

Regulator Assessment: Qualifying Regulatory Provisions

Title of proposal	Revision of the Food Law Code of Practice
Lead Regulator	Food Standards Agency
Contact for enquiries	Bill Drennan

Date of assessment	6 April 2017
Commencement date	30 March 2017
Origin	Domestic/EU/International
Does this include implementation of a Cutting Red Tape review?	No
Which areas of the UK will be affected?	England

Brief outline of proposed new or amended regulatory activity

1. Local authorities (LAs) in England are responsible for monitoring food business compliance with, and enforcement of, the main body of food law (including rules on food hygiene and safety, and on food standards). Direction and guidance on the approach that LA food law regulatory services should take is set out by the FSA in a statutory Code of Practice that LAs must have regard to. The Code aims to ensure that enforcement is effective, consistent, risk based and proportionate. In order to ensure the Code reflects current legislation and enforcement practices, to support LA delivery of their official controls, periodic revision is required.
2. The Code does not apply directly to food businesses and is not intended to be referred to by business. The direction and guidance to LAs, for the most part therefore, has no significant impact on business. Chapter 5 of the Code, however, provides LAs with a food business risk rating mechanism that LAs use to determine business intervention frequencies. LA interventions that require an onsite visit do therefore present a burden to business as they will need to accommodate the intervention.
3. The FSA published a revised Code on 30 March 2017. The principal objective for the revision was to enhance consistency of approach by LA officers in delivering official controls to ensure that enforcement is effective, consistent, risk-based and proportionate whilst maintaining effective safeguards for consumers.
4. The revised Code introduced a number of routine amendments including:
 - Providing additional guidance on the communication of food incidents and hazards, and addressing food criminality

- Further clarification on qualification and competency requirements of local authority authorised officers since the implementation of the previous Code revision.
 - Streamlining the document to improve readability
 - Updating links, terminology, and references to legislation.
5. This BIT assessment focuses primarily on the impact to business from the change introduced in this revised Code to:
 - Facilitate consistent interpretation and approach by local authority officers delivering official controls, specifically in relation to risk scoring; by updating advice and clarifying the risk descriptors used in the food establishment intervention rating schemes
 6. Chapter 5 of the Code concerns organisation of official controls including the food establishment intervention rating scheme. The scheme enables LAs to prioritise official interventions at food business establishments, by assessing food businesses against a range of risk factors with separate weightings that are then totalled to determine an overall risk rating. This numerical rating is assigned a risk category (A, B, C, D or E) which accords with a predetermined frequency of intervention (elements within the scoring mechanism also form the basis of the Food Hygiene Rating Scheme). See **Annex A**.
 7. The 'Confidence in management/control procedures' (CIM) forms Part 3 of the scheme; this risk factor assesses whether a business' food safety management/control procedures are appropriate. Officers are able to assign scores of 0, 5, 10, 20, or 30 for this component. The descriptor relating to the score of 10 in the previous version of the Code included a note regarding "Making progress" which said "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 this descriptor regarding whether a score of 10 could be consecutively awarded varied between some officers, potentially resulting in a portion of businesses being scored 20 instead of 10 for CIM. The revisions to the descriptors therefore aimed at focussing the officers on when a score of 10 and 20 would be appropriate, and to improve consistency of approach in determining when a successive score of 10 could be awarded.
 8. There was also evidence of reluctance by some LAs to consider the flexibility afforded by the regulations regarding documentation requirements in very small businesses. Further direction was provided under the CIM scoring guidance to remind officers that documentation and record keeping should be commensurate with the type of business and may not be necessary under this flexibility.
 9. The aim of these amendments was to provide greater clarity and consistency of approach for LAs risk-rating such establishments and avoid potential over-inspection. This would provide effective risk rating by using information better reflecting operational conditions to support a broader and fairer use of scores, and potentially reduce the number of inspections at some businesses.

Which type of business will be affected? How many are estimated to be affected?

10. The FSA intervention rating scheme in Chapter 5 of the Code is used by LAs to determine intervention ratings for the vast majority of food businesses in England (approx. 530,000 premises). The clarification for CIM scoring will however only impact on a small number of businesses – i.e. those where the CIM score of 10 for ‘making progress’ would be relevant in two or more consecutive LA visits where the LA officers have previously interpreted the guidance as meaning that the score could only be awarded once. In addition to this, in order for the business to benefit from the change in score, it would also need to result in the total risk rating score given to the business falling within a lower intervention frequency band.
11. It is expected that the additional emphasis regarding documentation and record keeping requirements for small businesses which present basic hygiene hazards will impact on a very small proportion of businesses i.e. those businesses with small-scale operations that have previously been required by some LA officers to provide extensive documentation and record keeping. Furthermore, the strengthening of this guidance supports similar advice already provided to LAs following the FSA’s National Consistency Exercise (NCE) in July 2016. The impact of this reminder is therefore expected to be minor. Some benefits this emphasis may bring about, based on responses to the consultation, is a reduction in inconsistencies of approach by some LAs and avoid undue burdens for these very small businesses that may still be subjected to documentation requirements by some LA officers since the NCE.

