

### Summary of responses

#### What was the background to the consultation?

1. The Food Standard Agency established the [Regulating Our Future \(ROF\) Programme](#) (ROF) in recognition that it was time to improve the way that regulatory controls for food and animal feed are delivered. The programme aims to modernise how food businesses in England, Wales and Northern Ireland are regulated, to check that our food is safe and what it says it is. We are building a system that is dynamic and flexible and can adapt as circumstances change and as technology develops in the future. We are doing this so that our system has the sophistication needed to regulate an increasingly diverse food industry and to adapt quickly to changing risks and so that it can respond to changing patterns of food production, trade and consumption when the UK leaves the EU.
2. In June 2017 we published '[Why food regulation needs to change and how we are going to do it](#)' which set out our ambitions for regulatory change to 2020. Our priority has been to ensure that the elements of the modernised system, that are key to continued public health protection, maintenance of consumer and business trust and confidence in the system, are in place in advance of EU exit.
3. These elements include: the development of a digitally-enabled approach to registration of food businesses that will help them set up for success; a more sophisticated and data driven method for the segmentation of businesses to help move towards a more proportionate and risk-based approach; and the development of mechanisms and the introduction of standards to allow businesses' own assurance data and information to be considered within the risk management framework. '[Changing food regulation: what we've done, where we go next](#)' provides a general update on progress towards delivery.
4. This consultation sought views on proposed changes to the Food Law Code of Practice (England) designed to facilitate implementation of these elements of the modernised regulatory model. It also sought early views from stakeholders on co-dependent initiatives that are still in development.

#### What did we consult on?

5. The consultation on the Food Law Code of Practice (England) – the Code - took place from 5 July to 27 September 2018.
6. The key changes to the Code that we asked for views on related to:
  - the introduction of the online service for the registration of new food businesses that is being developed for implementation in 2019;

- FSA recognition of Primary Authority national inspection strategies.
  - the introduction of definitions for the terms ‘full compliance’ and ‘sustained compliance’ in relation to food hygiene;
  - changes to the food hygiene risk assessment process enabling resources to be targeted on non-compliant businesses;
  - taking account of whether a food business operator proactively registers with the local authority in assessing ‘confidence in management’; and
  - a new requirement in the Code that will specify how a local authority must store and transfer the data it holds, and the need to follow the Data Standard specified by the FSA.
7. We also asked for views from stakeholders about data sources that might be used for the Balanced Scorecard tool that will help to give the FSA a more rounded picture of local authority performance and will make it easier for local authorities to benchmark their performance against other similar authorities.
  8. More details of our proposals may be found in the [full consultation package](#) published on our website.
  9. Consultations were also undertaken in [Wales](#) and [Northern Ireland](#) on similar proposed changes to the Code for these countries.

### Who did we consult?

10. As well as publishing the consultation on our website, we issued the package to 354 local authorities in England, and to 28 other stakeholders with an interest in enforcement issues, including professional bodies, businesses, and government departments
11. The FSA also presented the proposed amendments to local authorities at a series of update events that were held from December 2017 to January 2018, and to industry representatives at the BEIS Food Hygiene Expert Panel, which acts as a forum for discussion, exchange of ideas and liaison between local authorities, regions, and central government, promoting good practice and consistency. Meetings were also held with the FSA’s Segmentation Working Group, which is made up of experts from local authorities, regulators and industry and other stakeholder groups including representatives from industry and professional bodies prior to the consultation being launched.
12. We are very grateful for the 82 substantive responses that were received. These comprised responses from: 17 local authority focus/liaison groups, 42 individual local authorities, 9 individuals, 8 industry stakeholders, 4 professional bodies, and 2 ‘other’ respondents. A full list can be found at [Annex A](#).

### What did the responses say?

13. The table at [Annex B](#) summarises the responses to the consultation in terms of the specific questions we asked or proposals we made.

## Next steps

14. We have given very careful consideration to the detailed comments provided and the views expressed. Details of our next steps are provided in the table at [Annex B](#). In summary, at this stage, we propose only to take forward amendments to the Code that relate to the new registration system and to the recognition of Primary Authority national inspection strategies. These changes will be made when we next amend the Code. Timing depends on there being greater clarity on EU exit, so we cannot be definitive about when this will be at this stage.

