EXPLANATORY MEMORANDUM TO

THE FOOD HYGIENE (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2012

2012 No. 130

1. Introduction

1.1 This explanatory memorandum has been prepared by the Food Standards Agency in Northern Ireland to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under section 2(2) of the European Communities Act 1972.

2. Purpose of the Rule

2.1 These Regulations aim to extend Remedial Action Notices (RANs) to all food businesses. Currently, RANs can only be used at establishments subject to approval under Regulation 853/2004. Their extension to establishments not subject to approval will provide competent authorities with an enforcement tool that in certain circumstances is more appropriate and proportionate than the current tools for ensuring that food businesses take prompt corrective action, where it is in the public interest for them to do so.

3. Matters of special interest to the Health Committee

3.1 None.

4. Legislative Background

4.1 This rule is made under Section 2(2) of the European Communities Act 1972 and extends to all food businesses the availability of Remedial Action Notices (RANs) for enforcers as a more proportionate enforcement tool.

5. Parity or Replicatory Measure

5.1 This Statutory Rule is exclusive to Northern Ireland; it replicates equivalent legislation being made in England, Scotland and Wales. A Statutory Instrument in Scotland will come into force at the start of April and in Wales at the start of May 2012. Due to additional legislative making procedures in England it is anticipated that the SI in England will come into force later this year.

6. European Convention on Human Rights

6.1 As this rule is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 In March 2009, Professor Hugh Pennington completed his Public Inquiry into the September 2005 outbreak of *E.coli* O157 in South Wales, which claimed the life of five year-old Mason Jones and caused serious long-term health problems for many others. One of the recommendations of the Inquiry was that the Agency reviewed official controls to

ensure that they are adequate, consistent and appropriate. This proposal is part of the Agency's response to that recommendation.

7.2 Enforcement officers are provided with powers to ensure compliance with food hygiene regulations. These powers include Hygiene Improvement Notices, Hygiene Emergency Prohibition Notices and detention notices. In establishments that require approval to operate (generally slaughterhouses, cutting plants, and establishments processing or manufacturing products of any animal origin), the enforcement officer also has access to RANs.

7.3 RANs require prompt corrective action to be taken, but without criminalising a business, involving of a Magistrate, or indeed any court appearance. The evidence from their use in approved premises indicates that they are a proportionate and effective tool for dealing with certain breaches of the legislation, and are a proportionate remedy for cross-contamination problems.

8. Consultation

8.1 The FSA in NI previously held a full 12-week public consultation from 28 February 2011 to 23 May 2011 on the proposals for an extension on the use of RANS to all food establishments.

Responses were received to the consultation.

8.2 Local Government Group (formerly LACORS) and local authority authorised officers are strongly in support of extending the availability of RANs to all food establishments. Consumer Groups have also indicated their support.

8.3 Some sections of industry – in particular, at retail level – have concerns that RANs might be misused by enforcement officials.

8.4 Following a consideration of the consultation responses, it has been decided to include a provision to make it easier for those who are issued with a RAN which is subsequently overturned on appeal to claim compensation. This would provide businesses with a safeguard against the potential misuse of RANs and would be consistent with other existing compensation provisions.

9. Guidance

9.1 The Agency will be publishing guidelines for enforcers. The guidance will set out when a RAN might be used in preference to other enforcement options, and when it would not be appropriate to do so.

10. Equality Impact

10.1 These regulations will apply in equal measure to all Section 75 groups. It is not expected that any of these changes will impact differentially across any of the section 75 groups.

11. Impact

11.1 A full and detailed Impact Assessment (IA) which shows the effect of the Regulations was prepared by FSA colleagues in London and is believed to be representative of the position in Northern Ireland. The Agency has not identified any costs to industry from the proposal. Only those businesses that breach the existing hygiene legislation requirements and do not take voluntary corrective action will be affected. There will be a small cost on authorised officers, who will have to familiarise themselves with the new legislation. There are no

anticipated financial implications to the Department of Health, Social Services and Public Safety. The IA is attached to this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

12. Regulating small business

12.1 The rule will apply to all businesses small and large.

13. Contact

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Title: The extension of Remedial Action Notices to all food establishments	Impact Assessment (IA)
	Date: 22/12/2011
	Stage: Final
IA No: FOODSA0051	**Source of intervention: Domestic**
Lead department or agency: Food Standards Agency	**Type of measure: Secondary legislation**
Other departments or agencies:	**Contact for enquiries**: Philip Flaherty 0207 276 8549 philip.flaherty@foodstandards.gsi.gov.uk

Summary: Intervention and Options

RPC Opinion: RPC Opinion Status

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2009 prices)	**In scope of One-In, One-Out?**	**Measure qualifies as**
-£0.32m	£0m	£0m	No	zero net cost

What is the problem under consideration? Why is government intervention necessary?

Food can pose a risk to human health if it is not produced, manufactured and handled hygienically. Consumers are not usually able to observe this and it is difficult for food business operators to credibly inform consumers how far food safety risks have been minimised. In this case, government intervention is required to ensure that an enforcement tool is available in certain circumstances where breaches of food hygiene legislation occur, food businesses are not prepared to take corrective action voluntarily, and the current enforcement powers are not effective or proportionate.

What are the policy objectives and the intended effects?

To ensure that all food businesses that breach the hygiene legislation take prompt corrective action where it is necessary to protect public health and where businesses are not prepared to take such action voluntarily.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1: Do nothing. Authorised officers in establishments not subject to approval would continue to use the existing enforcement tools to address non- compliances with the hygiene legislation. There are certain circumstances where the current tools can be inappropriate or overly bureaucratic.

Option 2: Take action short of legislation – issue new guidance to food businesses and /or enforcers. This option was considered to ensure that we do not seek a legislative solution where a non-legislative solution would meet the policy objective.

Option 3: Preferred Option: Extend Remedial Action Notices (RANs) to establishments not subject to approval, which will provide consistency of enforcement provisions for all food businesses, a strengthened process to address breaches of the hygiene legislation and protect public health; and the introduction of a compensation clause to provide redress in the event of misuse.

Will the policy be reviewed? It **will** be reviewed. **If applicable, set review date: April 2015**

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro Yes**	**< 20 Yes**	**Small Yes**	**MediumYes**	**Large Yes**
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded: N/A**	**Non-traded: N/A**	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

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Signed by the responsible SELECT SIGNATORY: ..... Date: .....

Summary: Analysis & Evidence Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2011	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	0		0	**0**

Description and scale of key monetised costs by 'main affected groups'

No incremental monetised costs are associated with policy Option 1: 'do nothing', as this option will look to maintain the status quo.

Other key non-monetised costs by 'main affected groups'

As above there would not be any non-monetised costs associated with this policy option.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	0		0	**0**

Description and scale of key monetised benefits by 'main affected groups'

No incremental monetised benefits are associated with this policy, as this option will look to maintain the status quo.

Other key non-monetised benefits by 'main affected groups'

No incremental benefits (non-monetised) are associated with this policy, as this option will look to maintain the status quo.

Key assumptions/sensitivities/risks **Discount rate (%)** N/A

N/A

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	N/A	Zero net cost

Summary: Analysis & Evidence Policy Option 2

Description: Take action short of legislation – issue new guidance to food businesses and /or enforcers

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: -2.1

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	1	Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	2.1		0	**2.1**

Description and scale of key monetised costs by 'main affected groups'

Total cost of policy option: £2.1m (constant prices). Total enforcement: £0.01m in one-off familiarisation costs. Total UK industry: £2.07m in one-off familiarisation costs.

Other key non-monetised costs by 'main affected groups'

Minimal cost to enforcement authorities associated with issuing new or amended guidance

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	0		0	**0**

Description and scale of key monetised benefits by 'main affected groups'

No benefits monetised, see non-monetised benefits below.

Other key non-monetised benefits by 'main affected groups'

Could encourage FBOs to voluntarily address non-compliances with hygiene legislation

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

We estimate that each enforcement authority will spend 90 minutes familiarising themselves with the proposal, equating to a total one off familiarisation cost of £13,321 in England, Wales, Scotland and Northern Ireland. We assume no associated costs for the Agency or DARD. We estimate that each business will spend 30 minutes familiarising themselves with the guidance and disseminating to key staff, equating to a total one-off familiarisation cost of £2.1m[1] in the UK.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:				In scope of OIOO?	Measure qualifies as
Costs: 0.24	Benefits: 0	Net: 0.24		No	Zero net cost

[1] Detailed in paragraphs 63 - 67

Summary: Analysis & Evidence **Policy Option 3**

Description: Extend RANs to establishments not subject to approval and introduce a compensation clause to protect industry in the event of misuse

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	**PV Base Year** 2011	**Time Period Years** 10	**Net Benefit (Present Value (PV)) (£m)**		
			Low: -0.37	**High: -0.87**	**Best Estimate: -0.62**

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	Optional	1	0.04	**0.37**
High	Optional		0.1	**0.87**
Best Estimate	0.01		0.07	**0.62**

Description and scale of key monetised costs by 'main affected groups'

Total cost of policy option: £0.72m (constant prices). Total Enforcement: £0.71m in compensation costs to business if appeal of RAN is upheld; £0.01 in one-off familiarisation costs.

Other key non-monetised costs by 'main affected groups'

Misapplication of a RAN means food business operators could seek redress through legal channels; imposing an additional cost to LAs.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	N/A		N/A	**N/A**

Description and scale of key monetised benefits by 'main affected groups'

No benefits monetised, see non-monetised benefits below

Other key non-monetised benefits by 'main affected groups'

- Increased consumer confidence in food safety is likely to facilitate trade.
- Improved public health as legislation will minimise the potential health risk to consumers posed by food business operators with poor hygiene practices.
- Long-run improvement in compliance levels enabling enforcement authorities to free up resources and target more high risk activities.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

We estimate that each enforcement authority will spend 90 minutes familiarising themselves with the proposal, equating to a total one off familiarisation cost of £13,321 in England, Wales, Scotland and Northern Ireland. We assume no associated costs for the Agency or DARD.

