide guidance for local authority enforcement officers on enforcement issues under the food legislation. The principles set out in the Code have been mirrored in this chapter as guidance for AOs acting on behalf of FSA.

#### 2.1.2 Requirement to enforce

Each member state must enforce food law by monitoring and verifying that relevant legislative requirements are met through a system of official controls and other activities. It is for each member state to lay down the rules on measures and penalties to be applied when infringement of food law is detected. Regulation (EC) 178/2002 Article 17, paragraph 2

Regulation (EU) 2017/625 Article 138: Where non-compliance is established, the competent authorities shall take:

- any action necessary to determine the origin and extent of the non-compliance and to establish the operator’s responsibilities; and

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- appropriate measures to ensure that the operator concerned remedies the non-compliance and prevents further occurrences of such non-compliance. When deciding which measures to take, the competent authorities shall take account of the nature of that non-compliance and the operator's past record with regard to compliance.

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

### 2.1.3 General principles

Regulation EC 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 and various other terms)
- basic principles – FBO responsibility for food safety;
- traceability requirements;
- EFSA to provide independent scientific opinion.

### 2.1.4 Official controls

Regulation (EU) 2017/625 sets out the official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare.

Key points covered are:

- organisation of official controls
- crisis management
- imports from third countries
- financing / charges
- national enforcement measures
- Commission controls – for example, audits in Member States

### 2.1.5 EC hygiene regulations

The hygiene regulations include:

- Regulation EC 853/2004 dealing with the hygiene of foodstuffs. Key points:

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- applies to all food businesses
- looks for good hygiene practice and HACCP based procedures
- concept of industry guides
- Regulation EC 853/2004 laying down specific hygiene rules for food of animal origin. Key points
  - requirements beyond 852 for food of animal origin
  - approval of meat establishments
  - identification marking
  - objectives of the HACCP based procedures in slaughterhouses
  - food chain information
- Regulation (EU) 2019/624 concerning specific rules for the performance of official controls on the production of meat. It contains:
  - nature of official controls – for example, inspection, verification, auditing
  - role of OV and MHI and trained, qualified operatives, and
  - control on imports
- Regulation (EU) 2019/627 concerning uniform practical arrangements for the performance of official controls on products of animal origin intended for human consumption
- Regulation EC 2073/2005 on the microbiological criteria of foodstuffs
- Regulation (EU) 2015/1375 on official controls for Trichinella in meat.

### 2.1.6 Amendments

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

**Note:** It is suggested that users ensure that they access the latest version of the EC Regulations by checking at: <http://eur-lex.europa.eu/en/index.htm>.

### 2.1.7 Domestic regulations

The domestic Regulations providing the enforcement powers are:

- The Food Hygiene Regulations (NI) 2006 (FHR)
  - Note: These provide enforcement powers in respect of the obligations that apply in Regulations EC 852/2004, 853/2004, and implementing and amending Regulations.
- The Official Feed and Food Controls (NI) Regulations 2009 (OFFCR).

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Note: These provide enforcement powers in respect of the obligations that apply in Regulation (EU)-2017/625.

- The General Food Regulations (NI) 2004 (GFR)

Note: These provide enforcement powers in respect of the obligations that apply in EC 178/2002. For example:

Article 14 “the food safety requirements”

Article 19 “recall, withdrawal and notification requirements”

Various other provisions of the Food Safety Order apply to these Regulations and are detailed in Regulation 7.

- The Food Safety (NI) Order 1991 as amended (FSO).

Note: The amendment aligns the definition of food in the FSO with that in Regulation EC 178/2002.

### 2.1.8 Meat Industry Guide and compliance

Use of the “Guide to Food Safety and Other Regulations for the Meat Industry” (Meat Industry Guide) by a FBO is voluntary but in the event of a prosecution following the guide may provide a statutory ‘due diligence’ defence.

The FBO needs to demonstrate to the competent authority’s satisfaction that they are in compliance with legal requirements. Provided that they can show legal compliance they need not follow the advice in the guide.

### 2.1.9 Enforcement concordat

In England and Wales FSA is a signatory to the DTI Enforcement Concordat, with an underpinning principle of proportionality and consistency of enforcement. In respect of consistency, the expectation is that this will extend both regionally and nationally. To this end it is expected that similar approaches in similar circumstances will be taken in Northern Ireland to achieve similar ends.

### 2.1.10 Establishment files

An establishment file must be maintained for all establishments supervised by VPHP. This should include details of the approval and the FBO responsible for compliance, evidence of correspondence for example minutes or notes of meetings or conversations, letters, audit reports, e-mails as well as copies of all formal notices.

### 2.1.11 Security

In line with NICS records policy Records NI is the official NICS records repository and should be used unless the material cannot be scanned and stored electronically. Any material not on Records NI must be kept secure at all times in a location to be specified in the Key Tasks document on Records.

### 2.2 Communication with FBOs

#### 2.2.1 Communication channels

Effective communication is essential when guiding the FBO on compliance with legal requirements and good practice. The majority of day-to-day compliance is achieved through verbal discussion.

The OV should work with the FBO to establish agreed lines of communication between the MIT and the FBO and his/her staff. It is important that contingency arrangements exist to avoid difficulties when the FBOs normal contact person is unavailable, for example during holiday periods.

#### 2.2.2 FBO contact details

The OV must have available at the establishment the correct contact details for the FBO to ensure communication with the correct legal entity. Details should include:

- full name(s);
- address(es);
- telephone numbers;
- full limited company name and registered office address.

Where any ownership or approval details change, the FBO is obliged to pass this information to the competent authority.

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

**Reference:** (EC) 852/2004, Article 6, Paragraph 2.

If such a change of information is provided to the OV it should subsequently be provided to FSA through Executive Support team e-mail: [executive.support@food.gov.uk](mailto:executive.support@food.gov.uk)

#### 2.2.3 Key communication functions

The OV is responsible for:

- advising the FBO on compliance with legal requirements; and
- advising the FBO when infringements of legal requirements have been detected and discussing possible corrective action.

### 2.3 Recording and monitoring enforcement actions

From 01<sup>st</sup> January 2026, enforcement matters relating to Official Control delivery must be recorded on the **Chronos** database. Guidance on completion is available separately.

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The VPH23, (Intervention log) will still be required for matters outside this, principally welfare issues.

The intervention log is only used for non-compliance where the FBO is the responsible legal entity. If the offence detected is committed by a haulier or a presenter, only where the FBO is also liable, for example by failing to protect the welfare of an animal delivered into their care, should this be included in the log.

### 2.3.1 On-going enforcement action

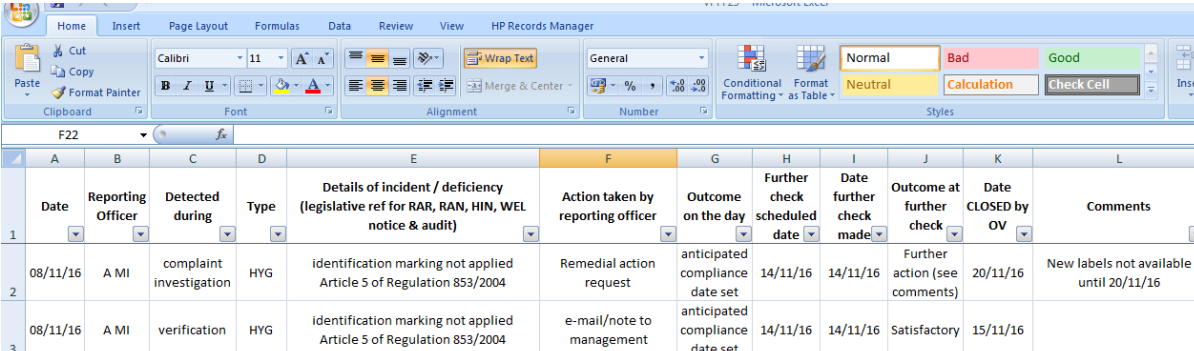
When attending any establishment whether on a permanent or on a temporary basis, the OV must:

- be familiar with any ongoing enforcement action.
- maintain the momentum of any enforcement action and, where they are able to support this enforcement action, escalate it.

## 2.4 Guidance on completion of the intervention log

2.4.1 The intervention log (VPH 23) is a 'live' excel spread sheet form, stored on HPRM and updated as necessary each time enforcement action is taken.

It is essential that **all** columns A to G and column K are completed in **all** cases. Columns H, I & J will be completed in most cases and L and M when required.



	A	B	C	D	E	F	G	H	I	J	K	L
	Date	Reporting Officer	Detected during	Type	Details of incident / deficiency (legislative ref for RAR, RAN, HIN, WEL notice & audit)	Action taken by reporting officer	Outcome on the day	Further check scheduled date	Date further check made	Outcome at further check	Date CLOSED by OV	Comments
1												
2	08/11/16	A MI	complaint investigation	HYG	identification marking not applied Article 5 of Regulation 853/2004	Remedial action request	anticipated compliance date set	14/11/16	14/11/16	Further action (see comments)	20/11/16	New labels not available until 20/11/16
3	08/11/16	A MI	verification	HYG	identification marking not applied Article 5 of Regulation 853/2004	e-mail/note to management	anticipated compliance date set	14/11/16	14/11/16	Satisfactory	15/11/16	

- A. Date – this is the date the observation was made
- B. Reporting officer – name of the person who observed the issue and took the action
- C. Detected during – choose from drop down selection to indicate the task (routine inspection, verification, audit of FBO, investigation etc) being undertaken when the issue came to light. If 'other' is selected you must specify in column L, comments.
- D. Type – choose from drop down selection the legislation relevant to the issue.

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- E. Details of the incident / deficiency – brief outline of the issue and the legal reference where appropriate, for example not required for verbal only intervention.
- F. Action taken – choose from drop down selection. If 'other' is selected you must specify in column L, comments.
- G. Outcome on the day - choose from drop down selection. In most cases this will be 'anticipated compliance date set'.
- H. Date further check scheduled – this is the anticipated compliance date, either agreed with the FBO or if agreement cannot be reached, the date deemed to be reasonable by the AO taking account of practicalities and risk to public health. You should aim to follow up on this date or very shortly afterwards.
- I. Date further check made – the actual date of the follow up check.
- J. Outcome at further check – choose from drop down selection. Where further action is selected this must be detailed in column L, comments including the date on the log where the details of the further action will be found.
- K. Date closed by the OV – this allows the OV to confirm that they are content that not only has a specific incident been resolved but that the FBO has demonstrated that measures are in place to prevent recurrence / maintain compliance. Any issues that are open should form agenda items for review meetings with the FBO.
- L. Comments – complete to detail in relation to 'other' selections and to provide any explanation deemed necessary for clarity.
- M. HPRM ref – the record reference for relevant correspondence.

### 2.4.2 Monitoring progress

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

Where the work does not progress at the agreed rate in the action plan or for a RAR, even when the full time has not expired, the AO should consider serving a HIN (FHR 01) to formalise the time scale and so maintain the momentum in enforcement.

The AO must take a reasonable approach when issues arise that are outside the FBOs control.

### Completing the intervention log

## 2.5 Gathering and preserving evidence

### 2.5.1 Introduction

The AO must gather evidence at the time the offence is witnessed, making detailed contemporaneous notes, which at a later stage could be relied upon in Court. It may be impossible to gather evidence retrospectively as it may no longer exist. Evidence may come in a variety of forms and must supplement a witness statement as an exhibit in order that it may be admissible in court. It is always useful to obtain corroboration and assistance from other members of the Inspection Team. Detailed evidence gathering at the time of the offence will provide the AO with as much material as possible to support their witness statement and prove the elements of the offence. Where possible the FBO should be kept informed of all intentions.

