

# **Review of the Food Law Code of Practice, Food Law Practice Guidance, and implementation of the Competency Framework – Northern Ireland**

## **Summary of stakeholder responses**

**01 March 2021**

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

In Northern Ireland, District councils (DCs) are the Competent Authorities responsible for delivering official food controls and other official activities in most food establishments including manufacturers, supermarkets, restaurants, pubs, hospitals and schools and other places where people buy and eat food. Those DCs, which also undertake port health functions, carry out official controls on products of animal origin, namely fish, fishery products and live bivalve molluscs and, foods not of animal origin considered high risk, imported into Northern Ireland from outside the EU sanitary and phytosanitary (SPS) regulatory zone.

The Food Law Code of Practice (Northern Ireland) - the Code - outlines how the requirements of Regulation (EU) 2017/625 apply to Competent Authorities and describes the approach to be taken to ensure the efficient and effective co-ordination of official food controls and other official activities. Competent Authorities must have regard to the provisions of the Code. Separate but parallel Codes are issued in each of the UK countries. The Practice Guidance complements the Code and provides general advice on approach to enforcement where its intention might be unclear. DCs must have regard to the relevant chapters of the Practice Guidance which are specifically referenced to within the Code.

The Code requires regular review and revision to ensure that it reflects current policy and legislative requirements so that DCs delivery of official food controls and other official activities remains effective, consistent, and proportionate. DCs are having difficulty recruiting a sufficient number of officers with the current baseline qualification requirements. The key changes in this revision of the Code were critical to addressing the urgent need for DCs to be able to recruit, train and deploy additional officers so that they can deal with the increase in imported and exported food controls as a result of implementation of the Northern Ireland Protocol and help address reductions in resources resulting from redeployment of staff and staff absences during the COVID-19 pandemic. A temporary deviation from the current baseline qualification requirements,

set out in the existing Code, was in place until the revised Code was issued and approved by the Minister for Health on 2 March 2021. Publication of the revised Code in March 2021 will enable DCs to continue to utilise the qualification flexibilities. There will be further reviews over the next few years to deliver on the various aspects of the FSA's modernisation programme to reform the regulatory delivery model.

## What did we consult on?

The key changes on which we sought views were:

- a) modernisation of the qualification requirements to enable a wider cohort of (DC) professionals to undertake official food controls and other official activities, which the current Code restricts
- b) replacing existing competency requirements with the FSA 'Knowledge and skills for the effective delivery of official food and feed controls and other activities' (Competency Framework) that defines competency by activity rather than by role
- c) introduction of a provision to enable the FSA to be more responsive in issuing instructions, whereby DCs may legitimately depart from the Code, in limited circumstances
- d) revisions to reflect legislative changes such as the coming into effect of the Official Control Regulation (EU) 2017/625 (the OCR), as well as EU exit and implementation of the NI Protocol
- e) simplification of the structure and format of the Code to promote consistency in its interpretation and implementation of food control activities

The full consultation package is published on our [website](#). A separate but similar consultation took place in [England](#) at the same time and consultation in [Wales](#) began on 18 December 2020 and closes on 25 March 2021.

## Who did we consult?

We completed an eight-week consultation exercise in two phases. This included:

- a series of stakeholder engagement events beginning in October 2020
- issuing the consultation package to 48 stakeholders with an interest in the proposals and publishing it on our website from 13 November with a request for comments by 10 December 2020

## What did stakeholders say and what is our response to this?

We are very grateful for the substantive responses that were received. A full list of the respondents can be found at Annex A. The tables to follow summarise the responses to the consultation in terms of the questions set out in the consultation package. We have given careful consideration to the comments provided and the views expressed and our response to these are also set out.

## Summary of substantive comments and FSA response

**Question 1** - Does the layout/presentation and clarified text of the proposed Code and the Practice Guidance make the documents easier to use, improve readability, and facilitate consistent interpretation? If not, how could they be improved?

