

<b>Title:</b> FSA Powers of entry review <b>IA No: FOODSA0134</b>  <b>Lead department or agency:</b> Food Standards Agency <b>Other departments or agencies:</b> Defra	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 19/07/2013		
	<b>Stage:</b> Consultation		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Other		
<b>Contact for enquiries:</b> J Alder Aviation House Kingsway WC2B 6 NH			

**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, Measure qualifies as One-Out?
£7.38m	£7.36m	£0.80m	No
			NA

**What is the problem under consideration? Why is government intervention necessary?**  
 Powers of entry (PoE) under Food Standards Agency (FSA) responsibility have been included in a number of Acts of Parliament and Statutory Instruments (SIs) regulating food safety since 1990 (The Food Safety Act 1990 being the principal piece of primary legislation currently within the FSA's remit). They have not until now been reviewed to consider if they are proportionate to the task of enforcing and monitoring food and feed safety or whether they contain sufficient safeguards for the businesses and individuals affected. This Impact Assessment (IA) proposes an option where further safeguards to protect individuals and businesses from intrusion could be added.

**What are the policy objectives and the intended effects?**  
 PoE for which the FSA has responsibility may no longer have sufficient safeguards in place to protect individuals and businesses from intrusion by public officials as a result of increased safeguards introduced by the Protection of Freedoms Act 2012. However, the civil liberties of individuals must be balanced against the need to protect public health in relation to feed and food safety.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
 Option 1 – Do nothing (maintain current PoE and safeguards)  
 The PoE and their safeguards would continue in their current form. This is the baseline by which all other options are considered.  
 Option 2  
 Apply additional safeguards to FSA PoE relating to leaving premises as close as possible to the condition in which it was found and the seizure of materials in all FSA legislation in which PoE are included.  
  
 Proposals that have been considered and rejected, to revoke PoE, and for the addition of further safeguards are assessed at annex A and B.  
 Option 2 is the preferred option.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 07/2018					
Does implementation go beyond minimum EU requirements?				N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)				<b>Traded:</b>	
				<b>Non-traded:</b>	

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Date:  
 SELECT SIGNATORY: e: \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** No changes to current PoE

## FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years N/A	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'

There are no monetised incremental costs associated with this option. This is the baseline against which the other option is assessed.

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

There are no non-monetised incremental costs associated with this option. This is the baseline against which the other option is assessed.

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'

There are no monetised incremental benefits associated with this option. This is the baseline against which the other option is assessed.

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

There are no non-monetised incremental benefits associated with this option. This is the baseline against which the other option is assessed.

Key assumptions/sensitivities/risks	Discount rate (%)	N/A
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FSA PoE and associated safeguards would be retained in their current legislative form. Enforcement authorities would continue to utilise PoE to ensure compliance with feed and food safety laws and the monitoring of the food and feed enforcement regime.

## BUSINESS ASSESSMENT (Option 1)

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

# Summary: Analysis & Evidence

# Policy Option 2

Description: Addition of safeguards

## FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 2.07	High: 12.68	Best Estimate: -7.38

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	2.07	Optional	2.07
High	12.68	Optional	12.68
Best Estimate	7.38	0	7.38

Description and scale of key monetised costs by 'main affected groups' Total familiarisation costs (England only):£7.38 m (EAC £0.86m) comprised of: Business £7.36m (EAC £0.85): Local Authorities (LAs):£16.717 (EAC (£1,942): FSA £620 (EAC £72).

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

The FSA considers that these safeguards would incur little or no non-monetised costs to businesses or enforcement authorities.

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'

The FSA consider that these safeguards would deliver little or no monetised benefits to businesses or enforcement authorities. There is anecdotal evidence to suggest and inform the assumption that activities to return premises as close as possible to their state prior to entry are already taking place and therefore no benefit to business will be gained.

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

Provision of information on redress will aid businesses. This is because the occupier of the premises will receive confirmation of any appeal rights and how long items may be held before they are returned (although counterfeit or illegal items may be destroyed).

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5

As well as the assumption about returning premises as close as possible to their state prior to entry, there is also anecdotal evidence that provision of information on seizures are already taking place.

We assume that either 100% of FBOs invest and take time to read and familiarise themselves with changes to PoE legislation (upper bound estimate) or that 16% of FBOs (excluding 'Micro' sized businesses), invest and take time to read and familiarise themselves with changes to PoE legislation (lower bound estimate); as we assume micro sized business would rather invest time in carrying out business as usual tasks.

## BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:	In scope of OIIO?	Measure qualifies as
Costs: 0.85	No	NA
Benefits: 0		
Net: 0.85		

# Evidence Base

## Evidence base

### Problem under consideration

1. The FSA has legislative responsibility for PoE relating to many aspects of food and animal feed law. These PoE allow officials whether local authority (LA) officials, FSA officials or officials acting on behalf of the FSA, to enter premises to enforce food and feed law and ensure food safety. In addition, the FSA has PoE to enter premises involved with enforcement activities, such as those of businesses, LAs and laboratories, in order to monitor and audit those services.
2. Current PoE under FSA responsibility have been introduced in a number of Acts of Parliament and Statutory Instruments (SIs) the earliest of which dates from 1990. They have not until now been reviewed to consider if they are proportionate to the task of enforcing and monitoring food and feed safety or whether they contain sufficient safeguards for the businesses and individuals affected. This Impact Assessment (IA) considers the impact of introducing further safeguards to protect individuals and businesses from intrusion. Annex A summarises additional safeguards that, subject to consultation views, have been considered and rejected. The proposals apply to England only.

### Rationale for intervention

3. PoE for which the FSA has responsibility may no longer have sufficient safeguards in place to protect individuals and businesses from intrusion. However, the civil liberties of individuals and businesses need to be balanced against the need to protect the wider public health interest in relation to feed and food safety.
4. PoE should also be periodically reviewed to consider individually and as a group if they are necessary and proportionate to enforce food and feed legislation and therefore ensure food and feed safety.
5. The Protection of Freedoms Act 2012<sup>1</sup> (PFA) contains a duty to review PoE, to repeal any unnecessary or inappropriate powers and to ensure that sufficient safeguards for individuals' privacy and property are in place. Ministers can by order re-write powers of entry or associated powers under Section 41 of PFA.

### Background

6. A PoE is a right for a person (usually a state official such as a local authority trading standards or environmental health officer or a member of the enforcement staff of a regulatory body) to legally enter defined premises, such as businesses, for specific purposes. The PoE might include undertaking an inspection, audit, dealing with a complaint, an emergency or searching for evidence during an investigation. Often, the power to enter is accompanied by what are known as 'associated powers', which set out what officials are allowed to do once they have entered the premises. This might, for instance, include conducting a search, seizing relevant items or collecting samples. PoE

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2012/9/part/3/chapter/1/enacted>

also contain 'safeguards' to protect individuals and businesses from intrusion, for example, by requiring officials to show authorisation.

7. The review of the PoE for which FSA is responsible is against the background of the Review of Food Standards Agency response to the incident of contamination of beef products with horse and pork meat and DNA<sup>2</sup>. This review noted that the incident '*demonstrated the limitations in the powers of the FSA, for example in power of entry into food premises, which could lead to loss of evidence if papers are removed elsewhere*'. Further work to investigate any limitations of FSA's PoE in this respect is being undertaken and will be concluded in December 2013.

### **Scope of the IA**

8. This IA considers PoE, their associated powers and safeguards, for which the FSA has responsibility and which came into force prior to the PFA in 2012. Those PoE that have been subject to the Home Office PoE gateway process are not considered in this IA.

### **Key aspects of FSA PoE**

#### **Authority to enter.**

9. PoE are defined in legislation to be carried out by an authorised officer with delegated authority to act on behalf of an enforcement authority. This will include FSA staff, including veterinarians and official auxiliaries undertaking official controls at approved establishments such as at meat plants; dairy hygiene inspectors undertaking primary production hygiene controls; and officials involved with auditing and monitoring enforcement. Other than FSA officials, the PoE also provide authority to local authority enforcement officers. In some circumstances, officers may take with them other persons they consider necessary and an enforcement authority may authorised any other persons whether or not an officer of the authority to act in matters arising under the legislation.

#### **Entry by authorisation or by court warrant**

10. PoE can be carried out by authorised individuals in cases where either a Justice of the Peace (JP) warrant is not required or where a warrant power of entry must be authorised by a JP. Routine powers of inspection, required under UK law to implement EU obligations, are often needed to monitor a trade or business for compliance. A warrant need not apply to such matters where authorisation i.e. consent by the owner occupier can be used (unless for example a power is needed to enter a private dwelling), as routine inspection is often frequent and expected and the use of a warrant might be considered to be a heavy-handed, disproportionate and potentially costly response to the inspection of routine matters. A warrant acts as a backstop power where:
  - entry is refused,
  - entry is likely to be refused,
  - where the owner or occupier of a property cannot be found,
  - where force is required, or
  - where entry to a private dwelling is necessary.

### **Primary or secondary legislation**

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<sup>2</sup> <http://www.food.gov.uk/multimedia/pdfs/board/board-papers-2013/fsa-130704-prof-troop-report.pdf>

Legislation enabling the power for enforcement officials to enter premises may be primary or secondary. Primary legislation is law made by the legislative branch of government (Parliament). This contrasts with secondary legislation, which is usually made by the executive branch (Ministers). Secondary (or delegated) legislation must be permitted under primary legislation, and conform to boundaries the latter has laid down.

### **Food safety issue to which the PoE relates**

11. A PoE will allow entry to investigate a specific food issue. For example, powers are made to enable entry to check that food hygiene regulations or animal feed regulations are complied with.

### **Nature of premises affected**

12. PoE can cover entry across the food chain. This includes business premises, local authority (LA) premises, laboratories and farms. PoE enable entry to business premises to ensure food and feed safety or to monitor whether LA enforcement authorities perform their duties correctly. They can also authorise entry to LA premises and laboratories to check their activities are being carried out appropriately. The FSA also has PoE across the food chain to carry out programmes to, for example, investigate a particular contaminant or a hygiene practice.