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			**In scope of OIOO?**	**Measure qualifies as**
Costs: 0	**Benefits: 0**	**Net: 0**	No	zero net cost

Evidence Base (for summary sheets)

Problem under consideration

1. The existing national Food Hygiene Regulations in the four UK countries[2] restrict the use of Remedial Action Notices (RANs) to establishments subject to approval under EC Regulation 853/2004. This means that they can only be used in certain establishments producing or handling products of animal origin, such as slaughterhouses, cutting plants and fishery product plants.

2. The extension of RANs to the unapproved sector is considered necessary to close a gap in the current enforcement powers, provide for consistent enforcement for all food businesses, and strengthen consumer protection. This is because there are certain breaches of the hygiene legislation where the current enforcement powers may provide too long a time limit to rectify the non-compliance which may present a risk to public health, be overly bureaucratic which can act as a disincentive for their use, or lack sufficient flexibility to be proportionate.

3. In some situations where a Food Business Operator (FBO) will not take voluntary action to rectify anon-compliance, a RAN provides a more effective, timely and proportionate enforcement tool for achieving compliance than the alternative enforcement tools that exist.

4. The extension of RANs to all food establishments would provide increased public health protection, and would be an important enforcement tool for tackling non-compliances that might lead to outbreaks of foodborne illness. RANs would provide an important additional enforcement tool for protecting public health at high profile national events such as the 2012 Olympic and Paralympic Games.

5. This Impact Assessment considers extending the availability of RANs for use in establishments not subject to approval. This IA has been prepared by FSA colleagues in England but it is believed to be equally representative of the situation in Northern Ireland.[3]

Objective

6. To ensure consistent enforcement powers such that all food businesses that breach the hygiene legislation can be required to take prompt and proportionate corrective action in order to protect public health where they are not prepared to do so voluntarily.

Rationale for intervention

7. Food can pose a risk to human health if it is not produced, manufactured and handled hygienically. This means that there is a benefit from government intervention both to require hygiene standards of food business operators and to enforce them.

8. The general requirements of food hygiene and safety law are set out in European legislation[4]. Member States are required to have national legislation that provides enforcement powers so that

[2] England: http://www.legislation.gov.uk/uksi/2006/14/contents/made
Scotland: http://www.legislation.gov.uk/ssi/2006/3/contents/made
Wales: http://www.legislation.gov.uk/wsi/2006/31/contents/made
Northern Ireland: http://www.legislation.gov.uk/nisr/2006/3/contents/made

[3] Subject to legislative procedures, RANs will be extended to all food business establishments on the following dates:
- Scotland 1st April 2012
- Northern Ireland 6th April 2012
- Wales 1st May 2012

non-compliances with the EU requirements can be addressed when these are identified during official controls. The respective national Food Hygiene Regulations 2006 in England, Scotland, Northern Ireland and Wales provide authorised officers in each country with such enforcement powers. The key powers are detailed at Annex 2.

9. The enforcement of food law is structured around a hierarchy of enforcement actions. Most non-compliances are rectified by the FBO voluntarily following the recommendations of an authorised officer. In the majority of cases this is the most effective way of achieving compliance, and the FSA's statutory Food Law Code of Practice stresses that, except where circumstances indicate a significant risk, officers should operate a graduated and educative approach (the hierarchy of enforcement), starting with advice/education and informal action and only move to more formal action where the informal action does not achieve compliance[5].

10. In those circumstances where the FBO will not voluntarily take corrective action, authorised officers may need to use enforcement tools to secure compliance. The two key powers currently available to authorised officers are Hygiene Emergency Prohibition Notices (HEPN) and Hygiene Improvement Notices (HIN). On occasion, authorised officers find breaches of the hygiene legislation where the current powers are not proportionate or effective, and this can act as a disincentive for their use.

11. Hygiene Emergency Prohibition Notices can be used to place an appropriate prohibition on a food business operating.. Having served a Notice, the authorised officer is required to demonstrate an "imminent risk of injury" to a Magistrate (a Sheriff in Scotland) before the Court will confirm their decision. Involving the Courts in dealing with non-compliances can be disproportionate, which acts as a disincentive against their use. Also, there are circumstances where HEPNs lack sufficient flexibility to deal with certain breaches (see paragraph 21), and where "imminent risk of injury" cannot always be readily demonstrated to the Court, although there is still a potential risk to public health. Addressing these types of non-compliances through use of the HEPN can therefore be ineffective and disproportionate.

12. The alternative for the authorised officer is the service of a Hygiene Improvement Notice. However, this permits a minimum period of 14 days for the FBO to take corrective action and therefore lacks immediate effect. It is effective in dealing with non-compliances that are low-risk and where a longer time-period can be permitted. However, where action needs to be taken immediately to protect public health this tool is ineffective.

13. There are therefore non-compliances where action needs to be taken immediately, but involving the Courts in resolving the issue is disproportionate for all parties. The current powers are not sufficient to protect public health in all circumstances. RANs fill the gap in the existing enforcement tools, but they are currently only available for use in establishments subject to approval. Examples of where RANs would be a more appropriate enforcement tool are provided below in paragraphs 16 – 23.

14. Following the extension of RANs, HEPNs will remain the key enforcement tool for dealing with significant contraventions where the involvement of a Court and access to high levels of sanctions are important. HINs will remain the main tool for dealing with low-risk breaches of the hygiene requirements that can be permitted to persist for 14 days before being rectified. RANs will not replace either of these sanctions but will fill the gap between them. Voluntary corrective action from the FBO will continue to be the main method of securing compliance.

15. Domestic legislation restricts the use of RANs to establishments that are approved under EU legislation. This means that their use is restricted to establishments that handle or process products

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[4] Regulation 852/2004: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:226:0003:0021:EN:PDF
Regulation 853/2004: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:139:0055:0205:EN:PDF

[5] Food Law Code of Practice (NI): http://www.food.gov.uk/multimedia/pdfs/codeofpracticeni.pdf
Food Law Practice Guidance (NI): http://www.food.gov.uk/multimedia/pdfs/practiceguidanceni.pdf

of animal origin, such as slaughterhouses, cutting plants, and fishery product manufacturers. Businesses that do not require approval, where RANs cannot currently be issued, include retailers, restaurants and caterers, and manufacturers of food not using products of animal origin (e.g. drink manufacturers). More details of the businesses affected are provided in paragraphs 56 to 58.

Examples

16. Examples of where a RAN might be a more appropriate enforcement tool for instances of unhygienic practices or risk of cross contamination include:

    - A lack of proper cook or chill temperature control which allows the growth of pathogenic organisms with a risk for consumers;
    - Cleaning issues which pose a risk of cross contamination of food for human consumption and require immediate attention;
    - A lack of hot water supply which prevents hygienic production and poses a risk of cross contamination; and
    - Pest infestation and drainage defect issues which create an unhygienic environment where food is produced with a risk of cross contamination.

17. These types of non-compliances would normally be corrected voluntarily by FBOs. However, voluntary action cannot be relied upon and where it is not forthcoming the enforcement powers currently available can be ineffective and/or disproportionate. The involvement of a court as required by a HEPN is not proportionate for controlling these types of non-compliance and the amount of time allowed by a HIN for an FBO to take remedial action makes them insufficiently effective. A RAN could be used to target the non-compliances without imposing a prohibition on the whole business.

18. A recent example reported to the FSA of where a RAN would have proved a more effective means of securing compliance and protecting public health was of an establishment found with accumulations of grease, dust and food debris on the floors, walls, and ceiling. Advice and guidance was given to the FBO about what should be done to resolve the problem, and a voluntary compliance period of 24 hours was agreed. The inspector visited the premises on three occasions in the same week and observed very little progress towards achieving compliance. It eventually took five days to bring the kitchen up to an acceptable standard, during which time the FBO was able to continue to sell food to the public. This process failed to deliver timely corrective action to protect public health at the establishment, and wasted valuable time of the enforcement authority and therefore represents a lost opportunity to the authority to resolve other problems in other establishments.

19. If RANs had been available, they could have been used to require the kitchen to be cleaned to an acceptable standard immediately.

20. RANs can place prohibitions on certain machinery or parts of an establishment without prohibiting the use of the whole establishment. For example, an authorised officer could issue a RAN to prohibit the use of a particular machine used for slicing cooked meats at a delicatessen counter until it is cleaned to an acceptable standard to protect public health, but without shutting the counter or store.

21. RANs are more flexible and more proportionate than HEPNs. Where a specific piece of machinery or process breaches the hygiene requirements, a HEPN could be used to prohibit the use of the machinery or the process if there was an imminent risk to health, but a RAN could be used to impose conditions on its use. This means that the machinery is not necessarily taken completely out of service, or the business closed. For example, if a business had a piece of complex machinery that was being used for both raw and ready-to-eat foods, a RAN could be issued to require that the

machinery is only used for raw foods from that point on. The alternative would be to prohibit its use with a HEPN.

22. RANs will prevent businesses benefiting commercially from non-compliance with food hygiene requirements to the detriment of their competitors who are compliant with the law. The purpose of the RAN is solely to ensure that proportionate corrective action takes place and that public health is adequately protected.

23. In all cases, the RAN can be appealed in the courts.

Protection of Public Health and the Food Hygiene Delivery Programme

24. Data from the Health Protection Agency's (HPA) electronic Foodborne and non-Foodborne Gastrointestinal Outbreak Surveillance System (eFOSS)[6], the Health Protection Scotland (HPS) ObSurv Surveillance System and the Public Health Agency in Northern Ireland show there were 97 foodborne outbreaks, affecting 3,440 people, reported in the UK in 2009 with a related economic cost of £1.76 billion[7]. This proposal will support a reduction in the level of foodborne disease and related serious illness and deaths.

