



PRACTICAL SAMPLING GUIDANCE
for FOOD STANDARDS and
FEEDING STUFFS

Part 2: Food Standards Sampling

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1 Introduction

The central requirement of any regulations or codes which concern sampling, is that they include details of the steps to be taken to ensure that any sample procured is a “fair sample” that accurately reflects the constituents of the bulk material being sampled.

The procedure by which a product or substance is sampled for enforcement purposes is of prime importance and must satisfy any statutory requirements. This is to ensure that the sample will constitute valid evidence in any subsequent court proceedings.

The basic principles that must be addressed in sampling are as follows:

- i) the sample should represent the food as sold to the consumer and each part of a divided sample should be truly representative of the original
- ii) where divided, all parts of the sample must individually be representative of the food and of each other
- iii) the sampling process must not alter the sample in any way that might affect the analysis
- iv) storage and transportation of the sample must not alter it in any significant way – whether through contamination, loss, deterioration or other means.

What follows is further practical guidance on food sampling to ensure that the results can be used to enforce the law in a sound manner.

2 Matters To Consider Before Going Sampling

2.1 Is the person taking the sample properly authorised?

Food Authorities must ensure that the officers that they authorise to carry out food standards enforcement possess suitable qualifications, and that they have evidence of experience and competency to carry out the duties assigned to them; for example, records of qualifications, details of accompanied sampling visits and formal appraisals.

When official sampling of foodstuffs for food standards purposes is undertaken, authorised officers must additionally be trained in the appropriate techniques and be competent to carry out sampling duties. Sampling under the provisions of food legislation and the Food Safety Act Code of Practice should only be undertaken by officers who meet the appropriate requirements stipulated in the Code.

The authorisation and qualification of officers are often questioned at the beginning of a court case.

2.2 Is the type of samples that are to be taken known?

The Food Safety (Sampling and Qualifications) Regulations 1990 require authorised officers who procure samples under the Act, and who consider that the samples should be analysed as a *formal sample*, to divide the sample into three parts. Further details of how to divide a sample are given later in this document (see section 14).

A decision needs to be made whether to take a *formal* or an *informal* sample and, in the former case, whether a single part sample is necessary or appropriate and whether the containers of food samples should be opened or not.

If no formal proceedings are likely to arise, then the use of a simple informal sample will probably suffice. In this case, the sample is taken as a single item or serving, with no formal requirements on the division of the sample. This is

often taken as an unopened container of the food and labelled to identify its status as a sample.

The type of food involved may also affect the way in which the sample is taken, particularly samples taken under the provisions of regulations that have their own sampling provisions, as listed in the schedule to the Food Safety (Sampling and Qualifications) Regulations 1990. For example, specific guidance is given on how to sample peanuts for aflatoxins and whole frozen chickens for extraneous water content. (See section 3)

2.3 Are there any legal, official or product specific sampling procedures that need to be considered before taking food samples?

The Food Safety Act 1990 contains the basic legal provisions relating to the sampling of foods. However, it is the Food Safety (Sampling and Qualifications) Regulations 1990, as amended, and the Food Safety Act 1990 statutory Code of Practice that specify the detailed requirements for the manner of procuring samples and the method of dealing with them. This includes their division into parts, the persons to whom parts must be provided and the notices to be given.

However, the sampling, storage and analysis of some food products, analytes and even packaging materials are often controlled by specific legislation that contains its own detailed provisions which may override these general considerations. Examples include: caseins and caseinates; coffee extracts and chicory extracts; condensed and dried milk; specified sugar products; wine and spirit drinks; dairy products (e.g. extraneous water); bottled waters; poultry meat standards (e.g. water content); fishery products (e.g. chemical checks); veterinary residues in animal products; pesticides in crops, foods and feeding stuffs; nitrates; aflatoxins; ochratoxin A; lead; cadmium; mercury; 3-monochloropropane-1, 2-diol (3-MCPD); dioxins; plastic materials and articles in contact with food and mineral hydrocarbons.

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Further details on legislation of this type can be found in the Food Standards Agency's Food Law Guide ⁽⁵⁾.

