

The implementation of official food and feed controls Regulations consultation 2019

Summary report of stakeholders' responses

The implementation of official food and feed controls Regulations consultation 2019 was issued 28 August 2019 and closed on 9 October 2019

The FSA in Wales carried out a 6-week public consultation exercise that was published on its website and sent directly to all identified stakeholder organisations.

The FSA is grateful to those stakeholders who responded and sets out in the table below responses in order of the key proposals

The key proposals on which the consultation sought views were:

- The proposed implementation legislation in Wales to provide for the execution of powers and enforcement of EU Regulations on official controls in relation to the FSA areas of responsibility for food and feed law and animal health and welfare
- Our assessment of the impacts associated with the implementation of the legislation in Wales in relation to FSA areas of responsibility only

The Food Standards Agency's considered responses to stakeholders' comments are given in the last column of the table. A summary of changes to the original proposal(s) resulting from stakeholder comments is set out in the final table.

The list of respondents is as follows – the abbreviations indicated are used in the tables below.

- Chartered Institute of Environmental Health in Wales (CIEH)
- Trading Standards Wales (TS Wales)
- The Food Safety Expert Panel Wales (FSEP)
- Which?

Summary of substantive comments to the FSA consultation on implementation of official food and feed controls Regulations consultation 2019

Q1: Have we appropriately identified the key aspects of the OCR application that apply from 14 December 2019.

Respondent	Comment	Response
CIEH	No comment	
TS Wales	No comment	
FSEP	No comment	
Which?	Which? supports the implementation of the Official Controls Regulation as this legislation was adopted in order to help ensure a more coherent regulatory approach and better targeting of risks. It will therefore provide enhanced consumer protection, helping to reduce foodborne illness and give a stronger focus to reducing food fraud, as foreseen during the updating of the Regulation	The FSA notes this response

Q2: Have we appropriately identified the impacts of the changes that apply from 14 December 2019 in our Impact Assessment?

Respondent	Comment	Response
CIEH	It is felt that in Enforcement Authorities (Familiarisation). that one Environmental Health Officer (EHO) and one Trading Standards Officer (TSO) will spend one hour reading and two hours disseminating it to staff. This is likely to be unrealistic. As the impacts affect Food and Feed, there is likely to be more than one EHO/TSO identified as some local authorities (LAs) will have	The FSA accepts that a re-examination of the familiarisation costs is appropriate and the explanatory Memorandum that accompanied the final Statutory Instrument contains amended figures.

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	<p>Lead Officers for food and feed standards.</p> <p>There is also undoubtedly going to be more time than one hour spent on this as there will also be changes to the associated Codes of Practice and Practice Guidance that will require further familiarisation.</p> <p>Additionally, for imported food, only costs to Port Health Authorities (PHAs) have been considered, if imported food or feed is moved to an External Temporary Storage Facility (ETSF), there are likely to be costs for LAs in registering and inspecting these premises.</p>	<p>It is expected that familiarisation costs will accrue due to changes to the Food Law Codes of Practice and Practice Guidance as a result of OCR. However, amendments to these documents will be subject to further consultation and impact assessment.</p> <p>The FSA has noted this, but these costs are theoretical and as such outside the scope of this consultation.</p> <p><i>[Note: an ETSF is a place outside the customs-controlled area of the frontier (port or airport) approved for temporary storage of goods before they undergo a customs procedure. ETSFs are regulated by HMRC and Border Force. See https://www.gov.uk/guidance/temporary-storage for details]</i></p>
<p>TS Wales</p>	<p>The assumption that one EHO and one TSO will spend one hour reading the new Sis and two hours disseminating it to staff, is unlikely to be realistic. As the impacts affect Food and Feed, there is likely to be more than one TSO identified as some LAs will have different LOs for food and feed standards.</p> <p>There is also undoubtedly going to be more time than one hour spent on this as there will be also be changes to the associated Codes of Practice and Practice Guidance that will require further familiarisation.</p> <p>Additionally, only costs for PHAs have been considered, if imported food or feed is moved to an External Temporary</p>	<p>See response above</p>

