

Introduction of Compliance Notices – Penalties and Sanction Workstream

Summary Report Of Responses To Consultation from Stakeholders

Purpose of the consultation

Food Standards Scotland (FSS) issued an 8 week public consultation from 21 October to 16 December 2022 on our proposal to introduce a new Compliance Notice for breaches of Food Standards. The main aims were seek the views of food businesses, enforcement authorities, consumers and other stakeholders on the proposal to confirm if introduction of a Compliance Notice for Food Standards would benefit officers who enforce food law, whether they would help to improve business compliance and to gain an understanding of how they might impact food businesses and LA resources.

The consultation provided interested parties and stakeholders the opportunity to comment on the proposal and the associated partial Business and Regulatory Impact Assessment (BRIA).

Background to proposal

This proposal was designed to address the gap in options available to Authorised Officers (AOs) for the enforcement of food standards offences (this includes food information, composition standards, novel foods, food for specific groups and food contact materials). Currently officers can only seize and detain product or report the offence to the Procurator Fiscal (PF).

Comparatively, there are a range of options available for breaches in food hygiene e.g. Hygiene Improvement Notice (HIN), Remedial Action Notice (RAN) or a Hygiene Emergency Prohibition Notice (HEPN).

The introduction of a new Compliance Notice will provide AOs with a formal enforcement notice for food standards, ensuring the same graduated approach that is currently available for food hygiene is also available for food standards.

It is proposed that the new Compliance Notice could make better use of AO and the court system's time and potentially have the breaches remediated in a shorter timescale, thus improving business compliance and consumer safety. Reporting contraventions to the PF, does not in itself achieve compliance, and it is anticipated that the use of Compliance Notices will have a positive impact on compliance.

What we consulted on

a) Views on the preferred and other options for introducing a new Compliance Notice over a specified timeline.

b) Views on the rationale for introducing a new Compliance Notice

- c) The benefits, impacts and risks of introducing a new Compliance Notice.
- d) The impact that the Compliance Notice may have on food businesses and Local Authorities.

Options presented

Option 1 – Do nothing (Keep everything as it is)

Option 2 – Introduce Compliance Notice to address non-compliance of Food Standards ONLY

Option 3 - Introduce Compliance Notice to address non-compliance of BOTH Food Standards and Food Hygiene

High level summary of results

The consultation clearly shows the Introduction of Compliance Notices will be welcomed by the majority of stakeholders with unanimous agreement across all respondents that there is a gap in current food standards enforcement and that a compliance notice is a sensible option for addressing this.

The majority of the respondents stated that they saw the benefit to also exploring the expansion of the scope to include all food law, however generally the response was that there are adequate tools in place for standalone breaches of food hygiene law. However, for a group of offences that include both hygiene and standards matters it would be useful to have one notice covering both, particularly if the issues/solutions are linked, for example, when there are undeclared allergens in a product and that product is available to consumers.

Respondents expressed the need for a standardised approach to delivery to ensure clear understanding. A positive and open line of communication between each sector of the food industry and the enforcement authorities will be essential to a smooth implementation of this change.

The consultation results have also highlighted the importance of consistent application of enforcement by all local authorities across Scotland and delivery of training and associated guidance will be essential to ensure this.

Respondents were also asked about risks associated with the proposed approach. 11/20 respondents said yes and potential risks covered issues such as:

- upsetting and confusing the well-established range of notice options that are already available for food hygiene issues;
- non-compliance with the Compliance Notice may lead to more work required by LA EHO colleagues in having to refer a report to the Procurator Fiscal;
- the potential for lack of standardisation of use across all 32 LAs;

- increased burden on LA resource in the beginning, given the breadth of non-compliance which may be encountered additional time may be required for research and an increase in the time associated with inspection and follow up enforcement.

The consultation has highlighted a need to explore whether a Compliance Notice applicable to all food law would be a beneficial addition to the food hygiene enforcement tool box or whether it would be replicating existing sanctions and therefore not necessary (unless it was to replace a current notice) and a further review will be undertaken separately on this.

At this time, due to the lack of a clear requirement to have a dual notice, and the fact that the known enforcement gap is in relation to food standards, FSS will introduce a new Compliance Notice for food standards only, followed by investigation of options for a food law notice at a later stage.