The sampling procedures of the Code, however, do not have to be adhered to in the following circumstances:

- a) complaint food samples that are submitted by consumers or other agencies;
- b) food samples that are submitted to the Public Analyst or Food Examiner solely for monitoring or surveillance purposes, where there is no intention at the time of sampling that any formal enforcement action will ensue from the result;
- c) food samples submitted for expert opinion (e.g. foreign body identification) rather than for analysis or examination;
- d) food samples taken as evidence in their own right (e.g. for use-by date offences);
- e) samples taken under the provisions of regulations that have their own detailed sampling provisions listed in the Schedule to the Food Safety (Sampling and Qualifications) Regulations 1990.

These are:

- The Poultry Meat (Water Content) (Scotland) Regulations 1983, S.I. 1983/1372
- The Milk-based Drinks (Scotland) Regulations 1983, S.I. 1983/1514
- The Cream (Heat Treatment) (Scotland) Regulations 1983, S.I. 1983/1515
- The Poultry Meat (Water Content) Regulations 1984, S.I. 1984/1145
- The Materials and Articles in Contact with Food Regulations 1987, S.I. 1987/1523
- The Milk and Dairies (Semi-skimmed and Skimmed Milk) (Heat Treatment) (Scotland) Regulations 1988, S.I. 1988/2190

- The Milk (Special Designations) (Scotland) Order 1988, S.I. 1988/2191
- The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) Regulations 1997, S.I. 1997/1729
- Plastic Materials and Articles in Contact with Food Regulations 1998, S.I. 1998/1376, as amended
- Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999, S.I. 1999/1540, as amended
- Contaminants in Food (England) Regulations 2003, S.I. 2003/1478

2.4 Do you know how many, and how much sample will be needed?

The Code of Practice Guidance indicates that the quantity and nature of any sample should be such as to enable the required analysis to be made. The nature of the samples that are appropriate will depend on the purpose for which the analysis is undertaken. The quantity will vary according to the product and the type of analysis to be carried out. The Public Analyst should be consulted in case of doubt.

This question of how much sample to take is regularly asked of Public Analysts. Generally, if each part of a formal sample is about 300 - 500 grams then this should be sufficient for analysis. In the case of spirits for alcohol content taken from licensed premises, the equivalent of a double shot from an optic (50ml) for each part of the sample will usually suffice although more may be required for other analysis. Again some regulations give guidance on the minimum weight of final samples.

Where the samples are prepacked, and in relatively small containers, e.g. 250 grams, and they are not to be opened, then ideally at least 6 or 9 items should be taken as the sample and divided into the three representative final parts, with two or three food containers in each part.

Generally, one sample of a specific food is taken and divided into three final parts of the sample. On some occasions multiple samples are taken e.g. to

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check whether the nutrition declarations on a ready meal are “typically” low by purchasing from different shops or different batches of production.

2.5 Are the correct labels, forms and paperwork, equipment, containers, utensils, and official seals available?

Each Authority should ideally have a defined system for the administration of samples. This will normally include the use of appropriately designed record forms, sample labels and laboratory submission sheets. Self-duplicating forms provide a useful means of keeping an exact record of all data. On taking a *formal* sample for analysis, the three final parts of the sample will need to be labelled with the name of the food, the name of the sampling officer, the name of the authority, the place, date and time of sampling and an identification number. They will also need to be placed in suitable containers and secured with a tamper evident seal. Sufficient labels, forms, containers and seals will need to be taken to the point at which the sampling is to be carried out.

Consideration also needs to be given to the correct container for the sample type. The Code of Practice Guidance indicates that samples of food which are not pre-packed or opened cans or packets of food should first be placed in clean, dry, leak-proof containers such as wide mouthed glass or plastic jars, stainless steel metal cans or disposable food quality plastic bags. Jars, bottles or cans should be suitably closed. Disposable food-quality plastic bags should be sealed securely after filling so that they cannot leak or become contaminated during normal handling. Samples of alcoholic drinks should be placed in glass bottles of appropriate size which have leak-proof caps and do not absorb alcohols.

The Code of Practice Guidance indicates that the contained final parts should each be secured with a tamper evident seal. It is often useful to place the parts of the sample in a second container, such as a plastic bag, which should be sealed in such a way as to ensure that the sample cannot be tampered with, without being obvious.

As the sample to be taken is not always known before going out on inspections, it may be necessary to take a selection of sample containers. Further guidance is given in CCFRA Guideline No. 36 (2002). It is good practice to place all sampling materials, labels etc into a sampling kit that is re-stocked after use. This gives an image of a professional approach to sampling to the seller/owner of the food.