**Regulatory Compliance Division  
Food Standards Agency  
January 2019**

## Annex A – List of respondents to consultation

Association of Chief Trading Standards Officers	Leeds City Council
Association of Convenience Stores	Leicester City Council
Borough of Poole	Leicestershire Food Liaison Group
British Frozen Food Federation	Lincolnshire Food Liaison Group
Cannock Chase District Council	London Borough of Tower Hamlets
Central England Trading Standards Authorities Food Group	London Food Coordinating Group
Chartered Institute of Environmental Health	Mansfield District Council
Chartered Institute of Environmental Health National Pest Advisory Panel	Martin Thomas Butchers
Chartered Trading Standards Institute	Mid Sussex District Council
Cherwell District Council	Mole Valley District and Tandridge District Council shared
Cheshire and Merseyside Food Liaison Group	Environmental Health and Licensing Services
City of London Corporation	Nationwide Caterers Association
Civica Foods Ltd	Norfolk County Council
Cornwall Council	North East Local Authorities
Coventry and Warwick Regulatory Partnership	North East London Food Liaison Group
Crawley Council	North Lincolnshire Council
Derby City Council	North West Leicestershire District Council
Dover District Council	North West London Food Liaison Group
East Northamptonshire Council	North Yorkshire Food Liaison Group
East of England Trading Standards Association	Northamptonshire Council
East Riding Council	Nottingham City Council
Elmbridge Borough Council	NSF International
Erewash Borough Council	Oxford City Council
Essex Food Liaison Group	Reigate and Banstead Borough Council
Food and Drink Federation	Rother Council
Food Hygiene Focus Group	Shropshire Council
Gloucestershire Food Safety Group	Slough Borough Council
Government Chemist	South Lakeland District Council
Gravesham Borough Council	South Staffordshire Council
Guildford Borough Council	Spelthorne Borough Council
Hampshire and Isle of Wight Food Advisory Committee	Staffordshire Authorities
Herts and Beds Food Liaison Group	Suffolk Food Liaison Group
Hinckley and Bosworth Borough Council	Tamworth Borough Council
Horsham District Council	The British Sandwich and Food to Go Association
Hull City Council	Tonbridge and Malling Borough Council
Jurassic Coast Food Safety	Torbay Council
Knowsley Council	Trading Standards North West
Lancashire Environmental Health	Wakefield Council
	Warwickshire Food Liaison Group
	Wealden Council

## Annex B – summary of consultation responses

What did we ask or propose?	What did stakeholders say?	What will the FSA do now?	
<b>Proposal 1 - Enhanced Registration</b>			
Q1.	<p>Are there any perceived barriers that could hinder the effective implementation and administration of the online registration service?</p>	<p>Almost all respondents identified potential barriers</p> <p>The key concerns in relation to local authorities were: the need to take account of the range of different IT systems in use; the resources that would be needed; and the cost of upgrading to the latest versions of software. Another common issue of concern was the requirement to maintain an offline version of the registration form, in cases where business do not have access/capacity to use the online service.</p> <p>For some businesses, there may be issues around IT knowledge and capability, and potential language barriers.</p>	<p>The new online service now has additional functionality and features and is being tested with ten local authorities. We anticipate that many of the barriers identified will be addressed during this phase of development. In addition, we plan to develop an offline form for use on any device, with or without internet service.</p> <p>Our long-term aim is to phase out non-digital channels for registration but in the meantime, an offline version of the form will be available.</p> <p>We do not anticipate a need for existing businesses to re-register. Should they wish to they will be able to once the local authority in which the business is located is connected to the registration service.</p>
Q2.	<p>Do you consider that enhancing registration through the online service will have the desired effect of increasing the effectiveness and efficiency of the registration process?</p>	<p>There were mixed views on this.</p> <p>Some considered that an overhaul of the registration process was long-overdue and could have good outcomes.</p> <p>Others felt that the desired effect would only be seen if there is a campaign to promote awareness of the requirement to register.</p> <p>Some considered that there was insufficient clarity on how businesses failing to register would be solved through these changes.</p> <p>Some indicated there was insufficient detail to draw clear conclusions on the proposals.</p> <p>Suggestions of more effective alternatives included a licensing/Permit to Trade scheme alongside the use of Fixed Penalty Notices, and the mandatory display of food hygiene ratings.</p>	<p>Wider roll-out of the service will be accompanied by communication to promote the new system and raise awareness around the legal requirement to register.</p> <p>Periodic review of the new service will take place, during and after roll-out.</p> <p>We do not currently have the evidence base to support a permit to trade regime but once the new registration service has been imbedded, the success of that will be evaluated to determine if it is appropriate to propose the legislation that would be needed.</p> <p>On the Food Hygiene Rating Scheme, we remain committed to moving toward a statutory scheme in England.</p> <p>Comments made will be considered and the registration text will be updated during the next Code revision.</p>