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

### 2.5.2 Best evidence rule

The AO should also have regard to the ‘best evidence’ rule. Whenever possible, any original items of evidence should be preserved, for example, the original form of a document, rather than a photocopy. If the evidence is a part of a carcass, SRM or a broken limb, it should be preserved by the OV (for example, by freezing)

If it is not practical or not possible to preserve the evidence, at the plant, for example, if perishable goods are involved and no facilities are available to freeze the product, the OV should try to organise alternative facilities at which to securely store the evidence. The FBO should also be given the opportunity to have the evidence examined by an expert before destruction.

The AO may also wish to consider taking photographs and / or sample evidence before perishable goods are destroyed. If there is doubt about what evidence should be retained, the AO can obtain further advice from VS CET

### 2.5.3 Note taking

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

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

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

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

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

### 2.5.4 Disclosure of unused material

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

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

- might undermine the case for the prosecution, or
- might reasonably be expected to assist the defence case

This material may include:

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

### 2.5.5 Storage and availability

Anything that is relevant to the case and which is not used by the prosecution is unused material and can be potentially disclosed. This fact makes it important that

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when notes are taken, emails written or drafts prepared, they should be made on the understanding that the defence may be entitled to see them and refer to them in open court. Even if there are good reasons for arguing that they are so sensitive that the defence should not see them, it is for the court to decide. The OV and FSA team should therefore ensure that:

- all material relevant to a course of enforcement is recorded and retained
- all material is safely stored
- the investigating officer must be made aware of the existence of all relevant material as soon as possible after a referral for investigation is made.

### 2.5.6 Photographic evidence

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

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

- When photographs are taken, details should be recorded in a contemporaneous notebook, including the photograph number, the subject, location and date / time. Colleagues should assist one another in this process.
- Photographs should be taken with a suitable digital camera; however, a record must be kept of how the digital information was downloaded and onto what medium it was stored, together with the Supporting Evidence

**Reference:** See 'Digital Camera Protocol' on the following page for additional information.

- Where the subject photograph is not clear, it may assist the court to have a colleague appear in the photograph to point to the item that needs identifying.
- Video filming is very useful to demonstrate a particular high speed operation / operational practices or welfare issues in a live animal. However, it is advisable that where the officer is not familiar with the equipment, that they receive some instruction and / or practice with the

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equipment prior to gathering the evidence that may be required for court.

- When printed, it is useful to add details to the reverse of the photograph, clearly indicating the subject matter, location and other relevant details. Although all AOs have powers to take **photographs for the purpose of evidence gathering**, they must always seek the permission of the FBO if they are taking photographs for any other reason than evidence gathering.

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

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

### 2.5.7 Conventional camera protocol

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

### 2.5.8 Digital camera protocol

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

- the memory card is clear of previous images, unless you have come from a non-work issued camera phone to take evidential images, as these items may also contain personal photographs
- poor quality images must not be deleted as they may become unused material in due course
- full particulars of images of the case are recorded, using the Supporting Evidence Photographic Report.
- all images taken that relate to that case, together with the corresponding photographic evidence report, are downloaded onto the hard-drive of a computer
- when required for a referral for investigation, all the images relating to that case and supporting photographic evidence report are copied onto two separate non-reusable CD-ROMs
- one CD is marked as the 'Master Copy'; this must be bagged and tagged, and its details recorded in the daybook or in the AO's contemporaneous note book, and stored somewhere secure
- the other CD is marked as the 'Working Copy'; it should also be tagged and its details recorded in the daybook or in the AO's

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contemporaneous notebook, and stored in a secure place for collection by the Investigating Officer

### **2.5.9 Supporting evidence photographic report**

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

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

The report should be stored electronically in the same file as the images to which it relates. A new report should be prepared to accompany images of each separate incident.

### **2.5.10 Retention of unused photographic images**

All unused photographs, images and negatives must be retained. These may be disclosed to the defence as "unused material"

### **2.5.11 Samples: physical confirmation of the failure**

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

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

The AO should inform the FBO of their intentions. Enlist the services of a colleague to witness the collection of the sample (if available) and also to record details of what, when, where and how; recording the date and time in their pocket notebook. The samples should be bagged and labelled with all relevant details and sealed with a tamper evident seal.

All samples must be kept under secure conditions in an environment where they will not deteriorate. Details of storage location and transportation should also be recorded to maintain continuity of evidence. Temperature logs and relevant calibration records of chillers and freezers, where evidence samples are stored, should be accurately maintained, as they may be required as evidence in court.

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### 2.5.12 Post-mortem evidence

There may be circumstances where an animal has died in transit or in the lairage, and a post mortem examination would be required, for example to support a case for a breach of animal welfare legislation. Before undertaking any post mortem examination, the OV must have regard to the requirements in chapter 6 on 'Notifiable diseases'.

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

- there should be suitable isolation facilities in the lairage to carry out the examination
- hygiene procedures must be followed and C and D carried out following examination and disposal
- the OV should have the appropriate protective clothing and equipment required for the procedure

A detailed report of the findings must be prepared at the time

- photographic evidence should be gathered having regard to the guidance contained in this chapter
- appropriate specimens should be retained, for example, fracture site, limbs or bodies of animals / birds and stored as outlined below to maintain continuity of evidence

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

Where an on-site post mortem examination is not considered appropriate, the carcass can be sent to the nearest Afbi for examination. Continuity of evidence must be maintained as outlined below.

The D/SVO should be consulted before initiating an off-site post mortem examination or advising the laboratory that the carcass is being sent.

The D/SVO will advise on any financial implications involved in the cost of the post mortem and report.

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

### 2.5.13 Temperature readings: factual figures

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

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

### 2.5.14 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.

**Note:** There are no prescribed minimum light levels in the Hygiene Regulations.

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

### 2.5.15 Humidity readings: factual figures

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

## 2.6 Information obtained from unauthorised sources – RIPA

### 2.6.1 Introduction

This topic covers instruction on dealing with information which may be provided under the Regulation of Investigatory Powers Act 2000 as amended by the Regulation of Investigatory Powers Act 2000 (Amendment) Order (NI) 2002. (known as RIPA).

### 2.6.2 Information received

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

Where this sort of information is provided, the AO must **always** inform the D/SVO, who must in turn notify FSA NI and Investigation Branch.

### 2.6.3 Questioning contacts

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

### 2.6.4 Use of informers

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

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

## 3. Surrender, Detention, Seizure and Condemnation

3.1 Unfit Meat and Meat not produced in accordance with the regulations

3.2 On line temporary detention

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

3.4 Detention under the Food Safety Act 1990

3.5 Seizure of Food

### 3.6 Condemnation procedure

#### 3.1 Unfit Meat and Meat not produced in accordance with the regulations

##### 3.1.1 Meat declared Unfit

Conditions requiring meat to be declared unfit are listed in Regulation 2019/627, Title III, Chapter III, Article 45, paragraphs ( a to u ). In addition meat from the following animals is to be declared unfit:

- with no available food chain information Regulation ( EU ) 2019/627, Title III, Chapter III, Article 40, paragraph 3.
- where animals, subject to movement prohibition, or for which withdrawal periods have not been observed and arrive at a slaughterhouse Regulation ( EU ) 2019/627, Title III, Chapter III, Article 41, paragraph 2.
- where the animal's identity was not readily ascertainable Regulation ( EU ) 2019/627, Title III, Chapter III, Article 43, paragraph 1.

The OV must check that the FBOs procedures guarantee to the extent possible that meat:

- does not contain patho-physiological abnormalities or changes;
- does not bear faecal or other contamination; and
- does not contain SRM (except where provided for by Community legislation)

Regulation: Regulation (EU) 2019/627, Title III, Chapter I, Article 7, paragraph 3 (a to d).

The OV cannot apply the health mark in circumstances where Regulation 2019/627 requires meat be declared unfit. Meat that cannot be health marked is not food but animal by-product.

Meat that is declared unfit is unsafe. Food shall not be placed on the market if it is unsafe.

Regulation: Article 14 of Regulation (EC) No. 178/2002

### 3.1.2 Meat not produced in accordance with Hygiene Regulation

If meat is produced, processed or distributed in a way that breaches the requirements of the Hygiene Regulations it may be certified (certificate FHR 13) as not having been produced in accordance with those Regulations.

Regulation: Food Hygiene Regulations (NI) 2006, regulation 25

Meat that has been so certified may be treated for the purposes of Article 8 of the Food Safety Order as failing to comply with food safety requirements.

### 3.1.3 Means of voluntary surrender

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

Voluntary surrender is an everyday occurrence within a slaughterhouse and should always be evidenced by completing a 'Voluntary Surrender of Food for Destruction Receipt' (FSO 01). Once completed the meat is disposed of as animal by-product.

### 3.1.4 Disposal of Unfit Meat

Meat that has been declared unfit is not food but is an animal by-product as defined in Animal By-products (Enforcement) Regulations (Northern Ireland) 2015. Unfit meat must be identified as an animal by-product.

Animal by-product must be disposed of in accordance with Community and domestic legislation, Regulation (EC) No. 1069/2009 and Animal By-products (Enforcement) Regulations (Northern Ireland) 2015.

### 3.1.5 Failure to Dispose of Unfit Meat

In the event that the FBO fails to dispose of unfit meat as animal by-product then notice BPA-01 requiring such disposal of the unfit material should be served.

Should the FBO fail to comply with this notice then appropriate enforcement follow up is required.

### 3.1.6 Failure to Dispose of Food not produced in accordance

If the FBO refuses to voluntary surrender meat certified as not having been produced, processed or distributed in accordance with the Hygiene Regulations it must be seized (FSO 04) using powers available under article 8 of the Food Safety Order.

### 3.1.7 Decisions regarding Fitness/Legality

It is not always possible to come to an immediate decision with regard to the fitness or the legality of meat. In order to allow time for suitable investigations to safeguard public and animal health, powers to detain animals and their products are available.

### 3.1.8 Detention pending decision on Fitness

The AO has powers to detain animals and food under:

- The Food Hygiene Regulations (NI) 2006; and food under
- The Food Safety (NI) Order 1991, as amended.
- Articles 65, 66 and 67 of Regulation (EU) 2017/625. Action in the event of suspicion of Non-compliance and of Non-compliance of animals and goods entering the union.

These are the powers that should be used for all meat, national, EU or 3<sup>rd</sup> country.

## 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 MI dedicated to that task.

### 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).

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.

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 (FHR 11).

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### 3.2.4 When to formally detain

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

- the OV may wish to undertake a further examination of the 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 OV may wish to carry out an investigation into the origin, marking, age, fitness, suitability of any meat or animal under the FBOs control
- the FBO prefers to carry out rectification work / removal of arthritic limbs when carcasses are chilled

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

### 3.2.5 Assessment of the detention facilities and history and confidence in Management

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

The assessment should identify:

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

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

#### Reference:

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 over night for routine rework and has not been health marked, and

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- is secured in lockable detained facilities on the premises,
- where the FBO has always been compliant and has a good relationship with VPHP, or
- where carcasses have been tested for BSE / Trichinella and are awaiting a negative test result prior to being health marked

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 to seek a condemnation order the OV should, as a matter of good practice, always formally detain the meat using a formal detention notice (FHR 11 or FSO 02). This is to ensure that the competent authority can secure all non-compliant meat **and** take formal action where the FBO breaches any of the requirements specified in a formal detention notice.

**Note:** (EC) 853/2004, Annex III, Section I, Chapter IV, Paragraph 12 requires the FBO to follow the instructions of the OV to facilitate post mortem of all animals. Where they fail to do so, this may constitute an offence for obstructing the OV and for failing to comply with the EC Regulations.

In order that the OV can prove that they instructed the FBO to detain the meat and take action where this did not occur, it is always good practice to serve the formal detention of food notice.

### 3.3 Detention under the Food Hygiene Regulations (NI) 2006

#### 3.3.1 Relevant Legislation

A Detention Notice (FHR 11) can be served under Regulation 9 (5) of The Food Hygiene Regulations (NI) 2006.

#### 3.3.2 Reasons for Service

To detain any animal or food of animal origin for further examination, including the taking of samples the results of which will be used to inform the decision making process as to whether the food is fit for human consumption.