25. There were very serious food borne *E.coli* outbreaks in Scotland during 1996 and Wales during 2005, both of which resulted in the deaths of some affected individuals and in serious long-term health problems for others. In March 2009, Professor Hugh Pennington completed his Public Inquiry into the September 2005 outbreak of *E.coli* O157 in South Wales[8], which built on his previous report following the Scotland outbreak. In response to the Inquiry's recommendations, the FSA set up the Food Hygiene Delivery Programme (FHDP) to prioritise, direct and measure progress in an ambitious and comprehensive programme of work to improve food hygiene delivery and enforcement across the UK, covering all foodborne pathogens and all food groups.

26. Through the FHDP, the FSA has committed to reviewing the adequacy of the existing legislation as it relates to the effectiveness of official controls delivery in protecting public health, set within the context of its wider strategy for compliance and enforcement. The FSA has also developed guidance on control of cross-contamination risks of *E.coli* O157 under FHDP. Both the Scotland and Wales outbreaks were attributed to cross-contamination from poorly managed food handling practices, and RANs will be an important tool to address such issues in the future.

27. RANs will provide an important tool for enforcement officers in many situations. For example, the extension of RANs to the unapproved sector will be an important tool for those authorities involved in protecting public health at major national events such as the Olympic and Paralympic Games in 2012, where many temporary operations are expected to begin trading food to capitalise on the influx of tourists.

28. Ensuring food safety at the Games is a key objective for Government, and it is essential for the UK's reputation that the risks from these new food operations are properly controlled, and that authorised officers have access to proportionate, rapid and effective tools to deal with any non-compliances with food hygiene legislation.

29. The current enforcement tools may not be effective in these circumstances. A HIN would permit two weeks for a non-compliance to be remedied, and each HEPN issued would require consideration in a court. HEPNs also lack the flexibility of a RAN that would allow the authorised officer to impose

[6] Health Protection Agency: eFOSS – electronic Foodborne and non-Foodborne Gastrointestinal Outbreak Surveillance System www.hpa.org.uk/Topics/InfectiousDiseases/InfectionsAZ/FoodborneOutbreakSurveillanceAndRiskAssessment/
[7] http://www.food.gov.uk/multimedia/pdfs/publication/csr1011.pdf
[8] http://wales.gov.uk/ecolidocs/3008707/reporten.pdf?lang=en

conditions on activities to ensure safety without necessarily prohibiting them outright. RANs would be an effective and proportionate enforcement tool in these circumstances.

Consistency with European Union Regulatory Requirements

30. Article 54 of EC Regulation 882/2004 requires that competent authorities must have powers to address non-compliances in a food business, including "the suspension of operation or closure of all or part of the business concerned for an appropriate period of time". The current enforcement tools are not always effective at achieving this requirement, as set out in paragraphs 7 - 23 above.

31. The extension of RANs to the unapproved sector is therefore consistent with the EU official control regulations and does not "gold-plate" requirements. RANs do not impose any additional requirements on compliant business.

One-in One-out (OIOO) and Micro-business moratorium

32. RANs will be available for use on all businesses regardless of size. There is no evidence that micro food businesses pose less of a safety risk than other businesses.

33. The Better Regulation Executive considered the RANs extension and confirmed that RANs are outside of the scope of Government's One-in One-out policy and therefore also outside the scope of the micro-business and start-up moratorium. This is because RANs are a specific enforcement action, and a form of regulatory penalty to deal with food businesses that are non-compliant with regulatory requirements. RANs do not impose any additional requirements on food businesses.

Background

34. When the EU hygiene Regulations entered into effect on 1 January 2006, domestic hygiene regulations (see footnote 2) were introduced to execute and enforce them. This included the creation of offences in the UK countries and provided authorised officers with enforcement powers for use in non-compliant establishments. These domestic regulations maintained a range of enforcement powers which had previously been contained in the Food Safety Act 1990[9] and had applied to all food businesses.

35. In the case of approved meat plants subject to veterinary supervision an additional enforcement tool, a "stop notice" (commonly known as a "regulation 10 notice") was also in use before 2006. In carrying this forward into the new domestic legislation, the "stop notice" became known as the RAN. As the EU legislation applied horizontally across all food business sectors, rather than vertically by commodity, the RAN could not continue being limited to meat establishments only - it could apply to:

    - all establishments subject to approval (including fish and dairy establishments in addition to meat, for example); or
    - all food establishments regardless of whether or not they were subject to approval (a wider scope including the retail and catering sectors).

36. In the 2005 public consultation for the domestic hygiene Regulations the FSA proposed that RANs should be introduced to all food establishments on the basis that they would provide a proportionate

[9] Food Safety (NI) Order 1991 in Northern Ireland

and effective tool for authorised officers to control certain non-compliances without the need to escalate issues to a Magistrates' Court, unless the FBO chose to appeal.[10] The former LACORS (much of whose work is now being carried out by the Regulatory Support Unit of the Local Government Group) and local authority authorised officers were strongly in support of this proposal. The timescale for consultation, receipt and analysis of comments from consultees before the introduction of the domestic Regulations was very compressed for reasons outside of the FSA's control, and during the consultation the FSA received very strong representation from the retail sector opposing the introduction of RANs to their trade sector. In view of the strength of opposition and the very tight timeframe for discussion, the FSA limited the use of RANs to establishments subject to approval with a commitment to review the position based on data from at least one year's use of RANs in approved establishments by the then Meat Hygiene Service (MHS) and LAs**.**

Lessons learned from the operation of RANs in approved establishments since 2006

37. The FSA now has the benefit of a history of service of RANs in establishments subject to approval by the former MHS, the Department of Agriculture and Rural Development (DARD) in Northern Ireland and local authorities across the UK.[11] Two specific data collection exercises have been carried out – a UK-wide survey of RANs used in 2008/09, and a similar exercise carried out by the FSA in 2006/07.

38. The 2006/07 data shows that 300 RANs were issued by the MHS/DARD, and 24 by LAs, across the twelve month period. The 2008/09 exercise shows a sharp decline in use, particularly by the MHS/DARD, indicating that 36 RANs were issued by the MHS/DARD and 17 by LAs. The decline in use was partly due to the MHS escalating enforcement action against establishments in 2008/09, as appropriate under the hierarchy of enforcement action, instead of issuing multiple RANs as was the practice in 2006/7. The figures are presented in table 1 below.

39. **Table 1 – RANs issued by enforcement authorities in approved establishments**

	2009 Survey	2006 Survey
LA RANs	17	24
MHS RANs	34	300
DARD RANs	2	0
Total	53	324

40. The key findings and indications from the data are;

- The use of RANs has not been excessive, and has declined, indicating careful consideration of use;
- Most MHS/DARD RANs issued in slaughterhouses were resolved quickly, frequently on the same day (probably because the RAN in this type of establishment may be used to slow the production line and thereby provide a clear incentive to FBOs to act quickly, and because there is a daily presence of authorised officers in these premises);
- RANs served by LAs were in force for comparably longer – very few were issued and resolved on the same day; and
- No RANs were appealed.

[10] http://www.food.gov.uk/consultations/consulteng/2005/hygconssep05eng
[11] The MHS merged with the Food Standards Agency in April 2010.

41. RANs have been used in a variety of situations where HEPNs or HINs would not have been proportionate or effective. For example, they had been used to slow production lines in order to guarantee that food was being produced safely, to target specific pieces of machinery that required cleaning (such as dripping refrigeration units posing a potential cross contamination risk), lack of hot water, and indications of pest problems.

42. Lessons learned from the use of RANs in approved establishments have assisted in the development of guidance to authorised officers. The key principles of the guidance were consulted on in 2011 and were considered by the FSA Board in September 2011. The guidance included recognition that most FBOs comply quickly with the requirements of RANs, and that authorised officers should be prepared to accommodate early requests from FBOs for RANs to be lifted when remedial action has been taken. It also stressed that RANs should be served in situations where the food business operator can achieve compliance in a short time frame. The key principles will be included in the Food Law Code of Practice and Practice Guidance for enforcers using RANs.

43. Local Government Regulation (formerly LACORS) and local authority authorised officers remain strongly in support of extending the RANs provision to establishments not subject to approval.

Options

44. The following three options have been considered:

Option 1:	No change – do nothing
Option 2:	Take action short of legislation – issue new guidance to food businesses and /or enforcers
Option 3:	**Preferred Option:** Extend RANs to establishments not subject to approval, which will provide consistent enforcement powers across all food businesses, a strengthened process to address breaches of the hygiene legislation; and introduce a compensation clause to protect industry from potential misuse

Option 1: Do Nothing

45. Option 1 would mean that authorised officers continue to use existing enforcement tools to require compliance with the hygiene legislation. As set out in paragraphs 7 - 15 above, there are certain circumstances where the current tools can be ineffective or disproportionate.

Option 2: Take action short of legislation – issue new guidance to food businesses and/or enforcers

46. Option 2 considers taking action short of legislation to meet the policy objective. For the purposes of this consultation, we have considered providing new or revised guidance to:

    - all food businesses on the need to rectify non-compliances such as cleaning deficiencies at the request of an authorised officer; and

    - authorised officers on methods of encouraging food businesses to rectify breaches of the hygiene legislation where corrective action is required immediately and the existing enforcement powers are ineffective or disproportionate.