What did we ask or propose?	What did stakeholders say?	What will the FSA do now?
<b>Proposal 2 - National inspection strategies (NIS)</b>		
<p>Q3. What do you see as the benefits of national inspection strategies?</p>	<p>Over two-thirds of respondents identified a range of benefits which were largely in line with those identified in the consultation document. Examples include the focussing of local authority resources, making use of intelligence, and businesses with consistently high standards saving some of the time and resource involved in managing inspections.</p> <p>Some caveats were attached to the benefits, such as the need for consistency and standards.</p> <p>Responses highlighted that NIS may not be appropriate for all types of primary authority partnerships with some mentioning that they could see most benefit for larger businesses, rather than SMEs.</p>	<p>We will better align the Primary Authority requirements for operation of NIS with the Code by including the text proposed in the consultation when we next revise the Code.</p> <p>We will also continue to develop standards and oversight/assurance mechanisms for primary authority partnerships that wish to develop and implement a NIS. This will provide a benchmark that partnerships will have to meet before a NIS is recognised by the FSA, and before any local authority would have to follow it. The aim is to ensure that only the most robust partnerships and most compliant businesses can benefit from NIS.</p>
<p>Q4. What challenges do you think that national inspection strategies for food safety partnerships may pose?</p>	<p>Most respondents identified potential challenges including: IT capability; administrative burdens; public perception and acceptability of 'self-regulation'; risks to food safety if inspections are less frequent; and the ability of local authorities to provide intelligence into an operational NIS at a time of reducing resources.</p> <p>Compatibility between FHRS and NIS was also raised as a challenge by some respondents.</p> <p>Other comments/concerns about the concept of NIS more generally were raised by some stakeholders.</p>	<p>The comments made will be considered as we refine thinking on NIS and test the draft standards we have developed. We will also consider our communications and engagement work in line with comments received.</p> <p>The <a href="#">draft standards</a> will be reviewed in light of the consultation responses and we continue to welcome feedback on these from all stakeholders.</p> <p>We are exploring how we might adapt the FHRS so that it can continue to work for businesses covered by a NIS. Consumer and business insight work is underway (due to complete in early 2019) and stakeholder engagement will follow.</p> <p>Comments made about NIS more generally will be discussed with colleagues in BEIS which is responsible for administration of Primary Authority.</p>

What did we ask or propose?	What did stakeholders say?	What will the FSA do now?
<b>Proposal 3 - Compliance definition</b>		
<p>Q5. The FSA would like stakeholders to consider the proposed description of 'full compliance' and give their opinion as to whether food businesses that achieve this level of compliance should be considered as fully compliant?</p>	<p>There was strong feedback that the definition of 'fully compliant' could be considered misleading as a score of 5 under the food hygiene scoring system in the Code allows for 'minor contraventions'.</p>	<p>Given the feedback, we propose to amend the term to, 'highly compliant'.</p> <p>As this proposal is linked closely with Proposal 4 below, we will not implement this change until that proposal is reviewed, and a set of meaningful local authority KPIs that will help protect resources have been developed.</p>
<b>Proposal 4 - Changes to the Food Hygiene Risk Assessment – recognising sustained compliance</b>		
<p>Q6. Do you think food businesses should be recognised for sustained compliance if they are assessed to be fully compliant at the last two interventions and over a minimum period of three years?</p>	<p>Whilst there was broad agreement from stakeholders with the proposed definition of sustained compliance, there were some concerns/questions around how this would be applied.</p> <p>The majority wanted to see clearer safeguards around whether certain businesses could drop into a low risk intervention category as a result.</p> <p>A common theme among local authority responses was clarity on which interventions would count towards sustained compliance, as FBOs can now pay for FHRS re-visits.</p>	<p>Based on the feedback, we will refine our proposals on how businesses that demonstrate sustained compliance can be recognised under the Code and will consult on this again in the future.</p>
<p>Q7. What scale of recognition do you think food businesses should receive to their total risk rating score if they are assessed as fully compliant, should it be -5, -10, or -20?</p>	<p>There was no clear consensus from stakeholders on the reduction that should apply.</p>	