### 3.3.3 Effect of Notice

The Detention Notice (FHR 11) requires the FBO or his duly authorised representative to detain any animal or food of animal origin until the outcome of the investigation is known.

### 3.3.4 When to use

This notice should be used for the routine detention of animals or meat being subject to further investigation or sampling e.g. for residue testing or resolution of identity queries.

### 3.3.5 Service Details

The notice should be:

- served on the FBO or their duly authorised representative;
- served by the OV or MI;
- served as soon as practicable.

### 3.3.6 Specific duties

The officer should:

- advise FBO of likely timescale for results
- advise FBO that they can take steps to prevent deterioration e.g. by boning under supervision and vacuum packing or freezing.
- ensure detained meat is identified and the identification cross-referenced on the detention notice.
- ensure detained meat is secured to prevent tampering

### 3.3.7 Time Period

No time period is specified within which the examination must take place, however, it must be completed as soon as practicable.

### 3.3.8 Right of Appeal

No right of appeal exists against the service of a detention notice under regulation 9 of the Food Hygiene Regulations (NI) 2006.

### 3.3.9 Withdrawal

Once all results of the examination / samples are available and checked by the OV, the OV must decide whether the animal / meat is fit or not.

NB Results may be available at different times, particularly where multiple residues have been tested.

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### **Fit for or to be slaughtered for human consumption:**

- Complete a withdrawal notice (FHR 12) (either OV or MI on instruction from the OV) and give to FBO to release the animal / meat.
- Health mark meat if appropriate.

### **Not fit for human consumption:**

- Slaughter separately and dispose as animal by-product; or
- Seek voluntary surrender for disposal as animal by-product

See section on 'Dealing with unfit meat'.

## **3.4 Detention under the Food Safety (NI) Order 1991**

### **3.4.1 Relevant Legislation**

A Detention of Food Notice (FSO 02) can be served under Article 8(3)(a) of the Food Safety (NI) Order 1991.

### **3.4.2 Reasons for service**

To detain food for further investigation where it appears on inspection that food may fail to comply with food safety requirements, that is it may be:

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

### **3.4.3 Effect of the notice**

Prohibits the use of the food for human consumption and requires it to be kept at the place specified in the notice. This may or may not require the food to be moved.

### **3.4.4 When to use**

This notice should be used when food that is already health or identification marked appears to fail to comply with food safety requirements but requires further investigation before a final decision can be made.

### **3.4.5 Service details**

Served on the person in charge of the food. This may be or may not be the FBO.  
Served by an OV or an MI.

### 3.4.6 Specific duties

The officer should record the following details at the time of serving a Detention of Food Notice:

- i An accurate description of the food type
- ii The date of production of the food
- iii The declared shelf life, e.g. use by/best before dates;
- iv The quantity of food;
- v The conditions of wrapping/packaging/storage at the time of detention;
- vi The conditions required for storage during detention;
- vii The place of detention of the meat.

The officer must ensure that all detained food is suitably and securely stored and investigations conducted expediently to minimise any deterioration.

**Examples:** in a lockable refrigerated room, or by means of a security tag on the chiller door.

**Note:** If a Detention of Food Notice is withdrawn, or condemnation order is refused, compensation is payable to the owner of the food, for any depreciation in its value which can be shown to result from the officer's actions.

### 3.4.7 Number of Notices

A separate Detention of Food Notice (FSO 02) should be issued for each type or batch of food to be detained.

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 that the whole batch fails to comply and the officer should detain all of it.

**Regulation:** Article 14, paragraph 6 Regulation (EC) No. 178/2002.

Where detailed assessment reveals that part of any detained batch, lot or consignment is not unsafe then that part can be released by service of Withdrawal of Detention of Food Notice (FSO 03).

### 3.4.8 Right of appeal

No right of appeal exists for the service of a Detention of Food Notice (FSO 02) under the Food Safety (NI) Order 1991.

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### 3.4.9 Time Limit

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

### 3.4.10 Withdrawal

Once the investigations are complete the OV must decide whether or not the food complies with food safety requirements.

#### **Complies with food safety requirements**

Immediately release by serving a Withdrawal of Detention of Food Notice (FSO 03) upon the person in charge of the food.

#### **Does not comply with food safety requirements:**

Seek voluntary surrender (FSO 01)

If refused:

Seize (FSO 04) the food and have it dealt with by a Justice of the Peace.

See section 'Dealing with unfit meat'.

### 3.4.11 Where not to serve

Where the meat is clearly unfit and the person in possession refuses to voluntary surrender, it can be seized without service of a detention of food notice and an application for condemnation sought through the Magistrates' Court

## 3.5 Seizure of Food

Where an officer believes **food** does not comply with the food safety requirements he should seize that food (unless it is voluntarily surrendered) using a Notice of Seizure (FSO 04).

It is not necessary to initiate detention procedures prior to proceeding to seizure of meat.

### 3.5.1 Relevant Legislation

Article 8(3)(b) of the Food Safety (NI) Order 1991

Reference: Food Law Code of Practice

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### 3.5.2 Service and copy requirements

Served on the person in charge of the food.

Served by OV or MI.

Copied to the owner of the food whenever there is any possibility of subsequent prosecution in relation to the food.

### 3.5.3 Special duties

Seized food must be:

- Clearly identifiable at all times
- Held securely under the direct control of a VPHP officer.

For example, seized carcasses may be kept in a chiller provided that they are segregated, clearly identified and the chiller can be locked and sealed by VPHP officer.

### 3.5.4 Time Limits

Once meat has been seized the person in charge of the food must be served with the Food Condemnation Warning Notice (FSO 05) within 48 hours, advising of the time and place of the hearing to decide the fate of the food.

## 3.6 Condemnation Procedure

### 3.6.1 Source

A Condemnation Order (FSO 07) may be obtained from a Justice of the Peace through the Magistrates' Court.

### 3.6.2 Action to take

The officer is to follow the steps in the table below.  
Food Law Code of Practice.

Reference:

Step	Action
1	Contact the Court covering the area for the establishment where the food is held by telephone and ask to speak to the Clerk of the Court.
2	Explain that an authorised officer is seeking an Order for Condemnation of Food under the Food Safety (NI) Order 1991 from a Justice of the Peace (JP) and ask to be put in touch with a suitable JP.
3	Establish with the JP a date, time and location for the Court hearing. The location can be either at the local court or the establishment depending upon circumstances.

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4	Notify the Court of the arrangements referring particularly to the legislation under which the case is brought.
5	Complete Food Condemnation Warning Notice (FSO 05) and serve on the person in charge of the food. If relevant, a copy of the notice should also be sent to the owner of the food i.e. whenever there is any possibility of subsequent prosecution in relation to the food e.g. the farmer of the animal from which the meat was produced. Retain a copy to produce at the hearing and for the file.
6	Prepare three copies of the Complaint for Condemnation of Food Order (FSO 06) <ul style="list-style-type: none"> <li>• one for the JP</li> <li>• one for the person in charge of the food and</li> <li>• one for the file</li> </ul>
7	Prepare three copies of the Order (FSO 07) itself for the JP to sign
8	On attending the hearing, the officer should take: <ul style="list-style-type: none"> <li>• The authorisation certificate for the legislation being enforced.</li> <li>• Copies of the Condemnation Warning Notice (FSO 05).</li> <li>• Copies of the Complaint for Condemnation of Food Order (FSO 06).</li> <li>• Copies of the Order of Condemnation (FSO 07).</li> <li>• Contemporaneous notes which may be referred to e.g. official note book.</li> <li>• A copy of the relevant legislation (highlight sections for easy reference)</li> <li>• Copies of Code of Practice</li> <li>• Any additional evidence e.g. copies of a public analyst report.</li> <li>• A proportional sample of the food if the hearing is to be held in Court and the entire batch cannot be transported.</li> </ul>
9	Explain clearly when presenting evidence at the hearing: <ul style="list-style-type: none"> <li>• why the meat should be condemned;</li> <li>• quote the regulation(s) which has/have been breached;</li> <li>• what the problems/issues are if the meat is not condemned; and</li> <li>• what the risk to public health is.</li> </ul>

### 3.6.3 Where the JP finds in favour of the complainant

If the Justice of the Peace finds in favour of the complainant (the officer) the JP issues an 'Order for Condemnation of Food' (FSO 07). On receipt of this Order ensure that the person in charge of the meat (and the owner if notified) receives a copy. Establish that effective supervision is maintained by the VPHP to ensure the meat is correctly disposed of.

### 3.6.4 Where the JP does not find in favour of the complainant

If the Justice of the Peace does not find in favour of the complainant, the meat must immediately be restored to the person in control/owner unless the decision of the justice of the peace is to be judicially reviewed.

Where the food is restored to the person in charge the officer must not discuss or negotiate any compensation for depreciation in value of the meat or food. FSA in NI and the owner of the meat will deal with this.

The officer must complete a meat depreciation report (VPH 15) detailing all the relevant circumstances which FSA in NI will then use to consider the case.

Guidance will be given by FSA in NI in cases where the justice of the peace decision is to be judicially reviewed.

## 4. Hierarchy of Enforcement

### 4.1 Introduction

### 4.2 Informal action – verbal

### 4.3 Informal action – written – remedial action request (RAR)

### 4.4 Formal enforcement action

### 4.5 Formal enforcement action – statutory notices

### 4.6 Formal enforcement action – prosecutions

### 4.7 Use of notices

## 4.1 Introduction

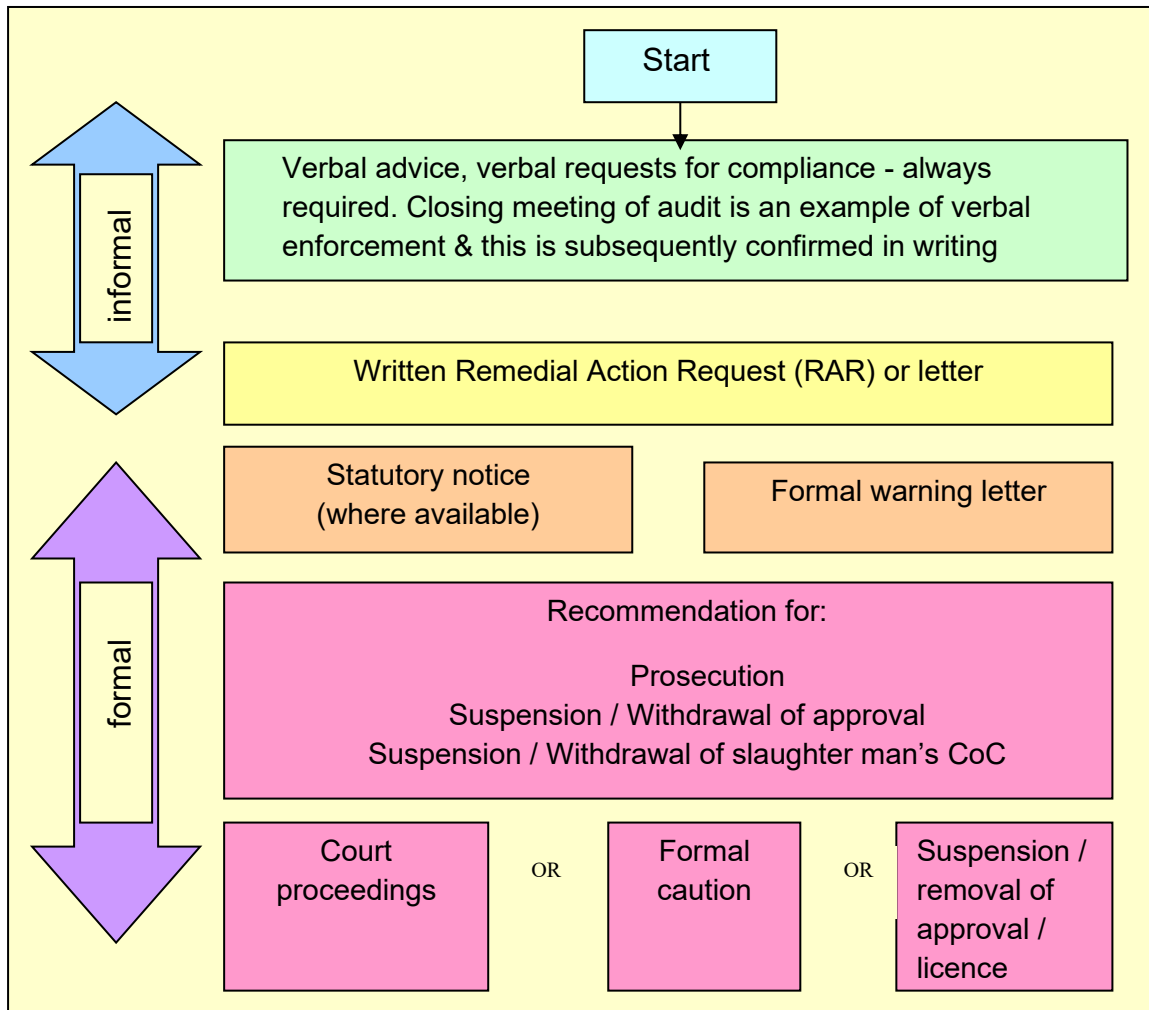
### 4.1.1 Range of enforcement powers

VPH officers are provided with a range of enforcement powers that make up what is referred to as the “hierarchy of enforcement”.