What did stakeholders say?	What is the FSA's response?
There was general agreement that the layout, presentation and revised text had improved.	The proposed changes will be made to the Code and Practice Guidance.
Further clarification was requested on the legal basis of Section 5.2.5 of the Practice Guidance (Root Cause Analysis) and the practical application of this section.	Obtaining a root cause analysis from food businesses is not mandatory in accordance with the Practice Guidance. It is however a recognised and important methodology to identify the underlying cause of an incident and consequently minimise the risk of re-occurrence. Further detail on the application of this section is being developed and will be communicated directly to the respondents who requested clarification.
The length of the documents collectively was highlighted.	<p>The Code has been streamlined and substantially reduced in length. The intention for future reviews is to reduce the length of the Practice Guidance, by providing links in areas where there is already guidance available, or the requirement is stated in legislation.</p> <p>We are also exploring digital solutions to the hosting of the Code and the Practice Guidance via for example e-books which would enable linking between both documents, and external websites (including to legislation). This will make navigation much simpler and reduce unnecessary duplication.</p>

**Question 2** - Do you agree that the proposed suitable qualification requirements provide DCs with the ability to deploy current resources more efficiently by, allowing a wider cohort of professionals to undertake food control activities, which the Code restricts? If not, why not? (Please specify any additional flexibility you would wish to see, and why).

What did stakeholders say?	What is the FSA's response?
<p>It was generally agreed that the proposed suitable qualification requirements would allow a wider cohort of professionals to undertake food control activities.</p>	<p>Noted.</p>
<p>At ports, suitably trained and competent persons should be able to complete and record simple documentary checks and ID seal checks. Only qualified officers should be authorised to fail a documentary check, reject a consignment or take enforcement action.</p>	<p>The Code provides some clarification on the role of appropriately trained assistants and regulatory support officers and confirms that all decisions on consignments must be taken by an Authorised Officer.</p>
<p>There were concerns expressed regarding:</p> <ul style="list-style-type: none"> <li>• the ability to effectively and efficiently deploy resources in the short/medium term</li> <li>• the professional status of the food officer role</li> </ul>	<p>We recognise the value that qualifications have in providing knowledge and skills for individuals and that they are an excellent way to demonstrate competency. We have retained but extended the list of 'suitable qualifications' which are assessed by an independent body.</p> <p>Before an officer can be authorised to deliver official food controls their competency must be assessed by the lead food officer (LFO) or other suitably qualified and competent officer who will support the LFO to assess against the competencies within the Competency Framework.</p> <p>We consider that restricting qualifications to only those courses that are accredited and/or requiring officer registration with EHRB (or equivalent) reduces the flexibility available to DCs.</p>

**Question 3 - Does the Competency Framework include:**

- (a) all the relevant activities for the delivery of front-line official food and feed controls, other official activities and other activities related to these, whether carried out by DCs and FSA delivery partners?
- (b) all the relevant activities for those working in the private sector who undertake assurance activities that are formally recognised to inform targeting/frequency of official controls?
- (c) the relevant competencies (knowledge and skills) for each activity and sub-activity?

What did stakeholders say?	What is the FSA's response?
<p>There was concern that the Competency Framework is too detailed, prescriptive, and resource intensive and therefore would be prohibitive and restrict the movement of officers into food control. The detail provided in the Competency Framework will not facilitate consistency without significant training and further supporting guidance.</p> <p>Stakeholders also stated that it would require regular updating for new and emerging activities and processes.</p>	<p>We acknowledge that the level of detail is greater than that provided by the current Code, but the aim is to assist LFOs determining officer competency. The Competency Framework is activity based and each activity is designed to stand alone, so an officer can be authorised to undertake one or multiple activities depending on their role.</p> <p>To support the implementation of the Competency Framework we will be providing:</p> <ul style="list-style-type: none"> <li>• lead food officer training</li> <li>• an optional competency assessment record (which has been developed to enable the evidence for a competency to be automatically logged against similar competencies in other activities)</li> <li>• a summary of officer competency table</li> <li>• mapping of the Competency Framework against the suitable qualifications so it is clear how they align</li> </ul> <p>We acknowledge that it is essential that the Competency Framework can be updated, so as part of its development we will be considering the process and frequency for updating.</p>

What did stakeholders say?	What is the FSA's response?
<p>The introduction of the Competency Framework for Officers who hold the EHRB qualification and are fully competent under the current Code, was not considered necessary. It was also proposed that Officers who have achieved the EHRB qualification but are not yet fully competent should be capable of a fast track method to achieve competency without having to complete the full Competency Framework.</p>	<p>The Competency Framework has been developed to set a single and consistent standard that applies to all individuals in DCs, the FSA and FSA delivery partners delivering official food and feed controls and other activities, as well as those working in the private sector who undertake assurance activities that are formally recognised to inform targeting and frequency of official controls. However, having considered the feedback received we consider it appropriate to provide a transition period for the implementation of the Competency Framework for existing officers whose authorisation is not extended to new activities. This transition period is now described in the Code.</p> <p>Additionally, please see response above regarding <a href="#">mapping of qualifications</a>.</p>
<p>There was specific concern regarding the prescriptive detail of the specialist and high-risk activities. It was suggested that a more generic non-exhaustive listing of activities would reduce the burden of completion, recognise the wider skills of EHO's and mitigate against legal challenge.</p>	<p>The proposed Practice Guidance includes a range of methods for how competency can be demonstrated. This allows officers to use relevant knowledge and skills gained from other environmental health disciplines to demonstrate competency for certain activities. The specialist activities then provide additional competencies for officers assessing specific high-risk and/or complex processes. Based on feedback received, we have amended the Competency Framework to include within relevant activities, the skill of being able to respond appropriately to unexpected circumstances and if required, request assistance or gather relevant information to enable an appropriate response. This ensures officers can draw</p>