Items and sampling equipment that may be useful when taking samples include: chopping board, can opener, knife, plastic bags, scissors, spoons, jars (note: glass is not often allowed in factories), sellotape, corkscrew, plastic gloves, ladle, protective clothing, cold box. Whatever equipment is used, it is important to ensure that it is appropriately maintained.

2.6 Is any specialised sampling equipment needed for the products concerned?

In some instances more specialised equipment might be needed to carry out the sampling and could include items such as a sampling spear, thief (specific piece of sampling equipment), temperature-monitoring device, scales, and weights. Equipment such as food processor or mincer may occasionally be useful, although it is more usual for any blending to be left to the public analyst. A camera is a useful piece of equipment for recording both the premises and details of the samples taken when appropriate.

British Standards and ISO standards contain many specifications of items of equipment that are useful during sampling, including cheese borers, dippers, and sampling spears. Some standards also specify appropriate ways of sampling for unusual shapes, e.g. round cheeses. Consideration needs to be given to the type of sample to be taken prior to setting out, to ensure that the appropriate equipment is available. It might also be necessary to take another person along to help carry out the sampling, especially if a large bulk of sample is to be taken or sub-sampled, or if there are health and safety implications, e.g. sampling from large volumes of liquid in vats, or food in silos.

2.7 Must the food sample be taken during normal working hours?

Entry into food premises, within a permitted area, may be demanded during *reasonable* hours, which usually means during the normal business hours of the premises in question. However, working hours within the food industry vary greatly and may not coincide with the Food Authority's normal hours of work.

Sampling visits should therefore be planned as part of the inspection programme and timed having regard to all relevant and available information, including hours of operation, hours at which certain foods may be handled and any seasonal factors.

It is desirable to sample at different times of the day at manufacturing and packing premises to ensure that samples are obtained from beginning and ends of batches etc., whether during the process of a single inspection, or by timetabling subsequent inspections differently. It is also important that food businesses are aware that they may be inspected and samples taken at any time during their working hours. You may need to consider the availability of appropriate secure storage facilities for any samples obtained outside of normal office hours.

2.8 Should prior warning of attendance be given?

The powers of entry under the Act are extensive and officers may clearly enter either business or domestic premises (as long as, in the latter case, the dwelling is in the Authority's own area and that 24 hours notice of intended entry is given to the occupier). Special circumstances apply to police and Crown premises to investigate complaints and carry out inspections. At the time of seeking entry, the officer may be required to produce an authenticated document that shows their authority.

The Official Control of Foodstuffs Directive (89/397/EEC)⁽⁷⁾ states that "as a general rule, inspections shall be carried out without prior warning".

Circumstances will arise, however, when prior notification of a visit will be beneficial, for example when the food business is carrying out a particular operation (a small production run of a limited line, for example).

2.9 Does the Public Analyst need to know the sample is coming?

Whilst it is not essential to let the Public Analyst know in advance of every sample to be submitted, in the interests of efficiency and effectiveness it is important to let your Analysts have a clear idea of the numbers and types of samples and when they may be expected. It would be prudent for any unusual demand or urgent requirements to be notified to the Public Analysts as soon as possible. The following are examples of particular instances when it is important to liaise with the Public Analyst before sampling and to give an accurate indication of the number of samples expected and when they are likely to be submitted:

- a) In the case of the delivery of large numbers of samples, or where space in freezers will need to be allocated.
- b) Where samples need to be analysed soon after receipt, such as fresh milk for compositional analysis, or foods with labile or evanescent analytes such as sulphite or vitamin C.
- c) Test for “previously frozen” must be made by prior arrangement because samples cannot be stored for long and because test chemicals in the laboratory have a limited shelf life and may need sourcing shortly before the samples are expected.

2.10 Is a plan for sampling in special circumstances, for example postal purchases, internet purchases and deliveries needed?

Special problems arise as a result of distance selling, and the Code of Practice Guidance includes a section covering this area. This presents particular difficulties in sampling because a food can be ordered by telephone,

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from the Internet or from literature and the first possibility of sampling does not arise until the sample arrives at its destination. Consideration has to be given as to whether a divided sample is sensible or practical. For instance, if Scottish salmon were ordered by phone and delivered, consideration needs to be given as to whether it can be divided and whether a part of the sample can be returned to the seller. Also, what changes might take place to that part of the sample in transit. It might be concluded that division into three parts is not practical and a single part sample used. The Authority needs clearly to consider the arguments in the case of each food type, and needs to be able to justify not dividing the sample in the event of a court case.

