**CONSULTATION ON THE IMPLEMENTATION OF THE OFFICIAL CONTROLS REGULATION**

**Consultation Summary Page**

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| **Date consultation launched:** | **Closing date for responses:** |
| 27th September 2019 |  18th October 2019 |
| **Who will this consultation be of most interest to?**Competent authorities and enforcement authorities responsible for undertaking official controls for food and feed safety, business operators that import food and feed products into Scotland and food business operators approved under Regulation (EC) No 853/2004. The consultation may also be of interest to consumer groups and other stakeholders with an interest in food and feed legislation. |
| **What is the subject of this consultation?**This consultation concerns Regulation (EU) 2017/625 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products. This directly applicable EU regulation – referred to as the Official Controls Regulation (OCR) comes fully into force on 14 December 2019. This consultation focuses on the implementation, approach and assessment of impacts in Scotland to provide for the execution and enforcement of the OCR only in relation to Food Standards Scotland (FSS) areas of responsibility for food and feed safety.  |
| **What is the purpose of this consultation?**To seek stakeholder views and comments in relation to the proposed amendment of the domestic legislation, in the form of Scottish Statutory Instruments (SSIs), to provide for the execution and enforcement of the OCR in relation to FSS’s areas of responsibility for food and feed law and our assessment of the impacts associated with the implementation of the legislation in Scotland in relation to FSS’s areas of responsibility only. |
| **Responses to this consultation should be sent to:** |
| Name: Karen RobertsonBranch: Regulatory PolicyFood Standards ScotlandTel: 01224 288362 E-mail address: karen.robertson@fss.scot | Postal address: Food Standards ScotlandPilgrim HouseOld Ford RoadAberdeenAB11 5RL  |

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| **Is a Business & Regulatory Impact Assessment (BRIA) included with this consultation?** | Yes [x]  | No [ ]  See Annex A for reason. |

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DETAIL OF CONSULTATION

Introduction

1. [Regulation (EU) 2017/625](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1561977271205&uri=CELEX:02017R0625-20170407) on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products – referred to as the Official Controls Regulation (OCR) – is a directly applicable EU regulation and an overarching piece of legislation that sets operational standards for the performance of official controls and other official activities by competent authorities (CAs) across the European Union (EU).
2. Although the OCR entered into force on 27 April 2017, the main date of application is 14 December 2019. As of that date, the OCR will repeal and replace existing legislation which is integral to the activities of Food Standards Scotland (FSS), as the national competent authority (CA) responsible for the delivery of official food and feed controls in Scotland, and enforcement bodies. This includes [Regulation (EC) No 882/2004](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1561977389971&uri=CELEX:02004R0882-20190101) regarding official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules and [Regulation (EC) No 854/2004](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1561977439854&uri=CELEX:02004R0854-20190101) that lays down specific rules for the organisation of official controls on products of animal origin (POAO) intended for human consumption.
3. The UK is due to leave the EU on 31 October but uncertainty remains on the outcome around the negotiations between the UK and the EU. However, in the event of a negotiated EU exit with an agreed Implementation Period or a further extension to Article 50, the UK Government and devolved administrations would be legally obligated to implement the OCR on 14 December. In either of these scenarios, to ensure Scottish Ministers meet their EU statutory obligations, secondary legislation in Scotland would be required to provide for the execution and enforcement of the OCR and associated tertiary legislation.

