

Food Law Code of Practice (Scotland) Review – Phase 1

Consultation Summary Page

Date consultation launched:	Closing date for responses:
29 June 2018	21 September 2018

Who will this consultation be of most interest to?

Primarily this consultation will be of interest to Scottish Food Authorities.
In addition it will be of interest to: Industry and relevant Trade Bodies

What is the subject of this consultation?

To inform stakeholders and seek their views on proposed updates to the Food Law Code of Practice (Scotland).

What is the purpose of this consultation?

To provide stakeholders with an opportunity to comment on the proposed changes to the Food Law Code of Practice (Scotland).

Responses to this consultation should be sent to:

Jacque Sutton
Enforcement Delivery Branch
Food Standards Scotland
01224 285176 / 07796 940299
FoodLawCodeReview@fss.scot

Postal address:
Food Standards Scotland
Pilgrim House
Old Ford Road
Aberdeen
AB11 5RL

Is a Business & Regulatory Impact Assessment (BRIA) included with this consultation?

Yes

No See Annex A for reason.

If you would prefer to receive future FSS consultations by e-mail, or if you no longer wish to receive information on this subject please notify the named person in this consultation.

Food Law Code of Practice (Scotland) Review – Phase 1

DETAIL OF CONSULTATION

Food Standards Scotland (FSS) welcomes your comments on the draft updated Food Law Code of Practice (Scotland) 2018 (See Annex B) and the Partial Business and Regulatory Impact Assessment (BRIA – see Annex C).

Introduction

The Food Law Code of Practice (Scotland) ('the Code') sets out instructions, processes and criteria to which the 32 unitary Local Authorities in Scotland must have regard to when they carry out Official Food Controls in their role as Food Authorities.

The current version of the Code was published in April 2015 following the creation of Food Standards Scotland on 1st April 2015. The Code now needs to be updated to reflect changes in legislation and practice since 2015 and to ensure it is in alignment with Food Standard Scotland's Regulatory Strategy.

Further phased updates to the Code will be required in 2019 (phase 2) and 2020 (phase 3). These subsequent updates aim to deliver (respectively):

- Changes required to the Code arising from the implementation of the Annex 5 Review Project.
- Development of a process to simplify future updates to, and re-publications of the Code, and to deliver a Code that is both portable and easily navigable for Food Authority use.

Other categories of change that arise (for example, changes relating to the EU Exit, or developments arising from any SFELC Working Groups), will be incorporated into the scope of the Phase 2 and Phase 3 Review Projects.

Separate consultations will be carried out for each phase of the Food Law Code of Practice (Scotland) Review.

Proposals

Key proposals:

- **To update and publish a new version of the Food Law Code of Practice (Scotland) incorporating changes in legislation and practice since 2015.**
- **To ensure alignment of the Code with Food Standards Scotland's Regulatory Strategy.**
- **To ensure alignment of the Code with the Scottish Government's approach to Better Regulation as set out in the Scottish Regulators' Strategic Code of Practice.**
- **To ensure the Food Law Code of Practice (Scotland) reflects and enables the framework set out in Food Standards Scotland's Strategy to 2021, in particular Outcome 4 – Responsible Food Businesses Flourish.**
- **To deliver an up to date Food Law Code of Practice (Scotland) in preparation for future planned and prospective changes including the new Food Law Performance Rating System that will replace the current Annex 5 of the Code.**

Consultation Process

A 12 week consultation is being launched to provide interested parties with the opportunity to comment on these proposals. The consultation will close on 21 September 2018.

Questions asked in this consultation:

Your views on sub-section 2 of the Code: Statutory and General Obligations on Food Authorities.

This sub-section has been updated to reflect:

- Food Authorities' statutory duties and powers regarding Food Information and Standards (see paragraphs 11 and 12).
- Food Authorities' duties under the Regulatory Reform (Scotland) Act 2014, and the need to have regard to the principles of Better Regulation as outlined in the Scottish Regulators' Strategic Code of Practice (see paragraph 16).
- The removal from the Code of Primary Production Activities that are now included within the Feed Delivery Manual (see paragraph 21).