Summary Report Of Stakeholder Responses to Consultation

1. Which best describes you? - Designation	
Respondent	Comment
Local Authority (14) Food Business (1) Other (5)	Majority of the respondents were from Local Authorities

2. Do you agree that there is a gap in the formal enforcement options available to authorised officers for food standards contraventions and that we should make use of the powers in the Food (Scotland) Act 2015 to introduce a Compliance Notice? Please provide further information in the comments box.		
Respondent	Comment	FSS Response
Local Authority	Yes. The introduction of a compliance improvement type notice for food standards offences has been talked about in the EH community for years. I believe it has always been available in other parts of the UK.	Noted
Local Authority	Yes. This will introduce a step between the formal letter response and the prohibition of a practice, similar to the HIN for food hygiene, and I am assuming will, like the remedial action notice, not require confirmation via sheriff and will not require a notice to be applied to the exterior of the premises, which FBOs prefer	Noted
Other	Yes, it seems there are a lack of enforcement options, especially when compared to the food hygiene options	Noted
Other	Yes. Moving to a compliance notice option should quicken and streamline the enforcement process provided that the subsequent use of notices is applied in a consistent and pragmatic manner.	Noted
Local Authority	Yes. No enforcement options at present other than referral to Procurator Fiscal.	Noted

Other	Yes. A compliance notice process appears to provide a straightforward and clear procedure that will be followed and applied to all food businesses. as long as there is consistency in the application of the rules. It is also important that all cases have access to an independent appeals process should it be necessary.	Noted and agree consistency in the application will be key.
Local Authority	Yes. Need comparable powers for standards as we have for hygiene	Noted
Local Authority	Yes. A Compliance Notice will be a proportionate response for breaches of Food Information Regulations where informal action has not secured an improvement and the non-compliance would not merit a report to the Procurator Fiscal.	Noted
Local Authority	Yes. Totally agree that currently there are limited powers and enforcement options available for Authorised Officers (AO'S) in the effective enforcement of breaches of relevant food standards law in comparison to those enforcement options available to AO's for any breaches in food hygiene law. Compliance Notices (CN) would provide an effective enforcement option tool for the wide and varied breaches of food standards law, saving on time and money in referring food standard breaches to PF and clogging up the court system when breaches of food standards by an FBO may be enforced in more immediate and effective way by an AO leaving the more serious breaches and re-offenders to the PF route.	Noted
Local Authority	Yes. Powers to resolve matters of urgency are inadequate and out of step with those on food safety.	Noted
Food Business	Yes. Our experience is that, in many circumstances, the current enforcement options are not appropriate to allow us to effectively and efficiently deal with Food Standards contraventions. We make regular use of HINs and RANs to achieve compliance in relation to Food Hygiene and would anticipate making use of Compliance Notices with similar effect for Food Standards.	Noted

Other	Yes. There is no sensible reason why a graduated range of enforcement options are not available for food standards offences and it would be appropriate to make use of the powers in the Food (Scotland) Act 2015 to do this.	Noted

3. Do you agree that option 3 "Introduce a Compliance Notice applicable to breaches in Food Standards followed by further exploration of expansion of the scope to also include Food Hygiene and wider Food Law" is the best option to address this gap? If you answered no, please provide further information in the comments box, clarifying your preferred option and reasons for it.		
Respondent	Comment	FSS Response
Local Authority	No. There are already a range of well-established compliance notices and tools for food hygiene and wider food law. Both businesses and local authorities know and understand their use.	Noted
Local Authority	Yes. It is a logical move	Noted
Local Authority	Yes. As food interventions are now combined food hygiene and food standards, it makes sense that the range of notices available to officers cover the entire food intervention	Noted
Local Authority	Yes. Agree the need for Food Standards but would there be a need for Food Hygiene as a number of enforcement options already exist.	Noted
Local Authority	Yes. A standardised approach and delivery of the food hygiene and food law enforcement will create a clearer understanding across the food industry.	Noted
Local Authority	Yes. It is worth exploring whether a Compliance Notice is a beneficial addition to the food hygiene enforcement tool box or whether it would be replicating existing sanctions and therefore not necessary (unless it was to replace a current notice).	Noted