### **Range of safeguards**

13. PoE include safeguards that the officials using the powers need to abide by. They can include providing notice to a business about when PoE are to be used, the number of officials involved and specify what items are being seized or removed as evidence. Each power can contain different safeguards according to the nature of that power. For example, a safeguard for officials entering at reasonable times would not be appropriate for a warrant entry as the circumstances may require flexibility over when the warrant is to be exercised. Similarly, providing notice for a warrant entry could defeat the object of the warrant, for example if advance notice would permit the removal of non-compliant product from the premises to be entered. There are also legal restrictions in some cases; for example, EU Regulation 882/2004<sup>3</sup> on official feed and food controls<sup>4</sup> states that official controls are to be carried out without prior notification.
14. The Government has decided that PoE should have as many relevant safeguards attached to them as possible in order to protect individuals and businesses from intrusion.

### **Nature of the power, routine inspection or investigative**

15. PoE can involve routine inspection: for example, officials attending premises on a permanent basis to check adherence to food laws serving the wider public interest in the protection from harm. This type of power is necessary to check regularly the conduct of a specified trade or business: an example is FSA official presence at meat plants when the plant is in operation.
16. PoE will also be used in an investigative way to follow up offences under food law or to track problems or issues that the enforcement authority has been made aware of.

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<sup>3</sup> Article 3.2 of Regulation 882/2004

<sup>4</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:165:0001:0141:EN:PDF>

17. In addition, PoE can be used as part of the FSA's duty to audit LA services or to check, for example, that a laboratory carrying out a service is providing accurate information.
18. PoE may be used implicitly whenever an enforcement officer enters a business premises, and formally exercised only where it is thought that entry will be denied or where there is evidence that an offence has been committed, so that entry can be required if necessary.

### **Options summary**

#### **Option 1 – Do nothing (maintain current PoE and safeguards)**

19. The PoE and their safeguards would continue in their current form. This is the baseline by which all other options are considered.

#### **Option 2**

20. Apply additional safeguards relating to leaving premises in as near as possible to the condition found on entry and the seizure of materials.
21. Proposals that have been considered and rejected, to revoke PoE, and for the addition of further safeguards, are assessed at Annexes A and B.
22. Option 2 is the preferred option.



## **Description of options**

### **Option 1**

23. This is the baseline against which the other option is assessed.
24. The FSA PoE and associated safeguards would be retained in their current legislative form. FSA, LA and third party officials tasked with carrying out enforcement functions on behalf of the FSA would continue to utilise the PoE to ensure compliance with feed and food safety laws and the monitoring of the food and feed enforcement regime. Details of FSA PoE are at Annex A. A description of the safeguards that have been considered and would remain unchanged, are at Annex B.

## **Option 2**

### **Additional safeguards for PoE**

25. All necessary PoE and associated powers should have as many relevant safeguards attached to them as necessary to protect individuals and businesses from intrusion. The FSA has a duty to protect civil liberties by providing an appropriate level of protection for the individual that recognises the right to private and family life as well as the rights of business owners. However, the application of safeguards must be proportionate to the need for the proper enforcement of food and feed law in the protection of public health in relation to food and feed safety.
26. The second order-making power in the PFA, contained in Section 40, enables Ministers to add safeguards to PoE. These may include:
  - restrictions as to types of premises that can be entered;
  - the time when entry may take place;
  - the number or description of persons who may enter premises;
  - the need for a warrant;
  - the need to provide reasonable notice; and
  - restrictions on use of force.

### **Proposal**

27. This option would entail two safeguards being brought into line with Government standards through legislative changes made to relevant SIs (a list of FSA PoE is at Annex A) and the Food Safety Act. Secondary legislation made under the Food Safety Act that is within the remit of Defra that is also likely to be affected by changes to the safeguards is listed at Annex A (responsibility for considering the retention or repeal of these PoE lies with Defra).
28. The two safeguards relate to securing premises and a number of requirements concerning the seizure of items. These are considered in turn below. Safeguards to remain the same, considered alongside the Government standard, are at Annex B.

### **State of premises**

#### *Government standard:*

29. State of premises – officials are required to leave premises in as near as possible to the condition in which found, especially where force is used.

#### *Proposal*

30. To add additional legislative provisions requiring premises to be left in as near as possible to the condition in which they were at the time of entry.
31. Currently FSA's PoE include the safeguard to secure premises but not the specific provision to leave premises in as close as possible to the condition in which found. This option would mean that the additional safeguard 'to leave the premises in as close as possible to the condition in which found' would be added to all FSA PoE.
32. Anecdotal evidence suggests that enforcement officials already leave premises in the condition in which found, the consultation will clarify this and seek to quantify any additional costs in time and expense for enforcement authorities in actioning the safeguard.

33.

### Consultation Questions

Q1 . Do you consider the additional safeguard to 'return premises to as close to the condition in which it was found' appropriate? If not, please provide information and evidence in support of your argument.

Enforcement authorities questions

Q2. FSA envisage that there may be additional costs for enforcement authorities associated with returning premises to as close as possible to the condition in which it was found. If this is the case, how many instances per year in your authority might such an activity take place?

Q3. What would be the additional time taken to return premises to as close as possible to the condition in which found?

Q4 For costing purposes, how many and of what grade of personnel would be carrying out this task?

Q5. Are there any other costs associated with this additional safeguard?

### Controls over seized items

*Government standard:*

34. Seizure of property – There ought to be compelling reasons to include a power to seize items but where that is the case the power should clearly set out what can be seized (limited to items that appear relevant to the exercise of the power), how long those items can be held or whether they are held as evidence pending court proceedings, what redress is available to the rightful owner, and a requirement to provide a receipt for what has been taken.

*Proposal*

35. To add additional legislative provisions detailing

- how long items can be held for or whether they are held as evidence pending court proceedings,
- what redress is available to their owner and
- provision of a receipt for seized items.

36. Provision of information on avenues for redress will aid businesses, as will how long items may be held before they are returned (although counterfeit or illegal items may be destroyed) or pending court proceedings and provision of receipts.

37. FSA anticipates that these provisions will not incur additional costs to businesses or enforcement authorities for the reasons that follow.

38. FSA PoE already contain safeguards regarding what can be seized. In addition, length of time material can be held is referenced in the Feed (Hygiene and Enforcement) Regulations 2005. In the case of the Food Standards Act<sup>5</sup> a receipt is required to be provided for any samples taken.
39. These requirements already take place in procedures followed by enforcement officers. Enforcement officers will provide, through a receipt or notice, details of the product seized the powers under which the material has been detained or seized and contact details for claiming redress. A Detention of Food Notice is given to an operator or person in charge of a premises where food is required to be detained pending investigation. Made under the Food Safety Act 1990 or the Food Hygiene (England) Regulations 2006 the notices include a description of items to be detained and for how long where applicable (e.g. 21 days) pending further actions, as well as redress details<sup>6</sup>. A Seizure of Food Notice made under the Food Hygiene (England) Regulations 2006 that stem from The Food Safety Act 1990 permits seizure pending action from a JP. In addition, investigation officers complete a premises seizure record, which details articles seized and provides information on redress for the premises owner.

### Consultation Questions

Q6. Do you consider the additional safeguards around the seizure of items appropriate? Please provide information and evidence in support of your argument.

Q7. FSA consider that businesses and enforcement authorities would incur additional costs around having to familiarise themselves with the change in legislation. Do you agree?

Q8. FSA envisages enforcement authorities will not incur additional costs around the administration of seized items by notifying how long items can be held or whether they are held as evidence pending court proceedings, what redress is available and providing a receipt. Do you agree?

Q9. If there are additional costs, on how many instances per year would such additional records keeping activity take place in your authority and what would be the additional time taken?

### Sectors and Groups Affected

#### Industry

40. The change in legislation will impact on all Food Business Operators (FBOs) in England who may want to familiarise themselves with the changes. In order to identify businesses affected, we have used 2011/12 LAEMS data. FSA estimates that there is approximately

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<sup>5</sup> Section 14 (7) of the Food Standards Act 1999

<sup>6</sup> <http://www.legislation.gov.uk/ukxi/1990/2614/schedule/made>

a total of 490,308 food businesses (approved and non-approved) operating in England. This is shown in table 1.1 broken down by business size and UK country; and table 1.2 where the number of businesses is distributed by size and sector (England only).

**Table 1.1 – Total Number of FBOs by UK Country and Business Size**

	Micro	Small	Medium	Large	Total
England	410,686	70,458	7,359	1,805	490,308
Wales	28,263	4,849	506	124	33,743
Scotland	47,086	8,078	844	207	56,215
NI	16,429	2,819	294	72	19,614
UK	502,464	86,204	9,004	2,208	599,880

Sources: LAEMS (FSA) 2011/12; IDBR (ONS) 2011

**Table 1.2 – Number of FBOs by Sector and Business Size – England Only**

	Primary Producers	Manufacturers/ Packers	Import/ Export	Distribution/ Transport	Retailers	Restaurant/ Catering	All FBOs
Micro	2,642	10,862	825	6,552	92,913	296,892	410,686
Small	453	1,864	142	1,124	15,940	50,936	70,458
Medium	47	195	15	117	1,665	5,320	7,359
Large	12	48	4	29	408	1,305	1,805
Total	3,154	12,968	985	7,822	110,927	354,452	490,308

Sources: LAEMS (FSA) 2011/12; IDBR (ONS) 2011

Notes:

1. This table contains food businesses in both the approved and the non-approved sector
2. Totals may not sum due to rounding
3. Number of business apportioned by firm size is based on the distribution of businesses taken from IDBR 2011 (ONS)<sup>7</sup>.
4. 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

## Enforcement Authorities: FSA and Local Authorities

41. The preferred option (Option 2) will require authorised FSA and Local Authority (LA) staff to read and familiarise themselves with the changes; and incremental costs associated with leaving premises unchanged and the administration of seizure of materials. There are 393 authorities in England (including PHAs) with responsibility for the enforcement of food hygiene legislation (see table 1.3).