### 4.1.2 The hierarchy of enforcement

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

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### 4.1.3 Approach to the hierarchy

The approach to the hierarchy of enforcement and level at which the officer comes in with enforcement action will be dependent upon the:

- urgency/severity of the situation;
- most appropriate course of action to control the risk;
- enforcement tools available under the particular piece of legislation;
- the history of the FBO's compliance and their willingness to comply;  
and
- need for consistency in enforcement actions.

### 4.1.4 Subject of enforcement action

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

### 4.1.5 The health mark and enforcement hierarchy

The health mark is not part of the hierarchy. However, the OV should refuse to apply the health mark in red meat slaughterhouses under the following circumstances:

- where the animal has not undergone ante mortem and/or post mortem inspection  
Regulation (EU) 2017/625 Article 18, paragraph 4 and paragraph 2 (a) and 2 (c)
- where there are grounds for declaring the meat unfit for human consumption, i.e. where the material is animal by-product  
Regulation (EU) 2017/625 Articles 40, 41, 43, 45.
- where the meat fails to comply with the provisions of Article 14, 5 Regulation (EC) 178/2002 in that the food is unacceptable for human consumption according to its intended use, for reasons of contamination (whether by extraneous matter or otherwise), or through putrefaction, deterioration or decay.

### 4.2 Informal Action – Verbal

#### 4.2.1 When to give verbal advice

The first stage of all enforcement action considered by the officer should be education and advice. Whilst it is the FBO's responsibility to know the legal provisions relating to their business, the officer should ensure that, where necessary, they clarify and update the FBO on any relevant legal requirements, so that the FBO understands the outcome to be achieved.

Verbal advice should go hand in hand with all stages in the enforcement process to help the FBO achieve compliance, and understand the enforcement action being taken. For example, officers 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 recommended for prosecution, if appropriate.

In order to avoid any misunderstanding or misrepresentation where verbal advice is of a structural, or technical nature, this should be followed up with an e-mail or a letter confirming the discussion / meeting.

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

Where immediate action is required on public health or animal welfare grounds and there is not a prompt response to verbal advice, it may be appropriate to move straight to formal enforcement action to secure compliance as soon as possible.

#### 4.2.2 Records

If it appears likely that the enforcement may be escalated up the enforcement hierarchy, or the FBO has a history of non-compliance, verbal advice should be recorded on the VPH 23.

### 4.3 Informal action – written – remedial action request (RAR)

#### 4.3.1 Remedial action request

Remedial action requests (RARs, VPH 13) are “informal” enforcement action. Failure by the FBO to comply with a RAR (VPH 13) will not constitute an offence. A RAR produced later in court will help to demonstrate fairness and proportionality in the enforcement approach. It may also demonstrate that the FBO has ignored previous advice.

RAR (VPH 13) should be sent by the OV to the FBO when:

- the FBO or a staff member has failed to take appropriate remedial action following verbal advice; or

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- where there is a minor contravention of the legislations which does not have an immediate impact on public health or animal welfare.

RARs (VPH 13) can be used for any piece of legislation but the relevant piece of legislation must be quoted on the RAR.

### 4.3.2 Procedure for issue

The officer should inform the FBO of the intention to produce a RAR (VPH 13). Ideally, the officer should meet with the FBO or his representative before issuing the RAR to discuss all the issues including the timescale for completion. Accurate minutes of any meetings in respect of compliance should be taken.

It is good practice to ask the FBO to confirm in writing their agreement to any action and any timescale. The RAR (VPH 13) has a section provided for this.

The VPH 13 template RAR must be used and it should be typed. Although any member of the MIT can draw up the RAR, it must be cleared (including by telephone) through the OV before issue to the FBO.

Make members of the VPHP team [plus regional D/SVO](#) aware of the RAR (VPH 13) and record details on the VPHP enforcement programme (VPH 23).

### 4.3.3 Checklist for RARs

The VPH 13 guides the drafting officer to the appropriate content. However the list below highlights the points that the OV should ensure is clear in the RAR:

- Addressed to the relevant FBO.
- Detail the relevant legislation  
e.g. the EC Regulation and domestic Regulation under which the offence is committed.
- Quote the legal requirements.
- Clearly describe the non-compliance i.e. state what is wrong.
- State why it is wrong; i.e. why it does not meet legal requirements
- State the remedial action required. The template includes reference to the fact that alternative equivalent measures are acceptable.
- Indicate the timescale, agreed if possible, sought for compliance.

In the VPH 13, the officer must not warn of prosecution action in the event of future contraventions, as this could prejudice any potential prosecution.

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Where structural work is needed, the remedial action request should be specific enough to explain the outcome to be achieved without being prescriptive about the exact way in which this must be achieved.

It is for the FBO to decide how he will achieve compliance. 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 they see fit.

### 4.4 Formal Action

#### 4.4.1 Preparation for formal action

Before taking formal enforcement action, the OV should:

- discuss intention with regional D/SVO
- aim to advise the FBO verbally of this intention;
- be fully aware of all ongoing enforcement action by reviewing the VPHP enforcement programme (VPH 23) for the establishment;
- ensure that evidence has been secured to demonstrate that a contravention exists that justifies the escalation of enforcement action.

Note: Formal action to detain meat for further examination need not be discussed with the FBO in advance but can be explained at time of serving of the notice.

### 4.5 Formal action – Statutory notices

#### 4.5.1 Statutory notices

Statutory notices are legal documents. Care must be taken to ensure they are completed correctly and used appropriately. They should only be served by officers authorised to do so and who have witnessed or detected the non-compliance.

A number of notices are available under the various pieces of legislation. The table below summarises the key notices likely to be used by VPHP officers. This is not an exhaustive list of notices.

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Type of notice	Legislation	Purpose	Served upon
FHR Detention Notice (FHR 11)	Regulation 9(5) Food Hygiene Regulations (NI) 2006	To detain food for further examination or while samples are taken and analysed	FBO or duly authorised representative
FSO Detention of Food Notice (FSO 02)	Article 8 Food Safety (NI) Order 1991	To detain food while further investigation is carried out	The person in charge of the food i.e. the FBO
Seizure of Food Notice (FSO 04)	Article 8 Food Safety (NI) Order 1991	To seize food in order that it may be taken before a JP	The person in charge of the food i.e. the FBO
Condemnation Warning Notice (FSO 05)	Article 8 Food Safety (NI) Order 1991	To notify time and place of hearing seeking condemnation.	The person in charge of the food i.e. the FBO
Notice of Disposal of Animal By Product (BPA)	Regulation 25 Animal By Product Regulations (NI) 2011	To require disposal of animal by-products in the manner specified.	The person in possession or control of the ABP / the FBO
Remedial Action Notice (RAN) (FHR 09)	Regulation 9 Food Hygiene Regulations (NI) 2006	To require correction of hygiene breaches posing an immediate risk to public health	FBO or duly authorised representative
Hygiene Improvement Notice (HIN) (FHR 01)	Regulation 6 Food Hygiene Regulations (NI) 2006	To require correction of hygiene deficiencies not posing an immediate risk to public health	FBO
Hygiene Prohibition Order	Regulation 7 Food Hygiene Regulations (NI) 2006	Prohibition on participation in management of a food business	FBO
Hygiene Emergency Prohibition Notices (HEPN) and Orders	Regulation 8 Food Hygiene Regulations (NI) 2006	To require correction of hygiene deficiencies posing an imminent risk of injury to health with backing from the Court	FBO

### 4.5.2 Serving notices

Full instructions on the how to use notices can be found in the section 'Use of notices' and specific instructions on the different notices in Section 5.

### 4.6 Formal action – Investigate with a view to prosecution

#### 4.6.1 Appropriate uses

Request for investigation with a view to prosecution (VPH 14) is required in the following circumstances:

- breaches of SRM controls;
- contraventions of welfare legislation;
- breaches of the Hygiene Regulations and / or FSO leading to an imminent risk to public health;
- continual failure to observe requirements of Hygiene Regulations;
- obstruction of VPHP personnel engaged in official duties;
- failure to comply with a notice
  - FHR (FHR 11) or FSO (FSO 02) detention notice
  - RAN (FHR 09)
  - HIN (FHR 01)
  - BPA (BPA 04); etc.
- failure to comply with requirements of the establishment approval.

#### 4.6.2 Evidence

The OV must identify the contravention. VPHP officers on site must collect adequate evidence before recommending prosecution. **Thus the officer's main task will be in the gathering of facts and evidence at the time of the offence**, which may be used in court at a later stage.

#### 4.6.3 Recommendation for prosecution

Regard should be had to the Veterinary Service and FSA prosecution policy prior to any request for investigation with a view to prosecution being put forward. Where the officer considers that an incident requires investigation with a view to prosecution he should refer the matter using VPH 14 in the first instance to D/SVO MIB.

### FSA legislation

Where the D/SVO concurs, the case should then be discussed with FSA in NI to ensure FSA are in support of a file being prepared. If FSA in NI considers a prosecution is appropriate and consistent with FSA policies then FSA in NI will issue

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a request to the VPHP SPVO for the appointment of an Investigating Officer. The resulting investigation report will be passed to FSA in NI for submission to DPP, copied to the VPHP SPVO.

See Annex 1- Protocol for prosecution on behalf of the FSA

### **DAERA legislation**

Where the D/SVO concurs, the case should then be discussed with relevant DAERA Branch to ensure they are in support of a file being prepared. If the relevant DAERA Branch considers a prosecution is appropriate and consistent with DAERA policies they will issue a request to the VPHP SPVO for the appointment of an Investigating Officer. The resulting investigation report will be passed to the relevant DAERA Branch for submission to DPP, copied to the VPHP SPVO.

In the event that the Investigating Officer has concerns at any stage regarding the quality of evidence available these will be raised with FSA in NI / DAERA branch as appropriate for a decision on whether to proceed with the case.

#### **4.6.4 Formal caution**

In certain circumstances it may be decided that a formal caution should be offered to a defendant rather than pursuing the case in court. DAERA and FSA have criteria, which are applied, to decide whether a formal caution will be offered.

Acceptance of the formal caution means that the defendant does not have to appear in court but has to sign a declaration accepting the offence(s). A record of the formal caution is kept on file for 3 years and may be used in that time should the defendant offend again.

Where the defendant refuses to accept the formal caution then the case will be pursued through the courts like any other prosecution.

The OV will be notified of any formal caution.

#### **4.6.4 Rules of Evidence**

The investigation must be conducted in accordance with the Police and Criminal Evidence (NI) Order 1989 (PaCE) requirements. Unless specifically trained, a VPHP officer must not attempt to conduct a full investigation nor should they attempt to caution suspects or take statements.