What did stakeholders say?	What is the FSA's response?
	upon their wider skills when responding to unexpected circumstances.
Councils in NI enforce both hygiene and standards legislation. It was considered duplicitous to require officers to complete certain sections common to hygiene and standards.	<p>The Competency Framework when fully implemented would apply to all individuals in DCs, the FSA and FSA delivery partners delivering official food and feed controls and other activities, as well as those working in the private sector who undertake formally recognised assurance activities to inform targeting and frequency of official controls. As such, some officers would only be required to undertake hygiene or standards intervention activities.</p> <p>The Competency Framework has been grouped into core competencies and common knowledge and skills for a type of intervention activity, including those for hygiene and standards, with any differences limited to the sub-activities. Officers that are authorised for both hygiene and standards activities can, where relevant, use the same evidence to demonstrate their competency for both. Additionally, please see response above regarding the provision of an optional <a href="#">competency assessment record</a>.</p>
It was stated that those in the private sector undertaking assurance activities should meet the same competency standards as an EHO.	Noted.
It was considered that not all activities were included, and it was suggested that the imported food section needed more detail.	Some additional details have been added to the Competency Framework.

**Question 4** - Do you agree that by defining competency by activity rather than taking a role or profession-based approach this provides DCs and FSA delivery partners with greater flexibility in the utilisation of resources? If not, why not?

What did stakeholders say?	What is the FSA's response?
<p>It was considered that competency by individual sub-activity does not recognise the skills, flexibility and value of holistic officers.</p> <p>It was suggested that some respondent's concerns could be addressed by the FSA carrying out a mapping exercise for officers who meet the baseline qualification in order to expedite completion.</p>	<p>The Competency Framework is activity-based which provides flexibility by allowing officers to be authorised for the activities they are competent to undertake.</p> <p>We recognise that each DC is different and that some officers enforce legislation beyond food. It is for each Council to decide from the list of suitable qualifications in the draft Code, whether to recruit food officers with specific food qualifications or those which includes other environmental health disciplines. Officers who have undertaken enforcement in other environmental health functions, may have gained knowledge and skills which demonstrate their competency in relation to certain activities within the Competency Framework.</p> <p>Additionally, please see response above regarding <a href="#">mapping of qualifications</a>.</p>



**Question 5** - Do you agree that by setting a standard that will apply to all individuals undertaking food and feed control activities, including assurance activities that are formally recognised, will improve the quality and consistency of delivery across the public and private sector? If not, why not?

What did stakeholders say?	What is the FSA's response?
<p>There was concern that assessment of officers will be inconsistent and a burden for employers. It was suggested that comprehensive training, guidance and support must be provided.</p> <p>It was also suggested that there needs to be an agreed system for the sharing of competency assessments between authorities.</p>	<p>We have retained but extended the list of 'suitable qualifications' which are assessed by an independent body. LFOs would continue to determine the competency of officers using existing methods, with assessment being against the Competency Framework. <a href="#">Supporting material</a> will be provided as detailed above.</p> <p>Some clarification on sharing of information between DCs is now provided in Section 3.4.7 of the Practice Guidance. Further work is ongoing to consider the process for assessing competency under the Competency Framework and authorising individuals as competent. We plan to consult on options for this in autumn 2021.</p>
<p>It was considered that the case for change has not been made and therefore the impact of proposed amendments was unable to be assessed.</p>	<p>At present there is no single standard of competency for food controls delivered by DCs, the FSA and FSA delivery partners, and those undertaking formally recognised assurance activities. The Competency Framework provides this standard.</p>
<p>The value of private assurance activities acknowledged which should inform but not replace independent assessments of compliance by DCs.</p>	<p>The scope of formally recognised assurance activities, is at this stage, the audit activities undertaken by FSA approved assurance schemes, which inform the frequency of official controls as part of earned recognition.</p>
<p>Further development ongoing to complete the Competency Framework therefore unable to fully assess quality and consistency of delivery.</p>	<p>The Competency Framework contains all food competencies relevant to DCs. It will be further developed in respect of activities undertaken by the FSA, FSA delivery partners and those undertaking formally recognised assurance activities, as necessary.</p>

**Question 6** - Do you foresee any problems with the provision to allow the FSA to be more responsive in issuing instructions, whereby DCs may legitimately depart from the Code, in limited circumstances? If yes, what, if any safeguards or conflicts should we consider?

