



PRIMARY AUTHORITY ASSURED ADVICE

SCDC/01/19/12/2018

Advice on approval of standalone cold stores

If you require further information and the full version of this advice and guidance, please contact the Primary Authority via the Primary Authority Register. Alternatively email deniserion@bfff.co.uk

Notes:

1. This document includes best practice advice and a brief summary of the requirements of the [Primary Authority Statutory Guidance](#). It should be read alongside the Primary Authority Statutory Guidance.
2. Primary Authority Advice is assured. This means that when a business is following the advice the primary authority can direct against any proposed enforcement action which is inconsistent with the advice

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Introduction

This Primary Authority Advice has been produced by South Cambridgeshire District Council in partnership with British Frozen Food Federation for use by members of British Frozen Food Federation to help your business comply with the law. If you follow this advice correctly your local trading standards and environmental health officers should respect this and not ask you to comply with the law in a different way.

The South Cambridgeshire District Council contact;

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Primary Authority Advice

Relevant Legislation:	Regulation (EC) Directive No 853/2004 (assimilated)
Geographic Applicability:	This has the status of Primary Authority Advice in England.
Scope:	This advice is addressed to businesses in the regulated group which are food business operators.
Details of request:	Advice on approval of standalone cold stores
Advice provided:	<u>Introduction</u> The purpose of this document is to provide interpretation of the legal requirements and the applicability of those requirements with respect to the approval of cold store establishments. <u>Questions:</u> Q1. What is the difference between being approved or registered by my Local Authority? A: All food business establishments should either be registered under Regulation (EC) No 852/2004 (assimilated) or be approved under Regulation (EC) No 853/2004 (assimilated). Registration is not required for establishments that are subject to approval.



The hygiene requirements in Regulation (EC) No 852/2004 (assimilated), where relevant to the operation of the business apply to all food business establishments regardless of whether they are registered or approved.

However, businesses that handle (which includes storage and transport) products of animal origin (POAO), must additionally meet the relevant specific requirements of Regulation (EC) No 853/2004 (assimilated), which includes amongst other things, detailed temperature control requirements. Such businesses must be approved, unless they are subject to one of the exemptions laid out in the Regulation and Approval Guidance (Published Jan 2024).

If you are approved, you will be given an Approval Number for your business. You must not carry out activities that need approval prior to approval being granted.

Q2. I understand that cold stores, which exclusively store, and transport packaged POAO for retail sale to the final consumer and are part of a retail distribution chain are exempt from approval.

A: Articles 1 and 4 of assimilated Regulation (EC) No. 853/2004 provide the relevant exemptions from the requirements for approval.

A cold store supplying POAO can benefit from the retail exemption as long as it is dedicated as part of the storage and transport operations for a specific retailer as part of their logistical distribution chain. This exemption is only applicable where that supply remains dedicated to a single and specific retail outlet, such that the POAO are all essentially under the ownership of that retailer.

Where an establishment supplies more than one retailer, the exemption no longer applies.

Cold stores which are not engaged in any form of retail activity to the final consumer themselves must not be considered as exempt under a retail exemption as wholesalers.

- Exemption example: An independent standalone cold store that is on a site where there are a number of other cold stores that are operated separately, (even if under the same ownership) which is part of a logistical supply chain for a specified retailer(s) would be exempt.

Q3. I currently do not handle POAO but wish to have the opportunity to carry out approvable activities should they become available to me. Can I opt to be approved if I choose?

A: You cannot be approved for an activity you do not undertake. You can only be approved if you are a:



- new establishment intending to undertake activities that are within the scope of approval
- an existing registered establishment intending to undertake new activities that are within the scope of approval
- an establishment which is already approved by the LA intending to undertake additional approvable activities

You can request an application from your Local Environmental Health Team provided you have the systems in place to meet the approval criteria

Q4. Assuming that no exemptions are available to me, do I have to be approved before I can receive POAO? Can I seek retrospective approval?

A: You must be approved before you can carry out any approvable activities for POAO, unless one of the exemptions from approval is available to you.

Note that if you are a cold store that is currently registered with the Local Authority but the Local Authority now considers that it is more appropriate for you to be approved as per the Food Law code of Practice, Practice Guidance and Approval Guidance; you will not need to stop your normal business activities whilst the approval process is taking place. However, if you wish to extend any activities e.g., to undertake rewrapping you will need to have approval in place before you can commence those activities.