Specially trained Investigation Officers conduct the investigations but are reliant on the VPHP officer's knowledge of the legislation and the evidence gathered by the officers at the time of the offence.

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### 4.6.5 Statements

Statements are a record of facts in a chronological order of events. They can be hand written or typed and will refer to exhibits at relevant parts such as:

- photographs;
- samples;
- copies of notices; or
- records of official controls.

Exhibits are usually identified by the initials of the officer and then consecutively numbered.

The Investigation Officer will assist with compilation of the statement and the numbering of exhibits when preparing the final statement.

### 4.7 Use of notices

#### 4.7.1 General principles

Statutory notices are legal documents. They should only be served by officers authorised to do so.

Notices must be used appropriately. They must:

- accurately reflect the non-compliance, quoting the relevant legislation
- be completed correctly, clearly and accurately
  - typed notices are preferred, it must be legible
  - language used must be clear, concise and unambiguous
  - all relevant sections must be completed
  - any necessary deletions must be made
- be directed at the correct legal entity responsible for any alleged offences
- be copied to other relevant parties
  - e.g. local manager where the original is sent to the Company Secretary of a limited company.
- be signed and dated

Use only an official notice, not a photocopied sample. It will:

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- accommodate all the required information
- include reference to any appeal provisions available.

Retain a copy for the establishment file. Record details of service on the reverse of the retained copy – who, where, how, when, any witnesses, copy recipients, any comments made.

Note: Always read the notice through from start to finish to check it makes sense, has all the relevant parts and has been completed in full.

Where appropriate regard should be had to the guidance in the Food Law Code of Practice.

### 4.7.2 Number of notices

Where notices are being used to require the correction of a number of non-compliances, a separate notice must be used for each contravention.

Where a number of non-compliances are grouped together on a single notice failure to rectify just one of the contraventions means the FBO has failed to comply with the notice. An appeal against a single issue on a multiple non-compliance notice will result in all the issues on the notice being held in abeyance until the court hearing, not just the issue of the appeal.

### 4.7.3 Formal service – who?

The officer serving the notice is the officer signing it.

- OV's and S/P/MIs are authorised to serve notices for the detention, seizure and release of meat.
- OV's are authorised to serve all other notices.

The OV who serves a notice must have witnessed the contravention to which it refers. It is not necessary for the officer serving the notice to actually deliver it. It can be delivered by another officer or by post.

### 4.7.4 Formal service – how?

Notices should be served as soon as practicable. While it is preferable to serve by hand wherever possible, notices can be served by post. It is also possible to serve a notice by attaching it to a conspicuous place. (See section 'Where identity is unknown')

Any officer delivering a notice by hand must be sufficiently aware of the reasons for service, any appeal provisions that apply and the next stage of the process to be able to explain these at the time of delivery.

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### 4.7.5 Posting

Notices should be posted at a Post Office and proof of posting obtained. Where this is not possible they can be posted in a post box, and the details of where and when posted and who witnessed it being posted recorded on the back of the retained copy.

### 4.7.6 Formal service – on whom?

The legal entity on which a notice is or can be served varies depending on:

- The nature of the business:
  - Sole trader;
  - Partnership; or
  - Limited company
- The relevant regulations, examples include:
  - The person in charge of the food; or
  - The FBO (may be more than one person); or
  - The authorised representative of the FBO; or
  - The Company Secretary at registered office address of a limited company

Check the wording of the specific piece of legislation.

### 4.7.7 Drafting and serving a notice to a sole trader

Ensure that the FBO name on the formal notice, is sufficient to identify that individual beyond doubt, and will include both their forename and surname.

Where family members have the same names, try to include any additional names that the person may have, to avoid confusion.

The notice may be served by hand on the sole trader at the establishment, or addressed to them personally at the establishment address.

### 4.7.8 Drafting and serving a notice to a partnership

Where a number of individuals act as the FBO under a partnership type 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 name.

The notices may be served by hand on each partner at the establishment, or addressed to each of them personally at the establishment address, with a covering

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letter explaining that the **same** notice has been served on the other partners in the business.

### 4.7.9 Drafting a notice to an FBO with limited liability status

Where the FBO has limited liability status, the name of the FBO will be the full name of the limited company, for example, “ABC Meat Ltd”. The notice must be sent 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 establishment.

The envelope must be addressed to “The Company Secretary” at the registered office address.

See section “Finding company addresses”

Note: The Company Secretary is the person responsible within a limited company structure, who receives such notices. They are not the FBO or proprietor, and therefore should not be referred to on the formal notice.

### 4.7.10 Where the identity is unknown

Where the name and address of the person on whom the notice should be served is not known, the notice can be served by addressing it to the “Food Business Operator at (name the establishment)”.

The notice may then either be handed to someone 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.

### 4.7.11 Finding company addresses

Checks on a company’s registered office details may be done through the Companies House website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk) . Click on to the free company information heading.

### 4.7.12 Copies for other relevant parties

In some cases copies of the notice should go to other relevant parties, for example;

- the local establishment manager where the original has been sent to the Company Secretary of a limited company; or
- the owner of the food where this is different to the person in charge

Again this varies depending on which regulation is being breached. Copies of notices may be delivered by hand or post.

### **4.7.13 If removed or defaced or destroyed**

The notice is the property of the Veterinary Service. If the officer discovers that an affixed notice has been removed or defaced, or destroyed, the notice should be replaced as soon as possible and the events recorded in the contemporaneous notebook.

### **4.7.14 Right of appeal**

In the event of an appeal by someone who is aggrieved by the service of a notice, the OV is to inform the DVO MIB or OVA at the VPHP Regional Office immediately who, through FSA in NI will arrange legal representation for any appeal hearing.

### **4.7.15 Records**

All notices served must be recorded on the VPH 23. A copy of each notice must be retained on the establishment file in HPRM.

## **5. Statutory notices for hygiene contraventions**

### **5.1 Introduction**

### **5.2 Remedial Action Notice (RAN)**

### **5.3 Hygiene Improvement Notice (HIN)**

### **5.4. Hygiene Emergency Prohibition Notice (HEPN) and Order (HEPO)**

### **5.5 Warrant to enter**

## **5.1 Introduction**

### **5.1.1 Food Hygiene Regulations 2006**

The Food Hygiene Regulations (NI) 2006, provide three notices for hygiene non-compliances:

- Remedial Action Notice (Regulation 9) – the FHR 09
- Hygiene Improvement Notice (Regulation 6) – FHR 01
- Hygiene Emergency Prohibition Notice and Order (Regulation 8)  
- FHR 03 to FHR 06

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**Note:** These notices must not be used for non-hygiene related matters. For example, where non-compliances are identified with Animal By-Products, Welfare of Animals or TSE Regulations.

### 5.2 Remedial Action Notice (RAN)

#### 5.2.1 When to use a RAN

The Remedial Action Notice (RAN) (FHR 09) may be used:

- when any requirement of the Hygiene Regulations is being breached; or
- when inspection under the Hygiene Regulations is being hampered.

They should be used when the OV considers the FBO must take immediate action to achieve compliance, or where the rate of operation is detrimental to compliance with the Regulations.

The OV must verbally request that the FBO rectifies the situation. If the FBO fails to respond the OV must verbally inform the FBO of the intention to serve the notice. The OV must then serve the notice if the FBO still does not respond. Before serving the notice, the OV should consult the regional DVO for approval. The OV must complete the enforcement programme VPH 23.

It is also essential to gather the evidence to support the action at the time in case an appeal is lodged by the FBO.

#### 5.2.2 Purpose of a RAN

The RAN (FHR 09) places a legal requirement on the FBO to take immediate action to achieve compliance with the Hygiene Regulations. This may require:

- prohibiting the use of any equipment or any part of the establishment specified in the notice;
- imposing conditions upon or stopping a process; or
- requiring the rate of operation to be reduced to such extent as specified in the notice, or to be stopped completely.

The identified action should be stated on the notice.

RANs can be used in relation to both hygiene and structural / maintenance deficiencies requiring immediate action relating to the Hygiene Regulations.

In the case of maintenance / structural problems that do not pose an imminent threat to health and can be rectified in the longer term, it is more appropriate to use a Hygiene Improvement Notice (HIN) (FHR 01) served under Regulation 6 of The Food Hygiene Regulations (NI) 2006.

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### 5.2.3 Service details

The RAN (FHR 09) is served:

- **on** the FBO or on a duly authorised representative of the FBO where the FBO has authorised such a representative in writing.
- **by** the OV.

In accordance with general principles, a separate RAN is served in respect of each alleged deficiency in an individual room or of a single item of equipment or machinery.

They may, on occasion, be served on the establishment as a whole, e.g. where a pest infestation, failure of sterilisers, inadequate overnight cleaning, failure of the hot water supply, or where the behaviour of the FBO is hampering adequate health inspection.

Where the effect of serving the RAN is to stop the entire operation the OV must:

- consider whether this action is proportionate to the risk
- inform the D/SVO MIB or OVA at the VPHP Regional Office.

### 5.2.4 Withdrawal

Once the OV is satisfied that effective remedial action has been taken the notice can be withdrawn using the RAN Withdrawal Notice (FHR 10). This notice records the date the OV is satisfied that compliance has been achieved.

### 5.2.5 Tagging

The identification and tagging of items of equipment **may** be done in association with RANs. The tag may be attached to the equipment using a numbered security seal, and cross-referenced to a RAN to facilitate identification of areas or items to be addressed.

### 5.2.6 Rights of Appeal

The FBO has the right of appeal (regulation 19) to a court of summary jurisdiction (the Magistrates' Court) regarding the decision of the OV to serve a RAN.

Where the FBO lodges and appeal the OV must inform the DVO MIB or OVA at the VPHP regional office.

The provisions of the RAN remain in force until the appeal is heard.

### 5.2.7 Failure to comply

Failure to comply with a RAN (FHR 09) is an offence (regulation 9(7)). If the FBO has failed to comply with a RAN, the OV must recommend prosecution (VPH 14) for

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breach of the notice and breach of the substantive offence that led to the notice being served in the first place.

Reference: See 'Investigation with view to prosecution' section.

### 5.2.8 When not to use a RAN

RANs must not be used for non-hygiene related matters. For example, where non-compliances are identified with Animal by-Products, Welfare of Animals or TSE Regulations.

RANs should not be used for maintenance / structural problems that do not pose an imminent threat to health.

## 5.3 Hygiene Improvement Notices (HIN)

### 5.3.1 When to use

The Hygiene Improvement Notice (HIN) (FHR 01) should be used:

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

A HIN can only be issued where a contravention of the Hygiene Regulations is identified and it does not require immediate correction.

The service of a HIN must follow both verbal and written advice unless there is evidence to support the by-passing of these stages e.g. documented history of FBO failing to respond to informal enforcement. The OV must have evidence to justify its service and must verbally inform the FBO of the intention to and reason for serving the notice. Before issuing the HIN, the regional D/SVO must be consulted for approval.

### 5.3.2 Purpose of a HIN

HIN's (FHR 01) place a legal requirement on the FBO to take action to achieve compliance with Hygiene Regulations. For example:

- address any hygiene deficiency that does not require immediate action

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- repair a structural defect within the building
- to build or construct addition facilities to cope with an increased throughput
- address failures to implement a sound HACCP based system

The identified action should be stated on the notice.

### 5.3.3 Content

Where structural work is needed the HIN should be specific enough to explain the outcome to be achieved without being prescriptive about the exact way in which this must be achieved. It is for the FBO to decide how he will achieve compliance. 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 they see fit.

### 5.3.4 Service

The HIN is served:

- on the FBO
- by an OV

It is served in accordance with general principles.

