

DRAFT BUSINESS AND REGULATORY IMPACT ASSESSMENT

**ADMINISTRATION AND SERVICE PLANNING – FOOD LAW CODE OF PRACTICE
(SCOTLAND) 2020**

Date: 24 August 2020
Stage: Consultation
Source of intervention: Scotland
Type of measure: Code of Practice
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1. Title of Proposal

- 1.1. Administration and Service Planning – Food Law Code of Practice (Scotland) 2020
- 1.2. Administration and Service Planning - Food Law Code of Practice (Scotland) 2020 (hereafter referred to as the Administration and Service Planning Code 2020) 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 consolidated version of the Food Law Code of Practice (Scotland) 2019 was published in January 2019 following a review of the Food Law Code of Practice (Scotland) 2015. The consolidated Code is now being published as individual codes as part of the Food Law Code of Practice review that has been split into three phases.
- 2.2. The Administration and Service Planning Code 2020 is being introduced as part of phase 3 of the Food Law Code of Practice review.
- 2.3. The Administration and Service Planning Code incorporates the following changes:
 - Alignment with Food Standards Scotland's Regulatory Strategy.
 - Alignment to reflect Food Standards Scotland's Strategy to 2021 and the Scottish Government's approach to Better Regulation as set out in the Scottish Regulators' Strategic Code of Practice.
 - The Official Control Regulations (EU) 2017/625
- 2.4. The Administration and Service Planning Code 2020 supersedes certain sections of the consolidated Food Law Code of Practice 2019 (**please see Annex 5 of the Administration and Service Planning Code 2020 for further information**).

• Background

- 2.5. The Administration and Service Planning Code 2020 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 Administration and Service Planning Code 2020 when discharging their duties, and must follow and implement the provisions of the Administration and Service Planning Code 2020 that apply to them.
- 2.6. The Administration and Service Planning Code 2020 is also part of a wider programme of work within our Regulatory Strategy to review the Food Law Code of Practice:

Phase One

The publication of the consolidated Food Law Code of Practice (Scotland) 2019 which updated the Food Law Code of Practice (Scotland) 2015 to reflect changes in legislation and practice since 2015 and to ensure it is in alignment with Food Standard Scotland's Regulatory Strategy. **This phase was completed on 31 January 2019.**

Phase Two

The Interventions Code is the first in a programme of work to publish a series of individual publications and introduces the Food Law Rating System (FLRS). The FLRS combines the rating systems for Food Hygiene and Food Standards into one Food Law Intervention scheme based upon a new food business performance model that will target resources on high to medium risk and non-compliant businesses. **This phase was completed on 1 July 2019.**

Phase Three

The key aim is to develop the process to simplify future updates by producing further individual Food Law Code of Practice publications. It is important that given the pace of legislative change Codes of Practices continually reflect current legislation, to ensure Food Authorities are accurately informed of the criteria they are required to have regard to when undertaking Official Controls. As part of Phase 3 Individual Codes of Practice publications are initially being considered for Approvals and Enforcement Sanctions. In addition all Codes of Practice have been updated to include the Official Controls Regulation (EU) 2017/625 and all future Codes of Practice will require to be updated in alignment any other legislative changes that arise from exiting the EU.

- **Rationale for Government intervention**

2.7. The publication of Administration and Service Planning Code 2020 ensures that current legislation and working practice is reflected (please see section 2.3)

3. Consultation

3.1. The Food Law Code of Practice review has been ongoing since 2017. Throughout this period, there has been ongoing and regular updates (written and verbal) to Scottish Food Authorities, Industry and Trade Bodies. Prior to a full written 12 week consultation of the consolidated Food Law Code of Practice (Scotland) 2019 in 2018, discussions were held with both enforcement and industry stakeholders.

- **Within Government**

3.2. A formal stakeholder engagement events have been held annually since 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 these event inform the Food Law Code of Practice review.

3.3. Local Authority Stakeholder engagement has also taken place within the established channels of Food Liaison Groups, SFELC meetings as well as individual SFELC Working Group meetings.

3.4. Within FSS a Cross Office Working Group was established in 2019 for the Administration and Service Planning Code 2020 to bring internal focus to the review, promoting collaborative working, and enabling changes to be identified and developed.

- **Public Consultation**

3.5. A full [12 week consultation](#) was held in 2018 for the Food Law Code of Practice (Scotland) 2019 asking for the public for their view on the changes being made as part of the Food Law Code of Practice review.

- **Business Consultation**

- 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 – 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: Do nothing (“Status Quo”)

This option considers the continued use of the Food Law Code of Practice (Scotland) 2019 without update. This option has been rejected for the reasons detailed below.

- The Scottish Food Authorities must follow and implement the provisions of the Codes of Practice that apply to them. It is therefore imperative that the Codes of Practice are updated periodically to reflect current legislation and working practices, and ensure the legal obligations on Food Authorities are clear.
- Food Law Codes of Practice that reflect current legislation and practice on the delivery of Food Law 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 Law controls may have a detrimental impact on public health and on public confidence in the food supply chain in Scotland.

4.2 Option 2: Publish the Administration and Service Planning Code 2020 (preferred option)

This option provides the opportunity to publish Administration and Service Planning Code 2020 and start Phase 3 of the Food Law Code of Practice Review. This creates a process to simplify future updates to, and re-publications of the Administration and Service Planning Code 2020, and to deliver an Administration and Service Planning Code 2020 that is both portable and easily navigable for Food Authority use.

- **Sectors and groups affected**

- 4.3 Food Enforcement Authorities - must follow and implement the provisions of the Administration and Service Planning Code 2020 that apply to them.
- 4.4 Professional Bodies – will provide input and advice with regard to official qualifications and experience requirements
- 4.5 Industry – will be impacted directly in terms of how Local authorities implement the requirements of the Administration and Service Planning Code 2020.
- 4.6 Consumers – will be impacted indirectly with respect to the application of regulation by Local Authorities on Industry.

- **Benefits**

4.7. Option 1: Do Nothing (Status Quo)

- There are no benefits.

4.8. Option 2: Publish the Administration and Service Planning Code 2020 (preferred option)

- Alignment with Food Standards Scotland’s Regulatory Strategy and to reflect Food Standards Scotland’s Strategy to 2021 and the Scottish Government’s approach to Better Regulation as set out in the Scottish Regulators’ Strategic Code of Practice.

- Provides flexibility to amend the Administration and Service Planning Code 2020 with any changes to legislation that may arise from EU Exit.

- **Costs**

4.9 **Option 1: Do Nothing (Status Quo)**

- The 2019 consolidated Food Law of Code Practice 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.

4.10 **Option 2: Option 2: Publish the Administration and Service Planning Code 2020 (preferred option)**

- This option incurs the monetary costs of the consultation and publication of the Administration and Service Planning Code 2020.

5. **Scottish Firms Impact Test**

Not applicable to the Administration and Service Planning Code 2020.

- **Competition Assessment**

Not applicable to the Administration and Service Planning Code 2020.

- **Test run of business forms**

Not applicable to the Administration and Service Planning Code 2020.

6. **Legal Aid Impact Test**

Not applicable to the Administration and Service Planning Code 2020.

7. **Enforcement, sanctions and monitoring**

- **Enforcement**

Not applicable to the Administration and Service Planning Code 2020.

- **Sanctions**

Not applicable to the Administration and Service Planning Code 2020.

- **Monitoring**

The Code and its application is monitored by FSS both through the liaison 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.

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