Q5. Where there are multiple separate cold stores on one site – can they be registered and if required approved separately?

A: Individual cold stores on one site that are operated as individual and independent units can be approved or registered separately. Different chambers in one cold store operated by one food business operator would be treated as one food business establishment for the purposes of registration or approval and generally would be considered under a single approval or registration. There can be some flexibility in this depending on how the cold store is structured and managed. Individual circumstances should be discussed with the Local Authority.

Q6. My cold store is not part of a logistical supply chain for specific retailers' activity according to the examples in Question 2, however some retail activities are carried out on site from the cold store. Are there any other exemptions which may apply?



A: Yes, your activity may be exempt from approval if it is considered to be retail, but additionally only supplies to other retailers on a marginal, localised, and restricted basis.

The exemption can only be applied if your cold store has a genuine retail element to its operation, i.e., where sales are made direct to the final consumer. Retail is exempt from the approval requirements of Regulation (EC) No 853/2004 (assimilated). Retailers can supply to other retailers (including caterers) on an MLR basis and remain exempt.

All three considerations have to be met in order for the exemption to apply, in which case the cold store would need only to be registered.

Marginal: Where the supply (i.e., to other retail businesses) of POAO represents either: <25% of the establishment's annual turnover of food OR for establishment that only handle meat, it supplies < 2 tonnes fresh, frozen or processed meat per week.

Localised: Sales within the county where the cold store is situated + the greater of either the neighbouring counties or 50km (30 miles) from the county boundary in which the establishment is located

Restricted: The supply should concern only certain types of products or establishments, for example, only a very specific type of product is being supplied or if the supply is limited to a very specific type of business establishment.

Cold stores with multiple chambers in one building storing a mixture of retail and foodservice POAO will need to be approved unless: they have a genuine retail element on site, are supplying businesses which directly supply the final consumer and can meet the criteria laid down in the MLR exemption.

Q7. Does it make a difference if POAO accounts for <25% of product supplied by my establishment or if it only handles composite products?

A: If the business establishment is only handling composite products it will not require approval. Composite products are those that are made of a combination of processed POAO (e.g., meat, fish, and dairy products) and materials of plant origin. Examples of such products are frozen ready to reheat meals, for example, lasagne etc.

The amount of POAO supplied from the site is only relevant if the cold store is a retail establishment which may qualify for the retail exemption. To qualify for the exemption, there must be a true retail element on site and all three of the MLR criteria (see Question 6) must be met



Q8. What is meant by the terms: Product of animal origin (POAO); unprocessed product of animal origin; and processed POAO?

A: These terms are defined in hygiene regulations: Regulation (EC) No 852/2004 (assimilated) and Regulation (EC) No 853/2004 (assimilated):

Product of animal origin (POAO)

Products of animal origin are defined in assimilated Regulation (EC) No 853/2004 Annex I, paragraph 8.1 to mean:

Food of animal origin, including honey and blood,

Live bivalve molluscs, live echinoderms, live tunicates, and live marine gastropods intended for human consumption, and

Other animals destined to be prepared with a view to being supplied live to the final consumer.

This definition includes meat, poultry, fish, crustaceans and molluscs, milk, eggs, frog's legs, snails and game.

Unprocessed products of animal origin

Assimilated Regulation (EC) No 852/2004 Article 2 paragraph (n) defines unprocessed products as '...foodstuffs that have not undergone processing, and includes products that have been divided, parted, severed, sliced, boned, minced, skinned, ground, cut, cleaned, trimmed, husked, milled, chilled, frozen, deep frozen or thawed.'

Processed products of animal origin

Assimilated Regulation (EC) No 852/2004 Article 2. paragraph 1 (o) defines processed products as '... foodstuffs resulting from the processing of unprocessed products. These products may contain ingredients that are necessary for their manufacture or to give them specific characteristics. '

Whilst 'processing means any action that substantially alters the initial product, including heating, smoking, curing, maturing, drying, marinating, extraction, extrusion or a combination of those processes. '

This would include products such as fat, greaves, gelatine, and collagen



Q9. What if all the products that my cold store handles are pre-packed meat products that already have an Identification Mark? Would I still require approval?