47. The FSA has issued much advice and guidance for businesses on the EU hygiene legislation requirements, such as Safer Food, Better Business (Cooksafe in Scotland and Safe Catering in

Northern Ireland). Safer Food Better Business focuses on practical application of the hygiene regulations and is designed to meet the specific needs of different food businesses. There are packs for small catering businesses, small retail businesses, and restaurants and takeaways that serve different cuisines, such as Chinese or Indian, Pakistani, Bangladeshi and Sri Lankan cuisines. Other FSA guidance includes setting up a food business and what to do when an inspector visits[12].

48. This guidance is extensive, and seeks to influence or change behaviour and make non-compliances less likely with resultant benefits for public safety. But despite the issuing of such extensive guidance, there are still frequent breaches of hygiene legislation and guidance in itself has proved insufficient to stop many non-compliances. Even were new guidance issued, non-compliances would still arise, and there would still be occasions where the food business operator would not take voluntary action to correct the non-compliance. In those cases it is important that the authorised officer has proportionate and appropriate powers to require that action is taken. Therefore, we do not believe that Option 2 is sufficient.

49. The guidance considered under Option 2 would not just be targeted at businesses breaching the hygiene regulations and would need to be considered by all FBOs. This means that the costs for this option are greater than the regulatory option, which would be targeted at businesses breaching the hygiene legislation.

Meeting the policy objective

50. Option 2 would not meet the policy objective set out in paragraph 6. Current guidance is extensive, and revision is unlikely to impact positively on the voluntary correction of non-compliances. We have not been able to identify any other non-legislative options that would meet the policy objective. No alternative options were suggested by stakeholders that would meet the policy objective during the FSA consultation in 2011.

51. Even though Option 2 does not meet the policy objective, we have included it in the Impact Assessment so that it is clear that alternative non-legislative options have been considered in the development of the policy. The legislative option is preferred only because no non-legislative options were identified that would meet the policy objective.

Option 3 (Preferred option): Extend RANs to establishments not subject to approval, which will provide consistent enforcement powers across all food businesses, a strengthened process to address breaches of the hygiene legislation, and introduce a compensation clause to protect industry from potential misuse

52. Option 3 is to extend the use of RANs to all food business establishments, which will provide a strengthened process to address breaches of the hygiene legislation. This option requires an amendment to the Food Hygiene Regulations 2006 in England, Scotland, Northern Ireland, and Wales, and also an amendment to the statutory Code of Practice for enforcers.

53. The FSA would also amend the Food Law Practice Guidance to clearly set out how authorised officers might use RANs in establishments not subject to approval to ensure such use is appropriate and proportionate. RANs would not be introduced to replace any existing power – for example, HEPNs would remain as the required tool to deal with any breach of the hygiene legislation where there is an “imminent risk of injury” and HINs would continue to be used where it is appropriate to allow at least 14 days for the non-compliance to be rectified.

12 List of FSA guidance on the website: http://www.food.gov.uk/foodindustry/guidancenotes/
Safer Food Better Business: http://www.food.gov.uk/foodindustry/regulation/hygleg/hyglegresources/sfbb/
Safe Catering: http://www.food.gov.uk/northernireland/safetyhygieneni/safecateringni/

54. The FSA consulted on the extension to RANs in 2011, and the FSA Board considered the consultation responses at its open meeting on 7th September 2011. At the meeting, the Board agreed that RANs should include a compensation clause to protect industry from potential misuse (see paragraphs 88 – 103 and 123 – 125). In taking this decision, the Board noted that the available evidence suggested that RANs were currently being used appropriately where they were available, and that the addition of a compensation clause should not provide a burden on local authorities or the FSA.

Meeting the policy objective

55. Option 3 is the only option that meets the policy objective set out in paragraph 6 as it provides for a consistent power to require food businesses to take prompt and proportionate corrective action to protect public health where they are not prepared to do so voluntarily.

Sectors and groups affected

Industry

56. The majority of the businesses listed below in Table 2 would not require approval, and therefore authorised officers could not currently use a RAN in them to secure compliance with hygiene requirements. Table 2 uses Standard Industrial Classification (SIC) codes taken from the Office for National Statistics (ONS) Inter Departmental Business Register (IDBR).

57. However, it has not been possible to entirely separate out approved and non-approved establishments on the list of SIC codes. SIC codes related to manufacture of products of animal origin will include both:

- approved establishments (those handling raw or unprocessed product of animal origin) where RANs are available; and
- non-approved establishments (those only handling processed products of animal origin) where RANs are not currently available.

58. Retail establishments are exempt from approval except in limited circumstances.

Table 2 - Type of Businesses Affected by Option 3

SIC Code	Type of Businesses Affected
10.11	Processing and preserving of meat
10.12	Processing and preserving of poultry meat
10.13	Production of meat and poultry meat products
10.20	Processing and preserving of fish, crustaceans and molluscs
10.31	Processing and preserving of potatoes
10.32	Manufacture of fruit and vegetable juice
10.39	Other processing and preserving of fruit and vegetables
10.41	Manufacture of oils and fats
10.42	Manufacture of margarine and similar edible fats
10.51	Operation of dairies and cheese making
10.52	Manufacture of ice cream
10.61	Manufacture of grain mill products
10.62	Manufacture of starches and starch products
10.71	Manufacture of bread; manufacture of fresh pastry goods and cakes
10.72	Manufacture of rusks and biscuits; manufacture of preserved pastry goods and cakes
10.73	Manufacture of macaroni, noodles, couscous and similar farinaceous products
10.81	Manufacture of sugar
10.82	Manufacture of cocoa, chocolate and sugar confectionery

10.83	Processing of tea and coffee
10.84	Manufacture of condiments and seasonings
10.85	Manufacture of prepared meals and dishes
10.86	Manufacture of homogenised food preparations and dietetic food
10.89	Manufacture of other food products n.e.c.
11.00	Manufacture of beverages
46.31	Wholesale of fruit and vegetables
46.32	Wholesale of meat and meat products
46.33	Wholesale of dairy products, eggs and edible oils and fats
46.34	Wholesale of beverages
46.36	Wholesale of sugar and chocolate and sugar confectionery
46.37	Wholesale of coffee, tea, cocoa and spices
46.38	Wholesale of other food, including fish, crustaceans and molluscs
46.39	Non-specialised wholesale of food, beverages and tobacco
47.21	Retail sale of fruit and vegetables in specialised stores
47.22	Retail sale of meat and meat products in specialised stores
47.23	Retail sale of fish, crustaceans and molluscs in specialised stores
47.24	Retail sale of bread, cakes, flour confectionery and sugar confectionery in specialised stores
47.25	Retail sale of beverages in specialised stores
47.26	Retail sale of tobacco products in specialised stores
47.29	Other retail sale of food in specialised stores
56.10	Restaurants and mobile food service activities
56.21	Event catering activities
56.29	Other food service activities
56.30	Beverage serving activities

Source: The Inter Departmental Business Register (IDBR) - accessible via the Office for National Statistics (ONS), http://www.statistics.gov.uk/idbr/idbr.asp

Table 3 below displays the number of businesses affected in the UK broken down by location and size of firm.

Table 3 – Number of Businesses Affected, by Country and Business Size (IDBR 2011)[13]

	Micro	Small	Medium	Large	Total
England	111,096	19,060	1,991	488	132,635
Wales	6,676	1,145	120	29	7,970
Scotland	11,077	1,900	198	49	13,225
NI	4,247	729	76	19	5,070
UK	**133,096**	**22,834**	**2,385**	**585**	**158,900**

Source: IDBR (ONS) 2011

Notes:
1. Totals may not sum due to rounding
2. Figures are the sum of premises listed under SIC codes as per table 2.
3. Firm size is based on the number of employees within an organisation. Micro 0 - 9 employees, Small 10 – 49 employees, Medium 50 – 249 employees and Large 250+ employees

Consumers

59. The measure proposed will allow authorised officers to tackle non-compliances with the hygiene regulations in a proportionate and effective manner. This will contribute towards increased food establishment compliance with the hygiene regulations, which will contribute to greater public health protection.

[13] Figures retrieved from Inter Departmental Business Register (IDBR 2011) from the Office of National Statistics (ONS): http://www.statistics.gov.uk/idbr/idbr.asp. The (IDBR) is a list of UK businesses which combines the former Central Statistical Office (CSO) VAT based business register and the former Employment Department (ED) employment statistics system. The IDBR covers businesses in all parts of the economy representing nearly 99 per cent of UK economic activity. However, some micro businesses and non-profit organisations have been omitted i.e. organisations operating without VAT or PAYE schemes; self employed and those with low turnover and without employees.

60. Data from UK Health Protection Agencies show that in 2009 there were 97 reported foodborne outbreaks, affecting 3,440 people, with a related economic cost of £1.76 billion in lost earnings and permanent disability to the UK economy. Option 3 could deliver public health benefits as it is likely to reduce health risks to consumers posed by food business operators with poor hygiene practices. However, these benefits are very difficult to quantify due to lack of robust data on the effects of improved hygiene practices.

Enforcement authorities

61. Access to RANs will enable local authorities to take proportionate and effective action in the circumstances set out in paragraphs 7 – 15 above. RANs are already available for use in approved establishments, where Local Authorities, DARD, and the FSA undertake official controls.

Costs and benefits

Costs

Option 1: Do nothing

62. There are no incremental costs. This option is the baseline for comparison.

Option 2: Take action short of legislation – issue new guidance to food businesses and / or enforcers

Costs to industry

Familiarisation costs

63. Under Option 2, the FSA would issue new guidance or revise and improve existing guidance to encourage businesses voluntarily to address non-compliances with the hygiene legislation.

64. The FSA has already published freely available guidance in this area. The FSA would not be introducing any new requirements in the guidance – it would only be looking to further stress the need for FBOs to rectify non-compliances such as cleaning deficiencies at the request of an authorised officer. There is plenty of existing guidance in this area, so the impact of the guidance on compliance is expected to be negligable.