**Table 1.3 – Number of Local Authorities by UK Country**

Location	Number of Local Authorities	Number of Port Health Authorities	Total Number of Enforcement Authorities
England	354	39	393
Wales	22	1	23
Scotland	32	0	32
NI	26	0	26
UK	434	40	474

<sup>7</sup> 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.

## Consumers

42. Option 2 will continue to allow authorised officers to tackle non-compliances with the Regulations in a proportionate and effective manner.

### **Costs and Benefits**

#### **Option 1**

##### **Costs**

43. No incremental costs are associated with policy Option 1: 'do nothing', as this option will look to maintain the status quo. This is the baseline by which all other options are appraised.

##### **Benefits**

44. No incremental benefits are associated with policy Option 1: 'do nothing', as this option will look to maintain the status quo. This is the baseline by which all other options are appraised.

#### **Option 2**

##### **Costs**

### **Industry**

#### **One-off Costs: Familiarisation**

45. There will be a small one-off cost to industry for reading and familiarising themselves with legislative changes pertaining to additional safeguards relating to FSA PoE.
46. It is estimated that it will take one hour per business to read and familiarise themselves with the new arrangements and a further one hour disseminating to key staff. This means a total of two hours for familiarising. However, due to the inherent uncertainties and lack of data and evidence surrounding the number of FBOs likely to opt for familiarisation, we produce a range of upper and lower bound estimates including best estimates for one-off familiarisation costs to industry. Details pertaining to costing methodology, assumptions, calculations and UK country breakdown are set out in Annex C of the Impact Assessment.
47. To quantify the one-off familiarisation cost to industry we calculate the familiarisation cost per business by multiplying the hourly median wage rate (including an up-rating of 30% to account of overheads) of a 'manager of a FBO' for each respective sector by the two hours taken to understand the changes, resulting in a familiarisation cost per business by sector (see table 2.1).
48. To quantify the overall one off familiarisation cost to industry we multiply the familiarisation cost per firm by the number of businesses affected as per sector by the proposal. This results in an approximate one off familiarisation cost in England to businesses ranging from an upper bound estimate of £12,661,802 (see table 2.1) to a lower bound estimate of £2,056,183 (table 2.2); with a best estimate of £7,358,993 (table 2.3).

**Table 2.1 – Total Familiarisation Cost Estimates by Sector and Size England Only (upper bound estimates)**

	Primary Producers	Manufacturers/ Packers	Import/ Export	Distribution/ Transport	Retailers	Restaurant/ Catering	All FBOs
Micro	£89,499	£551,555	£23,446	£279,197	£2,606,589	£7,055,332	£10,605,619
Small	£15,355	£94,626	£4,022	£47,900	£447,194	£1,210,432	£1,819,529
Medium	£1,604	£9,883	£420	£5,003	£46,707	£126,423	£190,041
Large	£393	£2,424	£103	£1,227	£11,456	£31,010	£46,614
<b>Total</b>	<b>£106,851</b>	<b>£658,489</b>	<b>£27,992</b>	<b>£333,327</b>	<b>£3,111,946</b>	<b>£8,423,197</b>	<b>£12,661,802</b>

Sources: LAEMS (FSA) 2011/12; ASHE (ONS) 2011

**Table 2.2 – Total Familiarisation Cost Estimates by Sector and Size England Only (lower bound estimates)**

	Primary Producers	Manufacturers/ Packers	Import/ Export	Distribution/ Transport	Retailers	Restaurant/ Catering	All FBOs
Micro	£0	£0	£0	£0	£0	£0	£0
Small	£15,355	£94,626	£4,022	£47,900	£447,194	£1,210,432	£1,819,529
Medium	£1,604	£9,883	£420	£5,003	£46,707	£126,423	£190,041
Large	£393	£2,424	£103	£1,227	£11,456	£31,010	£46,614
<b>Total</b>	<b>£17,352</b>	<b>£106,934</b>	<b>£4,546</b>	<b>£54,130</b>	<b>£505,357</b>	<b>£1,367,865</b>	<b>£2,056,183</b>

Sources: LAEMS (FSA) 2011/12; ASHE (ONS) 2011

**Table 2.3 – Total Familiarisation Cost Estimates by Sector and Size England Only (Best estimates)**

	Primary Producers	Manufacturers/ Packers	Import/ Export	Distribution/ Transport	Retailers	Restaurant/ Catering	All FBOs
Micro	£44,750	£275,778	£11,723	£139,598	£1,303,294	£3,527,666	£5,302,809
Small	£15,355	£94,626	£4,022	£47,900	£447,194	£1,210,432	£1,819,529
Medium	£1,604	£9,883	£420	£5,003	£46,707	£126,423	£190,041
Large	£393	£2,424	£103	£1,227	£11,456	£31,010	£46,614
<b>Total</b>	<b>£62,102</b>	<b>£382,711</b>	<b>£16,269</b>	<b>£193,728</b>	<b>£1,808,652</b>	<b>£4,895,531</b>	<b>£7,358,993</b>

Sources: LAEMS (FSA) 2011/12; ASHE (ONS) 2011

Notes:

1. Totals may not sum due to rounding
2. 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

### *Equivalent Annual Cost (EAC)*

49. 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. Under Standard HM Treasury Green book guidance a discount rate of 3.5% is used.

50. A total one-off cost to industry (England only) affected by this proposal is an estimated £7,358,993. This yields an EAC of approximately £854,933 in England over 10 years.

**Table 2.4 – EAC (Best Estimate): Familiarisation Cost (Industry)**

	EAC
England	£854,933
Wales	£59,224
Scotland	£100,870

NI	£34,940
UK	£1,049,966

### Non-Monetised Costs

51. It is envisaged that safeguards associated with Option 2 would incur little or no non-monetised incremental costs to business.

## **Enforcement - Local Authorities**

### One-off Costs: Familiarisation

52. There will be a small one-off cost to LAs for reading and familiarising themselves with changes in legislation relating to additional safeguards associated with PoE.
53. An amendment to PoE legislation would create a familiarisation cost to officials responsible for the enforcement of food law. It is expected that one enforcement officer from each LA will be required to read and familiarise themselves with the amended legislation; and disseminate the information to staff. FSA estimates that an officer already familiar with existing guidance on the hierarchy of enforcement will invest approximately one hour reading and familiarising themselves, and a further one hour disseminating to other authorised officers in the organisation. This means a total of two hours for familiarisation.
54. We assume that either an Environmental Health Officer (EHO) or Trading Standards Officer (TSO) in each LA and PHA will be required to familiarise themselves with these changes. In order to account for differences across enforcement authorities, hourly median wage rates for both TSOs and EHOs, including an up-rating of 30% to account of overheads<sup>8</sup>, are used to produce a range of estimates. As a lower bound we use the median hourly wage rate of an EHO (£20.46) and as an upper bound the median hourly wage rate of a TSO (£22.09). Taking the midpoint we obtain a central estimate of £21.27<sup>9</sup>.
55. The familiarisation cost per enforcement authority is calculated by multiplying the familiarisation time, two hours, by a central estimated hourly wage rate of £21.27, generating a familiarisation cost per enforcement authority of £42.54<sup>10</sup>. To quantify the overall familiarisation cost to enforcement authorities we multiply the familiarisation cost per LA by the number of LAs in England.
56. There are 393 authorities in England (including PHAs) with responsibility for the enforcement of food hygiene legislation that will need to familiarise themselves (see table 1.3 above). The total one-off familiarisation cost for LAs and PHAs in England totals £16,717 (see table 2.5).

### **Table 2.5 – Familiarisation cost to LAs**

<sup>8</sup> Up-rating for overheads is a method of accounting for the opportunity costs of an individual worker = (ASHE Median hourly wage rate – EHO + TSO) x 1.3 (30% overhead up-rating).

<sup>9</sup> Midpoint is obtained by taking the average of both lower and upper bound values to generate central value estimate: £21.27 (midpoint) = (£20.46 (lower bound) + £22.09 (upper bound) / 2)

<sup>10</sup> Familiarisation cost = 2 hours \* £21.27 = £42.54



Location	Number of Local Authorities	Number of Port Health Authorities	Total Number of Enforcement Authorities	Familiarisation cost (Lower Bound)	Familiarisation cost (Upper Bound)	Familiarisation cost (Midpoint)
England	354	39	393	£16,072.91	£17,360.38	£16,717
Wales	22	1	23	£940.65	£1,016.00	£978
Scotland	32	0	32	£1,308.74	£1,413.57	£1,361
NI	26	0	26	£1,063.35	£1,148.52	£1,106
UK	434	40	474	£19,385.65	£20,938.48	£20,162

### *Equivalent Annual Cost (EAC)*

57. One-off familiarisation costs to LAs must also be expressed as equivalent annual costs (EAC). Total one-off costs to LAs in England have been estimated as £16, 717. This yields an EAC for LAs in England of approximately £1,942 over 10 years.

**Table 2.6 – EAC: Familiarisation Cost (LAs)**

	EAC
England	£1,942
Wales	£114
Scotland	£158
NI	£128
UK	£2,342

### On-going Costs

58. Returning premises to ‘as close as possible to the condition in which it was found’. There may be incremental costs associated with time and materials required to restore premises to its original state. This consultation will seek to establish any costs.
59. Provision of information regarding seized items. There may be costs associated with providing premises with information on seized items. This consultation will seek to establish any costs.

### Non-Monetised Costs

60. It is envisaged that safeguards associated with Option 2 would incur little or no non-monetary incremental costs to LAs.