However, where a sample can be divided and returned without fear of the part changing, e.g. vitamin tablets, it might be safer to return a part of the sample to the seller/owner, although it is advisable to discuss these arrangements with the seller/owner beforehand.

2.11 Is any specialised clothing required?

The Food Safety Act 1990 Code of Practice requires authorities to provide officers with clean protective clothing including headgear consistent with good industry practice. It also requires officers to wear it, and to give details of their health status when requested to do so.

Many companies will have their own hygiene requirements for entering food production areas and will normally provide sampling officers with the appropriate clothing. These often include overalls, hairnets, hats, overshoes, wellington boots, beard snoods etc. It is necessary to comply with the hygiene requirements of the company concerned and this often includes a signed declaration of the officers state of health.

For sampling in shops, the provision by the authority of clean white coats, white hat and disposable gloves is good practice.

In certain instances personal protective equipment may be needed when sampling. For instance, when dealing with the cutting of meat, the use of

protective clothing such as chain mail gloves might be necessary. Other protective items might include protective boots, ear defenders, safety goggles, blue plasters and a small first aid kit.

The health and safety of sampling staff should be considered at all times and they should also comply with the hygiene requirements of any food company concerned.

2.12 Will the samples be purchased or taken?

It is for the authorised officer to decide, in accordance with the policy of their Food Authority, whether to purchase the sample, or if powers to take it should be exercised. Officers have the power to:

- a) **purchase** a sample of any food, or any substance capable of being used in the preparation of food (e.g. food additives);
- b) **take** a sample of any food which:
 - appears to be intended for sale, or to have been sold, for human consumption, or
 - they find on, or in, any premises which they are authorised to enter;
- c) **take** a sample from any food source, or a sample of any contact material (e.g. plastic packaging), which is found on, or in, any such premises;
- d) **take** a sample of any article or substance which is found on, or in, any such premises and which the officer has reason to believe may be required as evidence in proceedings under any provisions of the Act or of regulations or orders made under it.

Where the quantity or frequency of sampling gives rise to significant financial consequences for the owner or seller of the food, the Code of Practice

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Guidance recommends that the Food Authority should offer an ex-gratia payment when samples are not purchased.

It may be beneficial for a sample to be obtained by 'test purchase' (i.e. by buying an item of food as an ordinary purchaser without first announcing your identity as an authorised officer to the seller).

3 Procedures to be Used on Site

3.1 What powers and rights does the sampler have, and the owner/seller have?

Information concerning the powers of the officer making an investigation, the legal rights of the occupier of a food premises and the Food Authority's Enforcement Policy should be included in any post-inspection report if appropriate, on the reverse of the sheet with suitable sign-posting as necessary.

3.2 What should be sampled, and how should it be sampled and divided to ensure it is representative?

A formal sample for analysis should, as soon as possible, be carefully divided into three representative parts, preferably on the premises of the seller/owner of the food and giving the owner the opportunity to witness the sampling taking place. Each part must then be labelled and sealed to ensure that any evidence of tampering can be identified. One part of the formal sample must be given to the owner, his agent, or employee in charge of the food with notice that the sample will be analysed. The owner or seller is normally allowed to select any of the parts that they want. The second final part of the sample must be submitted for analysis to the Public Analyst of the Food Authority concerned. The third final part must be retained by the authority for possible future analysis by the referee analyst (Government Chemist). In the event of any dispute over the composition or other alleged defect in the sample, this will be decided by the court, or by mutual agreement of the authorised officer and the owner of the food.

Unopened containers

The Food Safety (Sampling and Qualifications) Regulations 1990 make allowances for samples that are in sealed containers. If, in the opinion of the

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officer, the opening of the containers would impede analysis, three unopened containers may constitute the final samples. In the case of small containers, this may need to be nine containers divided to make three final parts (three containers in each part).

Some instances where it is best to leave foods in unopened containers are listed below:

- foods containing volatile substances (such as alcohol)
- foods containing evanescent ingredients (e.g. soft drinks containing vitamin C)
- foods packaged in modified atmospheres where gas analysis is required or loss of the protective atmosphere could alter the preservative levels
- foodstuffs where it is not possible to ensure that each ingredient has been divided equally into three parts (e.g. a ready meal containing meat on the bone, or fruit cocktail)
- foods packed in aerosols
- “aerated” foods (e.g. carbonated soft drinks)
- products which are difficult to extract from the container and where there is a possibility of a considerable quantity of the food remaining in the container (e.g. salad cream, sauces, treacle)
- products where it is necessary to have an unopened container in order to carry out a particular test (e.g. condensed milk where there is a statement that the contents are equivalent to a quantity of whole milk).