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	Storage Facility (ETSF), there are likely to be costs for LAs in registering these premises.	
FSEP	Identical to CIEH response above	See response above
Which?	<p>Consumers need to be included within the cost/benefit sections as one of the main affected groups. Failure to implement these measures would directly affect consumers as it will determine the level of protection they can expect and associated likelihood of exposure to food safety risks or deceptive practices, as is set out in the rationale for intervention section of the impact assessment.</p> <p>Implementation of the regulation should result in improved consumer confidence which will have wider benefits for the food industry and wider economy, as well as reduced health costs.</p>	Although a more integrated and simplified approach to controls across the EU should lead to improved consumer protection and increase consumer confidence in food and feed produced within the EU and imported from third countries, consumers are not directly affected by the OCR. Indirect impacts on consumers have not been further assessed in the cost-benefit section of the Impact Assessment.

Q3: Do you agree with the assumptions made in our Impact Assessment?

Respondent	Comment	Response
CIEH	We think that more than one Manager of a business is likely to familiarise themselves with the OCR, thus resulting in additional costs to the business. No costs have been considered for impacts on small to medium sized businesses.	The FSA has considered the full breadth of businesses across Wales and recognises that the majority are small to medium sized businesses. This was considered in the drafting of the Impact Assessment.
TS Wales	We think that more than one Manager of a business is	See response above

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	likely to familiarise themselves with the OCR, thus resulting in additional costs to the business. No costs have been considered for impacts on small to medium sized businesses.	
FSEP	Identical to CIEH response above	See response above
Which?	No comment	

Q4: Are you aware of any other significant impacts of the changes that apply from 14 December 2019 that we have not identified?

Respondent	Comment	Response
CIEH	The CIEH supports work planned by the FSA to consider whether greater use could be made of non-criminal sanctions for food offences that have limited public health impacts. Criminal sanctions can be disproportionate and place unnecessary burdens on professional officers. However, we are of the firm view that along with new non-criminal sanctions, criminal sanctions should be maintained as a fall- back position to deal with persistent offenders or where it may be more profitable for offenders to pay repeated fines than comply with legal requirements.	Comments noted. The FSA will consider consultation responses made in relation to sanctions and penalties as part of our wider review of sanctions and penalties. We will be consulting further in future in relation to any specific proposals.
TS Wales	No comment	
FSEP	No comment	
Which?	Which? is concerned by the proposal to consider de-criminalising sanctions for some breaches of food and feed law as part of the policy development work on the implementing regulations. This would remove an	Comments noted. The FSA will consider consultation responses made in relation to sanctions and penalties as part of our wider review of sanctions and penalties. We will be consulting further in future in relation to any

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	<p>important deterrent and fail to reflect the severity of the consequences of food and feed law breaches for consumers. It is important that enforcement officers have an appropriate toolbox in order to ensure effective enforcement and compliance. This needs to include both civil and criminal penalties depending on the nature and severity of the breach and the type of consumer harm that can result. In some cases, swift and flexible action will be needed. However, it is essential that there remain strong criminal sanctions to deter non-compliance both for safety breaches and for food fraud or other crimes that can lead to consumer detriment, including financial and emotional detriment. Any move away from criminal sanctions would send the wrong message about how seriously breaches to food and feed law are taken.</p>	<p>specific proposals.</p>
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Q5: Do you consider that the Regulations will have an effect on opportunities for use of the Welsh language

Respondent	Comment	Response
CIEH	No comment	
TS Wales	No comment	
FSEP	No comment	
Which?	No comment	

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Q6: We would like to know your views on the effects that the proposed Regulations would have on the Welsh language, specifically on:

- i. opportunities for people to use Welsh and
- ii. on treating the Welsh language no less favourably than English.

Respondent	Comment	Response
CIEH	No comment	
TS Wales	No comment	
FSEP	No comment	
Which?	No comment	

Q9: What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Respondent	Comment	Response
CIEH	No comment	
TS Wales	No comment	
FSEP	No comment	
Which?	No comment	

Summary of changes made

As the consultation was on the principles of the implementation of the OCR, there was no effect on the drafting of legislation.

Appropriate changes were made to reflect the comments in the impact assessments that formed part of the Explanatory Memoranda to the Statutory Instruments drafted to allow for the implementation and enforcement of the OCR.