## **Enforcement - FSA**

### One off costs: Familiarisation

61. There are expected to be familiarisation costs for FSA staff with changes in legislation relating to additional safeguards associated with PoE. It is envisaged that 15 FSA staff consisting of 12 HEOs, 2 SEOs; and 1 Grade 7 will each invest approximately one hour reading and familiarising themselves, and a further one hour disseminating to other authorised staff. This means a total of two hours per FSA official for familiarisation.

62. The familiarisation cost per FSA official is calculated by multiplying the familiarisation time, two hours, by the hourly median wage rate applied to each respective grade (see table 2.7). We estimate an approximate total one off familiarisation cost of £620 to the FSA.

**Table 2.7 – Familiarisation Cost to FSA**

	FSA Occupations			Total
	G7	HEO	SEO	
Median wage (ASHE)	£23.70	£15.15	£16.46	-
Plus 30% (overheads)	£7.11	£4.55	£4.94	-
Total	£30.81	£19.70	£21.40	-
Reading time	2	2	2	-
Familiarisation cost per Staff	£61.62	£39.39	£42.80	-
No. of Staff	1	12	2	15
Familiarisation cost by Grade	£61.62	£472.68	£85.59	<b>£620</b>

*Equivalent Annual Cost (EAC)*

63. One-off familiarisation costs to LAs must also be expressed as equivalent annual costs (EAC). Total one-off costs to the FSA have been estimated as £620. This yields an EAC for the FSA of approximately £72 over 10 years.

**Table 2.8 – EAC: Familiarisation Cost (FSA)**

	EAC
FSA	£72

On-going costs

64. There are expected to be no on-going FSA costs associated with the proposals.

**Total Cost**

65. The total cost associated with policy Option 2 is estimated at £7,376,329 over 10 years; an equivalent annual cost (EAC) of £856,947. This is summarised and presented in table 2.9.

**Table 2.9 – Total Cost (England Only)**

	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Total Cost	EAC	Present Value
<b>Industry</b>													
<i>One-off Costs</i>													
<u>Familiarisation</u>													
Upper Bound	£12,661,802	£0	£0	£0	£0	£0	£0	£0	£0	£0	£12,661,802	£1,470,988	£12,661,802
Lower Bound	£2,056,183	£0	£0	£0	£0	£0	£0	£0	£0	£0	£2,056,183	£238,878	£2,056,183
Best Estimate	£7,358,993	£0	£0	£0	£0	£0	£0	£0	£0	£0	£7,358,993	£854,933	£7,358,993
<b>Total cost to business</b>	<b>£7,358,993</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£7,358,993</b>	<b>£854,933</b>	<b>£7,358,993</b>

<b>Enforcement</b>													
<i>One-off Costs</i>													
<b>Familiarisation</b>													
LAs	£16,717	£0	£0	£0	£0	£0	£0	£0	£0	£0	£16,717	£1,942	£16,717
FSA	£620	£0	£0	£0	£0	£0	£0	£0	£0	£0	£620	£72	£620
Total cost to enforcement	£17,337	£0	£0	£0	£0	£0	£0	£0	£0	£0	£17,337	£2,014	£17,337
<b>Total cost</b>													
Upper Bound	£12,679,139	£0	£0	£0	£0	£0	£0	£0	£0	£0	£12,679,139	£1,473,002	£12,679,139
Lower Bound	£2,073,520	£0	£0	£0	£0	£0	£0	£0	£0	£0	£2,073,520	£240,892	£2,073,520
<b>Best Estimate</b>	<b>£7,376,329</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£7,376,329</b>	<b>£856,947</b>	<b>£7,376,329</b>

## **Specific impact tests**

### **Competition Assessment**

66. The proposals are not expected to have a direct or indirect impact on competition. There will be no impact on competition from these proposals through a business not complying with the law, and by doing so possibly gaining an economic advantage, since the proposals maintain PoE to enforce feed and food legislation.

### **Small Firms Impact Test**

67. The proposals to amend the safeguards will entail a change of working practices for enforcement authorities that will provide added protection for small businesses. Legislative changes will result in a formal record made when all PoE are exercised. Receipts will be provided for any seized items and a time limit will be placed on such seizures. There will be a requirement that the premises are left in as near as possible to the condition prior to entry which will benefit small businesses.

### **Sustainability**

68. Impacts under the three pillars of sustainable development (environment, economic and social) have been considered and are included in the IA.

### **Equality Impact**

69. The FSA does not foresee any impact in terms of equality. The proposals do not discriminate against any disadvantaged or vulnerable people nor favour particular groups. The proposals do not offer the opportunity to promote equality.

### **Current FSA Powers of Entry (PoE) and reasons for their retention**

There are potentially serious outcomes from removing PoE. Justification for retention of PoE can be broadly separated into two areas, to protect the food chain and ensure that detrimental impacts on consumers and businesses are minimised and secondly to monitor and audit the activities of the enforcement authorities to ensure that enforcement is taking place as required.

The following PoE should be retained as removal would mean:

- enforcement officers would be unable, for example, to investigate public complaints about unsafe and potentially unlawful activities;
- unsafe food (including imported food) could continue to be placed on the market with a serious risk to public health;
- a loss of confidence in public health officials could result, with the potential for embarrassment for the Government;
- a loss of public confidence in food businesses could result, with the potential for detrimental economic impact to businesses;
- a detrimental impact on business confidence could result in cases where businesses complying with the law could feel that businesses not complying with the law would have an unfair economic advantage so leading to a detrimental effect on competition;
- the FSA could be impacted in its ability to audit the performance of local authorities;
- the FSA would not be able to intervene in the event of an LA failure, for example where entry had been refused following a serious inter/national food incident requiring remedial measures, and intervention by the UK central competent authority is considered necessary - possibly under emergency circumstances;
- the FSA, local and port health authorities would not be able to enter premises where there has been a failure by control bodies (such as laboratories) to provide reasonable information, or where there has been obstruction or the giving of misleading or false information that may be crucial to the effective monitoring and audit of the food chain.

### **Food Safety Act 1990 section 32 (1)**

<http://www.legislation.gov.uk/ukpga/1990/16/section/32>

Enables entry by authorised officer of enforcement authority to uphold provisions relating to ensuring food safety. Provisions for which entry may be required to enforce include making food injurious to health by adding, subtracting, or using articles or treating it to make it so. Also covers food which fails to comply with food safety requirements.

Removing the power could result in a detrimental impact on business confidence in cases where businesses complying with the law could feel that businesses not complying with the law would have an unfair economic advantage from doing so, with a detrimental effect on competition. A loss of public confidence in food businesses could also result, with the potential for detrimental economic impact to businesses. Unsafe food could continue to be placed on the market with a serious risk to public health.

This is the primary legislation under which numerous secondary legislation are made, including secondary legislation under the remit of Defra (a list of these can be found at the bottom of this section).

### **Food Safety Act 1990 section 32 (2)**

<http://www.legislation.gov.uk/ukpga/1990/16/section/32>

This enables warrant entry as above and covers the secondary legislation noted above. That is including the rendering and sale of food in the avoidance of making it injurious to health by adding, subtracting, or using articles or treating it to make it so. Also includes food which fails to comply with food safety requirements.

PoE should be retained, as without warrant entry, unsafe food could be placed on the market with a serious risk to public health when an uncooperative business is involved.

### **Extraction Solvents in Food Regulations 1993, regulation 7**

<http://www.legislation.gov.uk/uksi/1993/1658/contents/made>

As these Regulations are made under the Food Safety Act, the section 32 PoE under that Act applies to permit entry to premises to ascertain if they are in contravention of the provisions of these Regulations. For example whether an extraction solvent being used is one which is not permitted (i.e. its safety has not been evaluated) or whether the conditions of use specified are not being complied with. The use of unauthorised solvents or misuse of permitted solvents could have serious adverse health effects.

This legislation is being revoked and a single Statutory Instrument covering food additives, flavourings (including smoke flavourings), enzymes and extraction solvents will be in force in autumn 2013. The new SI includes a PoE under section 32 of the Food Safety Act.

### **Flavourings in Food (England) Regulations 2010 regulation 5**

<http://www.legislation.gov.uk/uksi/2010/2817/contents/made>

As these Regulations are made under the Food Safety Act, the section 32 PoE under that Act applies to permit entry to premises to ascertain if they are in contravention of the provisions of these Regulations. For example whether a flavouring is one which is not permitted (i.e. its safety has not been evaluated) or whether the conditions of use specified are not being complied with. The use of unauthorised flavourings or misuse of permitted flavourings could have serious adverse health effects.

There are several different types of flavourings some of which require authorisation prior to use. The flavouring legislation lists 15 substances which may not be added as such to foods due to the toxicity of the substance. These substances can be naturally found in a variety of herbs, spices and other foods (e.g. bitter almonds). The legislation also sets limits for 11 of these substances for when natural flavourings or food ingredients with flavouring properties (e.g. herbs) are used. The legislation also sets restrictions on which source materials can be used from which to prepare flavourings. In summary the overall

aim of the flavourings legislation is to protect human health and ensure that flavourings used are safe.

This legislation is being revoked and a single Statutory Instrument covering food additives, flavourings (including smoke flavourings), enzymes and extraction solvents will be in force in autumn 2013. The new SI includes a PoE under section 32 of the Food Safety Act.

### **Food Additives (England) Regulations 2009 regulation 16**

<http://www.legislation.gov.uk/uksi/2009/3238/contents/made>

As these Regulations are made under the Food Safety Act, the section 32 PoE under that Act applies to permit entry to premises to ascertain if they are in contravention of the provisions of these Regulations. For example whether an additive being used is one which is not permitted (i.e. its safety has not been evaluated) or whether the conditions of use specified are not being complied with. The use of unauthorised additives or misuse of permitted additives could have serious adverse health effects.

