

Title: Food Law Code of Practice (England) - Review

CONSULTATION SUMMARY PAGE

Date launched:	15 December 2016	Closing date:	2 February 2017
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<p>Who will this consultation be of most interest to?</p> <p>Local authorities</p>

<p>What is the subject of this consultation?</p> <p>A review of the Food Law Code of Practice for England</p> <p>Direction and guidance on the approach that local authority food law regulatory services should take is given in a statutory Code of Practice (Code). The Code sets out instructions and criteria to which food authorities must have regard. The Code requires periodic revision to ensure that it reflects current enforcement practices and supports delivery by local authorities of their official control obligations. It aims to ensure that enforcement is effective, consistent, risk-based and proportionate.</p>
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<p>What is the purpose of this consultation?</p> <p>The FSA welcomes views on its proposals to amend the Code, in particular:</p> <ul style="list-style-type: none"> a) clarifications and updates on the intervention rating scheme including the descriptors, to improve consistency on how authorised officers allocate risk rate scoring at food establishments; b) updates and new guidance on food incidents and addressing food criminality; and c) clarification of text where necessary to facilitate consistent interpretation and approach by authorised officers.

<p>Responses to this consultation should be sent to:</p>	
<p>Bill Drennan Operational Policy and Delivery</p> <p>FOOD STANDARDS AGENCY Tel: 020 7276 8141</p>	<p>Postal address 1st Floor Church Side Aviation House 125 Kingsway London WC2B 6NH</p> <p>Email: CodeReviewResponses@foodstandards.gsi.gov.uk</p>

Impact Assessment included?		No
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Food Law Code of Practice (England) - Review

DETAIL OF CONSULTATION

Introduction

In the UK, local authorities (LAs) are responsible for the verification of compliance with food law in food establishments. Direction and guidance on the approach that LAs should take is provided in the statutory Food Law Code of Practice (Code). This Code sets out instructions and criteria which LAs must have regard when discharging their official control duties on food law. The Code requires periodic revisions to ensure that it reflects current food law policies and practices so that official controls and enforcement action taken by officers remain effective, consistent and proportionate.

The Food Standards Agency (FSA) has identified improvements to the Code that can be undertaken now and other changes that would be considered through the FSAs Regulating our Future Programme (RoF). The RoF Programme aims to develop a sustainable regulatory model by undertaking a fundamental rethink of current approaches to official controls, and how the FSA gains assurance that businesses are producing and selling food that is safe and what it says it is. The proposed amendments on which we are now consulting, therefore, covers those areas that the FSA consider to be important to implement now to improve LA operational efficacy in the delivery of official controls.

FSA Wales and FSA Northern Ireland will consider relevant amendments to their Codes of Practice, in the light of the amendments to the Code for England.

The Code is supplemented by the Food Law Practice Guidance, which complements the Code and provides general advice on approach to enforcement of the law where its intention might need further clarification. Amendments will be made later in 2017 to the Practice Guidance pending amendments to the Code.

Proposals

The overall objective for this initiative is improving consistency of approach to enforcement and reducing the regulatory burden, while maintaining a high level of public health protection.

The specific objectives are:

1. To streamline the Code, updating references to legislation, terminology, links etc.;
2. To provide additional guidance on communication of incidents and advice on food criminality; provide updates to qualification and competency requirements since the implementation of the previous Code revision; and
3. To enhance consistency of approach by authorised officers in delivering official controls. In particular the risk rating by updating advice and revising and clarifying the risk descriptors used to assign risk scores;

Proposed Amendments:

1. Overall the Code is being restructured and revised to improve readability. References have also been updated where appropriate, which includes minor updates of referencing or clarification.

2. New sections have been incorporated into Chapter 2 to provide further guidance on communication of incidents and dealing with food criminality. Additional amendments and guidance have also been incorporated into Chapter 4, Qualification and Experience to reflect updates since the 2015 Code revision.

