

**PARTIAL BUSINESS AND REGULATORY IMPACT ASSESSMENT**

**FOOD LAW CODE OF PRACTICE (SCOTLAND) REVIEW - 2018**

**Date:** June 2018  
**Stage:** Consultation  
**Source of intervention:** Scotland  
**Type of measure:** Code of Practice  
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## 1. Title of Proposal

Review of the Food Law Code of Practice (Scotland).

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

## 2. Purpose and intended effect

### • Objectives

2.1. 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.

2.2. The Food Law Code of Practice should reflect and help to enable the framework set out in Food Standards Scotland's Strategy to 2021, in particular Outcome 4 – Responsible Food Businesses Flourish. The Code should also reflect the Scottish Government's approach to Better Regulation as set out in the Scottish Regulators' Strategic Code of Practice.

2.3. 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.

### • Background

2.4. The Code is issued under section 40 of the Food Safety Act 1990, Regulation 24 of the Food Hygiene (Scotland) Regulations 2006, and Regulation 6 of the Official Feed and Food Controls (Scotland) Regulations 2009. Scottish Ministers are empowered to issue Codes of Practice concerning the execution and enforcement of Food Law by Food Authorities. In turn, Food Authorities (may also be referred to as Enforcement Authorities and Local Authorities) are required to have regard to the Code when discharging their duties, and must follow and implement the provisions of the Code that apply to them.

### • Rationale for Government intervention

2.5. Periodical review of the Code is required to ensure that it continues to reflect current legislation and working practice. This particular review encompasses and reflects:

- FSS' and Local Authorities' Better Regulation obligations under the Scottish Regulators' Strategic Code of Practice.

- The duty on FSS and the Local Authorities under the Regulatory Reform (Scotland) Act 2014 to contribute to sustainable economic growth.
- New obligations on Local Authorities with regard to the Scottish National Database.
- Updates to data protection obligations in line with the new General Data Protection Regulation.
- The introduction of the Scottish Food Crime Incidents Unit (SFCIU) and updates to incident management processes.
- Implementation of new detention and seizure processes and notices for Food Information and Novel Foods.
- Updates to reflect current practices and guidance including:
  - Removal from the Code of Primary Production activities that now fall within the scope of the Feed Delivery Manual.
  - Inclusion of further information on Food Standards obligations.
  - Further information on Local Authority Service Planning.
  - Reference to the Approved Establishment Scottish National Protocol.

### **3. Consultation**

- **Within Government**

- 3.1. A formal stakeholder engagement event was held in November 2017 and attended by Food Enforcement officials from each of the Scottish Local Authorities, as well as representatives from the Scottish Government Better Regulation Team, Food Standards Agency, and the Scottish Food Enforcement Liaison Committee (SFELC). Feedback from this event informed the review of the Code.
- 3.2. Individual Local Authority Food Enforcement teams were also invited and encouraged to provide their views on the Code via a project email address.
- 3.3. Local Authority Stakeholder engagement also took place within the established channels of Food Liaison Groups, and the Scottish Food Enforcement Liaison Committee (SFELC) meetings as well as individual SFELC Working Group meetings.
- 3.4. Within FSS a Cross Office Working Group was established to bring internal focus to the review, promoting collaborative working, and enabling changes to be identified and developed.

- **Public Consultation**

3.5. Consumers – There has been no specific consultation with consumers as the Code is designed specifically for use by competent Food Authorities.

- **Business**

3.6. Professional and Regulatory Bodies – Individual meetings have been held with members of the Royal Environmental Health Institute of Scotland (REHIS) and the Society of Chief Environmental Health Officers of Scotland (SOCEHOS)

3.7. Industry – A presentation and regular updates have been provided to the respective trade bodies which are represented on SFELC at each of the committee meetings.

## **4. Options**

### **4.1. Option 1 – Phased Approach (option chosen)**

This option provides the opportunity to introduce and publish Code changes using a phased approach. This approach effectively splits the Food Law Code of Practice Review into three separate projects, each requiring its own project structure, Business and Regulatory Impact Assessment, consultation, and publication.

This is the chosen option and this BRIA describes the first of 3 scheduled Code reviews. The objectives of this first phase are detailed in section 2 above. The changes implemented in this phase will bring the Code up to date and provide a solid basis for the following review project phases.

The main objective of Phase 2 is to assess and develop the changes required to the Code arising from the implementation of the Annex 5 Review Project. Phase 2 is currently scheduled to begin in 2018 and finish in 2019.

Phase 3 is scheduled to begin in 2019 following the completion of Phase 2. Its main objectives are to develop 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. This phase may also consider the introduction of powers provided in the Food (Scotland) Act 2015 to use fixed penalty notices for serious and / or repeated non-compliance with food law contraventions.

### **4.2. Option 2 – Do nothing**

This option considers the continued use of the 2015 Food Law Code of Practice (Scotland) without update. This option has been rejected for the reasons detailed below.

- The Scottish Food Authorities must follow and implement the provisions of the Code that apply to them. It is therefore imperative that the Code is updated periodically to reflect current legislation and working practices, and ensure the legal obligations on Food Authorities are clear.