This legislation is being revoked and a single Statutory Instrument covering food additives, flavourings (including smoke flavourings), enzymes and extraction solvents will be in force in autumn 2013. The new SI includes a PoE under section 32 of the Food Safety Act.

### **Food Enzymes Regulations 2009 regulation 5**

<http://www.legislation.gov.uk/uksi/2009/3235/contents/made>

As these Regulations are made under the Food Safety Act, the section 32 PoE under that Act applies to permit entry to premises to ascertain if they are in contravention of the provisions of these Regulations. For example whether an enzyme being used is one which is not permitted (i.e. its safety has not been evaluated) or whether the conditions of use specified are not being complied with. The use of unauthorised enzymes or misuse of permitted enzymes could have adverse health effects.

This legislation is being revoked and a single SI covering food additives, flavourings (including smoke flavourings), enzymes and extraction solvents will be force in autumn 2013. The new SI includes a PoE under section 32 of the Food Safety Act.

### **Food Irradiation (England) Regulations 2009 regulation 11**

<http://www.legislation.gov.uk/uksi/2009/1584/contents/made>

As these Regulations are made under the Food Safety Act, the section 32 PoE under that Act applies to permit entry to premises under these Regulations which set out the requirements and procedures for the approval (licensing) of food irradiation facilities in the UK and the restrictions on importation, storage, transport and sale of irradiated foods by other food businesses. PoE is required to ensure authorised entry to facilitate the licensing of food irradiation facilities and as a result that food is treated following

international (Codex<sup>11</sup>) standards. Properly irradiated food poses no food safety risk but is seen as a consumer choice issue and this legislation ensures traceability of irradiated food so that information can be made available to consumers (ultimately by labelling requirements). Repeal of PoE could result in potential food safety risks due to inappropriate or ineffective irradiation treatment of foods.

### **General Food Regulations 2004 regulation 7**

<http://www.legislation.gov.uk/ukxi/2004/3279/contents/made>

Referencing section 32 of the Food Safety Act this provides entry powers to food business establishments to ensure that unsafe food is not placed on the market for public consumption.

This legislation is being revoked.

### **Food Hygiene (England) Regulations 2006 regulation 14 (1)**

<http://www.legislation.gov.uk/ukxi/2006/14/contents/made>

Power of an **authorised officer of a food authority** to enforce legislation that establishes the conditions under which food is produced to prevent, eliminate or acceptably control pathogen contamination of food. Includes risk based and flexible procedure matched to the needs of individual businesses and enforcement. The legislation has a "farm to fork" approach to food safety, by including primary production in food hygiene legislation.

The PoE should be retained as there will be instances where, to enforce food safety laws, authorised enforcement officers of LAs need to enter food business establishments to check that unsafe food is not being placed on the market for public consumption. Without PoE to enter food business establishments, enforcement officers would be unable, for example, to investigate public complaints or the complaints from other businesses about unsafe and potentially unlawful activities in a food business unless the operator of the business permitted entry.

The Food Hygiene (England) Regulations are to be consolidated with i.e. to be re-made to include the provisions of the General Food Regulations in a single instrument.

### **Food Hygiene (England) Regulations 2006 regulation 14 (2)**

<http://www.legislation.gov.uk/ukxi/2006/14/contents/made>

Power of an **FSA official** to enforce legislation that establishes the conditions under which food is produced to prevent, eliminate or acceptably control pathogen contamination of food. Includes risk based and flexible procedure matched to the needs of individual businesses and enforcement. The legislation has a "farm to fork" approach to food safety, by including primary production in food hygiene legislation.

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<sup>11</sup> The Codex Alimentarius is a collection of internationally recognized standards, codes of practice, guidelines and other recommendations relating to foods, food production and food safety. See: <http://food.gov.uk/enforcement/regulation/Codexbranch/>.



The PoE should be retained as there will be instances where, to enforce food safety laws, FSA officers will be required to enter food business establishments to ensure that unsafe food is not placed on the market for public consumption. Without PoE to enter food business establishments, FSA officers would be unable, for example, to investigate public complaints or the complaints from other businesses about unsafe and potentially unlawful activities in a food business unless the operator of the business permitted entry.

The Food Hygiene (England) Regulations are to be consolidated with i.e. to be re-made to include the provisions of the General Food Regulations in a single instrument.

### **Food Hygiene (England) Regulations 2006 14 (3)**

<http://www.legislation.gov.uk/ukxi/2006/14/contents/made>

Power for an FSA official or authorised officer of a food authority to obtain a warrant from a JP to enforce legislation that establishes the conditions under which food is produced to prevent, eliminate or acceptably control pathogen contamination of food. The legislation has a "farm to fork" approach to food safety, by including primary production in food hygiene legislation.

PoE should be retained as without warrant entry, unsafe food could be placed on the market with a serious risk to public health when an uncooperative business is involved.

The Food Hygiene (England) Regulations are to be consolidated with i.e. to be re-made to include the General Food Regulations in a single instrument.

### **Genetically Modified Food (England) Regulations 2004 regulation 6**

<http://www.legislation.gov.uk/ukxi/2004/2335/contents/made>

As these Regulations are made under the Food Safety Act, the section 32 PoE in that Act applies to permit entry to enforce the legislation on GM food and feed. It is used as a last resort to investigate breaches of the regulation in relation to unauthorised and potentially harmful Genetically Modified (GM) Foods. The PoE is in place to prevent potential food safety incidents, thereby protecting consumers. Increasing adoption and cultivation of new GM crops outside Europe means there is a corresponding increase in the risk that unauthorised GM material will find its way onto the UK market.

### **Novel Foods and Novel Food Ingredients Regulations 1997 regulation 7**

<http://www.legislation.gov.uk/ukxi/1997/1335/contents/made>

The section 32 Food Safety Act PoE is used to enforce legislation on novel foods. The PoE is in place to prevent potential food safety incidents, thereby protecting consumers. Novel foods are defined as foods or food ingredients which have not been consumed to a significant degree in the EU prior to 15 May 1997. All novel foods require a safety assessment and authorisation before they can be legally marketed in the EU. The regulations do not identify, or list, any unsafe or dangerous (novel) foods, rather they provide a mechanism for their assessment and authorisation (or rejection) and ensure

that there is an effective deterrent to prevent companies from marketing unauthorised novel foods. In this regard, there has been at least one instance when a company was prosecuted for refusing to take an unauthorised novel food off the market, - but this was on the basis that it required assessment and approval and not that it was unsafe (injurious to health).

Being designated a novel food does not mean that a food is unsafe. Businesses need to comply with the terms of the Regulations to be in a position to determine this and before this is done it is wise to ensure that there is an effective mechanism to ensure that something which has never been consumed undergoes a pre-market safety assessment.

### **Smoke Flavourings SI 2005 regulation 6**

<http://www.legislation.gov.uk/uksi/2005/464/made>

As these Regulations are made under the Food Safety Act, the section 32 PoE in that Act applies to permit entry to premises to ascertain if they are in contravention of the provisions of these Regulations. For example whether a smoke flavouring being used is one which is not permitted (i.e. its safety has not been evaluated) or whether the conditions of use specified are not being complied with. The use of unauthorised smoke flavourings or misuse of permitted smoke flavourings could have serious adverse health effects.

This legislation is being revoked and a single Statutory Instrument covering food additives, flavourings (including smoke flavourings), enzymes and extraction solvents will be in force in autumn 2013. The new SI includes a PoE under section 32 of the Food Safety Act.

### **The Specified Products from China (Restriction on First Placing on the Market) (England) Regulations 2012 regulation 6**

<http://www.legislation.gov.uk/uksi/2012/47/contents/made>

Applies the section 32 Food Safety Act PoE and is used as a last resort to investigate breaches of these Regulations in relation to unauthorised and potentially dangerous GM rice varieties from China. Unauthorised Genetically Modified Organisms (GMOs) potentially contain toxins or allergens that could be harmful to public health. The introduction of emergency measures by the EU several times in recent years to counter the threat posed by unauthorised GMOs (including these current measures against GM rice from China) illustrates the seriousness of the issue.

### **Plastic Kitchenware (Conditions on Imports from China) (England) Regulations 2011 regulation 11**

<http://www.legislation.gov.uk/uksi/2011/1517/contents/made>

As these Regulations are made under the Food Safety Act, the section 32 PoE in that Act applies to permit entry to inspect businesses for specified products from China and to advise or sanction as appropriate. PoE should be retained as there will be instances where, to enforce food safety laws, authorised enforcement officers will be required to enter food business establishments to ensure that utensils or containers which come into contact with food and may transfer harmful chemicals to food, are not placed on the market for public consumption. In this case, entry is to enforce legislation on food contact materials (FCM) where materials noted in this legislation have the potential to cause cancer and disrupt the body's hormonal systems that can potentially migrate from FCMs into food.

### **The Food with Added Phytosterols or Phytostanols (Labelling) (England) Regulations 2004**

<http://www.legislation.gov.uk/uksi/2004/3344/contents/made>

As these Regulations are made under the Food Safety Act, the section 32 PoE in that Act applies to permit entry to enforce these measures. The measures control the labelling of food and ingredients with added plant sterols for safety reasons, particularly in relation to pregnant and breastfeeding women, and children under the age of five years.

The Regulations ensure that all foods or food ingredients with added plant sterols are labelled consistently and aimed exclusively at consumers who wish to lower their blood cholesterol level. It also enables consumers in this target group to select from a range of products that contribute to the cholesterol lowering effect of plant sterols without exceeding the recommended upper daily intake. The Regulations also discourage the consumption of plant sterols by pregnant and breast-feeding women, and children under the age of five years.

These Regulations are due to be revoked and their provisions consolidated with the Food Information Regulations 2013 due to come into force in Autumn 2013<sup>12</sup>.