What did we ask or propose?	What did stakeholders say?	What will the FSA do now?
<b>Proposal 4 - Changes to the Food Hygiene Risk Assessment – vulnerable risk groups</b>		
Q8. What are your views on treating fully compliant businesses differently in these circumstances, and the likely positives and negatives of the effects of this proposal?	A wide range of views were received, with no clear consensus amongst them. A common concern raised related to the perception that this policy change may lead to less oversight of these businesses.	We will review the definition of ‘vulnerable groups’, in the Code to ensure that it captures those that are intended to be afforded a higher level of protection, and to better guide its application by Authorised Officers. This review will form part of the wider work relating to changes to the Food Hygiene Risk Assessment, so no change will be made to the Code at this stage.
Q9 The FSA would welcome any documented evidence that would substantiate the view that there has been a significant decline in food safety compliance levels within healthcare establishments.	Some limited evidence was provided that showed a recent decline in compliance, but this has not been tested and will require further investigation with those that have gathered the data.	The evidence provided will be considered and further investigated as part of the review of the overall proposal.
<b>Proposal 5 – Safeguards in respect of the proposals on the definition of ‘compliance’ and vulnerable groups</b>		
- We proposed safeguards to ensure that the combined effect of proposals 3 and 4 is capped and does not exceed a reduction of - 40 in the overall intervention rating score or reduce an establishment’s intervention rating by more than two risk categories. We also proposed that where a score of 22 is given for vulnerable groups, the risk category reduction cannot result in an establishment being categorised as less than category D.	The proposal here linked to Proposals 3 and 4.	Along with Proposals 3 and 4, these safeguard proposals will be reviewed, and we will consult further before any changes are made to the Code.



What did we ask or propose?	What did stakeholders say?	What will the FSA do now?
<b>Proposal 6 - Significant Risk</b>		
<p>Q10. Given the issues that exist with the application of this scoring factor, what are your views on retaining this in the food hygiene risk assessment scheme?</p>	<p>There were mixed views on this.</p> <p>Some suggested incorporating this aspect into the Confidence in Management (CIM) scoring system, and that linking this score to FHRS, would help drive up compliance in this area.</p> <p>There was also a suggestion to broaden the scope of what constitutes a significant risk to include, for example, allergen issues.</p> <p>Others considered that the issue would be better addressed through greater clarity about and training on the application of the score.</p> <p>Even if incorporated into the CIM, training to ensure consistency in application is considered necessary to ensure proper understanding and use.</p>	<p>The proposal to remove the separate scoring element for 'Significant Risk' was included in recognition that the score is not always applied as intended.</p> <p>From the responses received, we recognise that further work is needed to ensure the circumstances for use are fully understood so that it is applied consistently.</p> <p>We also recognise that removing this score and/or incorporating it into the CIM needs careful management to ensure that it does not result in unintended consequences which could have an unjustified negative impact on an establishment's score.</p> <p>In light of this, we will further explore the most effective method for dealing with activities associated with significant risk before making any change to the Code. We anticipate that such changes would be made at the same time as those relating to Proposal 4.</p>
<p>Q11. If the additional score is applied for reasons other than a risk factor, what are the perceived benefits and what alternative measures could be used to capture this instead?</p>	<p>Respondents recognised that this score is sometimes used to increase inspection frequency in cases where it is considered that there should be increased scrutiny. Indeed, some requested an alternative means to achieve this, such as a local confidence score.</p> <p>There was some concern that the removal of the score would cause more premises to be at the lower end of risk rating, which would make it difficult to target enforcement activities.</p>	

What did we ask or propose?	What did stakeholders say?	What will the FSA do now?
<b>Proposal 7 - Method of Processing</b>		
<p>Q12. The FSA believes that officers will already be interpreting the risk assessment approach to apply this risk factor to businesses that do not apply a control process and this revision of the descriptor will not result in any substantial change in inspection frequencies for businesses – do you have any evidence to the contrary?</p>	<p>The majority of those responding on this issue agreed with the proposed change to the descriptor, and no evidence was provided that this might have a significant impact on inspection frequency.</p> <p>Some stakeholders requested further clarity about the processing methods detailed in the Code and considered that these should be updated regularly to keep up with new/novel processing techniques.</p>	<p>We will change the descriptor as proposed but will not implement this until we are in a position to make changes to the Food Hygiene Risk Assessment (Proposal 4).</p> <p>Further consideration will be given to any practical implications and to the optimal means by which this scoring element can remain sufficiently flexible to deal with new or novel methods of processing, which may not currently be specified within the examples given in the Code.</p>
<b>Proposal 8 – Considerations for Confidence in Management</b>		
<p>Q13. The FSA would welcome any documentary evidence to support the use of a minimum score for the non-registration of a food business.</p>	<p>Views were mixed – 26 of the responses on this issue were supportive of the proposal while 20 were not.</p> <p>Reasons for opposition varied: for example, some thought it inappropriate as it does not form part of the risk assessment; others considered it more a punitive measure than an incentive to register.</p>	<p>We recognise that more evidence is required to establish the link between non-registration and poor compliance before introducing new measures.</p> <p>We are currently undertaking research to understand reasons for non-registration, review compliance, and establish the type of support FBOs receive.</p>
<p>Q14. Do you think the use of a minimum score for non-registration would have enough impact, and if so, which score do you consider most appropriate?</p>	<p>Of those respondents that agreed with the proposal, the majority felt a score of no less than 10 would be most suitable. This was considered appropriate as anything less may not affect the overall food hygiene rating, leaving the business still able to achieve a rating of '5'.</p>	<p>We also propose to undertake work to review the use of existing FPNs to understand the logistics around their use and their effectiveness.</p>
<p>Q15. If the additional score is applied to the CIM score for non-registration, what are the perceived benefits and what alternative measures could be used to increase pro-active registration and to improve initial FHRS ratings?</p>	<p>There was strong support for some alternative measures including: FPNs; Permit to Trade; and mandatory display of food hygiene ratings.</p>	<p>As noted in the response to Proposal 1, work is ongoing to establish if there is a case to introduce a Permit to Trade approach.</p>