Single part samples

Formal samples need not be divided into three if, in the opinion of the authorised officer, this is not reasonably practicable, as failure to do this

correctly would constitute unfair sampling or may impede analysis. In these circumstances the sample is not divided, and a single part sample is submitted for analysis. Enforcement officers must be able to justify this decision in court if necessary. An example would be where a large single meat pie was all that was left in the shop. If the filling were not evenly distributed then division would not make three fair parts.

Some examples of how to divide the sample are given below. Appropriate storage conditions should also be followed:

1. Ham from a delicatessen counter in a supermarket

Take sufficient slices to allow 200-300 grams per part of the sample and divide the slices between the three final parts of the sample. Place each part in a container or plastic bag, expelling as much air as possible. Label the bag, and place in a further plastic bag which should be closed with a tamper proof seal.

2. Containers of powdered coffee or milk powder

As the food would absorb moisture if opened and change its composition, keep the food in closed containers. Take sufficient containers from the same batch for each of the final parts. Label the containers and place in plastic bags. Close each part with a tamper proof seal.

3. One large loose meat pie left

As there is only one pie and it would not be fair or representative to divide the sample, then take as a single sample. Place the pie in a container or plastic bag, put the label in a plastic bag and in the bag with the sample to avoid contact with the pie. Seal the whole sample with a tamper proof seal.

4. Indian balti ready meal in a box, includes meat in sauce with rice

If analysis is required for nutrient and meat content it is advisable not to mix the sample and hence each final part should consist of a number of boxes. Divide the requisite number of boxes (3, 6 or 9 depending on their size) to form each part of the final sample. Place each final sample in a plastic bag, put the label in the plastic bag and seal the whole sample with a tamper proof seal.

5. Scotch whisky taken from a public house

Take 6 “shots” from an optic into a jug to mix and divide between small glass containers, ensuring that only a very small air space is left in the container after closing. Label the containers and seal each in a plastic bag with a tamper proof seal.

3.3 Is the sample taken fair to both parties and is the security of sealing procedures adequate?

It is absolutely essential that the individual parts of the sample be sealed with tamper evident seals. Where plastic bags are used with external heat sealed seams, these should be turned inside out so that the seams are inside. This prevents surreptitious opening and resealing.

It is necessary to consider whether each part of the sample is representative, and whether the sample taken is a fair reflection of the food being sampled. It would be a waste of resources to lose a legal case due to the fact that the food had not been sampled correctly.

Once sampled, the parts retained for analysis must be “under control” for the whole time with a good chain of evidence in case a legal action results. It is

imperative that the part retained for the referee analysis is not lost or damaged such that it would affect subsequent analysis.

3.4 What documents need to be used and left with the owner of the food?

Where any food samples have been taken during the course of an inspection, the owner of the food should be left with a receipt or record detailing all such samples that have been taken away from the premises for analysis.

In the case of multi-site food businesses, the relevant head office, or other address should also be notified, unless someone at the site indicates otherwise. This could be by copying documents that are left with on-site personnel.

This notification allows the owner to retain documents (e.g. invoices) relating to the food sampled, notify other interested parties and take food samples from the same batch for their own analysis if they wish.

3.5 Is the identification of the sample correct and are all forms completed correctly?

In any quality system for sampling the essential requirement is to identify all parts of the sample positively, uniquely, unambiguously and correctly usually with a unique reference number. There is also a need to record and send all pertinent information to the Public Analyst.

The use of food labels with unique reference numbers to ensure traceability of the sample and pre-printed self-duplicating forms bearing the sample number, to record information, are ideal.

Ideally officers should complete and submit a form with the food sample to the analyst that details the reason(s) for sampling and the analysis required. An example form is attached at Annex B which sets out the information being collected by Authorities currently using the UK Samples Database. In summary, the following data should also be recorded (where relevant):

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- Name and authority of sampling officer
- Sample number
- Date, time and place of sampling
- Description/Name applied to food (which should match the display name where displayed or the name/description presented to the consumer for prepacked food or the name/description of the food as requested in other cases)
- Description of sample including batch or lot number, canning code etc and durability date, packaging material
- Name of owner/ manufacturer/ importer/ seller/ buyer, as appropriate
- Process and date of cooking [for cooked foods] (if known)
- Place of origin, conditions of storage and transport (if known)
- Conditions of storage at place of sampling
- Other relevant storage factors (e.g. condition of packages, humidity etc)
- Methods of sampling employed (e.g. random throughout lot)
- Conditions of storage and transport since sample taken.