### **The Genetically Modified Animal Feed (England) Regulations 2004 regulation 6**

<http://www.legislation.gov.uk/ukpga/1970/40/section/76>

Regulation 6 of these Regulations applies powers under section 76 of the Agriculture Act 1970 to allow an enforcement officer to enter premises to inspect and copy documents relating to GM feed and to take samples of that feed, for the purpose of ensuring that labelling declarations are correct and that no unauthorised GM varieties are present in the feed. Without this power, where there was non-compliance, illegal activity could go undetected, to the detriment of businesses which are trading legitimately and with potential adverse effects on the health of both animals and human consumers of animal products (milk, meat, eggs).

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<sup>12</sup> Further information is here: <http://food.gov.uk/enforcement/regulation/fir/> and here: <https://www.gov.uk/government/consultations/food-information-regulations-fir-2013>

## **Feed (Hygiene and Enforcement) (England) Regulations 2005 regulation 24 (1)**

<http://www.legislation.gov.uk/uksi/2005/3280/contents/made>

Allows an enforcement officer to enter premises for the purposes of checking compliance with feed legislation and (where non-compliance is uncovered) to issue directions for rectification. Without this power, where there was non-compliance the illegal activity could go undetected, to the detriment of businesses which are trading legitimately and with potential adverse effects on the health of both animals and human consumers of animal products (milk, meat, eggs). Various high-profile unsafe or contaminated feed incidents over the past two decades, some of which involved deliberate fraud or criminal activity (e.g. lead in milk 1989, dioxins in fats in Belgium 1999, melamine in soya bean meal 2008), point to the potentially serious consequence of repeal.

This PoE is to be consolidated with the Feed (Specified Undesirable Substances) (England) Regulations 2006, regulation 3.

## **The Feed (Specified Undesirable Substances) (England) Regulations 2006 regulation 3**

<http://www.legislation.gov.uk/uksi/2006/3120/regulation/3/made>

Regulation 3 of these Regulations inserted new regulation 24A into the Feed (Hygiene and Enforcement) (England) Regulations 2005, which allows enforcement officers to enter premises for the purposes of determining the source(s) of undesirable substances where the action thresholds specified in Annex II of Directive 2002/32 on undesirable substances have been breached.

The PoE underpins the ability of enforcement officers to inspect premises and take samples. Without this power, businesses could obstruct and disrupt officers' assessment of compliance with EU feed law. More importantly, where it is known that an action threshold has been breached, there could be potential adverse effects on the health of both animals and human consumers of animal products (milk, meat, eggs). Various high-profile unsafe or contaminated feed incidents over the past two decades, some of which involved deliberate fraud or criminal activity (e.g. lead in milk 1989, dioxins in fats in Belgium 1999, melamine in soya bean meal 2008), point to the potentially serious consequence of repeal.

This PoE is to be consolidated with the Feed (Hygiene and Enforcement) (England) Regulations 2005, regulation 24 (1).

## **Feed (Hygiene and Enforcement) (England) Regulations 2005 regulation 24 (2)**

<http://www.legislation.gov.uk/uksi/2005/3280/contents/made>

Permits a JP to issue a warrant to allow an enforcement officer to enter the premises when admission has been refused or refusal is likely, or the issue is urgent or the premises are empty or advance notice of a visit would defeat the object of the visit. Various high-profile unsafe or contaminated feed incidents over the past two decades, some of which involved deliberate fraud or criminal activity (e.g. lead in milk 1989, dioxins

in fats in Belgium 1999, melamine in soya bean meal 2008), point to the potentially serious consequences of repeal.

### **Official Feed and Food Controls (England) Regulations 2009, regulation 9(4)**

<http://www.legislation.gov.uk/uksi/2009/3255/contents/made>

Gives PoE to an individual authorised by the FSA to inspect premises or anything which may be found on them as part of its function of monitoring the performance of enforcement authorities as part of enforcing relevant audit legislation. This is so that the FSA can carry out its duties of auditing the performance of local authorities. The audits act as a check that the authorities are carrying out their duties in delivering official controls in line with EU obligations. It also ensures consistency of performance across authorities ensuring business confidence in the enforcement system. Without a PoE, the FSA would not be able to ensure that records and systems, both at the premises of the local authority and at the premises they were inspecting, could be checked.

### **Official Feed and Food Controls (England) Regulations 2009 regulation 18(1)**

<http://www.legislation.gov.uk/uksi/2009/3255/contents/made>

Gives PoE to an authorised officer of a relevant enforcement authority other than the FSA to enter a premises in its area/ district to ascertain whether there has been a contravention or evidence of a contravention of any provision of Part 2 of these Regulations by a control body (independent third party to which the competent authority has delegated certain tasks, e.g. laboratory etc.). These relate to failure by a control body to provide information, deliberately or recklessly providing misleading information and obstruction of or failure to give reasonable assistance to a person monitoring enforcement action. This ensures that a local authority can check that a contractor, such as a laboratory, is carrying out its work properly and with due regard to safety procedures and adhering to the terms of its contract. This PoE should be retained as the enforcement regime should always have the legal authority to enter and inspect official control laboratories if the need arises (for example in response to a whistle-blowing incident).

### **Official Feed and Food Controls (England) Regulations 2009 regulation 18 (2)**

<http://www.legislation.gov.uk/uksi/2009/3255/contents/made>

Gives PoE to an authorised officer of the FSA to enter a control body's premises to check that a contractor such as a laboratory is carrying out its work properly and with due regard to safety procedures and adhering to the terms of its contract.

This PoE should be retained as FSA should have the legal authority to enter and inspect official control laboratories if the need arises (for example in response to a whistle-blowing incident).

### **Official Feed and Food Controls (England) Regulations 2009, regulation 18 (3)**

<http://www.legislation.gov.uk/uksi/2009/3255/contents/made>

A JP may authorise an authorised officer to enter a control body's (e.g. a laboratory's) premises with a warrant if admission to a premises has been refused, or a refusal is expected and notice to apply for a warrant has been served or if an application for admission would defeat the point of entry, or urgent action is needed or the premises are unoccupied or the occupier is temporarily absent.

This ensures that the FSA or a LA can apply to a JP to check that a contractor such as a laboratory is carrying out its work properly and with due regard to safety procedures and adhering to the terms of its contract, if there is a dispute about whether the FSA/ LA should enter in this case.

### **Official Feed and Food Controls (England) Regulations 2009, regulation 39 (1)**

<http://www.legislation.gov.uk/ukxi/2009/3255/contents/made>

This power gives an authorised officer of a food authority the right to enter a premises to ascertain whether there is or has been a contravention of the import provisions specified in these Regulations, or to see whether there is evidence of this or to exercise their functions under the import provisions. Many food safety problems in the UK are caused by imported food. This allows an authorised officer to check premises to ensure that imported food is safe.

### **Official Feed and Food Controls (England) Regulations 2009, regulation 39 (2)**

<http://www.legislation.gov.uk/ukxi/2009/3255/contents/made>

Gives a JP power to issue a warrant to an authorised officer to enter premises where there are reasonable grounds for entry in relation to performance of their authority under the import provisions specified in these Regulations.

This ensures that a JP can issue a warrant so that an enforcement officer can check the safety of imported food if there has been a dispute about whether they should be able to enter or if the premises is not currently occupied, which could be particularly useful if there is an urgent food safety issue to tackle.

### **Food Standards Act 1999 section 11**

<http://www.legislation.gov.uk/ukpga/1999/28/section/11>

Sections 10 and 11 set out specific powers to help the FSA fulfil its general function of obtaining and keeping under review any information relevant to its work. The PoE allows the gathering of information on food safety and related matters through undertaking surveillance programmes or by other appropriate means for this purpose. The FSA can conduct such work at any point in the food production and supply chain and anywhere else where there might be implications for food safety and any other interests of consumers in relation to food.

The two sections give the FSA specific powers necessary to obtain information, either directly or through an authorised person acting on its behalf. Examples of the types of observations that the FSA might carry out are surveillance programmes to investigate the presence of pathogens that could carry risks for human health; or of a particular

contaminant, such as lead, in certain types of foodstuffs; or surveys of hygiene practices in a certain type of food business.

The PoE relate to the gathering of information of a general and representative nature and not to the investigation of individual complaints or failures for which the enforcement powers in the Food Safety Act 1990 and other powers will continue to be used by the FSA and other enforcement authorities. Since the observations made under this section are not intended for enforcement purposes, there is no requirement that these powers be used to gather evidence in accordance with the kind of safeguards contained in the Police and Criminal Evidence Act 1984, and thus any information obtained could not in general be used directly for the purposes of food law enforcement.

Where apparent problems were identified in the course of a surveillance exercise, the information gathered would need to be passed on and any follow up action required would need an alternate PoE. The FSA has PoE under the Official Feed and Food Controls Regulations and the Food Safety Act (see above) that can be used for enforcement action.

A collaborative approach with the various food businesses in the food chain is seen as an appropriate course of action before observations and surveillance under this PoE would be utilised. Political, media, and reputational risks for businesses not complying with any requests from the FSA to monitor at any point in the food production and supply chain should deliver sufficient impetus to ensure that such functions could be carried out without the use of specific entry powers, however, this may not be the situation in all cases.

These PoE gives a 'backstop' power across the food chain for surveillance activity. Potentially, repeal of these PoE could lead to a situation where the complicated dynamics of the food chain could not be investigated or reviewed in sufficient detail to reach sound conclusions when considering potential policy changes or possible enforcement action (using other powers) to ensure the safety of the food chain.

#### **Food Standards Act 1999 section 14**

<http://www.legislation.gov.uk/ukpga/1999/28/section/14>

This FSA power to ensure entry into LAs and business premises is required in case of failing systems or a serious incident e.g. where a failing LA service refuses entry or following a serious national or international food incident requiring remedial measures and intervention - possibly under emergency circumstances.

Without the power, the FSA would not be able to fulfil its duties under national and European law to audit and monitor LA delivery of official food and feed controls, and may not be able to intervene in the event of serious failure with resulting risks to public health and international trade.