65. The guidance would not be targeted at food businesses breaching the hygiene regulations, and therefore there would be a familiarisation cost for all food businesses. As there would be no new requirements for industry to follow, there would be no adaptation costs.

66. On this basis we envisage a small one-off cost to industry for reading and familiarising themselves with the new guidance. It is estimated that it will take 15 minutes per business to read and familiarise themselves with the new arrangements and a further 15 minutes disseminating to key staff[14]. This means a total of 30 minutes for familiarising. There are currently 158,900 food businesses operating in the UK directly affected by the proposal. Table 3 above displays the number of businesses affected in the UK broken down by country.

67. We assume that one official per business will be required to familiarise himself/herself with the new guidance. We further assume that the official will be a Business Manager. To quantify the one-off familiarisation cost to industry we calculate the familiarisation cost per business by multiplying the

[14] While we recognise that dissemination of information will result in an opportunity cost in terms of time of key staff members we anticipate that this will be minimal and the additional hour will cover these costs.

hourly wage rate of a 'business manager' of £26.10[15] by the 30 minutes taken to understand and disseminate the new guidance, resulting in a familiarisation cost per business of £13.05[16]. To quantify the overall one-off familiarisation cost to industry we multiply the familiarisation cost per firm by the number of businesses affected by the regulation. This results in a one off familiarisation cost in the UK to businesses of £2,073,963. Table 3 displays the familiarisation cost to industry broken down by location.

Table 3 – Option 2 - Familiarisation Costs to Industry by Country and Business Size

	Micro	Small	Medium	Large	Total
England	£1,450,026	£248,770	£25,983	£6,373	£1,731,152
Wales	£87,132	£14,949	£1,561	£383	£104,024
Scotland	£144,582	£24,805	£2,591	£635	£172,613
NI	£55,428	£9,509	£993	£244	£66,174
UK	**£1,737,167**	**£298,033**	**£31,128**	**£7,635**	**£2,073,963**

Note: Totals may not sum due to rounding

Equivalent Annual Costs (EAC)

68. In order for 'one-off' familiarisation costs to be compared on an equivalent basis across policies spanning different time periods, it is necessary to 'equivalently annualise' costs using a standard formula[17]. Under Standard HMT Green book guidance a discount rate of 3.5% is used.

69. A total one-off cost to industry affected by this proposal is an estimated £2,073,963. This yields an EAC for of approximately £**240,943** in the UK over 10 years, which per country equates to £**201,117** in England, £**12,085** in Wales, £**20,053** in Scotland and £**7,688** in Northern Ireland. Table 4 displays the breakdown of the EAC per country.

Table 4 – Option 2 - Equivalent Annual Costs (EAC) to Industry by Country

Country	England	Wales	Scotland	NI	UK
Total Familiarisation cost	£1,731,152	£104,024	£172,613	£66,174	£2,073,963
EAC	**£201,117**	**£12,085**	**£20,053**	**£7,688**	**£240,943**

Note: Totals may not sum due to rounding

Costs to enforcement authorities

Familiarisation costs

70. Under Option 2, the FSA would issue new guidance or revise and improve existing guidance to advise authorised officers on methods of encouraging food businesses to rectify breaches of the hygiene legislation where corrective action is required immediately and, in their judgment, the existing enforcement powers are ineffective or disproportionate.

[15] Wage rate obtained from The Annual Survey of Household Earnings (2011) (http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=15313). Median hourly wage of a production manager (£20.08 which has been up-rated by 30% to cover overheads: £20.08 * 1.3 = £26.10

[16] 26.10*0.5=13.05

[17]

EACB = PVCB/a_{tr}, Where a_{tr} is the annuity rate given by:

$$a_{t,r} = \sum_{j=0}^{t-1} \prod_{i=0}^{j} \left(\frac{1}{1+r_i} \right)$$

PVCB is the present value of costs, r is the social discount rate and t is the time period over which the policy is being appraised.

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71. The FSA's guidance on enforcement powers stresses the importance of trying to gain voluntary corrective action from the FBO through informal advice and only advancing action through the hierarchy of enforcement powers when necessary. The Food Law Code of Practice Guidance and Practice Guidance (see footnote 5) in particular set out how the current enforcement tools should be used. We have considered amendments to these two documents. However, we have not identified any amendments that would enable proportionate and effective action to be taken for the kind of issues set out in Paragraph 7 - 15 above, and stakeholders have not identified viable options through consultation that would meet the policy objective.

72. An amendment to either the Food Law Code of Practice or Practice Guidance would create a familiarisation cost that will only apply to authorised officers (EHOs). It is expected that one Environmental Health Officer (EHO) from each LA will be required to read the new or amended guidance; and disseminate the information to staff. We estimate that an officer already familiar with existing guidance on the hierarchy of enforcement will invest approximately 30 minutes reading and familiarising themselves with the guidance, and a further one hour disseminating to other authorised officers in the organisation[18]. This means a total of 90 minutes for familiarisation.

73. The familiarisation cost per enforcement authority is calculated by multiplying the familiarisation time, 90 minutes, by the average hourly wage rate applied to an Environmental Health Officer of £20.70[19], generating a familiarisation cost per enforcement authority of £31.04[20]. To quantify the overall familiarisation cost to enforcement authorities we multiply the familiarisation cost per LA by the number of LAs in the UK.

74. There are 434 authorities in the UK (including PHAs) with responsibility for the enforcement of food hygiene legislation who will need to familiarise themselves with this guidance. This includes 354 LAs in England; 32 LAs in Scotland; 22 LAs in Wales; and 26 LAs in Northern Ireland (see table 5).

Table 5 Local Authorities (LAs) by Country

Country	England	Wales	Scotland	NI	UK
Local Authorities	354	22	32	26	434

75. The total one-off familiarisation cost for enforcement authorities in the UK totals £13,321. By country this equates to £10,865[21] in England, £675 in Wales[22], £982 in Scotland [23]and £798 in Northern Ireland[24]. Table 6 displays the number of LAs and PHAs per country with familiarisation cost.

Table 6 Option 2 - Familiarisation cost to Local Authorities (including Port Health Authorities) in the UK.

Country	England	Wales	Scotland	NI	UK
Local Authorities	£10,865	£675	£982	£798	£13,321

Notes: Costs are estimated by multiplying wage rates uplifted by 30% to account for overheads. This means that the wage rates reported in the text are approximate to 2 decimal places and when grossed may result in a rounding error.

[18] While we recognise that dissemination of information will result in an opportunity cost in terms of time of key staff members we anticipate that this will be minimal and the additional hour will cover these costs.
[19] Wage rage obtained from the Annual Survey of Household Earnings (2011) (http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=15313). Median hourly wage of a 'Environmental health officer' is used, £15.92, plus 30% overheads totalling £20.70.
[20] 1.5 hours * £20.70 = £31.04
[21] 354 England - (Local Authorities) * £31.04 (EHO median hourly wage rate) = £10,865
[22] 22 (Wales - Local Authorities) * £31.04 (EHO median hourly wage rate) = £675
[23] 32 (Scotland - Local Authorities) * £31.04 (EHO median hourly wage rate) = £982
[24] 26 (Northern Ireland - Local Authorities) * £31.04 (EHO median hourly wage rate) = £798

Equivalent Annual Costs (EAC)

76. As for industry, the 'one-off' transition costs to enforcement authorities must also be expressed as an equivalent annual cost (EAC)[25]. A total one-off cost to enforcement authorities affected in the UK by this proposal is an estimated £13,321. This yields a total EAC of approximately £1,548 over 10 years, which per country equates to £1,262 in England, £78 in Wales, £114 in Scotland and £93 in Northern Ireland. Table 7 displays the breakdown of the EAC per country.

Table 7 – Equivalent Annual Cost (EAC) for Enforcement Authorities by Country

Country	England	Wales	Scotland	NI	UK
EAC	£1,262	£78	£114	£93	£1,548

Note: Totals may not sum due to rounding

Total costs: Option 2

The total one-off cost associated with policy Option 2 is estimated at £2,087,284. This is presented in table 8 below.

Table 8 –Total cost of policy Option 2

Policy Cost	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total Cost	Average Annual Cost	Present Value
One-off Cost													
Familiarisation cost to Authorities*	£13,321	£0	£0	£0	£0	£0	£0	£0	£0	£0	£13,321	£1,548	£13,321
Industry*	£2,073,963	£0	£0	£0	£0	£0	£0	£0	£0	£0	£2,073,963	£240,943	
Total One-off Cost	£2,087,284	£0	£0	£0	£0	£0	£0	£0	£0	£0	£2,087,284	£242,491	£13,321

* Average annual cost of familiarisation to Authorities is based on Equivalent Annual Cost (EAC)

25

EACB = PVCB/a_{tr}, Where a_{tr} is the annuity rate given by:

$$a_{t,r} = \sum_{j=0}^{t-1} \prod_{i=0}^{j} \left(\frac{1}{1+r_i} \right)$$

PVCB is the present value of costs, r is the social discount rate and t is the time period over which the policy is being appraised.

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Option 3 (Preferred option): Extend Remedial Action Notices (RANs) to establishments not subject to approval, which will provide a strengthened process to address breaches of the hygiene legislation, and introduce a compensation clause to protect industry from potential misuse

Costs to industry

77. This proposal places no new burdens on compliant businesses. Like existing enforcement tools, RANs are targeted at FBOs that will not voluntarily comply with the existing hygiene requirements. There are no new requirements for businesses to familiarise themselves with, as the legislative requirements and associated offences remain unchanged.