The information transmitted to the analyst should also include, if possible, the label itself, otherwise a photocopy will suffice. Any background information such as whether a sample is a follow up to a previous sample (what and why?) or a home authority referral to the company (again what and why?) is also helpful.

3.6 What additional information about the food should be asked for?

Full details of any pertinent declarations or specifications relating to a food sample should be recorded for the Public Analyst (e.g. claims such as 'low fat' or declarations of meat content or alcoholic strength etc.). Failure to do so can result in unnecessary analysis and wasted resources.

An authorised officer is entitled to seek any reasonable information or assistance in connection with the food business being inspected. The officer may inspect any records relating to a food business in whatever form they are kept (e.g. recipes, computer records or process data sheets). Documents, such as recipes, production records, staff instructions, invoices and correspondence, are often useful to review. When exercising powers to inspect recipes and other material of commercial importance (such as secret manufacturing processes) officers must bear in mind that it is an offence to disclose any trade secret, unless the disclosure is made in the performance of the officer's duty.

Where such information is required as evidence, for example where there is reason to believe that contravention of food legislation has occurred, the officer may seize and detain the records. Alternatively, copies of documents may be taken and the officer will give notice to the owner that the originals may be required as evidence. All such evidence must be obtained and used fairly.

Whilst obtaining evidence, officer should bear in mind that the investigation of suspected offences must be carried out in accordance with the procedures set out in the Police and Criminal Evidence Act 1984 (PACE) and the Codes of Practice made under it, and also the Criminal Procedure and Investigation Act 1996 (CPIA).

3.7 Where should it be sampled?

It might not always be possible to divide the sample at the point that it is taken or purchased (e.g. on the production line or at a supermarket checkout). In such cases it should be removed to a clean area such as a manager's office where there is room to enable it to be properly divided and secured. Ideally, a member of the company concerned should be invited to witness the sampling if they so wish. They should then be invited to select a final part for their own analysis.

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Although there is no official guidance on what information should be given to the owner/seller of the food on how they should store their part of the sample prior to submission to their own laboratory (if they wish to do this), it is good practice to provide advice on the most appropriate storage conditions be employed. An example of a form which may be used for this purpose is given in CCFRA Guideline No. 36, 2002⁽⁶⁾.

4 Matters to Deal with Following Sampling

4.1 How should the samples be transported?

The final part to be submitted to the Public Analyst should be transmitted as soon as practicable after sampling, particularly where tests are to be made for substances which may deteriorate or change with time (e.g. certain pesticides, sulphur dioxide etc). In any case where doubt exists about suitable storage or transport arrangements for samples for analysis, the Public Analyst should be consulted.

It is common practice to transport chilled or frozen samples in cool boxes or refrigerated vans. The former procedure has been validated and shown to be suitable for short periods of time during transport⁽⁶⁾. It is essential that sufficient ice packs and packing are included in the cool box to ensure that frozen food stays below 0°C and chilled foods below 5°C.

In instances where food is suspected of being in the early stages of decay, it would be good practice to monitor the temperature of the samples at all times during transport using calibrated measuring equipment such as a datalogger. This would avoid any future problems with suggestions that the food decayed after being sampled.

4.2 How should the samples be stored?

Since retained final parts may need to be stored for several months prior to submission to the Government Chemist, it is important that they are appropriately stored. Final parts of food which are perishable should be kept refrigerated or in a frozen state as necessary. The method of storage used will differ, depending on whether the final part is to be submitted to the Public Analyst, or retained for possible submission to the Government Chemist. Further guidance on how to store different types of foods, and foods to be tested for different analytes, is also given in CCFRA Guideline No.36⁽⁶⁾.

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Samples of apparently fresh food for assessment of whether it has been previously frozen must neither be frozen nor chopped, while the limited storage time to allow subsequent analysis precludes the retention of samples for referee analysis.

4.3 What should the company that owns the food be told?

If the address of the packer, manufacturer, importer, or the agent of the food is available at the time of sampling and the address is in the U.K., the officer should notify that person of the procurement for analysis, in writing.