### **Consultation Question**

Q10. Do you agree with the retention of the above PoE? If not why not? Please provide information and evidence in support of your argument.

In your answers please state which PoE you are referring to.

### **Defra secondary legislation made under the Food Safety Act which is enforced by means of the PoE in Section 32 of that Act**

The following secondary powers will be affected by proposals amending the **safeguards** in the Food Safety Act. The **proportionality** of the powers is to be considered by Defra however, and is not covered in this IA.

- Animals and Animal Products (Examination for Residues and Maximum Residue Limits) Regulations 1997
- Bread and Flour Regulations 1998
- Cocoa and Chocolate Products (England) Regulations 2003
- Coffee Extracts and Chicory Extracts (England) Regulations 2000
- Fish Labelling (England) Regulations 2010
- Fruit Juices and Fruit Nectars (England) Regulations 2003
- Honey (England) Regulations 2003
- Jam and Similar Products (England) Regulations 2003
- Specified Sugar Products (England) Regulations 2003
- The Casein and Caseinates Regulations 1985
- The Condensed and Dried Milk (England) Regulations 2003
- The Food (Lot Marking) Regulations 1996
- The Food Labelling Regulations 1996 (soon to be replaced by the Food information regulations 2013)
- The Meat Products (England) Regulations 2003
- The Natural Mineral Water, Spring Water and Bottled Drinking Water (England) Regulations 2007
- The Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) (England) Regulations 2008



## **Analysis of current FSA safeguards against government standards**

Government standards for safeguards have been defined by the Home Office<sup>13</sup>. FSA PoE safeguards have been considered against these Government standards and the following safeguards are proposed to remain unchanged-

### **Sufficient Notice**

#### Government standard

Powers should provide sufficient reasonable notice and clearly set out what if any exemptions apply, for instance EU rules regarding unannounced checks, where giving notice would defeat the object of exercising the power, or in an emergency.

#### FSA proposed response

Official controls can be carried out without prior notification under EU Regulation 882/2004 Article 3(2)<sup>14</sup>. Safeguards are already in place with regard to private dwellings which require 24 hours' notice. Notice under warrant conditions would defeat the PoE where urgent cases need immediate attention. FSA does not consider amendment to the provisions is necessary, since they are in line with Government exemptions where EU rules allow unannounced checks and giving notice would defeat the object of exercising the power. Notice can also be overridden where there is an imminent risk such as spread of disease.

### **Private Dwellings**

#### Government standard

Private premises should be excluded from intrusion in as many cases as possible. Entry must be by consent, or by warrant, (i.e. by court order or other type of judicial authorisation) which would allow entry to such places where there is good reason to suspect that there may be evidence of wrongdoing or non-compliance on the premises that requires further investigation.

There may be exceptional circumstances where entry is needed urgently. There may be an immediate need to protect life or property from harm, to carry out some police business or where entry is required in the national interest (examples include preventing terrorism, spread of disease, fire or dangerous chemical spillages or leaks). Article 8(2) of the European Convention of Human Rights (ECHR) lays down that interference with the right to respect private, family life and the home is permitted only "if such interference is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others". ECHR case law has established that in relation to private dwellings, save in urgent circumstances, prior judicial approval, such as a warrant is required.

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<sup>13</sup> <https://www.gov.uk/government/publications/protection-of-freedoms-act-2012-documents-powers-of-entry>

<sup>14</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:165:0001:0141:EN:PDF>

### FSA proposed response

In many cases entry to private dwellings are excluded from FSA PoE. Where entry is authorised, giving 24 hours' notice to the occupier is specified and then entry would be carried out either by consent or, if consent has been refused, or is expected to be refused, or giving notice would defeat the object of entry, or there is urgency or the premises are unoccupied, entry would be by court warrant. This is in line with Government requirements.

### **Reasonable Force**

#### Government standard

Usually only permitted under court warrant.

#### FSA proposed response

Those powers that involve a court warrant include the use of reasonable force and are necessary to ensure food safety. Where entry is by consent, (i.e. by authorisation of the occupier) force is not permitted. The FSA does not consider any changes should be made to its PoE since they are in line with the Government standard.

### **Presenting authorisation**

#### Government standard

Officials should present official documentation to identify themselves before entering. In addition to identifying themselves, officials must be able to furnish the owner or occupier of premises with a document setting out what is allowed in plain English when a power is being exercised as well as explaining clearly what authority they possess or represent.

#### FSA proposed response

Officials being prepared to show authorisation on request is outlined in the FSA legislation and therefore the FSA considers this in line with the Government standard.

### **Reasonable Hours.**

#### Government standard

In general there should be a requirement that entry may be sought only at a reasonable time. An added safeguard would be to specify between exact times that powers may be used.

#### FSA proposed response

Entry at reasonable hours (except for warrant entry) is currently specified in FSA PoE. The FSA does not consider any changes should be made, since this is in line with the government position and safeguarding personal freedoms. For warrant entry, it is important enforcement officials are not restricted to reasonable hours as circumstances e.g. food safety incidents, may require flexibility as to when the warrant is to be exercised.

### **Maximum number of officials**

### Government standard

Maximum numbers of officials entering premises at any one time – number of officials able to exercise the power per visit, or accompanying the authorised person per visit, should be limited wherever possible.

### FSA proposed response

This safeguard, as currently described in FSA PoE, enables any number of officials as considered necessary to enter premises. The FSA does not propose any change to current powers as enforcement officials need to exercise professional judgement as to the level of support required based on individual circumstances. For example, a high number of officials from a variety of enforcement agencies, including the police and LAs, may be required for entry to large premises with many exits.

The FSA does not, therefore, propose any amendment to its current powers in relation to this safeguard.

## **Recording powers**

### Government standard

The exercise of powers to be recorded.

### FSA proposed response

The government has completed a consultation on a statutory PoE Code of Practice<sup>15</sup> that will include provisions about this safeguard. Amendment of the Food and Feed Law Codes of Practice, which are statutory codes issued under s.40 of the Food Safety Act 1990, will be considered in due course to require enforcement officers to have regard to the PoE Code when exercising PoEs (as required by section 51 of the Protection of Freedoms Act 2012). The FSA also expects that the Framework Agreement on Official Feed and Food Controls (the OFFC Framework Agreement)<sup>16</sup>, which relies on the FSA's powers to monitor and audit LAs under sections 12 and 13 of the Food Standards Act 1999, would need to be expanded to cover the specific requirements of the PoE Code of Practice<sup>17</sup> in due course. Section 16 of the OFFC Framework Agreement already imposes a requirement for the recording of interventions at/ inspections of businesses.

## **Compensation and complaint provisions**

### Government standard

Complaints procedure – there ought to be a clear procedure for individuals or businesses affected by the exercise of powers of entry to formally lodge complaints where they feel aggrieved.

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<sup>15</sup> <https://www.gov.uk/government/consultations/powers-of-entry-draft-code-of-practice-consultation>

<sup>16</sup> <http://food.gov.uk/enforcement/enforcework/frameagree/>

Compensation – legislation should specify where liability exists and where compensation is payable for damages to property, possessions or land.

#### FSA proposed response

These are not currently included in the PoE under consideration. The FSA proposes not to add compensation and complaint provisions to any revised PoE. Central government (and local government) have established complaints policies and procedures published on their websites, and multiple compensation provisions in legislation (some of the FSA's powers provide for samples of materials taken for testing to be paid for<sup>18</sup>) would be likely to cause confusion.

Section 17 of the OFFC Framework Agreement also requires LAs to have a documented complaints process.

Regarding compensation, existing complaints policies and procedures could be expanded to cover applications for compensation (if they do not already), as the existing Parliamentary Ombudsman's Code (and the Local Government Ombudsman's Code), under which all central government departments' (and local government) complaints procedures ultimately fall, make provision for redress, which includes compensation (see <http://www.ombudsman.org.uk/home> and <http://www.lgo.org.uk/>).

The PoE Code of Practice requires officers to notify businesses of their rights to compensation and complaints procedures, in sections 7 (Providing notice of rights) and 14 (Seizure of property).

#### **Consultation Question**

Q11. Do you agree that the above safeguards should remain unchanged? If not, why not? Please provide information and evidence in support of your argument.

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<sup>18</sup> For example, section 9(7) of Food Safety Act 1990.

## ANNEX C

### Familiarisation Costs to Industry

#### Methodology

Familiarisation costs are calculated using an established and consistent methodology based on the UK Standard Cost Model (SCM) Manual as published by the Department for Business Innovation and Skills (BIS); while wage rates are based on average hourly pay rates taken from the Annual Survey of Hours and Earnings (ASHE) where median rates of pay are used. This is published yearly by the Office for National Statistics (ONS) website. Consistent with SCM methodology, we uprate median hourly wage rates by 30% to account for overheads; this is a method of accounting for the opportunity costs of an individual worker.

#### Assumptions

We assume that it will take one hour per business to read and familiarise themselves with the new arrangements and a further one hour disseminating to key staff. This means a total of two hours for familiarising.