Summary of costs and benefits

Price base year	Implementation date	Duration of policy (years)	Net Present Value	Business Net Present Value	Net cost to business (EANDCB)	BIT score
2017	30 March 2017	10	0.02	0.02	0.0	0.0

Please set out the impact to business clearly with a breakdown of costs and benefits

12. To help assess the impact of this change, the FSA asked all local authorities as part of the public consultation, whether the proposed clarification on ‘10’ and ‘20’ scores on Confidence in Management/Control Procedures would result in any substantial changes in scoring.
13. LAs that answered yes, were also asked to identify the number of businesses they regulate that would be likely to stay as a 10 rather than switching to 20 as a result; And, what percentage of their businesses (that would currently get a 10 score) does this represent.
14. 22 responses were received in answer to this question, of which 15 commented specifically on the issue of whether the change in guidance on businesses staying as a 10 rather than switching to 20 would have any effect. Of these, almost all said there would be no or no substantial change or did not give any reply about the number of businesses affected. Only four gave any quantifiable change, ranging from 0.25% to 9%.

15. From the limited evidence we have been able to gather, we estimate that a small percentage of businesses (between 0 –9%) will receive a better CIM score. A reliable figure could not be quantified, given the very few LAs which provided the FSA with a quantifiable number of businesses that would result in a change of CIM score.
16. Furthermore, not all overall ratings will be affected by the clarification of the descriptor of the 10 score for CIM as it would be dependent on the LA's scorings for the other factors of the risk rating scheme.
17. Based on the responses received from LAs and our own theoretical modelling based on informed assumptions we consider the impact of the measure to have only a very small overall benefit to businesses from reduced number of inspections for a very small number of premises. We have assumed a figure of 9% for the percentage of instances where an establishment would remain as a score of 10 for CIM rather than a 20 had the guidance been interpreted as intended. This assumption of 9% is based on the largest percentage estimate received from the responses to the consultation. From interrogation of the Local Authority Enforcement Monitoring System (LAEMS) data we have determined that the percentage reduction in expected interventions to be 0.03% based on the above assumption, which equates to a reduction of 89 interventions. Applying an assumption of 2 hours duration for a typical inspection and £11.68¹ for the hourly wage rate of a restaurant and catering establishment manager and proprietor inclusive of a 20% uprate to account for overheads in line with SCM² methodology, the potential cost saving to business will be £2079.04 (see **Annex A**).

Please provide any additional information (if required) that may assist the RPC to validate the BIT Score

See **Annex A**

¹ Wage rates were obtained from Annual Survey of Hours and Earnings 2016 (Provisional) and based on an hourly median wage of a restaurant and catering establishment manager and proprietor of £11.68 = £9.73 * 1.2 (inclusive of a 20% uprate to account for overheads)

² SCM methodology <http://www.berr.gov.uk/files/file44503.pdf>

Table 1. Food hygiene intervention frequencies ³

Category	Score	Minimum Intervention frequency
A	92 or higher	At least every 6 months
B	72 to 91	At least every 12 months
C	52 to 71	At least every 18 months
D	31 to 51	At least every 24 months
E	0 to 30	A programme of alternative enforcement strategies or interventions every three years

Establishments rated as low-risk (30 or less) need not be included in the planned inspection programme, but must be subject to an alternative enforcement strategy at least once in every 3 years.

The CIM 10/ 20 score clarification

For the below calculations, an assumption of 9% was made for the percentage of instances where an establishment with a CIM score of 10 were scored a 20 but should have remained at 10 if the guidance had been interpreted as intended. This is based on the highest figure received from the responses to the FSA consultation.

From interrogation of the raw LAEMS data for the 209 out of the 322 LAs for which

- a) their raw data on individual food establishments for 2014/15 and 2015/16 was closely aligned with their final signed-off figures and
- b) it was possible to map across establishments between the 2 years

The maximum proportion of establishments which might have one risk rating lower as result of this issue being clarified (i.e. those establishments which had CIM score of 20 awarded during an inspection carried out in 2015-16 **AND** had previously had a CIM score of 10 **AND** would be one risk rating lower had they stayed on CIM 10), is demonstrated in Table 2 as follows:

Table 2:

Risk rating category	Estimated % of all establishments
A	9.3%
B	8.2%
C	0.8%
D	0.2%

If we assume that for each risk rating, only 9% of these cases should have remained at 10 instead of 20. The proportion of all establishments, in each rating, which should have been one rating lower would be 9% of these percentages. The percentages are shown in Table 3:

³ Food Law Code of Practice, March 2017

Table 3:

Risk rating category	
A	0.8%
B	0.7%
C	0.1%
D	0.01%

Based on the LAEMS figures 2015-16 signed-off by LAs, the number of food establishments in each risk category in England (excluding those considered “outside the scheme”) were as follows:

Table 4: Current risk ratings

Risk rating category	Establishments by risk rating
A	2,200
B	22,244
C	101,612
D	170,608
E	180,439
Unrated	25,032

Using the above determined percentages, if:
 0.8% of As were Bs instead,
 0.7% of Bs were Cs instead,
 0.1% of Cs were Ds instead and
 0.01% of Ds were Es instead

then the resulting risk ratings would be as follows:

Table 5: Adjusted risk ratings

Risk rating category	Establishments by risk rating
A	2,181
B	22,099
C	101,706
D	170,654
E	180,463
Unrated	25,032

If we assume the following expected intervention frequencies as set out by the Food Law Code of Practice intervention rating scheme:

Table 6: Intervention frequencies per year for each Category

Risk rating category	Expected interventions per year
A	2.00
B	1.00
C	0.67
D	0.50
E	0.33
Unrated	1.00

Then the new number of interventions expected per year would be:

$$(2.00 \times 2181) + (1.00 \times 22099) + (0.67 \times 101706) + (0.5 \times 170654) + (0.33 \times 180463) + (1 \times 25032) = 264,778 \text{ interventions per year.}$$

This is 0.03% lower than the figure of 264,868⁴ interventions based on the current risk ratings.

⁴ Expected interventions based on LAEMS data 2015-16 (final figures signed off by LAs).