Please provide any feedback you may have on these changes.

Your views on sub-section 4 of the Code: Qualifications and Competence

This sub-section has been updated to reflect:

- Updates to the role and responsibilities of Lead Officer, particularly the responsibility to provide a weekly transfer of Food Law enforcement activity to the Scottish National Database (SND).
- Updates to Qualifications and Awarding Bodies for Food Hygiene (4.9), and Food Standards (4.10).
- Updates to reflect the powers regarding Food Information and Novel Foods (4.11).

Please provide any feedback you may have on these changes.

Your views on sub-section 5 of the Code: Conflicts of Interest.

This sub-section has been updated to clarify Food Authorities' duty to document any potential conflicts of interest that may arise in an enforcement situation.

Please provide any feedback you may have on this change.

Your views on sub-section 6 of the Code: Food Business Establishment Records.

This sub-section has been updated to reflect:

- Updates to data protection legislation.
- Requirements for the Scottish National Database (SND).
- Clarifications to the instructions for registration of different categories of moveable establishments.

Please provide any feedback you may have on these changes.

Your views on sub-section 8 of the Code: Managing Incidents and Alerts.

Sub-sections 8 and 10 of the current (2015) Code deal with Incidents and Food Alerts respectively. These sub-sections have been re-written and are now combined into one new sub-section 8: Managing Incidents and Alerts.

(Please note that Food Fraud and Food Crime is now detailed within a new sub-section 9.)

Annexes 3 and 4 of the Code have also been updated. Respectively these are the Schematic Representation for Food Incidents Reporting, and the Food Incident Report Form.

Please provide any feedback you may have on the new sub-section 8, and in particular can you please comment on any content that you believe should be included in Practice Guidance, rather than in this Code.

Please also provide feedback on the following updates:

- Annex 3 – Schematic Representation for Food Incidents Reporting,
- Annex 4 – Food Incident Report Form.

Your views on sub-section 9 of the Code: Food Crime and Food Fraud.

Sub-section 9 of the Code now contains information on Food Crime and Food Fraud, and includes:

- Definitions;
- The FSS organisational structure that supports the investigation of Food Fraud and Food Crime;
- Arrangements for Food Crime investigation, reporting, and intelligence gathering.

Please provide any feedback you may have on the new sub-section 9.

(Please note that sub-section 9 of the 2015 Code is re-numbered sub-section 10 in this 2018 Code.)

Your views on sub-section 12 of the Code: Information to be supplied to FSS.

This sub-section has been updated to reflect:

- The new requirement to share information with FSS using the Scottish National Database;
- New data protection legislation;
- A change to paragraph 12.3 – Concerns about Industry Practice – as this is relevant to all Food Business Establishments, not just Approved Establishments.
- An update to sub-section 12.4 regarding live bivalve mollusc purification centres.

Please provide any feedback you may have on these changes.

Your views on sub-section 14 of the Code: Approach to Enforcement.

This sub-section has been updated to reflect:

- The National Food and Feed Compliance Spectrum (contained within the FSS Regulatory Strategy);
- The requirement for Food Authorities to ensure that enforcement action is consistent with the principles of Better Regulation set out within the Scottish Regulators' Strategic Code of Practice.
- Clarification of the need to indicate timescales for the rectification of each contravention in correspondence with Food Business Establishments (see sub-section 14.7).

Please provide any feedback you may have on these changes.

Your views on sub-section 19 of the Code: Detention and Seizure.

This sub-section has been updated to include:

- Detention and seizure powers under Section 15B of the Food Safety Act 1990 (as amended), for breaches of Food Information Law.
- Detention and seizure powers under Section 9 of the Food Safety Act 1990 (as amended) further amended by the Novel Foods (Scotland) Regulations 2017.

Please provide any feedback you may have on these changes.

Your views on sub-section 27 of the Code: Interventions.

This sub-section has been updated as follows:

- Inclusion of information about Food Authorities' duties to produce an Annual Service Plan.
- Removal of reference to Annex 10 – Primary Production. This Annex has been removed from the Code.
- Removal of information about, and reference to, Annex 5A. This Annex has been removed from the Code.