A: Yes, there is no exemption from approval based on whether the products of animal origin are pre-packed or loose and already bear an Identification Mark. Unless another exemption applies the cold store should be approved.

If you are only handling composite products, then approval will not be needed. Some composite products may bear Identification Marks because the establishments in which they are made are approved for activities that require approval.

Q10. What difference would it make to the approach taken by the Local Authority if I was approved or registered by them? Would there be any difference to their expectations or how often they would visit and inspect my premises?

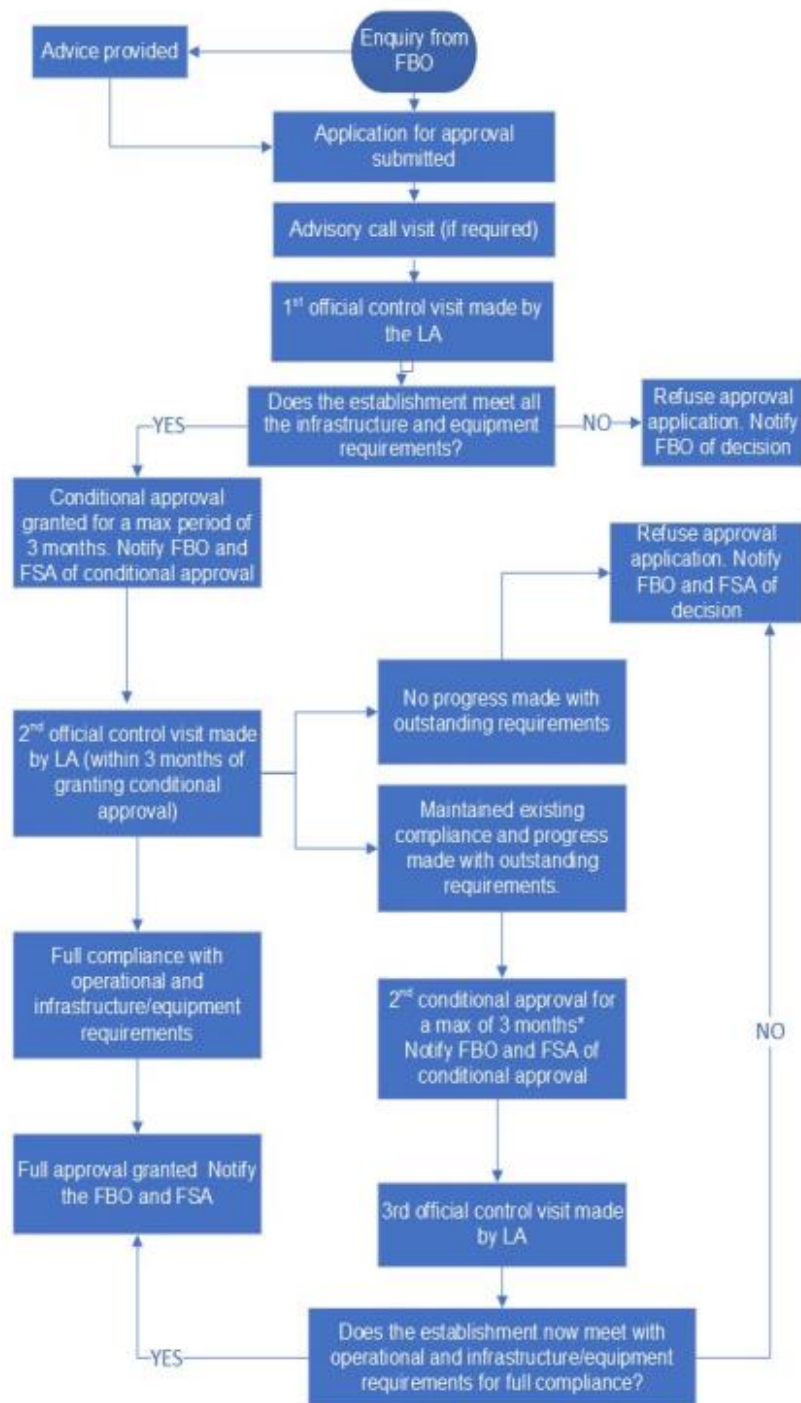
A: According to the Food Law Code of Practice (<https://www.food.gov.uk/about-us/food-and-feed-codes-of-practice#food-law-code-of-practice>), there should be no difference in the regulatory burden placed on the cold store, no difference to the risk associated, no difference to the way you are inspected and no difference to the frequency of inspections once approval has been achieved. In accordance with the Code of Practice the frequency of inspection is determined by the Local Authority through risk rating the establishment on the basis of the activities which take place there. Where there is no difference to the activities undertaken there should not be any difference to the risk rating.