Local Authority	No. Already have a range of enforcement options for hygiene	Noted
Local Authority	Yes. Less clear what the gaps in food safety are that this would address.	Noted
Local Authority	Yes, assuming that the exploration of expansion to Food Hygiene and wider Food Law would be subject to further consultation. Whilst we would agree that there may be a gap in the formal enforcement options available to authorised officers for food standards contraventions, with reference to our business activities and practices, feel that the current enforcement options are adequate and therefore not be a need to introduce compliance notes.	Noted. Yes, there would be a further public consultation before development or implementation of any new enforcement notice.
Local Authority	Yes. Although it would be beneficial to have a single notice covering the entirety of food law, there are already appropriate notices for food hygiene. The introduction of a CN for food standards and food information is needed to ensure proportionate enforcement. The introduction of CNs should not be postponed in order to incorporate hygiene.	Noted

4. In relation to "exploration of expansion of the scope to also include Food Hygiene and wider Food Law" do you perceive a benefit to having a single enforcement notice across the entirety of Food Law?		
Respondent	Comment	FSS Response
Local Authority	No. Just make the new notices the same as a hygiene improvement notice, or RAN/HEPN for serious immediate issues. Alternatively just make existing notices apply to food standards	For existing notices to apply to food standards as well as hygiene, this would require new primary legislation (i.e. a much

		<p>larger task than what is required to implement the new Compliance Notice). This is due to the Food Safety Act 1990 being the legal basis for the current food hygiene notices. It would require amendment via an Act of Parliament to extend those notice provisions to include food standards matters. However, there are already powers in the Food (Scotland) Act 2015 that enable compliance notices and fixed penalty notices to be introduced and these can be applied to food hygiene and wider food law, including food standards, which is the basis of this proposal.</p>
Local Authority	<p>Yes. However the CN reads like a HIN - would there be provision for immediate action or will a RAN be amended to include food standards? or is it intended that the CN will act as all three and immediate action should be enforced by the CN?</p>	<p>Noted. The Compliance Notice will not be suitable for issues requiring immediate action as a 2 week (minimum) compliance period will be applied. For breaches requiring urgent remediation, there remains the option of using seizure and detention powers. Currently</p>

		there are no plans to modify the RAN.
Local Authority	Yes. As food interventions are now combined food hygiene and food standards, it makes sense that the range of notices available to officers cover the entire food intervention	Noted
Other	Yes. Best to have consistent enforcement options for food standards, food hygiene and wider food law. Less opportunity for perception that enforcement is stricter or more relaxed in certain circumstance.	Noted
Other	Yes. It is imperative that a decision to issue a notice is applied evenly and is commensurate with the gravity of the actual offence. For example the breach may be of such a low risk nature that the issue of a verbal or written warning would suffice; the scale of the fine should match the crime.	Noted
Local Authority	Yes. Would benefit staff but it depends which of the Food Hygiene Notices would be removed, this reads more like a Hygiene Improvement Notice, Remedial Action Notices are very useful and do not specify timescales so would be concerned if the ability to use that notice was removed.	Noted. At this time we will not be proceeding with amendment or replacement of any of the existing hygiene notices.
Local Authority	Yes. A standardised approach and delivery of the food hygiene and food law enforcement will create a clearer understanding across the food industry, provided clear guidance to each food industry sector is issued. A positive and open line of communication between each sector of the food industry and the enforcement authorities will be essential to a smooth implementation of this change.	Noted

Local Authority	No. Would need to see further detail on the proposals	Noted. FSS will formally consult on any future proposed changes and full details of any proposals will be provided as part of the consultation package.
Local Authority	<p>Yes. One notice covering both regimes would be simpler for AO's to administer and explain and this streamlined approach should be of benefit to the recipient also. Some breaches could be associated with both hygiene and standards, depending on the cause or the circumstances leading to the offence.</p> <p>For example, some allergen incidents may result in a breach of food information rules, but upon investigation may be caused by inadequate hygiene controls (cross contamination, training, FSMS). Having a single enforcement notice may allow all linked non conformities to be addressed at once.</p>	Noted. FSS have prioritised implementation of the compliance notice for food standards related offences at present, as this is where the known gap in enforcement exists. The authorised officer (AO) may serve a hygiene notice and a compliance notice at the same time to deal with each issue.
Local Authority	Yes. To aide consistency	Noted
Local Authority	Yes. Absolutely of benefit to having a single enforcement notice across both food standards and food hygiene especially in light of conducting combined interventions covering both areas. This cuts down on paperwork and using separate enforcement options such as serving a hygiene improvement notice alongside a compliance notice for a food standards breach so saving on an authorised officer's work time (resource time) and bombarding a food business with a number of formal notices/reports at the same time giving rise to possible confusion with regards to time frames of remedying the various breaches for both food standards and food hygiene non compliances.	Noted. FSS will look into this option in the future. If the feedback gives a clear indication that serving multiple notices is causing confusion, we will review the Compliance Notices powers.