3. The Code includes food establishment intervention rating schemes for determining the frequency of interventions at food establishments using risk assessment criteria. These criteria include: the potential hazard or potential risk; the level of (current) compliance by the establishments and, the confidence in management and control systems. These individual criteria are “scored” and the collective total is used to assign a risk category to an establishment, which then determines the minimum intervention frequency it should receive.

The FSA has identified inconsistencies in the application of intervention ratings in Chapter 5, in that establishments presenting similar risks may be subjected to different intervention frequencies, depending on how LAs interpret the current intervention rating scheme. These clarifications aim to improve the harmonised interpretation of existing definitions, and mitigate the level of inconsistencies in the scoring.

Clarifying the intervention rating scheme’s descriptors under ‘Level of (current) compliance’ in Chapter 5

The revised descriptors should focus the officers, in particular on when a score of 0, 5 and 10 would be appropriate for the ‘Level of (current) compliance’. The proposed clarification aims to improve consistency of approach in awarding these scores for those businesses who have demonstrated the relevant level of compliance with the hygiene legislation in other ways other than through compliance with industry codes of practice/ guides. We expect the proposed arrangements to have a small positive impact on businesses and will provide more clarity for LAs risk rating such establishments

Clarifying the flexibility with regard to the implementation of the HACCP principles

The additional text aims to remind officers that the HACCP concept allows HACCP principles to be implemented with the required flexibility so as to ensure that it can be applied in all circumstances, particularly for small businesses which present only basic hygiene hazards.

Re-aligning the intervention rating scheme’s descriptor score of 10 under ‘Confidence in management/control procedures’ in Chapter 5

We consider that the measure that may have a small direct impact on business will be the clarification in definition proposed to the 10 score for confidence in management, which is the subject of question 6 below.

The intervention rating scheme’s descriptor score of 10 for the ‘Confidence in management’ criteria currently includes a note regarding “Making progress” whereby “Making progress”

can only be considered appropriate once. If at the next intervention the food safety management procedures are not satisfactory the score of 10 is not appropriate'

The interpretation of when a score of 10 can be consecutively scored can vary between officers and LAs. The revised descriptors should focus the officers on when a score of 10 and 20 would be appropriate. This proposed clarification will improve consistency of approach in determining whether the score of 10 can be awarded for more than one intervention cycle. We expect the proposed arrangements to have a small positive impact on businesses and will provide greater clarity for LAs risk-rating such establishments and avoid potential over-inspection. This will provide effective risk rating by using information better reflecting operational conditions, and potentially reduce the number of inspections.

Currently we do not have sufficient information about the possible impact that this clarification will have and there is accordingly no impact assessment included with this consultation. If we have sufficient evidence for this, a Business Impact Target (BIT) assessment for this will be produced and validated through the Regulatory Policy Committee.

To enable us to gauge any possible impact, we would be grateful for answers to that question in particular.

Consultation process

We have sought views from the Food Hygiene Focus Group (FHFG) about the main revisions prior to this public consultation.

We are consulting for a period of seven weeks, which we consider to be proportionate to the changes proposed and the financial impact on businesses relating to these changes is likely to be limited. Information gathered from this consultation will be considered when preparing a finalised version of the Code for submission to the Minister of State for approval. Information supplied by consultees will also inform any assessment of the impact these revisions will have. Versions of the draft Code are included with and without tracked changes for your convenience.

At the end of the consultation period, the FSA will analyse the responses, make any relevant amendments to the Code and post its reply to the consultation responses on the FSA website.

Questions asked in this consultation:

Q1: We would welcome any views or comments on the new/revised guidance on:

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| a) 2.1.2.2 Composition, chemical contamination, adulteration and labelling with regards to division of responsibilities |
| b) 2.2.1 Food incidents |
| c) 2.3 Addressing food criminality |
| d) 2.4 Communication between Competent Authorities |

Do you consider any additional clarification is necessary? If so, what?