The approval process itself however does require an investment in time from the company and the Local Authority. Time and effort will be required to complete an approval form and submit necessary documents; this may be followed by an approval 'inspection' visit by the Local Authority. Actions may arise from this visit prior to either full or conditional approval being granted, and an Approval Number being issued. As long as the hygiene requirements are being met and then maintained this should be a one-off process.

Q11. What process do I have to go through to be approved?

A: See the diagram below, which outlines the approval process and any prescribed timescales:





Q12. I provide a transport and distribution service for my customers and do not take any title to their products: does this make a difference to whether I should be approved or registered?

A: No. Unless one of the exemptions applies if you store and transport POAO you should be approved. If your operation is restricted only to transport, including cross docking, then you should be registered rather than approved. You must still comply with the temperature requirements of Regulation (EC) No 853/2004 (assimilated).



Q13. I am carrying out rewrapping and cutting operations at my cold store premises, should I be approved or registered?

A: Assimilated Regulation (EC) No 853/2004, Annex II, section (A) (2) states '... when a product's packaging and/or wrapping is removed or it is further processed in another establishment, a new mark must be applied to the product. In such cases, the new mark must indicate the approval number of the establishment where these operations take place.' Therefore, if you are carrying out repackaging or rewrapping or any cutting or processing activity you need to be approved as a cold store and approved specifically for those activities. If you are cutting meat you will need to be approved by the FSA rather than your Local Authority.

Traceability requirements are laid down in Commission Implementing Regulation (EU) No 931/2011 (assimilated).

Q14. I carry out blast freezing operations at my cold store on behalf of my customers, is it acceptable to be registered and not approved?

A: If you are registered (because you are subject to one of the available approval exemptions) and your additional activity is restricted to blast freezing product in its original packaging, you need only to be registered.

Q 15. What are the rules for applying an identification mark to products on my premises?

A: You can only apply an identification mark to a product if you are an approved establishment for the relevant operations (e.g., rewrapping), assimilated Regulation (EC) 853/2004 Annex II applies . As part of the approval process LA officers will discuss and agree the application of the Identification Mark with you.

Annex II, Section 1 A point 2 of the Regulation states that '...when a product' s packaging and/or wrapping is removed or it is further processed in another establishment, a new mark must be applied to the product. In such cases, the new mark must indicate the approval number of the establishment where these operations take place.'

Section 1C, then stipulates various ways in which the identification mark should be applied, according to the type of product and its destination e.g., for POAO that are placed in transport containers or large packages and are intended for further handling, processing, wrapping, or packaging in another establishment the mark may be applied to the



external surface of the container or packaging. Where it is difficult to apply a mark to bulk products such as fishery products, it can appear on the documentation that accompanies the consignment.

To facilitate traceability, applying an Identification Mark to documentation such as invoices and dispatch notes would be good practice but is not legally required.

For further advice on how to apply the identification mark as of January 2024 please see the link below:

<https://www.food.gov.uk/business-guidance/guidance-on-health-and-identification-marks-that-apply-from-1-january-2024>

Scenarios

Scenario 1

A catering premises has a large cold store on site, which is used for all the food for that premises.

Advice: Approval is not required as the cold store is connected to the catering premises and is not a stand-alone facility and the food is being supplied direct to the final consumer on site.

Scenario 2

A supermarket has a distribution network of cold stores in their ownership and linked to the direct supply of their own retail outlets.

Advice: Approval is not required, as this is part of the logistical chain for distributing to a specific retailer.

This situation would not alter if the supermarket were using third party carriers to distribute on their behalf.

Scenario 3

A company has several stand-alone cold stores throughout the country. The company supplies POAO to various catering and retail premises using their own vehicles. It is not a wholesale business, so the business activities relate solely to storage and distribution operations.

Advice: Approval is required because the stand-alone cold store does not have a true element of retail on site. In addition, it is not carrying out an undertaking as in Scenario 2 which is part of a logistical chain.