Proposals

1. As such, it is necessary to begin preparing for the implementation of this legislation to avoid a failure to meet our legal requirements as a Member State or as set out in any UK/EU Withdrawal Agreement.
2. Food Standards Scotland (FSS) have lead policy responsibility for the food and feed safety elements of the OCR whereas Scottish Government (SG) have responsibility for the animal health and welfare, plant health and animal by-product elements. To ensure a consistent approach is adopted, extensive discussion has taken place with SG Plant Health and Animal Health colleagues to scope out the work required to implement the OCR. Separate legislation is being prepared by SG for their areas of responsibility and the impacts assessed accordingly.
3. In relation to FSS’s policy areas, the scope of the OCR regarding the protection of public health and the integrity of the food and feed and chain largely replicates the current legislative regime. While the OCR does introduce more prescriptive controls in certain areas, greater flexibility is provided in others, and the overall impacts on the existing food and feed official control regime in Scotland are expected to be broadly policy neutral.
4. The principal SSIs that will require to be amended to provide for the execution and enforcement to the food and feed safety elements of the OCR and its tertiary legislation in Scotland include:
* The Official Feed and Food Controls (Scotland) Regulations 2009;
* The Food Hygiene (Scotland) Regulations 2006;
* The Meat (Official Controls Charges) (Scotland) Regulations 2009;
* The Fishery Products (Official Controls Charges) (Scotland) Regulations 2007;
* The Feed (Hygiene and Enforcement) (Scotland) Regulations 2005;
* The Feed (Sampling and Analysis and Specified Undesirable Substances) (Scotland) Regulations 2010;
* The Plastic Kitchenware (Conditions on Imports from China) (Scotland) Regulations 2011; and
* The Food Safety (Sampling and Qualifications) (Scotland) Regulations 2013.
1. The draft amending SSI is not available for publication at the time of consultation. It is intended that the amending SSI will follow the framework of the existing SSIs which provide enforcement powers for the current official controls regulation (Regulation (EC) No 882/2004 and Regulation (EC) No 854/2004). Most of the changes are required to update legislative references and to remove references to requirements which no longer have effect.
2. In the event the UK leaves the EU in a non-negotiated exit, FSS will update stakeholders further in relation to the proposed implementation of the OCR. We will also consult further on any proposals to align national legislation with the OCR, including an updated assessment of the impacts.

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| **The main intended effects of the OCR are summarised below:*** **A harmonised and coherent regulatory approach to official controls and enforcement actions along the agri-food chain;**
* **Increased transparency and greater accountability required by Member State competent authorities through the publication of information on the organisation and performance of official controls;**
* **More stringent rules on fraud will provide greater consumer protection and benefit compliant businesses;**
* **A common set of rules for controls at EU borders that overcomes the current fragmentation and makes the control system less burdensome for enforcers and businesses;**
* **An integrated computerised system to improve the exchange of information between Member States on official controls;**
* **Greater flexibility in relation to the accreditation of official laboratories (i.e. formal recognition of competence in their field);**
* **Businesses and authorities will benefit from reduced administrative burdens, more efficient processes and strengthened controls.**
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Impacts

1. [Consultation](https://www.reading.ac.uk/foodlaw/pdf/uk-13026-enforcement-consultation.pdf) with stakeholders previously took place prior to the agreement and adoption of the OCR and stakeholder views have consistently been sought on various pieces of tertiary legislation, made under the OCR, which have been under negotiation since 2017.
2. A Business and Regulatory Impact Assessment (BRIA) is provided at Annex B which is based on an assumption that the OCR will need to be fully implemented as of 14 December 2019.
3. The BRIA will assess the immediate changes brought about by the amending domestic secondary legislation to provide for the execution and enforcement of the food and feed safety elements of the OCR and associated tertiary legislation. It will also provide an overview of the changes and expected impacts that this directly applicable EU regulation will necessitate in the Scottish context in relation to FSS areas of responsibility only.

### Groups affected

1. Competent authorities and enforcement authorities responsible for undertaking official controls to verify operators’ compliance with food and feed law, food business operators approved under Regulation (EC) No 853/2004 and business operators that import food and feed products into Scotland.

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| **Questions asked / information sought – please refer to the BRIA (Annex B):****Q1: Is the total list of identified affected sectors/groups representative?** **Q2: If you are an affected business, please provide any information on the expected costs if FSS or other enforcement bodies were to verify compliance by either (a) collecting industry data or (b) by sampling.** **Q3: We welcome supporting evidence on the total throughput levels of low capacity slaughterhouses and Game Handling Establishments, and the distribution of such establishments in relation to the new maximum annual threshold.** **Q4: We also welcome views on our assumption that the new requirement may result in additional costs on such businesses and the degree to which this change is likely to impact them.** **Q5: Do you have any evidence in relation to the number of food business operators that currently harvest echinoderms intended for human consumption?** **Q6: We welcome views and, where possible, supporting evidence from businesses importing one or more of the products subject to the above changes. What impact do you believe the harmonising of controls will have on your business?** **Q7: Please provide details of any specific training needs you think will be necessary to support delivery of the changes introduced by the OCR.****Q8: If you are an existing specialised border facility, such as a Border Inspection Post (BIP) or a First Point of Introduction (FPI), what necessary changes and/or upgrades are required in order to obtain certification as a Border Control Post (BCP)?****Q9: If you are an Official Control Laboratory (OCL) representative or Local Authority (LA) that currently sub-contracts samples to/from other non- designated laboratories in other Member States, please describe any potential impact that may arise from this change.****Q10: Do you agree that a harmonised and coherent regulatory approach to official controls will deliver any benefits and/or cost savings to industry?. Q11: We welcome views from industry stakeholders on any benefits you foresee from the implementation of the OCR. Where possible, please explain your views and provide quantifiable evidence.** **Q12: We welcome views from LAs on any benefits you foresee from the implementation of the OCR. Where possible, please explain your views and provide quantifiable evidence.** |