### 5.3.5 When not to issue a HIN

A HIN (FHR 01) should not be used in the following circumstances:

- for non-hygiene related matters e.g. welfare or TSE regulations
- where the contravention might be a continuing one, for example, personal cleanliness of staff and the notice would only secure an improvement at that point in time; or
- where breaches exist that pose a potential and imminent risk to health and urgent action is needed. In these circumstances a RAN may be more appropriate or in the most serious cases a HEPN.
- for the failure to implement good hygiene practice.

### 5.3.6 Time limits

HINs place the FBO under a legal obligation to take specified action within a set time period, during which operations may continue.

The time period given as the date of compliance must not be less than 14 days. When calculating this, the officer 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

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to serve the notice, count 14 clear days and then put the date for compliance as the day after this.

Example:

Decision that offence requires formal action is taken on 1 January. The notice is drafted on 1 January. The officer 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.

The period of compliance must be reasonable, given the measures required, and should, wherever possible, be agreed with the recipient. Where the officer is unsure what may constitute a reasonable time they should seek advice from the DVO MIB or OVA at the Regional Office. This will reduce the likelihood of an appeal being lodged against the notice for unrealistic timescales.

### 5.3.7 Right of appeal

Recipients have a right of appeal (regulation 19) against HINs to a court of summary jurisdiction (the Magistrates' Court).

Where the FBO lodges and appeal the OV must inform the DVO MIB or OVA at the VPHP regional office.

During the appeal period the requirements of the notice are suspended.

### 5.3.8 Extension of notice

Recipients may request additional time for compliance. Such requests must be put in writing. Where there is a genuine reason for seeking an extension of time, and this does not produce an unacceptable risk to public health, an extension should normally be given (but should be for as short a time period as possible).

The OV should withdraw the existing notice by letter and, having reviewed the evidence and concluded that conditions prevail which justify it, issue a new HIN with a revised time frame that:

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

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

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### 5.3.9 Failure to comply

Failure to comply with a HIN (FHR 01) is an offence. If the FBO has failed to comply with a notice the officer must put forward a recommendation for prosecution (VPH 14) for breach of the notice and breach of the substantive offence that led to the notice being served in the first place.

Reference: See 'Investigation with view to prosecution' section.

### 5.3.10 Withdrawal

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

Where compliance is achieved, the OV must confirm formally in writing that they are satisfied with the works carried out to the FBO. There is a template letter (FHR 01a) available for this.

Measures that achieve the same outcome as those specified in the notice must be accepted as achieving compliance.

Where a notice has been served in error or must be withdrawn due to a technicality, these too must be withdrawn in writing and template letters (FHR 01b) exists for this purpose.

## 5.4 Hygiene Emergency Prohibition Notices and Orders

### 5.4.1 Caution

Hygiene Emergency Prohibition Notices (HEPN) seeking Hygiene Emergency Prohibition Orders (HEPO) can only be issued after DVO / SPVO approval.

### 5.4.2 When to use

Issuing a Hygiene Emergency Prohibition Notice (HEPN)(FHR 03) should only be considered, after discussion with the DVO / SPVO, where there is a real and imminent risk to health that is so serious that action requires the backing of the Court e.g. contamination of the potable water supply.

Reference: Specific examples and further guidance are given in the Code of Practice made under regulation 22 of the FHR.

Full details on use of HEPNs and obtaining HEPOs can be found in Annex 3.

### 5.5 Warrant for premises entry

#### 5.5.1 Warrant to enter premises

In the unlikely event that access to an establishment is refused and an officer must gain access, the procedure for obtaining a warrant to enter is described in Annex 4.

## 6. Incident and Food Fraud Reporting

### 6.1 Introduction

### 6.2 Incident Report Form

#### 6.1 Introduction

The FSA defines an **incident** as “any event where, based on the information available, there are concerns about actual or suspected threats to the safety, quality or integrity of food and/or feed that could require intervention to protect consumers’ interests”.

The FSA’s Incident Management Plan can be accessed at the following web address: <https://www.food.gov.uk/business-guidance/food-incidents-product-withdrawals-and-recalls>

A food-related incident involves a *biological, chemical, physical* hazard or *allergen* in food, or the condition of any food with the potential to cause an adverse effect on the health or safety of consumers (including outbreaks of foodborne disease and/or

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infectious intestinal disease). This is of particular importance when the FBO has distributed the food outside their control and therefore a food withdrawal/recall may be considered. In such situations, the DAERA DVO should report the incident to the FSA Consumer Protection Team (CPT) by submitting a completed incident report form (IRF) to [incidents.ni@food.gov.uk](mailto:incidents.ni@food.gov.uk). The FSA CPT will initiate the risk analysis process and provide guidance on next steps.

Food crime, or food fraud, is described as serious dishonesty which has a detrimental impact on the safety or authenticity of food. Any suspicion or information about food fraud should be reported to FSA in NI's National Food Crime Unit (NFCU) contact: [ed.mcdonald@food.gov.uk](mailto:ed.mcdonald@food.gov.uk) Tel: 07771840370 or the NFCU Food Crime confidential contact: [foodcrime@food.gov.uk](mailto:foodcrime@food.gov.uk) 0330 332 7149 (option 4).

### 6.2 Incident Report Form

The appropriate form (VPH 26 Food Incident Report Form) to be used to report an incident to the FSA can be found here:

[VPH 26 - Food Incident Report Form](#)

Completed VPH 26s should be signed off by the DVO before submission to the FSA and should be accompanied by any relevant supporting documents.

[Please see annexe 5 for more information:](#)

[VPH 26 Food Incident Report Form – Completed Example](#)

[Incident Handling Process – Flow Diagram](#)

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### Annex 1- Protocol for prosecutions

The table below outlines the process and rationale for prosecution taken forward by the OV.

<b>Process</b>	<b>Rationale</b>
<p>Discuss the issue at the VPHP MIT meetings as &amp; when the contraventions occur, prior to completing the VPH 23.</p> <p>Keep the team updated regarding the progress of particular investigations / considerations.</p>	<p>This will ensure that the MIT is made aware of all potential formal enforcement action taking place at the establishment.</p> <p>MIs may provide an input into any enforcement action, and act as the eyes and ears of the OV. It is important that MIs never unknowingly condone activities that the OV is attempting to stop.</p>
<p>The OV should ask the DVO MIB to confirm that FSA in NI is in support of pursuing a prosecution of this nature.</p> <p>If advice is needed on the correct enforcement approach, the OV should seek this at an early stage</p>	<p>The FSA in NI has the final say in whether to present a case to the DPP. Their agreement in principles needs to be sought at an early stage before too much time and resource are expended on any investigation.</p>

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<p>from the DVO MIB or OVA who will refer the matter to obtain legal advice where necessary.</p>	<p>FSA in NI will have to defend any potential action taken in court. They should therefore be consulted as soon as any procedural, or policy difficulties are identified.</p> <p>Early clarification will avoid unnecessary mistakes, lead to a more consistent approach, reduce legal challenges, improve evidence gathering and ultimately improve the success of cases in court.</p>
<p>Once FSA in NI has confirmed they are content in principle, the decision is made to recommend a case for prosecution.</p>	<p>Remember that at this stage it is just a recommendation – the FBO is innocent until proven guilty in a court of law</p>

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<b>Process</b>	<b>Rationale</b>
Collect all evidence relating to the referral and send it, with the VPH 23, to the DVO MIB at the regional office within 10 days of completion	Photographs must be taken to assist the court where the nature of the offence may be difficult to visualise and where the photograph proves elements of the offence. Hygiene offences carry a 12-month time limit; within which any charges should be laid at the court. (Note: welfare contraventions have a 6-month time limit.) The VS CET IOs must be afforded enough time to investigate the offences identified by the VPHP.
The RO will acknowledge receipt of the recommendation and associated paperwork.	If not, contact the Regional Office to identify why confirmation has not been received.
Inform the MIT of the recommendation	All members of the MIT are authorised officers and must assist in all formal enforcement action as and when required, including acting as witnesses in court if necessary. Failure to work as a team may lead to contradictory evidence being tendered by different members of the MIT.
Inform the FBO of this decision as a matter of courtesy	Informing the MIT before the FBO of any recommendation will forewarn and forearm colleagues that contraventions have been referred for investigation.  Officers must not pass comment on any formal action to the FBO or his/her staff.
Cooperate fully with the appointed Investigating Officer, providing specific advice on the requirements of the Hygiene Regulations etc.	The IO has expertise in preparing statements, interviewing suspects and preparing case files. The OV has expertise in food hygiene law.
If compliance is achieved after a recommendation to prosecute, this must be accurately recorded and reported to the DVO MIB and the IO.	This will demonstrate the effectiveness of operators “Due Diligence” systems & identify any defences that the operator may wish to put forward.

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The table below outlines the process and rationale for prosecution taken forward by the **DVO MIB and IO**

Process	Rationale
<p>The DVO MIB should review the VPH 14 (completed by the OV) and accompanying evidence (collected by the MIT). They must assist the assessment procedure by adding constructive and realistic comments to the VPH 14.</p>	<p>It is important that all relevant veterinary input is made at this point because this may be the last formal veterinary assessment of the evidence made before the file reaches FSA in NI.</p>
<p>The DVO MIB must identify any concerns that they may have about the case for the benefit of the IO and FSA in NI.</p> <p>This should include specifically checking that:</p> <p>All the necessary evidence has been gathered.</p> <p>The correct course of action has been taken.</p> <p>All formal notices have been correctly drafted and served.</p> <p>All formal notices must request the FBO to undertake a course of action that the Regulations actually provide for.</p> <p>Recommendations are put forward within the time limits, after the offence has been committed</p> <p>The hierarchy of enforcement has been followed and the approach to enforcement has been both reasonable and proportionate to the contravention that was identified.</p>	<p>It is vital in complex cases, where the DVO MIB has not visited the establishment for 6 months or where they are not familiar with a particular process that they re-acquaint themselves with the operation. This will allow them to make a better judgment and assess the recommendation in an informed way.</p> <p>To prove the elements of the offence beyond all reasonable doubt.</p> <p>To stand up to legal scrutiny.</p> <p>To make sure that all the procedural requirements relating to enforcement have been followed.</p> <p>To ensure that an offence has actually been committed.</p> <p>To ensure that long delays are not prejudicing the process.</p> <p>To ensure that all Codes of Practice, the VS Prosecution Policy have been complied with.</p>

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Process	Rationale
<p>A time of no more than 5 working days should elapse between the DVO MIB receiving the VPH 14 and associated evidence, and discussing and deciding with the IO whether to recommend or withhold the case.</p>	<p>Where a DVO MIB is on leave / absent from work at short notice etc, any recommendations they would normally receive must be passed to the OVA or another DVO MIB or the VPHP SPVO to be assessed in their absence. This will prevent any bottlenecks in the recommendation procedure.</p>
<p>DVO MIB or IO must advise FSA in NI and the OV of any decision not to recommend the case and the reasons for this.</p>	<p>Makes FSA in NI aware of practical difficulties in pursuing enforcement.</p> <p>Allows the OV and the MIT to understand why a case cannot be pursued.</p>
<p>Where it is decided to proceed with the case the IO will review all the evidence and arrange to gather all necessary statements, conduct interviews and put together the case file.</p> <p>The recommendation must then be sent promptly to FSA in NI.</p> <p>The DVO MIB should be kept informed of progress.</p>	<p>The IO has expertise in preparing statements, interviewing suspects and preparing case files.</p> <p>VPHP officers need to be kept informed of progress to be able to update staff and deal appropriately with industry representatives.</p>

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The table below outlines the process and rationale for prosecution taken forward by the FSA in NI

Process	Rationale
<p>On initial notification, FSA in NI consider the case and if agree in principle request that the SPVO VPHP source an Investigation Officer from VS CET to interview the alleged defendant(s) and take statements from the MIT and any other potential witnesses</p> <p>Where FSA in NI does not agree with pursuit of prosecution they will confirm this in writing to SPVO VPHP.</p>	<p>The FSA in NI has the final say in whether to present a case to the DPP. Their agreement in principles needs to be sought at an early stage before too much time and resource are expended on the matter.</p> <p>This decision and reasons for it need to be communicated to VPHP officers to allow for consistent enforcement.</p>
<p>When the investigation is complete, the FSA in NI will review the completed case file and make a decision on the appropriate course of action.</p> <p>This could be that:</p> <ul style="list-style-type: none"> <li>● not enough evidence exists to pursue the case</li> <li>● procedural errors have been identified and no further action is taken</li> <li>● it is not in the public interest to take formal action</li> <li>● while evidence exists to pursue the case and the FBO admits the offence, it is felt that a formal caution may be more appropriate</li> </ul>	<p>When a decision is made to take the case forward to court, FSA in NI must inform VPHP prior to informing the FBO of this intention. This will ensure the OV and the MIT is aware of the fact that the FBO will be facing formal action, so that they are aware of any potential conflict.</p> <p>Where a decision is made not to proceed with the prosecution, this decision and the reasons for it should be cascaded as quickly as possible back to the VPHP, who will ensure that this information is passed to all relevant parties DVO MIB / OV / SMI / MI's etc.</p> <p>This will assist with future assessments of new cases and advice provided to the MIT on the best way to proceed with certain types of enforcement action.</p>

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<b>Process</b>	<b>Rationale</b>
Where the FBO pleads not guilty and the case goes forward to trial, the witnesses should be made aware that their presence will be required and when this will be.	Any officer who is unfamiliar with court procedure may benefit from some counselling from the VS CET before any court appearance.
When the case has gone to court and the outcome determined, this information will be sent out by the FSA in NI to VPHP.	This information must be filtered down via the Regional Office to the staff at the establishments concerned

### Annex 2- Enforcement of the EC Hygiene Regulations

#### Introduction

Details of the new legislation are provided in the **Legislation and enforcement provisions** topic at the beginning of this Chapter and should be referred to.