Please provide any feedback you may have on these changes.

Your views on sub-section 34 of the Code: Approved Establishments Subject to Approval under Regulation (EC) No 853/2004.

The following updates have been applied to this section:

- Sub-section now refers to the Approved Establishments Scottish National Protocol.
- Clarification of the authorisation information in sub-section 34.2 on collection centres and tanneries supplying raw material for the production of gelatine or collagen intended for human consumption.
- The paragraph on live bivalve mollusc purification centres has been removed.
- Further clarification that approval numbers must be unique and should not be re-used (see sub-section 34.12).

Please provide any feedback you may have on these changes

Your views on sub-section 37 of the Code: Matters Relating to Fresh Meat.

This sub-section has been updated to include the enforcement responsibilities set out in the Country of Origin of Certain Meats (Scotland) Regulations 2016 (see 37.1, para 2).

Please provide any feedback you may have on this change.

Your views on Annex 7 of the Code: Model Forms of Notice.

Annex 7 has been updated to include:

- Privacy Notices on all model forms, in line with data protection regulations.
- Detention and seizure powers under Section 15B of the Food Safety Act 1990 (as amended), for breaches of Food Information Law.
- Detention and seizure powers under Section 9 of the Food Safety Act 1990 (as amended) further amended by the Novel Foods (Scotland) Regulations 2017.

Please provide any feedback you may have on these changes.

Your views on Annex 8: Model Application Form for the Registration of a Food Business Establishment.

Annex 8 has been updated in line with new data protection legislation.

Please provide any feedback you may have on this change.

Your views on other sub-sections of the Code.

The preceding questions detail the larger changes that are being proposed for this update to the Code.

Please provide any feedback you may have on any other sub-sections of the Code.

We are keen to hear from Local Authority Food Enforcement Officers on any aspect of the Code changes, and any impact the changes may have on Local Authority Food Enforcement activities.

Responses

This is a 12 week consultation and responses are required by 21st September 2018. 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).

If you are replying by post then please note our address details on page 1 above.

We will summarise all comments received and the official response to each will be published on the FSS website within three months following the end of the consultation period.

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

Yours sincerely,

Bryan Campbell,
Senior Enforcement Manager
Enforcement Delivery Branch
Food Standards Scotland

Enclosed

Annex A: Standard Consultation Information

Annex B: Draft Food law Code of Practice (Scotland) 2018

Annex C: Partial Business and Regulatory Impact Assessment

Annex D: List of interested parties

Queries

1. If you have any queries relating to this consultation please contact the person named on page 1, who will be able to respond to your questions.

Publication of personal data and confidentiality of responses

2. In accordance with the principle of openness, our office in Pilgrim House in Aberdeen will hold a copy of the completed consultation. FSS will also publish a summary of responses, which may include full name. Disclosure of any other personal data would be made only upon request for the full consultation response. If you do not want this information to be released, please email dataprotection@fss.scot or return by post to the address given on page 1.
3. In accordance with the provisions of Freedom of Information Act (Scotland) 2002/Environmental Information (Scotland) 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 FSS. 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 D. 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 for alternative versions of the consultation documents in Braille or other languages.
7. Please let us know if you need paper copies of the consultation documents or of anything specified under 'Other relevant documents'.
8. This consultation has been prepared taking account of the Consultation Criteria.
9. The Consultation Criteria from that Code should be included in each consultation and they are listed below:

The Seven Consultation Criteria

Criterion 1 — When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2 — Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3 — Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4 — Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5 — The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6 — Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7 — Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

10. Criterion 2 states that Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
11. The Code of Practice states that an Impact Assessment should normally be published alongside a formal consultation. Please see the Partial Business & Regulatory Impact Assessment at Annex C.

Comments on the consultation process itself

12. We are interested in what you thought of this consultation and would therefore welcome your general feedback on both the consultation package and overall consultation process. If you would like to help us improve the quality of future consultations, please feel free to share your thoughts with us by sending an email to openness@fss.scot or return by post to the address given on page 1.