**Consultation Process**

1. This consultation will last for three weeks to seek stakeholder views and comments in relation to the proposed implementation of the domestic legislation to provide for the execution and enforcement of the OCR in relation to FSS’s areas of responsibility for food and feed law, and our assessment of the impacts associated with the implementation of the legislation in Scotland.

1. Parallel consultations and assessments have been issued by the Food Standards Agency (FSA) – the CA responsible for the delivery of official food and feed controls in England, Wales and Northern Ireland.

**Responses**

1. This is a shortened three week consultation and therefore responses are required by close **18 October 2019**.
2. 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).
3. 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.
4. Thank you on behalf of Food Standards Scotland for participating in this public consultation.

Yours sincerely,

### Karen Robertson

Senior Policy Advisor

Regulatory Policy Branch

Food Standards Scotland

01224 288362

### Enclosed

Annex A: Standard Consultation Information

Annex B: Business & Regulatory Impact Assessment

### 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.

### Data Protection, Publication of personal data and confidentiality of responses

1. The UK data protection regime is set out in the Data Protection Act (DPA) 2018 and General Data Protection Regulation ([GDPR] – which also forms part of the UK Law). In accordance with the data protection law, we are required to provide a privacy notice in relation to this public consultation. Food Standards Scotland will be known as the “Controller” of the personal data provided to us. We need to collect this information to allow us to effectively carry out our official duties of policy development and for the purposes of record keeping. In responding to this consultation, you have consented to provide this information to us but are able to withdraw your consent at any time by getting in touch with us.
2. Personal information is stored on servers within the European Union and cloud based services have been procured and assessed against the national cyber security centre cloud security principles. Personal information will not be used for any purpose other than in relation to consultations. Personal information will be stored for as long as necessary to carry out the above functions and for five years from receipt in accordance with our retention policy. No third parties have access to your personal data unless the law allows them to do so.
3. You have a right to see the information we hold on you by making a request in writing to the email address below. If at any point you believe the information we process on you is incorrect you can request to have it corrected. If you wish to raise a complaint on how we have handled your personal data, you can contact our Data Protection Officer who will investigate the matter. If you are not satisfied with our response or believe we are processing your personal data not in accordance with the law you can complain to the Information Commissioner’s Office (ICO). Our Data Protection Officer in the FSS is the Director of Policy, Science, HR and Finance who can be contacted at the following email address: dataprotection@fss.scot
4. In accordance with the principle of openness, our office in Pilgrim House in Aberdeen will hold a copy of the completed consultation as per our retention policy. FSS will not publish anything without your consent. If you have any queries please email: dataprotection@fss.scot.  or return by post to the address given on page 1.
5. 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.
6. 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

1. 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.
2. Please contact us for alternative versions of the consultation documents in Braille or other languages.
3. Please let us know if you need paper copies of the consultation documents or of anything specified under ‘Other relevant documents’.
4. This consultation has been prepared taking account of the Consultation Criteria.
5. 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.*

1. Criterion 2 states that *Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible*. This consultation is not being held for a full 12 weeks in order to achieve the laying deadline for the secondary legislation to provide for the execution and enforcement of the OCR in relation to FSS’s areas of responsibility for food and feed law.

### Comments on the consultation process itself

1. 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.
2. The privacy notice covering this consultation is available on our website at: <https://www.foodstandards.gov.scot/privacy/privacy-notices/consultations-privacy-notice>