Examples to help illustrate where offences lie for contravention of the EC Regulations are given below.

#### Example 1

The requirements contained in Regulation (EC) 853/2004, Annex III, Section I, Chapter II, 3 make specific requirements for slaughterhouses in that they must have facilities for disinfecting tools with hot water supplied at not less than 82 degrees Celsius, or an alternative system having an equivalent effect.

If the hot water system in an establishment was to fail, then there could be an imminent risk of the contamination of fresh meat and the OV could use the provisions of the Food Hygiene Regulations (NI) 2006 to serve a Remedial Action Notice (RAN) to stop production until the provision of a hot water supply at 82 degrees was restored. The failure to have such a water supply or adequate alternative, or any other failure to comply with any specified community provision may constitute an offence under Regulation 17 of these Regulations.

Any meat produced under conditions that pose a risk to public health, can be detained under Regulation 9(5) for further examination, or to procure a sample. Regulation 23 also provides the means by which the OV may certify meat as not having been produced in accordance with the Regulations, and thus dealing with it via the provisions of Article 8 of the Food Safety (NI) Order 1991 as failing to comply with food safety requirements. Where voluntary surrender is not forthcoming, this latter route is the only mechanism by which the OV can bring the matter before the court.

#### Example 2

Where food is found to be unfit for human consumption due to faecal contamination, it will fail to meet the food safety requirements laid down under Article 14 of Regulation (EC) 178/2002 and contravene Annex III, Section I, Chapter IV Para 10 Regulation (EC) 853/2004. The meat will either have to be trimmed and partial re work undertaken, or if the extent of the contamination is such that re work is not an option, there may be an offence for failing to comply with the food safety requirement. The enforcement of which can be achieved through Article 8 of the

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Food Safety (NI) Order 1991, or through Regulation 4 of the General Food Regulations (NI) 2004.

In Regulation (EU) No 2019/627, Title III, Chapter III, Article 45, paragraphs (a to u) it specifies the conditions under which meat is to be declared unfit for human consumption. Meat that has been so produced cannot have the health mark applied to it. Voluntary surrender should be sought and where the FBO refuses, then the OV may certify meat as not having been produced in accordance with the Regulations, and thus dealing with it via the provisions of Article 8 of the Food Safety (NI) Order 1991 as failing to comply with food safety requirements.

Regulation 10 of The General Food Regulations 2004 has updated the definition of food safety requirement in the Food Safety Order, so that any food that is deemed unsafe by definition of Article 14 Regulation (EC) 178/2002, will fail to comply with the food safety requirement in Article 7 of the Order and hence may be seized under Article 8 to be taken before a Justice of the Peace.

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### Annex 3 – Application for a Hygiene Emergency Prohibition Order

#### Process Overview

The table below provides an overview of the process:

Reference: Specific examples and further guidance are given in the Code of Practice made under regulation 22 of the Regulations.

Stage	Description
1	<p>The OV must give the proprietor at least <u>1 days' notice</u> of their intention to apply for a Hygiene Emergency Prohibition Order (HEPO) (notice FHR 06) by serving a HEPN (notice FHR 03) on the FBO.</p> <p>A Hygiene Emergency Prohibition Notice (HEPN) (notice FHR 03) has an immediate prohibitory effect and once served the OV should contact the local court to immediately arrange for a hearing and advise the FBO of the intention to apply for an Order (FHR 04).</p> <p>Note; a copy of the HEPN must be affixed in a conspicuous position to the premises at which the notice relates.</p>
2	<p>The OV applies (FHR 05) for an HEPO from the Magistrates' Court <u>within 3 days of the</u> service of the HEPN. The day of the service of the HPEN being day one. There is no legal requirement for the application to be heard in 3 days, although the court should be asked to list the hearing at the earliest opportunity. Once made the HEPO supersedes the HEPN. The AO must also affix a copy of the HEPO in a conspicuous position to the premises at which the Order relates.</p>
3	<p>Once the FBO applies, in writing, for the HEPO to be lifted, the application must be determined as soon as practicable and within 14 days. Once the OV is satisfied that the proprietor has taken significant steps to remove the health risk(s) specified in the notice, the OV should sign the withdrawal certificate (FHR 07).</p> <p><u>Regulation:</u> Food Hygiene Regulations (NI) 2006, regulation 8</p>

#### Sources of Advice

Advice should be sought from VPHP DVO / SPVO, who will, in conjunction with FSA in NI, assist in the preparation of the case prior to the Court's hearing of an HEPO.

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### Evidence

Monitoring of the prohibition and any action taken by the FBO must be recorded. This together with the evidence gathered before serving the HEPN will be presented in Court.

### Procedure

The table below lists the steps for an OV to follow when applying for an HEPO.

Stage	Description
<b>Contact local court to arrange hearing</b>	The hearing must take place within 3 days of service of the HEPN (FHR 03). On establishing dates and times the OV must notify the FBO by serving a Notice of Intention to Apply for a Hygiene Emergency Prohibition Order (notice FHR 04).
<b>Prepare for hearing</b>	<p>Prior to the hearing the OV should:</p> <ul style="list-style-type: none"> <li>• read all the relevant papers;</li> <li>• prepare to be questioned as a witness;</li> <li>• bring all relevant evidence to court.</li> </ul> <p>The OV should prepare, for the court, 3 copies of:</p> <ul style="list-style-type: none"> <li>• the HEPN (FHR 03);</li> <li>• the Notice of Intention to Apply (FHR 04);</li> <li>• the Complaint for a Hygiene Emergency Prohibition Order (FHR 05); and</li> <li>• the draft Hygiene Emergency Prohibition Order (FHR 06) duly completed and ready for signing by the Justice of the Peace.</li> </ul> <p>The OV must monitor the establishment whilst awaiting the hearing and record any breaches of the notice or changes in circumstances at the establishment.</p>
<b>At the hearing</b>	It is crucial that the OV has gathered significant evidence at the time the HEPN was served and that this evidence is presented to the court.
<b>Court will decide whether to issue the HEPO or not</b>	<p>If the Order is made the officer should produce the completed HEPO for signing by the magistrate. The HEPO must then be served on the FBO as soon as possible and a copy affixed to the establishment in a conspicuous place.</p> <p>Any breaches of the HEPO whilst in force should be recorded and evidence collected. The matter should then be recommended for prosecution.</p>

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<b>Risk is removed</b>	The HEPO remains in force until the OV is satisfied that the imminent risk has been removed. The OV must then formally cancel the HEPO by writing to the FBO. The withdrawal of an HEPO must not be unreasonably withheld. Once the Order has been complied with, the business can recommence its operation.
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### Annex 4 – Warrant to Enter Premises

#### Access Refused

In the event that access to an establishment is refused, it may be necessary for an officer to apply to a Justice of the Peace for a Warrant to Enter Premises, to gain access to carry out his duties.

DVO MIB or OVA should be contacted for advice on any refusal by the FBO to grant entry to an officer. Where there is a threat of violence, reference should be made to the CET for guidance.

Examples of when it is necessary to apply for a Warrant to Enter Premises include:

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

#### Execution of the warrant

The warrant must be executed within 28 days and is no longer valid once the officer has used it to gain access. When executing a Warrant to Enter Premises Code B of the Codes of Practice, made under the Police and Criminal Evidence (NI) Order 1989 (PaCE), should be complied with. Legal advice on this and other aspects of the Warrant should be obtained **before** entry is attempted. VPHP Headquarters and VS CET will advise further.

#### Access

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

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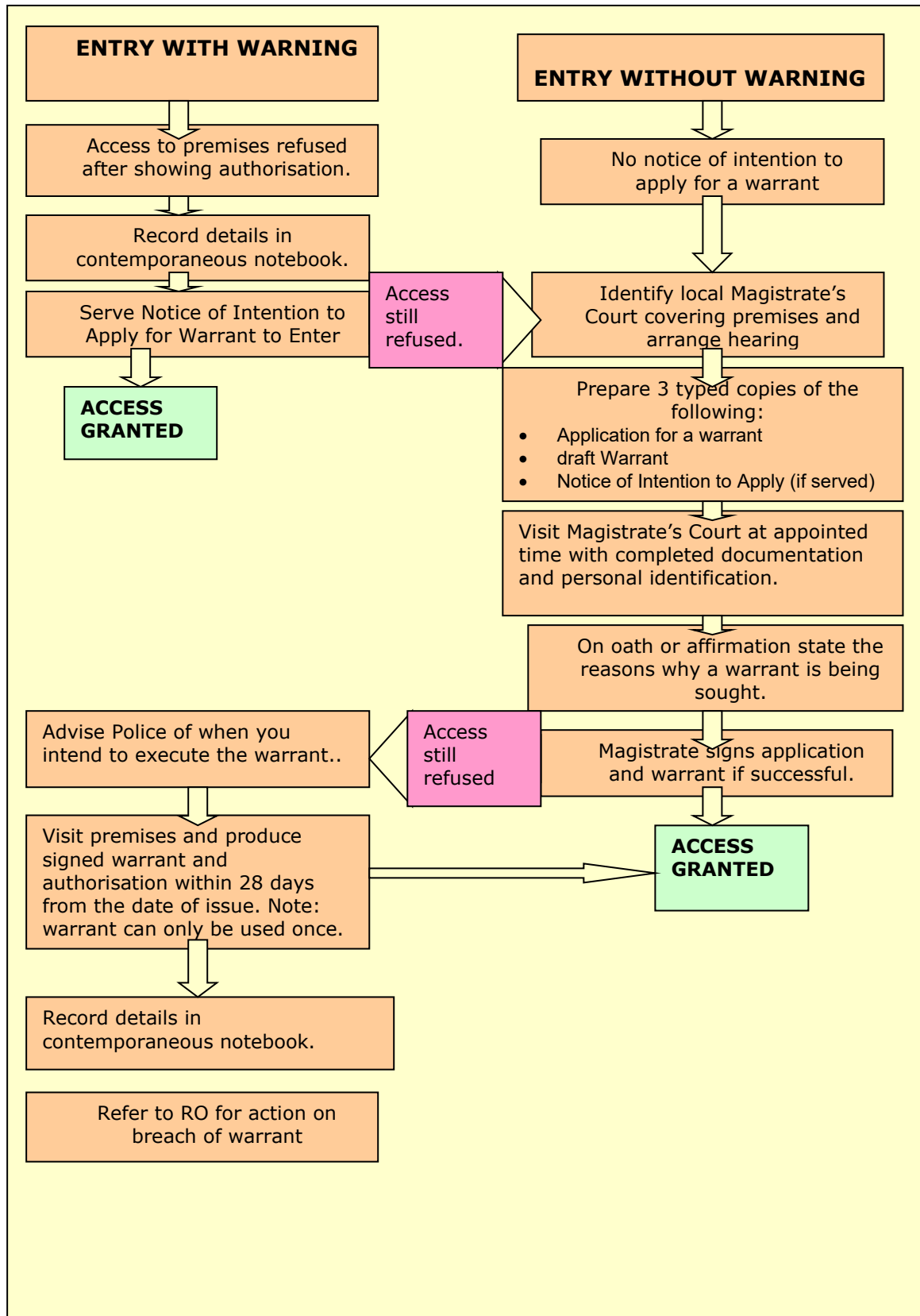
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### **Forced Entry**