What did stakeholders say?	What is the FSA's response?
<p>There was recognition that the provision to allow the FSA to be more responsive in issuing instructions to DCs to depart from the Code, in limited circumstances, would be beneficial but concern was raised about the legal basis for this.</p> <p>The potential impact on Council approved service plans and the need for robust analysis of risks and cost benefit analysis were also raised.</p>	<p>We acknowledge the concerns raised and have amended the terminology used in the Code in line with the FSA's statutory functions to provide 'advice' to DCs rather than to 'require' or 'instruct' them.</p> <p>The FSA would obtain legal opinion, as appropriate, and inform the Minister prior to advising DCs to depart from the requirements. Prior agreement with district councils will be sought before participation in any feasibility/pilot studies.</p>

**Question 7** - Do you agree that the key aspects of the OCR that have applied since the 14 December 2019 have been reflected, within the proposed Code and the Practice Guidance?

What did stakeholders say?	What is the FSA's response?
<p>There was agreement that the key aspects of the OCR have been reflected within the Code and Practice Guidance.</p>	<p>Noted.</p>

**Question 8** - Do you agree with our assessment of the impacts on DCs, FSA approved assurance schemes, private sector assurance bodies, FSA delivery partners, and consumers, resulting from the proposed changes to the Code, the Practice Guidance, and implementation of the Competency Framework? Do you have any additional evidence to better understand the identified impacts? In particular, please indicate:

- (a) if you agree with our assumptions on familiarisation and dissemination time?
- (b) how long it currently takes to assess the competency of a newly appointed member of staff and the ongoing assessment of a member of staff already in post?
- (c) whether you foresee any changes in the assessment time, from the implementation of the Competency Framework?
- (d) how many new members of staff do you appoint every year?
- (e) whether you foresee changes to the number of new staff that need to be appointed every year?

What did stakeholders say?	What is the FSA's response?
<p>Assumptions on familiarisation and dissemination time spend was not agreed.</p> <p>LFOs have spent well in excess of the allotted time.</p> <p>All officers would need to review and understand the documents.</p> <p>No impact assessment had been provided with the consultation, assessing the burden and costs on DCs.</p>	<p>The familiarisation time was established in line with the Department for Business, Energy &amp; Industrial Strategy (BEIS) <a href="#">guidance</a> on the appraisal of new guidance, which is based on the average number of words a person can read per minute. This approach is consistent with that taken in other FSA consultations.</p> <p>We have, however, reviewed our assumptions and recalculated the familiarisation costs:</p> <ul style="list-style-type: none"> <li>- using the recently published 2019/20 LAEMS data</li> <li>- increasing the familiarisation time to take account of the additional amendments to the Competency Framework</li> <li>- applying the dissemination time to all food officers, and not just LFOs</li> <li>- adding the cost for the provision of training to all LFOs</li> </ul> <p>This resulted in the familiarisation costs rising from £2,497 to £4,894.</p>

What did stakeholders say?	What is the FSA's response?
	Even with the revised estimate, a full regulatory impact assessment has not been produced. The FSA has certified the impact as being below the required threshold of +/-£5m equivalent annual net direct cost to business.
The assumption that there would be 'no significant additional burden' to introduce the Competency Framework was strongly refuted. It was stated that disseminating the 2016 competency assessment took at least two to five days for officers to complete, two days per officer for the annual review and one day for LFOs to assess. The Competency Framework is considered to be a more complex and time-consuming process. It was predicted that it will take five to ten days per officer and two to four days of LFO time, per assessment, to complete.	We note the responses indicating the time it currently takes to assess officer competency. Additionally, please see response above regarding <a href="#">question 3</a> , and <a href="#">question 4</a> .
It was highlighted that in addition to new staff, consideration should be given to staff absence/redeployment.	The proposed Code considers officers returning to food, after a period of absence. They would be subject to an appropriate competency assessment against the Competency Framework, which is proportionate to the length of absence, and relevant to the activities they will undertake.
It was highlighted that future staff requirements are difficult to predict and are impacted by; EU exit, backlog of inspections due to the pandemic, businesses which were inspected outside the mandatory FHRS and restructuring exercises.	We note the responses relating to expected recruitment.