Local Authority	Yes. Potentially beneficial as an additional tool rather than a replacement for all existing notices	Noted
Local Authority	<p>Yes. The existing enforcement options for Food Hygiene have been effective in achieving an appropriate and measured approach to compliance. While there would be benefit in having a single enforcement notice for both Food Hygiene and Food Standards for consistency, we would be keen to ensure that this does not weaken any existing enforcement options.</p> <p>For example, the text in the BRIA indicates that the notice would be suspended in the event of an appeal, which is not the case with a RAN. This would significantly impact on the effectiveness of the notice if it were to be used in situations where a RAN would currently be considered appropriate.</p> <p>The suspension of a notice during an appeal may lead officers towards HEPNs rather than CNs in many circumstances if RANs were replaced as part of this process. This would have a significant impact on resources and would result in a less efficient process overall.</p>	<p>Noted.</p> <p>There are no plans at present to modify the RAN. We recognise that the RAN is a very effective enforcement tool for AOs, so we wouldn't change its effectiveness.</p>
Other Local Authority	Yes. A single enforcement regime will be easier for business to understand and will serve to reinforce that all areas of food law have equal importance.	Noted
Other	Yes. This will avoid confusion amongst authorised officers and lower the risk of an "incorrect" notice being applied.	Noted. Officer training will be delivered to all the local authorities (LAs) so that there is clarity and consistency in the use of the Compliance Notice.

5. Do you believe that the introduction of a Compliance Notice is an appropriate and proportionate measure for ensuring compliance with the relevant food information and standards requirements?		
Respondent	Comment	FSS Response
Local Authority	Yes.	Noted
Local Authority	Yes. The only current enforcement tool is a report to the PF. As this is very time consuming and should only be reserved for serious offences it is rarely done meaning food standards issues often go unaddressed.	Noted
Local Authority	Yes.	Noted
Local Authority	Yes. This will introduce a step between the formal letter response and the prohibition of a practice, similar to the HIN for food hygiene, and I am assuming will, like the remedial action notice, not require confirmation via sheriff and will not require a notice to be applied to the exterior of the premises, which FBOs prefer, while still leaving the option of taking further steps if required.	Noted
Other	Yes	Noted
Other	Yes	Noted
Local Authority	Yes	Noted
Local Authority	Yes, for the reasons given above.	Noted
Local Authority	Yes. No suitable notice currently available	Noted

Local Authority	<p>Yes, as there are no current sanctions fully within the control of the enforcement body. In many circumstances, written warnings don't have the desired effect and due to the lack of available sanctions, resources are not deployed to follow up breaches. This can result in offences continuing or cause the standard of compliance to drop further.</p> <p>Reports to PF are reserved for serious cases usually involving deliberate fraudulent activity or which may result in a risk of harm and therefore a more appropriate sanction, such as in the form of a Compliance Notice, is necessary.</p>	Noted
Local Authority	Yes. Provides a graduated enforcement route.	Noted
Local Authority	Yes. I do having understand the objective of issuing such notices in achieving compliance in the most effective way possible and once AO's exercise their enforcement powers in a consistent manner carrying out enforcement action in a reasonable, proportionate and risk based way. The options of using Compliance Notices gives a more flexible, graduated approach for AO's in their enforcement action with respect to food standard breaches.	Noted
Local Authority	Yes. The time period for compliance and the penalty for non-compliance are relevant to proportionality. These should be detailed in development.	Noted. This will be documented in the SSI and in any associated guidance.
Local Authority	Yes. This will allow for a graduated approach to compliance and introduce compliance timelines. It will allow for compliance to be achieved in instances where minor breaches are observed, and seizure/detention is not an appropriate means of enforcement. Whilst we would agree that there may be a gap in the formal enforcement options available to authorised officers for food standards contraventions, with reference to our business activities and practices, feel that the current enforcement options are adequate.	Noted
Other	Yes.	Noted