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

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### Process to obtain a Warrant to Enter Establishment



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### Annex 5 – Example of Completed Incidents Form

This form should be completed by the investigating officer/representative and submitted to:

[incidents.ni@food.gov.uk](mailto:incidents.ni@food.gov.uk)

Tel. 0330 332 7149 option 4 or out of hours 07884473022

*Confidential information relating to criminality, whistleblowing or intelligence should be sent to FSA in NI's National Food Crime Unit (NFCU) contact: [ed.mcdonald@food.gov.uk](mailto:ed.mcdonald@food.gov.uk) Tel: 03303327149 option 4, Mob: 07771840370 or NFCU Food Crime confidential contact: [foodcrime@food.gov.uk](mailto:foodcrime@food.gov.uk) Tel: 0207 276 8787*

#### 1. DAERA Contact Details:

<b>DAERA Reporting officer</b>	<b>Name:</b>	<b>John Smith</b>	
	<b>Position:</b>	<b>Veterinary Officer</b>	
<b>Contact details</b>		<b>Business hours</b>	<b>Out of hours</b>
<b>Telephone</b>		<b>02890xxxxxxxx</b>	<b>077xxxxxxxx</b>
<b>E-Mail</b>		<b>John.smith@.....</b>	<b>OoH@.....</b>

#### 2. Initial information received by DAERA:

<b>Reported to DAERA by (Food Business Operator/ District Council/ Other Gov. Dept./Member of Public/FSA etc.)</b>	<b>Date &amp; time</b>	<b>04/02/2020</b>
	<b>Organisation</b>	<b>Joe Bloggs Meat Co.</b>
	<b>Name</b>	<b>Jane Bloggs</b>
	<b>Position</b>	<b>Technical Manager</b>
	<b>Tel:</b>	<b>02890xxxxxxxx</b>
	<b>Email:</b>	<b>Jane.bloggs@.....</b>

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### 3. Brief description of incident: (e.g. what is currently known about the situation)

Salmonella enteritidis detected in raw, chilled chicken thighs produced by Joe Bloggs Meat Co. (Approval no. xxxxx)

Whole chickens slaughtered in ROI before being sent to Joe Bloggs Meat Co. for portioning and packing.

Salmonella enteritidis detected in retained samples of chicken thighs after the implicated batch was dispatched to Fresco retailer's depot in GB

### 4. Is this incident linked to a previous incident or an update to a previous incident? If so, please give the FSA reference number of the previous incident. e.g. is this a follow-up sample result?

No

### 5. Type of concern about actual or suspected threats to the safety, quality or integrity of food and/or feed that could require intervention to protect consumers' interests:

Concern regarding public health as product has tested positive for Salmonella enteritidis and gone onto the retail market. Product non-compliant with EU Legislation.

### 6. Product Details:

Description of Product:	Chicken bone-in thighs, skin on
Product Name (name of food label):	Premium Free Range Chicken Thighs

## Manual for Official Controls

<b>Product Brand:</b>	<b>Fresco</b>		
<b>Description of packaging:</b>	<b>Modified Atmosphere</b>		
<b>Packing format:</b>	<b>1 unit = 6pack thighs, 500g. 12 units per tray.</b>		
<b>Batch Number(s) affected:</b>	<b>602020B</b>		
<b>Date implicated product put on market:</b>	<b>01/03/2020</b>		
<b>Quantity affected:</b>	<b>On Market:</b>	<b>20 trays</b>	
	<b>In FBO's control:</b>	<b>10 trays</b>	
<b>Durability Date(s):</b>	<b>11/03/2020</b>		
<b>Cooking Instruction details:</b>			
<b>Implicated Food Business Operator's details</b>	<b>Name</b>	<b>Joe Bloggs Meat Co.</b>	
	<b>Address1</b>	<b>10 Hill Street</b>	
	<b>Address2</b>		
	<b>Town</b>	<b>Belfast</b>	
	<b>Country</b>	<b>Northern Ireland</b>	
	<b>Premise Type (abattoir/cutting plant/combined)</b>	<b>Cutting</b>	
	<b>Tel:</b>	<b>02890xxxxxxxxx</b>	

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**7. Traceability – One step back (i.e. Supplier[s]):**

Country	Implicated Raw Material(s) received from (Yes/No)	Details attached in excel spreadsheet (Yes/No)
NI	No	
ROI	Yes	Yes
GB	No	
EU Member States (other than ROI)	No	
Non – EU Countries	No	
Additional Comments:		

**8. Traceability – One step forward (i.e. Customer[s]):**

Country	Distributed to (Yes/No)	Details attached in excel spreadsheet (Yes/No)
NI	No	
ROI	No	
GB	Yes	Yes
EU Member States (other than ROI)	No	
Non – EU Countries	No	
Additional Comments:		

**9. Has DAERA been made aware if clinical illness occurred? If yes, include details (type of illness, symptoms, numbers of consumers affected etc):**

No
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**10. Food Business Operator Actions**

Is the FBO aware of the incident?	Yes
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## Manual for Official Controls

Has the FBO completed an investigation and/or taken actions? If so, please detail below	<b>In progress</b>
<b>Raw material supplier identified.</b>	
<b>Customer identified.</b>	
<b>All other in-process micro results and finished product micro results satisfactory.</b>	
<b>Post-cleaning ATP swabs satisfactory on day of production.</b>	
<b>Same batch of raw material quarantined on site and being tested.</b>	

**11. Has DAERA taken any action to date? Yes/No. Please give details. (e.g. restrictions/detentions/notices/sampling/interviews etc.)**

<b>Yes.</b>
<b>Formal sample of raw material taken. Results expected 09/03/2020</b>

**12. Has there been media interest? Yes/No**  
**If there has been a press release, please email to the FSA with this form.**

<b>No</b>
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**13. Has there been a Ministerial Submission? Yes/No**  
**If there has been a Ministerial Submission, please email to the FSA with this form.**

<b>No</b>
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**14. Any additional information: Please attach additional pages if necessary.**

<b>Traceability distribution lists attached.</b>
<b>Micro certificates attached.</b>
<b>Same raw material used in other finished products.</b>

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**15. Please email any relevant laboratory certificates/photos/relevant paperwork along with this incident report form.**

<b>Signed:</b>	<b>John Smith</b>
<b>Position:</b>	<b>OV</b>
<b>Date:</b>	<b>04/03/2020</b>

### 16. *DVO Comments*

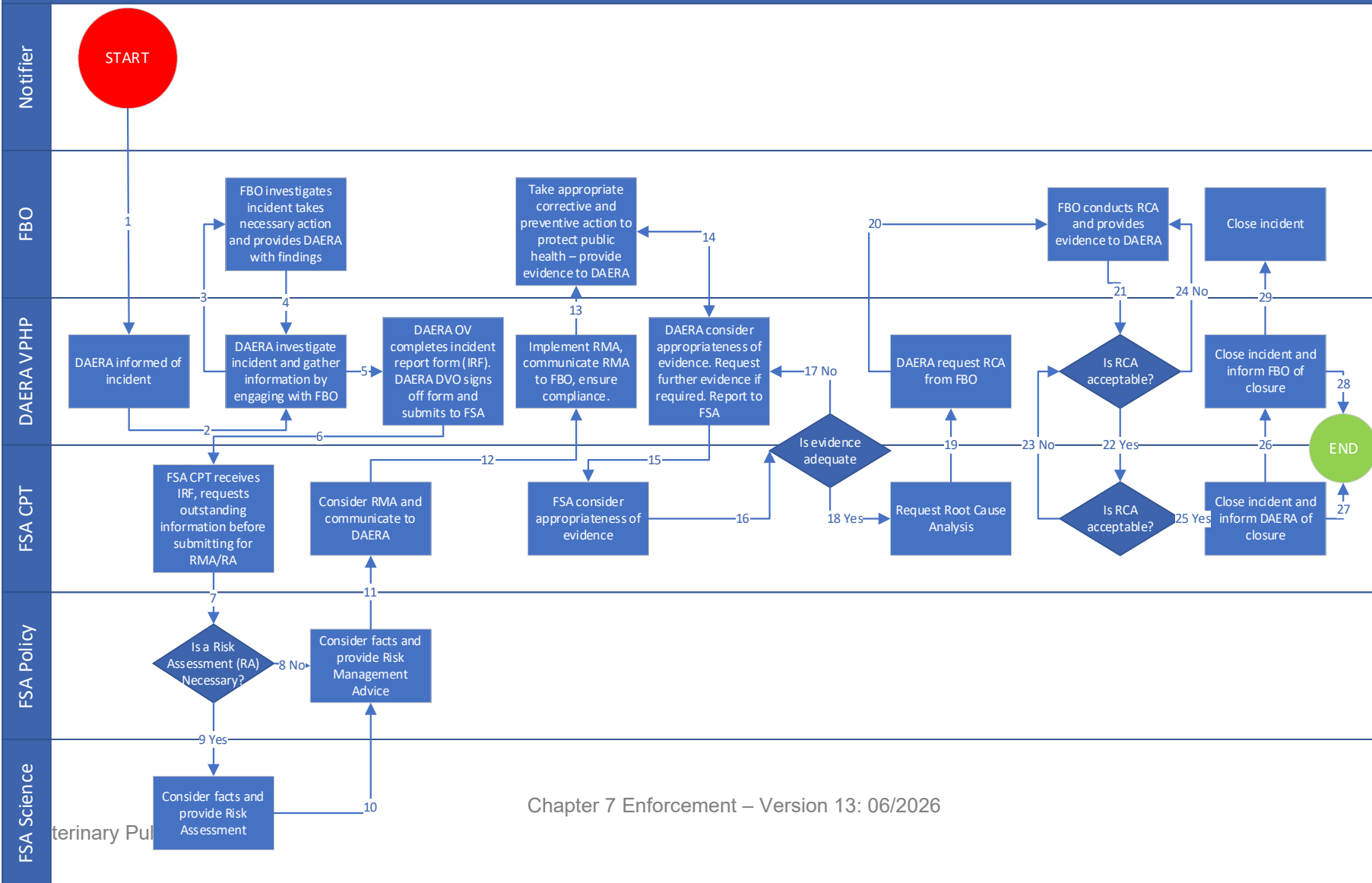
<p><b>There is no history of Salmonella detections associated with this cutting plant.</b></p> <p><b>The FBO continues to investigate the matter as a priority and will continue to share findings with DAERA.</b></p> <p><b>Grateful if FSA could consider and advise on further course of action regarding product on the market.</b></p>
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<b>Signed:</b>	<b>Xxxxxx xxxxx</b>
<b>Position:</b>	<b>DVO</b>
<b>Date:</b>	<b>05/03/2020</b>

# Manual for Official Controls

## Incident Handling Process – FSA & DAERA VPHP Interactions

FD INC 005 – MOC Incident Chapter - ANNEX C Version:1 Authorised by: C.A. Leeman



# Manual for Official Controls

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