This 'notice' should be given as soon as practicable after sampling has taken place and should include the name of the foods taken from where and any relevant codes which will help identify where the food was manufactured.

4.4 Where should the samples be sent?

All samples for analysis taken in accordance with the Food Safety (Sampling and Qualifications) Regulations 1990 and the requirements of the Code of Practice should be submitted to the Public Analyst appointed for the authority concerned. The samples should be submitted as soon as possible as any delay may cause a change in the food.

The Food Safety Act requires the food analyst to analyse, as soon as practicable, any sample submitted or sent to them.

5 Matters to Deal with on Receipt of Results of Samples

5.1 Does anything need to be reported back to seller/owner of the food?

The Food Safety (Sampling and Qualifications) Regulations 1990 entitle the owner of the food to ask for a copy of the certificate of analysis.

Where a certificate indicating that the foodstuff does not comply with legal requirements has been received, the Food Authority should refer to and implement any relevant provisions of the Code of Practice and the LACORS Home Authority Principle.

A copy of the certificate should be sent as soon as practicable to the person from whom the food was sampled and the importer/manufacture/producer, if based in the EU. Where the Food Authority is undertaking an investigation, the release of the certificate may be delayed if its early release might compromise the investigation.

5.2 What are the considerations for a decision of any formal action?

When considering any formal enforcement action officers must have regard to their Authority's food law enforcement policy, the Enforcement Concordat⁽⁸⁾ and the Code for Crown Prosecutors⁽⁹⁾.

The enforcement policy should cover all areas of food law that the Authority has a duty to enforce and detail the criteria for the use of all of the enforcement options that are available.

In deciding the type of enforcement action to take, an authority should have regard to the nature of the breach and the history of compliance of the proprietor with food legislation. The existing procedure of giving advice and sending informal letters for less serious breaches is well established and is accepted and understood by the food trade. Authorised officers should continue to use informal procedures as long as they believe that such procedures will secure compliance with the requirements of food legislation. A

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clear distinction between action needed to meet statutory requirements and recommendations concerning good practice should be made in all communications with food businesses.

Any formal enforcement action should be reasonable, proportionate and consistent with good practice. Before deciding whether a prosecution should be taken, food authorities must consider a number of factors which include the following: the relevant sections of the Food Safety Act 1990 Code of Practice and Practice Guidance; the 'public interest' test; and the evidential test.

5.3 When can the third part of the sample be disposed of?

Section 34 of the Food Safety Act 1990 sets time limits for the commencement of any prosecution. This stipulates that a prosecution cannot be commenced more than three years from the date of the commission of the offence or twelve months from its discovery by the prosecutor, whichever is the earlier.

In effect, once the results of analysis of a sample have been reported by the Public Analyst, the retained part of the sample may have to be stored for up to a further twelve months pending investigation by the food authority.

In any proceedings it is vital for the retained part of a sample to be produced at the start of the hearing so that the court is aware of its existence and of the fact that it could be submitted to the Government Chemist if necessary. The officer should be able to demonstrate that the sample has been held in safe keeping in the interim (e.g. by using a sample history log-book).

In general, samples may be disposed of after the return of a satisfactory certificate of analysis, or after any formal action taken by the authority as the result of an adverse report and any period for appeal against a court decision has lapsed.

6 Sampling and the Framework Agreement

Officers should be mindful of the arrangements required by The Food Law Enforcement Standard. There are some specific procedures that can be applied to ensure that all sampling personnel are working consistently using good sampling practices and. These include:-

- **Proper training of sampling staff**

Any officers involved in food sampling should be appropriately qualified and trained in accordance with the Code of Practice and records should be held relating to these issues. See also paragraphs 5.3 to 5.5 of the Standard.

- **Sampling equipment**

Sampling equipment should be kept in a clean box or container with a list of the equipment present. The list should be checked prior to going sampling to ensure that all equipment needed is present. The sampling kit should be re-stocked on return to base. Containers should be drawn from stock which is properly rotated. Consider whether any equipment needs to be calibrated e.g. temperature probes. See also paragraphs 6.1 to 6.3 of the Standard.

- **Sampling procedures**

Paragraphs 1.4 and 12.5 of the Standard set out the requirement for documented sampling procedures. These should be taken to sampling situations and the documentation controlled to ensure that it is current.