Other	Yes. The enforcement concordat and risk-based and proportionate enforcement should still be followed by authorised officers. The introduction of a new tool does not equate to always having to use it.	Noted

6. Do you agree that the introduction of a Compliance Notice will help to encourage businesses towards compliance with regulations? If not, please provide further information in the comments box.		
Respondent	Comment	FSS Response
Local Authority	Yes	Noted
Local Authority	Yes	Noted
Local Authority	Yes	Noted
Local Authority	Yes	Noted
Other	Yes	Noted
Other	No. The vast majority of food businesses are family owned and do strive to achieve a good degree of regulatory compliance, not least because that is what their customers demand. FSS and local authority officials need to cast aside the mind-set that most FBOs are crooks looking to cut corners as soon as their backs are turned.	Noted. Compliance Notices are not penalties in themselves but a means to formally set out what a business needs to achieve to correct an issue which remains unresolved despite previous education or informal advice given by an officer.

Local Authority	Yes	Noted
Other	<p>Yes. Our members are mainly small businesses owned and operated by the same family. Any non-compliance with the regulations would have a massive impact on the business reputation and their relationship with the customers. A clear understanding of the penalties for non-compliance will focus the mind on making sure the law is not broken.</p> <p>However, sometimes the application of the enforcement by local authorities can vary from area to area, so it is important that there is a clear standardisation across the country. Also imperative that an appropriate appeals procedure is in place.</p>	<p>Noted</p> <p>FSS have committed to deliver training to all LAs, in the use of the Compliance Notice so that there is more of a consistent application across the country. There will be an appeals process explained in the notice.</p>
Local Authority	Yes.	Noted
Local Authority	<p>Yes, service of formal notices does usually get the attention of the FBO, especially in larger establishments or chain businesses where most communications are with a Manager rather than Business Owner(s). The consequences of breaching the notice are usually sufficient to encourage compliance.</p>	Noted
Local Authority	Yes. Prosecution is currently the only option and feels heavy handed, this would be a better option.	Noted
Local Authority	Yes. Absolutely agree especially in securing compliance with specific food standard related matters/issues that require addressing and remedying in a quicker time frame so a more efficient enforcement action tool.	Noted
Local Authority	Yes, as a proportionate tool aligned to other enforcement tools.	Noted

Local Authority	Yes. Compliance Notices will be a way of ensuring compliance with breaches where a report to the Procurator Fiscal or Seizure/Detention is not appropriate, particularly with more reluctant businesses	Noted
Other	Yes	Noted
Other	Yes	Noted

7. Do you foresee any risks with the preferred approach (option 3)? - Please provide detail		
Respondent	Comment	FSS Response
Local Authority	No.	Noted
Local Authority	Yes. Upsetting and confusing a well-established range of notice options that are already available for food hygiene issues.	Noted
Local Authority	Yes, there may be some confusion initially but with adequate training for AO on the completion and service it will hopefully be minimal.	Noted
Local Authority	Yes. Possible confusion for businesses as to the consequences of non-compliance.	Noted. Failure to comply with a compliance notice will be an offence, and this will be made clear in the notice and the SSI. The penalty for committing the offence will be set out in the SSI too.
Other	No.	Noted