Scenario 4



A company operates several stand-alone cold stores supplying frozen ready meals in their own vehicles directly to elderly persons.

Advice: Approval is not required because the food is being supplied directly to the final consumer. In addition, the products may be exempt if they fall within the definition of composite products.

Scenario 5

A company stores frozen food on behalf of manufacturers and retailers, who need to build up stocks e.g., for seasonal products like ice cream. The company really don't know what they are storing until they take on their customer. So, on occasion, the products may be food not of animal origin, or composite products, at other times they will be product of animal origin. The customers transport the products in their own vehicles or by using a third-party distribution company to the site. The products are then dispatched in either the customer's vehicles or by a third-party distribution to various retail or manufacturing sites.

The company which operates the site does not own the food which is being stored there.

There is also a 're-work room' on site in case a customer needs it in the future e.g., a large retail customer which may sell mixed cases of product. The site would receive the already wrapped product and would de-box them and mix them together with other wrapped products into another box e.g., different types of sausages.

Advice: There is no retail activity on site and the food is also being distributed to manufacturers so the retail/MLR exemption cannot be applied. The company are handling POAO albeit this may change throughout the year.

The Approval Guidance states that the term logistical distribution relates to cold stores which store POAO which are packed, labelled and on route to a specific retailer.

The activities undertaken at these premises clearly fall outside these criteria, meaning that approval is required.

The fact that the company does not own the food which is being stored there is immaterial.

Scenario 6

A large wholesale cash and carry business operates a membership card scheme, which is nominally for 'trade'. Members of the public use the cash and carry.



Advice: This type of wholesale outlet is included in the definition of retail as it involves sale to the final consumer and is therefore exempt from approval as long as sales of POAO to other retail establishments fall within the MLR criteria (see Question 6). If the supply of POAO to other retailers exceeds the MLR criteria, they would need to be approved.

Glossary of Terms

Logistical Distribution Chain (LDC)

According to FSA guidance logistical distribution relates to cold stores which store POAO which are packed, labelled and on route to a specific retailer as part of their logistical distribution chain. A logistical distribution chain therefore relates to a business that operates within a supply chain providing products and services to a specified retailer.

This could apply even if a cold store operator is engaged with more than one LDC through the same standalone cold store. For example, a cold store operator is servicing three distinct and separate retailers with product that is sourced and supplied specifically for the individual retailers and product is not substituted between them.

Approval Number

Local Authorities issue an Approval Number to each individual food business it approves or conditionally approves. The Approval Number is a unique number. Examples can be found in:

<https://www.food.gov.uk/business-guidance/guidance-on-health-and-identification-marks-that-apply-from-1-january-2024>

Identification Mark

This is the mark which incorporates a food business operators Approval Number, that indicates that a POAO has been produced or wrapped in an approved establishment in accordance with the appropriate hygiene regulations.

Examples can be found in the above link.

Foodservice

The business of preparing, transporting, and serving food intended for immediate consumption to consumers such as in restaurants; catering operations in schools shops, supermarket distribution centres and wholesale outlets.



	Cross Docking Where products are moved directly from one vehicle to another over a short period of time.
Document references:	Review V5 BFFF Advice on approval of standalone cold stores
Communication with businesses	This advice will be published in electronic format and located in the Technical Guidance area of the BFFF website: http://bfff.co.uk/technical/guidance/
Communication with enforcing authorities:	An enforcing authority, proposing to take enforcement action against a business, is only required to notify the primary authority, where they are aware that the business is a member of a regulated group. While guidance states that the enforcing authority should ask you whether you are relying on Primary Authority advice, we recommend that you ensure you communicate this as soon as possible, and do not wait to be asked. (para 21.5 of the Statutory Guidance refers). The scheme does not allow for a business to make a notification to the primary authority where an enforcing authority has already taken action in respect of which it [the enforcing authority] failed to make the required notification to the primary authority (para 21.20 of the Statutory Guidance refers). Additionally, the rules allow for you (or the Co-ordinator) to notify the primary authority (para 21.19 of the Statutory Guidance refers). Once a primary authority receives notification, statutory time limits apply (usually 5 days) in which time they must respond to the notification. (Paras 21.9 & 21.10 of the Statutory Guidance refer).
Issued by:	South Cambridgeshire District Council Environmental Health Department



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