- A Food Law Code of Practice that reflects current legislation and practice on the delivery of Food Safety and Food Standards controls will help to protect public health and maintain consumer confidence in the nature, substance, quality and provenance of food manufactured, sold, or supplied in Scotland.
- Continual use of a Code that does not reflect current legislation and practice on the delivery of Food Safety and Food Standards controls may have a detrimental impact on public health and on public confidence in the food supply chain in Scotland.

#### **4.3. Option 3 - Single Code review incorporating all known and planned changes**

This option would encompass all known current and planned changes to the Code into a single project with one consultation and publication. The scope and objectives of the project would encompass:

- Code updates to reflect changes in legislation and practice since 2015.
- Alignment of the Code with Food Standard Scotland's Regulatory Strategy, and updates to reflect the Scottish Government's approach to Better Regulation as set out in the Scottish Regulators' Strategic Code of Practice.
- Updates to the Code to help to enable the framework set out in Food Standards Scotland's Strategy to 2021, in particular Outcome 4 – Responsible Food Businesses Flourish.
- Modifications required for the new Food Law performance rating system replacing the current Annex 5 of the Code, and incorporating the conflation of food safety and food standards intervention schemes.
- Modifications arising from outcomes of the SFELC Interventions Working Group and the SFELC Approved Establishments Working Group.
- Modifications to the Code that may arise from the EU exit process.
- Design and implementation of a process that will simplify future updates to the Food Law Code of Practice, and deliver improvements that will assist each Food Authority in their use of the Code, particularly digital portability and navigation.
- The possible introduction of powers provided in the Food (Scotland) Act 2015 to use fixed penalty notices for serious and / or repeated non-compliance with food law contraventions.

The estimated date for publication of the Code would be 2020.

This option was rejected for the reasons set out in 4.13 below.

- **Sectors and groups affected**

4.4. Food Enforcement Authorities - must follow and implement the provisions of the Code that apply to them.

4.5. Professional Bodies – will provide input and advice with regard to official qualifications and experience requirements

4.6. Industry – will be impacted directly in terms of how Local authorities implement the requirements of the Code.

4.7. Consumers – will be impacted indirectly with respect to the application of regulation by Local Authorities on Industry.

- **Benefits**

**4.8. Option 1 - Phased approach (option chosen)**

- Facilitates incremental, focussed, and managed development of changes to the Code. Recognises that an initial Code update is required to incorporate smaller changes that have arisen since 2015.
- Stakeholder engagement and consultation can be centred around specific categories of change.
- Provides flexibility to amend the scope of individual phases to incorporate new or unexpected categories of change.
- Provides a plan for consultation, update, and publication of the Code in 2018, 2019, and 2020.

**4.9. Option 2 - Do nothing**

- There are no identified benefits.

**4.10. Option 3 - Single Code review incorporating all known and planned changes**

- This option would require a single consultation and publication of the entire Code in comparison with three separate consultations and publications required by Option 1.

- **Costs**

**4.11. Option 1 - Phased approach (option chosen)**

- This option incurs the monetary costs of three separate review projects, consultations and publications of the Code.

**4.12. Option 2 - Do nothing**

- The 2015 Code would remain in operation but would increasingly not reflect the actual obligations on the Food Authorities.
- Both cost and risk would likely increase over time as a result of outdated guidance. This may exhibit as:
  - Increased resource costs to both Food Standards Scotland and the Food Authorities in efforts to maintain alignment with current legislation and practice without the structure provided by an up to date Code.
  - Possible increased risk to public health through outdated practice in the delivery of Food Official Controls.
  - Possible decline in consumer confidence in the food supply chain in Scotland.

#### **4.13. Option 3 - Single Code review incorporating all known and planned changes**

- The 2015 Code would remain in operation until 2020 but would increasingly not reflect the actual obligations on the Food Authorities.
- The delay in publishing an updated Code is likely to increase resource costs and place risks on public health and public confidence as detailed in 4.12 above.

### **5. Scottish Firms Impact Test**

5.1. Not applicable at this phase of the Code review.

- **Competition Assessment**

5.2. Not applicable at this phase of the Code review.

- **Test run of business forms**

5.3. Not applicable at this phase of the Code review.

### **6. Legal Aid Impact Test**

6.1. Not applicable at this phase of the Code review.

### **7. Enforcement, sanctions and monitoring**

- **Enforcement**

7.1. In addition to the existing enforcement options available to Local Authorities the Food (Scotland) Act 2015 also introduces new enforcement powers with respect to food information and novel foods, and creates provisions for additional powers with respect to non-compliance with food standards matters.

- **Sanctions**

7.2. The Food (Scotland) Act 2015 creates provisions for the use of fixed penalty notices, for serious and/or repeated non-compliance with food law contraventions. The introduction of these powers would be considered within the proposed phase 3 review of the Code.

- **Monitoring**

7.3. The Code and its application is monitored by FSS both through the liason networks established with LAs and also via FSS' statutory function to monitor Local Authorities' performance by Audit, as detailed in Sections 3 and 25 of the Food (Scotland) Act 2015.