78. Information on the sanctions available to authorised officers, including RANs, is generally available on the FSA's website. The information would be updated after the extension of RANs, but it would not be expected that food businesses familarise themselves with it in the way that they would be required to familiarise themselves with new legal requirements. The FSA recognises that some compliant businesses (especially larger businesses) may choose in any case to familiarise themselves with RANs. This cost has not been possible to quantify, but it is expected to be negligable.

79. Only businesses that breach the existing hygiene legislation requirements and do not take voluntary corrective action will need to familiarise themselves with RANs. Businesses need to be aware that authorised officers have powers to ensure that they are compliant with legal requirements, but there is no need to be familiar with the detail of the powers unless they breach the legislation and will not take voluntary corrective action. RANs are therefore targeted at businesses not complying with the EU hygiene requirements, unlike the guidance envisaged in Option 2.

80. Such costs could be justified since any FBO that is non-compliant should be taking action to rectify the non-compliance.

Costs to enforcement authorities

Familiarisation costs

81. There will be a small one-off cost to enforcement authorities for reading and familiarising themselves with RANs, but this will only apply to officers working in local authorities (LAs) who deal only with establishments not subject to approval – i.e., those officers not already familiar with RANs from their use in approved establishments. As RANs are already available for use in approved establishments, there are no associated costs for the FSA or DARD.

82. It is expected that one Environmental Health Officer (EHO) per LA will be required to read the Regulations and disseminate the information to staff. The amendment to the text of the Regulations is not extensive and we estimate that an officer already familiar with the service of RANs will invest 30 minutes reading and familiarising themselves with the Regulations and revisions to the Food Law Code of Practice and Practice Guidance, and a further one hour disseminating to other authorised officers in the organisation[26]. This means a total of 90 minutes for familiarisation per LA.

[26] While we recognise that dissemination of information will result in an opportunity cost in terms of time of key staff members we anticipate that this will be minimal and the additional hour will cover these costs.

83. The familiarisation cost per enforcement authority is calculated by multiplying the familiarisation time per LA, 90 minutes, by the average hourly wage rate of an Environmental Health Officer of £20.70[27], generating a familiarisation cost per enforcement authority of £31.04[28]. To calculate total familiarisation cost to UK enforcement authorities we multiply the familiarisation cost per LA by the number of LAs in the UK.

84. As per Option 2, there are 434 authorities in the UK (including PHAs) with responsibility for the enforcement of food hygiene legislation who will need to familiarise themselves with this guidance. This includes 354 LAs in England; 32 LAs in Scotland; 22 LAs in Wales; and 26 LAs in Northern Ireland (see table 5 above).

85. The total one-off familiarisation cost to enforcement authorities in the UK totals £13,321. By country this equates to £10,865[29] in England, £675 in Wales[30], £982 in Scotland [31]and £798 in Northern Ireland[32]. Table 9 shows the familiarisation cost for the extension by country.

Table 9 Option 3 - Familiarisation cost to Local Authorities (including Port Health Authorities) in the UK

Country	England	Wales	Scotland	NI	UK
Local Authorities	£10,865	£675	£982	£798	£13,321

Notes: Costs are estimated by multiplying wage rates uplifted by 30% to account for overheads. This means that the wage rates reported in the text are approximate to 2 decimal places and when grossed may result in a rounding error.

Equivalent Annual Costs (EAC)

86. In order for 'one-off' transition costs to be compared on an equivalent basis across policies spanning different time periods, it is necessary to 'equivalently annualise' costs using a standard formula[33] . Under Standard HMT Green book guidance a discount rate of 3.5% is used.

87. A total one-off cost to enforcement authorities affected in the UK by this proposal is an estimated £13,321. This yields a total EAC for of approximately £1,548 over 10 years, which per country equates to £1,262 in England, £78 in Wales, £114 in Scotland and £93 in Northern Ireland. Table 10 displays the breakdown of the EAC per country.

Table 10 – Equivalent Annual Cost (EAC) for Enforcement Authorities by Country

Country	England	Wales	Scotland	NI	UK
EAC	**£1,262**	**£78**	**£114**	**£93**	**£1,548**

Note: Totals may not sum due to rounding

Compensation Clause Costs

[27] Wage rage obtained from the Annual Survey of Household Earnings (2009) (http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=15313). Median hourly wage of a 'Environmental health officer' is used, £15.92, plus 30% overheads totalling £20.70.
[28] 1.5 hours * £20.70 = £31.04
[29] 354 England - (Local Authorities) * £31.04 (EHO median hourly wage rate) = £10,865
[30] 22 (Wales - Local Authorities) * £31.04 (EHO median hourly wage rate) = £675
[31] 32 (Scotland - Local Authorities) * £31.04 (EHO median hourly wage rate) = £982
[32] 26 (Northern Ireland - Local Authorities) * £31.04 (EHO median hourly wage rate) = £798
[33]

EACB = PVCB/a_{tr}, Where a_{tr} is the annuity rate given by:

$$a_{t,r} = \sum_{j=0}^{t-1} \prod_{i=0}^{j} \left(\frac{1}{1+r_i} \right)$$

PVCB is the present value of costs, r is the social discount rate and t is the time period over which the policy is being appraised.

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88. In the event that a business wishes to challenge a RAN, the Regulations provide an appeal mechanism. Appeals are heard by a magistrate (a Sheriff in Scotland). If the appeal upholds the business's complaint, the RAN is lifted.

89. At present, where RANs are available in approved establishments, the FBO would need to take further action to acquire compensation if the Court upheld the appeal. The introduction of a compensation clause under Option 3 will allow for compensation for costs to be granted to the business at the appeal hearing. If the appeal is upheld, compensation will be available for both approved and unapproved establishments, imposing a potential incremental cost to enforcement authorities.

90. To obtain an estimate of potential costs associated with this compensation clause we need an estimate of the proportion of RANs that are appealed in non-approved establishments; the proportion of those appeals that are successful; and the average cost of compensation for those appeals that are upheld.

91. The FSA's surveys of RANs issued by Local Authority, DARD and MHS/FSA in 2006 and 2009 (see Table 1) looked at data from 377 RANs, none of which had been appealed. These surveys considered information from all 10,000 approved establishments. The data from Local Authorities was gathered through a survey, based on information on the Agency's LAEMs database on enforcement activities. The LAEMs database does not collate information on appeals or compensation, which is why surveys needed to be carried out to gather this data.

92. FSA historical time series data for MHS/FSA supervised establishments also shows that there is little evidence that RANs are issued when there is no breach of the legislation. This data, which relates to the FSA's own enforcement activities in 1000 approved establishments, has been considered back to 2003/04, and includes data on appeals. Since 2003, 2,193 RANs (or Regulation 10 Notices, as they were known before 2006) have been issued, out of which only two have been appealed. Also the number of RANs issued has fallen quite significantly over the last eight years due in part to the move to escalated enforcement action instead of issuing multiple Notices. This is presented in Table 11 below.

Table 11: Regulation 10 Notices / RANs issued in Great Britain by the FSA

Financial Year	RANs	
	Issued	Appealed
2003/04	580	0
2004/05	670	1
2005/06	345	0
2006/07	300	0
2007/08	165	0
2008/09	36	0
2009/10	73	0
2010/11	97	1
Total	**2,193**	**2**

Source: FSA Historical Data

Estimating number of appeals

93. To obtain a lower bound estimate of the number of appeals for approved and non-approved FBOs, we use data from the Inter Departmental Business Register (IDBR 2011) and data on the number of RANs issued and appealed. According to the IDBR there are 158,900 food establishments in the UK, of which 10,000 of these require approval. We therefore estimate that there are approximately 148,900 food establishments in the non-approved sector. The decline in use since 2006/07 was partly due to the MHS moving to escalated enforcement action against establishments as appropriate under the hierarchy of enforcement action, instead of issuing multiple Notices, and we envisage the number of RANs being issued is now at a stage where it is beginning to level out. On

this basis and for the purpose of obtaining consistent and robust estimates, we therefore base our analysis on the last two years of data (2009/10 - 2010/11).

94. Based on these two years of data, we estimate that approximately 8.5%[34] of approved FBOs would be issued with a RAN, of which 0.6%[35] would be subject to appeal per annum. Assuming a similar percentage of non-approved FBOs are likely to be issued with a RAN and attempt to appeal one; we estimate that approximately 12,660 RANs would be issued to non-approved FBOs. This is calculated by multiplying the proportion of approved FBOs issued with a RAN (8.5%) by the number of non-approved FBOs (148,900). We then estimate that of the 12,660 RANs issued to non-approved FBOs, approximately 76 will be subject to appeal. This is calculated by multiplying the proportion of RANs issued to approved FBOs that are likely to be appealed (0.6%) by the number of RANs issued to non-approved FBOs (12,660).

95. In using the figures from use of Notices in FSA approved establishments to provide the basis of our analysis, we recognise that we are making an over-estimate of the number of RANs that will be issued. This is because it is not possible to provide a like-for-like comparison between approved establishments and non-approved establishments. The FSA has a permanent presence at approved establishments and will therefore issue Notices to address non-compliances more frequently than where establishments are visited as part of an inspection regime. The evidence in Table 1 supports this assumption. In both 2006 and 2009, Table 1 demonstrates that LAs issued fewer RANs, despite being responsible for a far greater number of establishments - in 2009, only 53 RANs were issued in 10,000 approved establishments.

96. This data on RANs is the best data we have available. The data shows us that, historically, very few RANs have been subject to appeal. To provide a sensitivity test, we use historical FSA data on Hygiene Improvement Notices (HINs)[36], which we know are issued with a higher frequency, and historically have been subject to appeal more frequently. This is presented in table 12 below.