**Question 9** - Do you foresee any other impacts from the implementation of the main proposals detailed in paragraph 13 beyond what we have identified? Where possible, please explain your views and provide quantifiable evidence (for example, costs associated with updating existing templates, the benefits of greater flexibility to allocate staff to activities).

What did stakeholders say?	What is the FSA's response?
<p>Existing pressures were highlighted, and additional impacts specified including resource to review and amend internal policies and procedures.</p>	<p>Please refer to above responses to <a href="#">question 5</a>.            Also, a number of the proposed amendments to the Code and Practice Guidance take account of the implementation of Regulation (EU) 2017/625 (the OCRs), which came into force on 14 December 2019. The consultation on the OCRs, in August 2019, included the impacts these regulations would have on DCs. The Code requires DCs to ensure their policies and procedures are reviewed and updated at regular intervals including whenever there are relevant changes to legislation. We have therefore assumed that any necessary changes to policies and procedures, relating to these regulations, would already have been made.</p>
<p>It was considered that the proposals would not achieve the desired outcomes due to availability of graduates and DCs capacity to develop, mentor and supervise new officers as well as assess their competence.</p>	<p>We recognise that these proposals do not in themselves resolve DC recruitment or funding issues. We are aware of these concerns and are currently involved with cross Government discussions about the issue of funding.            There will be a further review of the Code and the Practice Guidance in 2021. which will include consideration of additional qualification flexibilities to assist DCs with resourcing.            Additionally, please see response above regarding <a href="#">question 2</a>.            Questions were included in the consultation pack to gather data on the quantity of officers required by DCs.</p>

## Other comments

What did stakeholders say?	What is the FSA's response?
<p>Concerns were expressed regarding the four- week formal consultation period and also the timing of the consultation with EU exit preparatory work and COVID-19 pandemic.</p>	<p>We recognise that this consultation came at a particularly difficult time when DC resources were already extremely stretched. However, the changes proposed were and are critical to addressing the urgent need for DCs to be able to recruit, train and use additional officers, to deal with import and export food controls and help to address reductions in resources resulting from the COVID-19 pandemic.</p>

## **Actions implemented**

### **The Food Law Code of Practice (Northern Ireland)**

- Revised Section 2.3 on 'Departure from the Code' amending 'instruction' to 'advise'
- Revised wording in section 3.5 on the requirements for staff undertaking import controls at Border Control Posts
- New Section 4.5 on sampling underpinning its importance and directing DCs to further detailed guidance in Chapters 2 and 4 of the Practice Guidance
- Revised Section 4.6 on monitoring of consignments, providing clear links to the OCR requirements
- Minor editorial amendments

### **The Food Law Practice Guidance (Northern Ireland)**

- Revised Section 3.4.5 to make clear that other competent authorised officers may assess competency and make recommendations to the LFO, but the decision to authorise remains solely that of the LFO
- New Section 3.4.7 added covering 'Officers moving from one Competent Authority to another'
- Clarification made in Section 3.6.2 'Continuous Professional Development (CPD) requirements' that a CPD year could be a calendar year or a rolling 12-month period
- Minor editorial amendments

### **The Competency Framework**

- Implemented a transition period for assessment of ongoing competency against the Competency Framework for existing authorised officers and regulatory support officers, whose authorisation is not extended for new activities
- Improved clarity of specific wording
- Included within relevant activities, the skill of being able to respond appropriately to unexpected circumstances and if required request assistance or gather relevant information to enable an appropriate response
- Added a sub-activity covering FSA approved assurance scheme audits to better reflect the difference between the roles and responsibilities of enforcement authorities and these schemes
- Included additional details in the import control activities

# Annex A

## List of respondents

1. Antrim and Newtownabbey Borough Council
2. Ards and North Down Borough Council
3. Armagh City, Banbridge and Craigavon Borough Council
4. Belfast City Council
5. Causeway Coast and Glens Borough Council
6. Chartered Institute of Environmental Health
7. Derry City & Strabane District Council
8. Environmental Health Northern Ireland (EHNI)
9. Fermanagh and Omagh District Council
10. Lisburn and Castlereagh City Council
11. Mid and East Antrim Borough Council
12. Mid Ulster District Council
13. Newry, Mourne and Down District Council
14. Private Capacity Response