Due to the inherent uncertainties and the fact that no data or other evidence is available on the potential number of food business operators (FBO) likely to familiarise themselves; we provide a range estimates based on the following assumptions, which we will look to validate during the consultation:

- 1) *All FBOs (100%) invest and take time to read and familiarise themselves with changes to PoE legislation (upper bound estimate);*
- 2) *All FBOs (16%), with the exception of 'Micro' sized businesses, invest and take time to read and familiarise themselves with changes to PoE legislation (lower bound estimate); as we assume micro sized business would rather invest time in carrying out business as usual tasks.*

Upper and lower bound estimates pertaining to the number of businesses opting to familiarise are presented by sector (tables 1.1C and 1.2C) and size of business (tables 2.1C and 2.2C) below:

**Table 1.1C – All FBOs (100%) by 'Sector' opt to familiarise with changes to PoE legislation (upper bound estimate)**

	Primary Producers	Manufacturers/ Packers	Import/ Export	Distribution/ Transport	Retailers	Restaurant/ Catering	All FBOs
England	3,154	12,968	985	7,822	110,927	354,452	490,308
Wales	371	1,090	12	435	7,878	23,957	33,743
Scotland	1,979	2,615	48	853	11,903	38,817	56,215
NI	61	912	15	391	4,352	13,883	19,614
UK	5,565	17,585	1,060	9,501	135,060	431,109	599,880

**Table 1.2C – All FBOs (16%) by ‘Sector’, excluding ‘Micro’ sized FBOs, opt to familiarise with changes to PoE legislation (lower bound estimate)**

	Primary Producers	Manufacturers/ Packers	Import/ Export	Distribution/ Transport	Retailers	Restaurant/ Catering	All FBOs
England	512	2,106	160	1,270	18,014	57,560	79,622
Wales	60	177	2	71	1,279	3,890	5,480
Scotland	321	425	8	139	1,933	6,304	9,129
NI	10	148	2	63	707	2,254	3,185
UK	904	2,856	172	1,543	21,933	70,009	97,416

**Table 2.1C – All FBOs (100%) by ‘Size of Business’ opt to familiarise with changes to PoE legislation (upper bound estimate)**

	Micro	Small	Medium	Large	Total
England	410,686	70,458	7,359	1,805	490,308
Wales	28,263	4,849	506	124	33,743
Scotland	47,086	8,078	844	207	56,215
NI	16,429	2,819	294	72	19,614
UK	502,464	86,204	9,004	2,208	599,880

**Table 2.2C – All FBOs (100%) by ‘Size of Business’, excluding ‘Micro’ sized FBOs, opt to familiarise with changes to PoE legislation (lower bound estimate)**

	Micro	Small	Medium	Large	Total
England	0	70,458	7,359	1,805	79,622
Wales	0	4,849	506	124	5,480
Scotland	0	8,078	844	207	9,129
NI	0	2,819	294	72	3,185
UK	0	86,204	9,004	2,208	97,416

## Calculations

To quantify the one-off familiarisation cost to industry we calculate the familiarisation cost per business by multiplying the hourly median wage rate (including an up-rating of 30% to account for overheads) of a ‘manager of a FBO’ for each respective sector by the two hours assumed it would take a business to understand the changes, resulting in a familiarisation cost per business by sector (see table 3.1C).

**Table 3.1C – Familiarisation cost per FBO by sector**

	Primary Producers	Manufacturers/ Packers	Import/ Export	Distribution/ Transport	Retailers	Restaurant/ Catering
ASHE Occupations	<i>Managers In Farming, Horticulture, Forestry &amp; Fishing</i>	<i>Production Managers</i>	<i>Importers, Exporters</i>	<i>Transport and Distribution Managers</i>	<i>Retail &amp; Wholesale Managers</i>	<i>Restaurant &amp; Catering Managers</i>
Reading time	2	2	2	2	2	2
Median wage	£13.03	£19.53	£10.93	£16.39	£10.79	£9.14
Plus 30%	£3.91	£5.86	£3.28	£4.92	£3.24	£2.74
Total	£16.94	£25.39	£14.21	£21.31	£14.03	£11.88
Familiarisation cost per business	£33.88	£50.78	£28.42	£42.61	£28.05	£23.76

Source: ASHE (ONS) 2011

To quantify the overall one off familiarisation cost to industry we multiply the familiarisation cost per firm (table 3.1C) by the number of businesses per sector (tables 1.1C and 2.1C) opting to familiarise with the change.

## Results

Based on the assumptions set out above we obtain an upper bound estimate for total one-off familiarisation costs of approximately £15.55m for UK businesses (table 4.1C), with a lower bound estimate of £2.53m (table 4.2C); a best estimate of £9.04m<sup>19</sup> (table 4.3C).

**Table 4.1C – Total Familiarisation Cost Estimates by Sector and UK Country (upper bound estimates)**

	Primary Producers	Manufacturers/ Packers	Import/ Export	Distribution/ Transport	Retailers	Restaurant/ Catering	All FBOs
England	£106,851	£658,489	£27,992	£333,327	£3,111,946	£8,423,197	£12,661,802
Wales	£12,569	£55,348	£341	£18,537	£221,009	£569,314	£877,118
Scotland	£67,045	£132,784	£1,364	£36,350	£333,927	£922,447	£1,493,917
NI	£2,067	£46,310	£426	£16,662	£122,091	£329,916	£517,471
UK	£188,531	£892,931	£30,123	£404,876	£3,788,973	£10,244,874	£15,550,308

**Table 4.2C – Total Familiarisation Cost Estimates by Sector and UK Country (lower bound estimates)**

	Primary Producers	Manufacturers/ Packers	Import/ Export	Distribution/ Transport	Retailers	Restaurant/ Catering	All FBOs
England	£17,352	£106,934	£4,546	£54,130	£505,357	£1,367,865	£2,056,183
Wales	£2,041	£8,988	£55	£3,010	£35,890	£92,452	£142,438
Scotland	£10,888	£21,563	£222	£5,903	£54,227	£149,799	£242,601
NI	£336	£7,520	£69	£2,706	£19,827	£53,576	£84,033
UK	£30,616	£145,005	£4,892	£65,749	£615,301	£1,663,692	£2,525,255

**Table 4.3C – Total Familiarisation Cost Estimates by Sector and UK Country (Best estimates)**

	Primary Producers	Manufacturers/ Packers	Import/ Export	Distribution/ Transport	Retailers	Restaurant/ Catering	All FBOs
England	£62,102	£382,711	£16,269	£193,728	£1,808,652	£4,895,531	£7,358,993
Wales	£7,305	£32,168	£198	£10,774	£128,450	£330,883	£509,778
Scotland	£38,966	£77,174	£793	£21,126	£194,077	£536,123	£868,259
NI	£1,201	£26,915	£248	£9,684	£70,959	£191,746	£300,752
UK	£109,574	£518,968	£17,507	£235,312	£2,202,137	£5,954,283	£9,037,782

**England only** range estimates are set out in tables 5.1C – 5.3C below:

**Table 5.1C – Total Familiarisation Cost Estimates by Sector and Size England Only (upper bound estimates)**

	Primary Producers	Manufacturers/ Packers	Import/ Export	Distribution/ Transport	Retailers	Restaurant/ Catering	All FBOs
Micro	£89,499	£551,555	£23,446	£279,197	£2,606,589	£7,055,332	£10,605,619
Small	£15,355	£94,626	£4,022	£47,900	£447,194	£1,210,432	£1,819,529
Medium	£1,604	£9,883	£420	£5,003	£46,707	£126,423	£190,041
Large	£393	£2,424	£103	£1,227	£11,456	£31,010	£46,614
Total	£106,851	£658,489	£27,992	£333,327	£3,111,946	£8,423,197	£12,661,802

<sup>19</sup> Calculated by taking the midpoint of the range of upper and lower bound estimates:  $(£15,550,308 + £2,525,255) / 2 = £9,037,782$

**Table 5.2C – Total Familiarisation Cost Estimates by Sector and Size England Only (lower bound estimates)**

	Primary Producers	Manufacturers/Packers	Import/Export	Distribution/Transport	Retailers	Restaurant/Catering	All FBOs
<b>Micro</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>
<b>Small</b>	£15,355	£94,626	£4,022	£47,900	£447,194	£1,210,432	£1,819,529
<b>Medium</b>	£1,604	£9,883	£420	£5,003	£46,707	£126,423	£190,041
<b>Large</b>	£393	£2,424	£103	£1,227	£11,456	£31,010	£46,614
<b>Total</b>	£17,352	£106,934	£4,546	£54,130	£505,357	£1,367,865	£2,056,183

**Table 5.3C – Total Familiarisation Cost Estimates by Sector and Size England Only (Best estimates)**

	Primary Producers	Manufacturers/Packers	Import/Export	Distribution/Transport	Retailers	Restaurant/Catering	All FBOs
<b>Micro</b>	<b>£44,750</b>	<b>£275,778</b>	<b>£11,723</b>	<b>£139,598</b>	<b>£1,303,294</b>	<b>£3,527,666</b>	<b>£5,302,809</b>
<b>Small</b>	£15,355	£94,626	£4,022	£47,900	£447,194	£1,210,432	£1,819,529
<b>Medium</b>	£1,604	£9,883	£420	£5,003	£46,707	£126,423	£190,041
<b>Large</b>	£393	£2,424	£103	£1,227	£11,456	£31,010	£46,614
<b>Total</b>	£62,102	£382,711	£16,269	£193,728	£1,808,652	£4,895,531	£7,358,993



## SPECIFIC IMPACT TESTS

<b>Type of test and link to guidance</b> <b>(Double click on each of the headings to follow link)</b>	<b>Click on a box for EACH row to show if the test is relevant or not:</b>	
	<b>Relevant</b>	<b>Not relevant</b>
<a href="#"><u>Competition assessment</u></a>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<a href="#"><u>Small firms impact test</u></a>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b><a href="#"><u>Sustainability:</u></a></b>  Economic impact  Social impact  <a href="#"><u>Environmental impact</u></a>	<input checked="" type="checkbox"/>  <input checked="" type="checkbox"/>  <input checked="" type="checkbox"/>	
<a href="#"><u>Carbon impact</u></a>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<a href="#"><u>Equality impact</u></a>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<a href="#"><u>Justice impact</u></a>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<a href="#"><u>Rural proofing</u></a>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<a href="#"><u>Human rights</u></a>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<a href="#"><u>Privacy impact</u></a>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<a href="#"><u>Creation of new criminal offence</u></a>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<a href="#"><u>Impact on powers of entry</u></a>	<input checked="" type="checkbox"/>	<input type="checkbox"/>