Table 12: HINs issued in Great Britain by the FSA

Financial Year	HINs	
	Issued	Appealed
2003/04	1046	0
2004/05	1264	0
2005/06	587	0
2006/07	777	3
2007/08	564	1
2008/09	121	0
2009/10	186	1
2010/11	133	2
Total	**4,678**	**7**

Source: FSA Annual Report 2010/11

97. HINs require remedial work to be undertaken but allow food business operators at least 14 days to take the specified action, failing which they are guilty of an offence. If the FBO disagrees with this, the FBO may choose to appeal the HIN to a court. This makes the HIN more comparable to a RAN (which FBOs may also choose to appeal) than a HEPN (which is always considered by a court after being issued). This is why we have also included data on the number of HINs that have been

[34] (73 (RANs Issued 2009/10) + 97 (RANs Issued 2010/11)/2)/ 1000 (approved FBOs – survey sample) = 85/1000 = 8.5%
[35] (0 appeals (2009/10) + 1 appeal (2010/11)/2)/(73 (RANs Issued 2009/10) + 97 (RANs Issued 2010/11)/2) = (0.5/85)*100 =0.6%
[36] Hygiene Improvement Notices (HINs) can be used as an enforcement tool in circumstances where the FBO refuses to take voluntary action. In contrast to RANs, they permit a minimum of 14 days for the FBO to take corrective action and therefore lack the immediate effect of RANs. Despite this fact we believe they are similar enough to RANs to provide an upper bound value, given their characteristics with regards to the frequency of appeals. For more information on HINs see paragraph 10.

appealed. As set out in paragraph 64 above, assumptions based on this data need to be treated with caution. Comparing HINs served by the Agency in approved establishments with RANs that might be served in establishments where there is no permanent presence will provide a considerable overestimate of the number of RANs likely to be issued.

98. We use data on the number of HINs issued and appealed to provide upper bound estimates. Using a similar approach as per paragraphs 60 and 61 based on the last two years of data (2009/10 – 2010/11); we estimate, on average, that approximately 23,824[37] RANs would be issued to non-approved FBOs, out of which approximately 223[38] would be subject to appeal per annum.

99. In all we estimate, on average, that the number of RANs that would be subject to appeal would range between 76 (lower bound) and 223 (upper bound); a best estimate of 150 appeals per annum[39]. FSA data shows that no RAN has so far been appealed successfully. The only successful appeal in the data is an appeal against a Regulation 10 Notice in 2005. On this basis we assume that between approximately 0.3%[40] and 1 %[41] of appeals would be successful and granted compensation; a best estimate of 0.7%. Using this best estimate (0.7%) we calculate and estimate the range of the number RANs appealed that are likely to be upheld and result in compensation. We estimate the number of successful appeals would range between 1 (lower bound) [42] and 2 (upper bound) [43], a best estimate of 2[44] per annum.

Estimating costs associated with compensation

100. In the case where an appeal is successful, compensation will be limited to direct costs incurred by the business arising from the issue of the RAN, in the same way that compensation is provided for under Hygiene Emergency Prohibition Notices (HEPNs[45]) provisions. The compensation awarded in these circumstances will vary on a case-to-case basis. The BRC have provided figures which show that closing a busy supermarket delicatessen counter would cost approximately £50,000 per week. This is likely to be at the top end of potential costs to business. However, where the food hygiene legislation had not been breached and the business was challenging the enforcement authority over it, it would be unlikely that the RAN would remain in place for a full week before it was lifted.

101. The only successful appeal was against a Regulation 10 Notice in 2005. This appeal resulted in a cost to enforcement authorities of £21,000.

102. Due to uncertainty around the average cost of compensation per appeal; we use the only data we have available to construct a range of estimates using the information set out in paragraphs 64 - 66. Taking £21,000[46] as our lower bound estimate of the cost of compensation per an appeal; and

[37] 186 (HINs Issued 2009/10) + 133 (HINs Issued 2010/11)/2)/ 1000 (approved FBOs – survey sample) = (160/1000) * 148,900 (non-approved FBOs) = 23,824

[38] 3 (appeals) /(186 (HINs Issued 2009/10) + 133 (HINs Issued 2010/11)/2) = (1.5/160)* 23,824 HINs (average annual estimate) = 223 appeals

[39] 76 (lower bound) + 223 (upper bound)/ 2 = 150 (best estimate) appeals per annum

[40] 1 successful appeal as per Regulation 10 Notice (proxy for successful appeal)/(186 (HINs Issued 2009/10) + 133 (HINs Issued 2010/11)) = (1/319)*100 = 0.3%

[41] 1 successful appeal as per Regulation 10 Notice (proxy for successful appeal)/(73 (RANs Issued 2009/10) + 97 (RANs Issued 2010/11)) = (1/170)*100 =0.6%≈1%

[42] 0.7% (best estimate) * 76 (number of appeals (lower bound)) = 0.53 ≈ 1

[43] 0.7% (best estimate) * 223 (number of appeals (lower bound)) = 1.6 ≈ 2

[44] 1 (lower bound) + 2 (upper bound)/ 2 = 1.5 ≈ 2 successful appeals (best estimate)

[45] A Hygiene Emergency Prohibition Notice is an enforcement tool that authorised officers can use to secure compliance. In contrast to RANs and HINs, HEPNs require the authorised officer to demonstrate "imminent risk of injury" to a Magistrate (Sheriff in Scotland) before the court will confirm the authorised officer's decision.

[46] Regulation 10 Notice in 2005 only successful appeal - cost to enforcement authorities of £21,000 (lower bound estimate)

£50,000[47] as our upper bound estimate; we estimate the average cost of compensation ranges between £42,000[48] and £100,000[49] per annum, a best estimate of £71,000[50]. This equates to a total cost of approximately £710,000 over 10 years; an annual average cost of £71,000 (see Table 13).

103. However, these are presented as indicative estimates only, given the lack of available data, and should therefore be treated with caution.

Table 13 – Cost of Compensation

Cost of Compensation Clause	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total Cost	Average Annual Cost	Present Value
Number of Successful Appeals													
Best Estimate	2	2	2	2	2	2	2	2	2	2	N/A	N/A	N/A
Compensation Costs													
Upper Bound	£100,000	£100,000	£100,000	£100,000	£100,000	£100,000	£100,000	£100,000	£100,000	£100,000	£1,000,000	£100,000	£860,769
Lower Bound	£42,000	£42,000	£42,000	£42,000	£42,000	£42,000	£42,000	£42,000	£42,000	£42,000	£420,000	£42,000	£361,523
Best Estimate	£71,000	£71,000	£71,000	£71,000	£71,000	£71,000	£71,000	£71,000	£71,000	£71,000	£710,000	£71,000	£611,146

Total costs: Option 3

104. The total cost associated with policy Option 3 is estimated at between £433,321 and £1,013,321 over 10 years with a best estimate of £732,321; an annual average cost of £72,332. Once these costs are discounted at a rate of 3.5% over 10 years we obtain a present value total cost of £624,467. Total one-off and on-going costs associated with Option 3 are presented in table 14.

Table 14 – Total cost of policy Option 3

Policy Cost	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total Cost	Average Annual Cost	Present Value
One-off Cost													
Familiarisation cost to Authorities*	£13,321	£0	£0	£0	£0	£0	£0	£0	£0	£0	£13,321	£1,548	£13,321
Total One-off Cost	£13,321	£0	£0	£0	£0	£0	£0	£0	£0	£0	£13,321	£1,548	£13,321
Compensation Costs													
Best Estimate	£71,000	£71,000	£71,000	£71,000	£71,000	£71,000	£71,000	£71,000	£71,000	£71,000	£710,000	£71,000	£611,146
Upper Bound	£100,000	£100,000	£100,000	£100,000	£100,000	£100,000	£100,000	£100,000	£100,000	£100,000	£1,000,000	£100,000	£860,769
Lower Bound	£42,000	£42,000	£42,000	£42,000	£42,000	£42,000	£42,000	£42,000	£42,000	£42,000	£420,000	£42,000	£361,523
Total Costs													
Best Estimate	**£84,321**	**£71,000**	**£71,000**	**£71,000**	**£71,000**	**£71,000**	**£71,000**	**£71,000**	**£71,000**	**£71,000**	**£723,321**	**£72,332**	**£624,467**
Upper Bound	£113,321	£100,000	£100,000	£100,000	£100,000	£100,000	£100,000	£100,000	£100,000	£100,000	£1,013,321	£101,332	£874,089
Lower Bound	£55,321	£42,000	£42,000	£42,000	£42,000	£42,000	£42,000	£42,000	£42,000	£42,000	£433,321	£43,332	£374,844

* Average annual cost of familiarisation to Authorities is based on Equivalent Annual Cost (EAC)

Benefits

Option 1: Do nothing

105. There are no incremental benefits. This option is the baseline for comparison

Option 2: Take action short of legislation – issue new guidance to food businesses and / or enforcers

Benefits to Consumers

106. There will be limited improvement in consumer safety from issuing FBOs and enforcement authorities with new or revised guidance on compliance, as guidance is already available to FBOs

[47] Based on figures from BRC, which show closing a busy supermarket deli counter would cost approximately £50,000 (upper bound estimate)
[48] £21,000 (lower bound compensation) * 2 (number of successful appeals (best estimate)) = £42,000
[49] £50,000 (upper bound compensation) * 2 (number of successful appeals (best estimate)) = £100,000
[50] £42,000 (lower bound compensation) + £100,000 (upper bound compensation)/ 2 = £71,000 (best estimate)

on meeting legal hygiene requirements. The current tools would continue, in the circumstances set out in paragraphs 16 – 23 above, to be potentially ineffective in dealing with risks to public health and overly bureaucratic and time consuming for enforcement authorities and food businesses.

107. This option would therefore not meet the policy objective.

Benefits to Industry

108. There would be no benefit to industry from Option 2, and businesses that are non-compliant and remain so because of the inadequacy of the current enforcement tools will continue to have an unfair advantage to compliant competitors. Guidance is already available to FBOs on meeting legal hygiene requirements. Refreshed or new guidance might encourage some businesses to take corrective action in circumstances where they have not in the past, but it does not guarantee this.