What did we ask or propose?	What did stakeholders say?	What will the FSA do now?
<b>Proposal 9 - Data storage and transfer</b>		
<p>Q16. We would welcome your views on any likely barriers to its implementation or any unintended consequences this Data Standard may have for a local authorities' delivery of its official control programme.</p>	<p>Most local authority respondents highlighted concerns with the interface and compatibility of their IT systems and costs and timescales of implementation.</p> <p>As well as the systems, compatibility with local authority information management policies, which are likely to vary, was noted as a potential barrier.</p> <p>Engagement with software providers at an early stage was noted by many respondents as critical to successful implementation.</p>	<p>We recognise that such change needs careful consideration and have commenced work to help us fully understand the concerns, challenges and impact of this.</p> <p>We are conscious of the need to avoid unnecessary additional burdens and the focus of the standard will be data already held by local authorities.</p> <p>We recognise the complexities around local authority delivery of controls and reliance on Management Information Systems (MIS) where changes to IT are required. We have been in touch with the main MIS providers on lead times, technical feasibility, and ease of implementation. We will continue to work with them and keep stakeholders informed of developments.</p>
<b>Supplementary Proposal - Balanced Scorecards (BSC)</b>		
<p>Q17. Are there any other publicly available data sets, apart from LAEMS and FHRS that could be readily accessed and usefully added to the Balanced Scorecard to improve its scope and potential?</p>	<p>A number of data sources were suggested but the most common were LAEMS and FHRS.</p> <p>In relation to food standards, some concerns were noted regarding the fitness of LAEMS to record that activity, due to the intelligence led approach.</p> <p>Some more general concerns about performance assessment were raised.</p>	<p>Many of the suggested data sources are currently being explored and several new KPIs are in development and will be tested in due course.</p> <p>We note the concerns regarding the use of certain KPIs to assess local authority effectiveness and will take these into account as we further develop the Balanced Scorecard.</p>
<p>Q18. Are there any other measurable indicators of local authority performance besides LAEMS and FHRS that could be developed and used to contribute to the assessment of the effectiveness of LAs? These could be direct or indirect indicators and either quantitative and/or qualitative in nature.</p>	<p>Again, the focus of responses related to the use of LAEMS and FHRS data.</p> <p>One industry response suggested looking for consistency of risk ratings in UK-wide national chains.</p>	<p>We will review the current KPIs taking into account the more general comments made on assessment of local authority performance.</p>

What did we ask or propose?	What did stakeholders say?	What will the FSA do now?
<b>Impact of proposals on full compliance and sustained compliance</b>		
Q19.	<p>Do you have any documentary evidence that would substantiate the concern expressed by some local authorities (at engagement events) that the proposed change will not allow the reallocation of resources?</p>	<p>Although no documentary evidence was provided respondents expressed the view that any reallocation of current resources could potentially result in a further resource reduction as an unintended consequence. They considered that the FSA should provide a clear steer to ensure that does not happen. One respondent considered local authorities have already prioritised resource beyond the scale of change proposed.</p>
<p>We recognise the need to protect current resource levels.</p> <p>The proposals regarding full and sustained compliance are not intended to achieve a predetermined reduction in planned inspection numbers, but rather create a standardised approach to improve prioritisation which can apply to all local authorities regardless of current prioritisation.</p> <p>In light of the comments on this question and on Proposals 3 and 4, these changes will not be implemented until necessary safeguards are in place.</p>		