Q2: With regards to the revisions incorporated in Chapter 4 Qualifications and Experience:

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| a) Under 4.3.3 Regulatory Support Officers: <ul style="list-style-type: none">• is the revised wording sufficient for clarifying what activities regulatory support officers can carry out?• Or should further clarification be provided? If so what? |
| b) Under 4.8 Authorised officers competencies – <ul style="list-style-type: none">• is the revised wording clearer in describing the competency requirements?• Do they adequately cover the key tasks expected of authorised officers? |
| c) Under 4.11 Primary production – equivalent qualifications will be listed in the Practice Guidance. <ul style="list-style-type: none">• What are your views on the updates to this section? |

Q3: Is the amended wording in Chapter 5.2.1 dealing with what constitutes an official control clear to you? Should further clarification be provided? If so on what?

Q4: a) Do you agree with the amendments to the wording for Chapter 5.6.1 Part 2 with regard to relevant codes and industry guides and the scorings of 10, 5 and 0? If not, what further amendments would be helpful? Further views on this descriptor are welcome.

c) Would you interpret 'industry guides' as referring to:

- i) the section in them on legal compliance only e.g. 'guide to compliance'; 'how to comply with the law' or**
- ii) the section in them on legal compliance and the section on 'best practice'?**

Q5: We would welcome your views on the additional paragraph on documentation and record-keeping for small businesses (Chapter 5.6.1, Part 3).

- a) Do you consider any further clarification is necessary?**
- b) Do you think this will affect the consistency of scoring of food businesses by LA officers?**

Q6: Do you think the proposed clarification on 10 and 20 scores on Confidence in Management/Control Procedures will result in any substantial changes in

scoring? (Chapter 5.6, Part 3) If so:

What is the number of businesses in your Council area that would be likely to stay as a 10 rather than switching to 20 as a result?	
What percentage of businesses in your area that would currently get a 10 score does that represent?	

Q7: a) Do you think that the amendments to the descriptors in 5.6 will affect the consistency of scoring of food businesses by LA officers? Please provide comments.

b) Are there any additional clarifications that should be added to the descriptors? If so which factor needs additional material and why?

Q8: We would welcome views on any other amendments to the Code that haven't already been mentioned.

Other relevant documents

None.

Responses

Responses are required by close 2 February 2017. Please state, in your response, whether you are responding as a private individual or on behalf of an organisation/company (including details of any stakeholders your organisation represents).

Thank you on behalf of the Food Standards Agency for participating in this public consultation.

Yours faithfully

Bill Drennan

Operational Policy and Delivery

Regulatory Delivery Division

Enclosed

Annex A: Standard Consultation Information

Annex B: List of interested parties

Annex A

Publication of personal data and confidentiality of responses

1. In accordance with the FSA principle of openness we shall keep a copy of the completed consultation and responses, to be made available to the public on receipt of a request to the [FSA Consultation Coordinator](tel:02072768308) (020 7276 8308). The FSA will publish a summary of responses, which may include your full name. Disclosure of any other personal data would be made only upon request for the full consultation responses. If you do not want this information to be released, please complete and return the Publication of Personal Data form, which is on the website at <http://www.food.gov.uk/multimedia/worddocs/dataprotection.doc> Return of this form does not mean that we will treat your response to the consultation as confidential, just your personal data.
3. In accordance with the provisions of Freedom of Information Act 2000/Environmental Information Regulations 2004, all information contained in your response may be subject to publication or disclosure. If you consider that some of the information provided in your response should not be disclosed, you should indicate the information concerned, request that it is not disclosed and explain what harm you consider would result from disclosure. The final decision on whether the information should be withheld rests with the FSA. However, we will take into account your views when making this decision.
4. Any automatic confidentiality disclaimer generated by your IT system will not be considered as such a request unless you specifically include a request, with an explanation, in the main text of your response.

Further information

5. A list of interested parties to whom this letter is being sent appears in Annex C. Please feel free to pass this document to any other interested parties, or send us their full contact details and we will arrange for a copy to be sent to them direct.
6. Please contact us if you require this consultation in an alternative format such as Braille or large print.
7. This consultation has been prepared in accordance with HM Government consultation principles¹.

¹ <http://www.bis.gov.uk/policies/bre/consultation-guidance>

Annex B

List of consultees

All councils and Port Health Authorities in England and interested parties