Option 3 (Preferred option): Extend Remedial Action Notices (RANs) to establishments not subject to approval, which will provide a strengthened process to address breaches of the hygiene legislation, and introduce a compensation clause to protect industry from potential misuse

Benefits to Consumers

109. Data from UK Health Protection Agencies show that in 2009 there were 97 reported foodborne outbreaks, affecting 3,440 people, with a related economic cost of £1.76 billion in lost earnings and permanent disability to the UK economy. Option 3 could deliver public health benefits as it is likely to reduce health risks to consumers posed by food business operators with poor hygiene practices. Their benefit could be particularly significant during times of large national events such as the 2012 Olympic and Paralympic Games. However, these benefits are very difficult to quantify due to lack of robust data on the effects of improved hygiene practices.

Benefits to Industry

110. Industry is likely to benefit from increased consumer confidence in food safety thus facilitating trade. Also the RAN does not lead to a Court hearing for which a food business operator is likely to need to spend time preparing for and attending, and can be lifted quickly and simply when the non-compliance has been resolved.

111. All FBOs are required to meet the same standards. The extension of RANs will help address those businesses operating with lower standards. As such, RANs will benefit compliant businesses by helping to remove the unfair advantage that can be gained by businesses that do not comply with the hygiene requirements.

Benefits to enforcement authorities

112. Long-run improvement in compliance levels enabling enforcement authorities to free up resources and target high-risk establishments.

SPECIFIC IMPACT TESTS

Competition

113. Using the OFT competition assessment framework[51], it has been established that the preferred policy option (Option 3) is unlikely to have any material impact on competition. We assert that this

[51] http://www.oft.gov.uk/shared_oft/reports/comp_policy/oft876.pdf

policy will not limit the number or range of suppliers directly or indirectly nor will it limit the ability or reduce incentives of suppliers to compete vigorously.

Small Firms

114. Under Option 3, RANs would be available for use in all food businesses regardless of size. We have not identified any specific or disproportionate impacts on small businesses. The Better Regulation Framework team at the Better Regulation Executive considered the RANs extension and confirmed that the measure falls outside of the scope of the moratorium on new domestic regulation for micro-business and start-ups.

Sustainability

115. In our view there is no indication at this time of an impact of this policy on sustainability issues.

Race Equality Issues

116. In our view there is no indication at this time of a differential health impact of this policy on any ethnic groups.

Gender Equality Issues

117. There is no evidence at this time that indicates a significant differential health impact of this policy on different genders.

Disability Equality Issues

118. We do not consider there to be any differential impacts of this policy for disabled people.

Consultation

119. The consultation on the proposed extension of RANs to the unapproved sector closed on 23 May 2011. The FSA received 74 responses in total across the UK, consisting of 12 Food Liaison Groups (representing about 100 Local Authorities), 46 individual Local Authorities, two consumer groups, one lobby group, and 13 industry responses.

120. The responses demonstrate strong and unanimous enforcement and consumer group support for the extension of RANs to all food establishments across the UK.

121. The response from industry was mixed. All 13 industry responses called for greater safeguards to be put in place to protect them from the possibility of misuse of RANs. There were also concerns about the practicalities of RANs. The main concerns are considered in paragraphs 123 - 131. Two industry respondents supported the extension in principle, on the grounds that it would help to ensure that their competitors did not gain an unfair advantage by not complying with the law.

122. In Scotland, in compliance with Scottish Government Business and Regulatory Impact Assessment (BRIA) procedures, face-to-face meetings were held with seven small business representatives from a range of industry sectors to discuss the potential impact of the proposal in parallel to the written consultation. With one exception, industry representatives were very supportive of the principle of extension of RANs.

Safeguards: Appeals and Compensation

123. Industry consultation responses indicated uncertainty over the appeals procedure for RANs. RANs can be appealed. The appeal is heard by a Court, and, if upheld, the RAN is lifted. However, to obtain compensation for losses incurred, a business needs to undertake further legal action.

124. Having considered the consultation responses, we agree that where an appeal is upheld, compensation for losses incurred should be available at the Court hearing. This would provide business with a safeguard against misuse, and would be consistent with existing provisions, e.g. for

Emergency Prohibition Notices, which can be used where an imminent risk for public health can be demonstrated.

125. Introducing a compensation clause will require an amendment to the domestic Food Hygiene Regulations. The new compensation clause would apply to RANs issued in approved establishments, as well as the unapproved sector.

Hierarchy of Enforcement and Consistency

126. A common industry concern was that RANs would be issued indiscriminately, or where informal enforcement would be more appropriate.

127. The statutory Food Law Code of Practice (CoP) (refer to footnote 5) requires that, except where circumstances indicate that a significant risk warrants immediate action, officers should operate a graduated and educative approach to enforcement. This should begin with advice and education and informal action, and move to more formal action only where the informal action does not achieve the desired effect. The FSA will continue to encourage the enforcement hierarchy through guidance and audit.

128. Evidence of current application of RANs indicates careful use by authorised officers. Local authorities have responsibility for about 10,000 approved establishments, and the FSA / DARD have responsibility for about 1,000. In 2008/09, local authorities issued 17 RANs. In establishments for which the FSA is responsible 34 were issued, and two were issued by DARD in Northern Ireland. None of the RANs were appealed.

129. In order to drive consistency in the application of RANs if this enforcement tool is extended to all establishments, the FSA will amend the Practice Guidance. The FSA will also review the relevant sections of the statutory CoP, which sets out the processes for issuing a RAN. Consistency will be supported further by the existing competency framework for authorised officers, which requires that an authorised officer must have two years post qualification experience to be able to issue a RAN.

Process for lifting a RAN

130. In order to issue a RAN, the authorised officer must specify which provisions of the hygiene legislation are being breached, and what is needed to rectify the non-compliance. Once the non-compliance has been rectified, the RAN can be lifted by any officer at the enforcing authority. Some consultation responses from industry were concerned about how long this process might take.

131. The statutory CoP requires that the RAN must be withdrawn as soon as the authorised officer is satisfied that the action specified in the notice has been taken. The need for an authorised officer to lift the RAN quickly when they are satisfied the business has rectified the non-compliance will be further emphasised in the FSA guidance.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: The extension of Remedial Action Notices will be achieved through the introduction of SIs amending the national Food Hygiene Regulations 2006. Data on the use of RANs will be gathered and monitored on an annual basis through the Local Authority Enforcement Monitoring System (LAEMs) database and the FSA's enforcement records. A review will be carried out after three years with industry and enforcers to gather data on their experience of RANs. In England, the SI will be subject to a sunset clause after seven years, which will provide a legislative trigger to begin a formal review after three years.
Review objective: The review will aim to assess whether RANs are being applied appropriately, and whether they are having a positive effect in improving business standards, The review will look at how RANs are used in all types of food establishment (eg across all sectors) and that no burdens are being placed on compliant businesses.
Review approach and rationale: We will gather data on the number of RANs (and other enforcement tools) issued, and survey enforcement authorities for data on the number of appeals that have taken place and whether and why such appeals were successful. We will also formally consult with industry, consumer and enforcement groups to assess the impact and gather views on the extension in a qualitative manner. We will review how the compensation clause has worked in practice, and whether this indicates any issues with certain sectors.
Baseline: The current situation, before RANs are introduced in establishments not subject to approval.
Success criteria: We will be looking for evidence that RANS are successfully filling the gap between HEPNs and HINs and that enforcement authorities are making appropriate use of them.
Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review] The LAEMS database provides information on Local Authority enforcement across the UK. Further information will be gathered through consultation with industry and enforcers.
Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]

Annex 2: Details of sanctions currently available

Authorised officers of enforcement authorities (including the FSA) have a variety of enforcement tools available to them ranging from informal oral advice to prosecution, a number of other sanctions may be imposed by a court.

Sanctions available to Authorised Officers

- Hygiene Improvement Notices: these enable authorised officers to issue notices requiring remedial works to be undertaken but allow food business operators at least 14 days to take specified remedial action, failing which they are guilty of an offence.
- Remedial Action Notices: these permit authorised officers of enforcement authorities to require food business operators running establishments subject to approval to remedy contraventions. They have immediate effect, stopping or reducing an activity until compliance is regained.
- Hygiene Emergency Prohibition Notices : these enable authorised officers to impose an immediate appropriate prohibition on a food business, including closure, where there is imminent risk of injury to health.
- Detention Notices: these enable authorised officers of enforcement authorities to detain animals or food at premises for the purposes of examination.
- Simple caution

Sanctions imposed by a Court

- Hygiene Prohibition Orders:

  (1) where a food business operator is convicted of an offence under the Food Hygiene Regulations 2006, the Court must — if it is satisfied that the construction, state or condition of premises used for the purposes of the business or the use of any process, equipment or treatment for the purposes of the business involves a risk of injury to health — make an order prohibiting the use of the process, premises, equipment or treatment concerned.

  (2) where a food business operator is convicted of an offence under the Food Hygiene Regulations 2006, the Court may prohibit him from being involved in the management of a food business.

- Post-conviction confiscation under the Proceeds of Crime Act 2002: the Court can make a confiscation order where it concludes that the offender has benefited from –

  1. A general criminal lifestyle ; or
  2. Particular criminal conduct.

  The Court can order that the offender pay a recoverable amount, representing the benefit of what he has obtained from criminal conduct.

  Confiscation orders are only available following conviction before the Crown Court or where a magistrates‘ court commits the offender for sentence to the Crown Court.

The usual means of enforcing the order is to treat the value of the order as a fine. Failure to satisfy the order will result in an additional mandatory prison sentence.