- **Monitoring of sampling staff**

The Framework Agreement requires internal monitoring procedures to be implemented covering all parts of the Standard (see paragraph 19.1) including sampling and sampling staff should be monitored periodically to ensure that they are sampling correctly.

Annex A: References

1. The Food Safety Act 1990
2. The Food Safety (Sampling and Qualifications) Regulations 1990
3. Food Safety Act 1990, Code of Practice
4. Food Safety Act 1990 Practice Guidance
5. Food Standards Agency's 'Food Law Guide'. This reference manual aims to provide a comprehensive guide to the provisions of the 1990 Food Safety Act and other UK legislation covering the composition and labelling of foods, chemical safety, food hygiene, control of foodstuffs, and trading and marketing standards.
<http://www.foodstandards.gov.uk/multimedia/pdfs/foodlaw.pdf>
6. Guidelines for the Preservation of Official Samples for Analysis, CCFRA Guideline No. 36, 2002.
7. Council Directive 89/397/EEC of 14 June 1989 on the official control of foodstuffs. Official Journal of the EC, L 186, 30/06/1989 P. 0023 – 0026.
8. Enforcement Concordat, the Cabinet Office, March 1998.
<http://www.cabinet-office.gov.uk/regulation/PublicSector/Enforcement/Concordate.pdf>
9. The Code for Crown Prosecutors, Director of Public Prosecutions under section 10 of the Prosecution of Offences Act 1985.
<http://www.cps.gov.uk/Home/CodeForCrownProsecutors/index.htm>

Annex B: Example of sample data

Premises Data	Sample Number	_____				
	Sampling Officer	_____				
	Sample Date	_____				
	Sample Time	_____				
	Premises Name	_____				
	Address 1	_____				
	Address 2	_____				
	Address 3	_____				
	Address 4	_____				
	Postcode	_____				
	Premises Type	_____				
	Risk Category	1	2	3	4	5

Sample type	Reason for Sample	enforcement/investigation	surveillance/monitoring
	Sample Type	formal	informal

CoP	Was sample taken in compliance with CoP?	Yes / No
	Was sample transported to Lab in compliance with CoP?	Yes / No

Survey	Survey reference if appropriate	_____
	Survey body if appropriate	_____

Food Standards Sampling

Sample Description	Brand Name	_____
	Food Description	_____
	Nature of product	_____
	Category (from Framework Agreement monitoring form)	_____
	Sub-category (from Framework Agreement monitoring form)	_____
	Manufacturer	_____
	Manufacturer's postcode	_____
	Distributor/Supplier	_____
	Importer	_____
	Country of Origin	_____

Packaging	Packaging provided	prepacked (direct sale) / prepacked (end consumer) / not prepacked
	Packaging provided	cardboard / can / glass / plastic / other _____
	Pack Quantity/Size	_____ grams / kg / litres / ml / pints
	Batch/Lot no.	_____
	Health Mark	_____

Durability	Durability	best before / best before end / use by / not provided
		Day _____ Month _____ Year _____
	Condition	ambient / chilled / frozen / hot / other _____
	Temperature	_____ °C

Analysis	Analysis/examination required
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Annex C: Checklist

Before going sampling

- a) Have you got authorisation/warrant card?
- b) Do you know what samples will be taken?
- c) Are there any legal, official or product specific sampling procedures that need to be considered before taking food samples?
- d) Do you know how many, and how much sample will be needed?
- e) Have you got the correct labels, forms and paperwork, equipment, containers, utensils, and official seals?
- f) Is any specialised sampling equipment needed for the products concerned?
- g) Do normal working hours apply?
- h) Should prior warning of attendance be given?
- i) Does the Public Analyst need to know the sample is coming?
- j) Do you need to take any specialised clothing?
- k) Will the samples be purchased or taken? If you are going to purchase samples, do you have sufficient money?
- l) What powers and rights does the sampler have, and the owner/seller have?
- m) What should be sampled, and how should it be sampled and divided to ensure it is representative?

When taking sample

- a) Has a sample fair to both parties been taken and is the security of sealing procedures adequate?
- b) What documents do you need to use and leave with the owner of the food?
- c) What additional information should you ask for about the food?
- d) Where should you take and divide the sample?
- e) Do you know how you should transport the sample?
- f) Do you know how you should store the sample?
- g) What do you need to tell the company that owns the food?
- h) Where do you need to send the samples?
- i) What do you need to report back to seller/owner of the food on receipt of the result?