Other	Yes. The uneven application of fines by officials in different parts of the country will severely undermine the credibility of the preferred approach.	Noted. There would be a maximum fine possible (level 4 on the standard scale £2,500). Officer training will be delivered to all the LAs so that there is clarity and consistency in the use of the CN.
Local Authority	Yes. If there is non-compliance with the Compliance Notice, there may be more work required by colleagues in having to refer a report to the Procurator Fiscal. Procurator Fiscal may need assistance in understanding the importance of the offence.	Noted. The introduction of the compliance notice will give AOs the chance to take a graduated approach to enforcement. Failure to comply with the Compliance Notice will incur the same sanctions as failing to comply with any other available food enforcement notices.
Other	Yes. Sometimes the application of the enforcement, and the interpretation of the rules, by local authorities can vary from area to area, so it is important that there is a clear standardisation across the country. Also imperative that an appropriate appeals procedure is in place.	Noted. There will be training delivered to all the LAs and a Food Law Code of Practice (FLCoP) developed to support a consistent approach. An appeals procedure will be included in the Compliance Notice.
Local Authority	Yes. Would need to see the detail of the proposals	Noted
Local Authority	No. The exploration of having a Compliance Notice for food hygiene matters is to be consulted on so any risks will be identified then.	Noted
Local Authority	No. Difficult to answer until we receive more information on how the notices will be implemented and enforced.	Noted
Local Authority	No. Apart from inconsistency in approach by Authorised Officers and possible over use of Compliance notices when compliance could be secured in a step before use of such notices in a scenario where the food business operator is simply	Noted

	misunderstanding his legal obligation and requires educating and supporting in securing compliance.	
Local Authority	<p>Yes. Please see comments relation to removal of existing enforcement powers.</p> <p>The improved ability to effectively deal with Food Standards contraventions will almost certainly result in increased time dedicated by officers to applying the new enforcement powers. Given the breadth of non-compliance which may be encountered in relation to food standards, additional time may be required for research etc.</p> <p>The effect in the short-term would almost certainly be an increase in the time associated with inspection and follow up enforcement.</p>	<p>Noted. The intention behind the introduction of Compliance Notices for food standards is to add enforcement powers to support current enforcement of food standards. There will be training delivered to all the LAs and a FLCoP developed to support a consistent approach.</p>
Other	<p>Yes. As drafted the proposals suggest that offences would be pursued by issuing a Compliance Notice OR a report to the Fiscal. It would seem plausible that a situation may arise where an offence is sufficient for a report to the PF, but the Compliance Notice would address the situation rapidly and therefore the ability to pursue both should not be prevented.</p>	<p>Noted. The Food Scotland Act 2015 enables the introduction of the Compliance Notice and is written in such a way that permits the issuing of a compliance notice OR reporting of the offence to the Procurator Fiscal – unfortunately not both. Therefore, the Authorised Officer will be required to make a judgement call on the severity of the offence and the resulting appropriate action. The LA training will be scenario-based in order to support this.</p>
Other	No.	Noted

8. Do you have any other suggested solutions for addressing the gap in formal enforcement options available for Food Standards contraventions that have not been considered here? - Please provide detail		
Respondent	Comment	FSS Response
Local Authority	No.	Noted
Local Authority	Yes. Just make the current notices - RANs, improvement notices, HEPNs, voluntary closures available for food standards offences.	Noted. For existing notices to apply to food standards as well as hygiene, this would require new primary legislation (i.e. a much larger task than what is required to implement the new Compliance Notice). This is because the Food Safety Act 1990 provides the legal basis for the current food hygiene notices and food standards are not included in the scope of these regulations. It would require amendment via an Act of Parliament to extend those notice provisions to include food standards matters. However, there are already powers in the Food (Scotland) Act 2015 that enable compliance notices and fixed penalty notices to be introduced and these could be applied to food hygiene and wider food law, including food standards.

Local Authority	No	Noted
Local Authority	No	Noted
Local Authority	No	Noted
Local Authority	No	Noted
Local Authority	No	Noted
Local Authority	<p>Yes. Continued communication between industry and enforcement authorities.</p> <p>FSS and local authorities should highlight examples good practice not just bad practices which are penalised. Examples of good practice will help to drive up the standards. At the moment it seems that authorities are trying to drag up the standards.</p>	Noted. FSS encourage regulation as per our compliance spectrum approach
Local Authority	No	Noted
Local Authority	No	Noted
Local Authority	No	Noted
Local Authority	No	Noted
Local Authority	No	Noted

Local Authority	Yes. Experience is that FHIS does encourage many businesses to rectify matters regarding Food Hygiene which impact on their FHIS rating. Currently there is no such incentive for them to do so in relation to Food Standards. Whilst it is unlikely that this would have the same impact as introduction of Compliance Notices, review of the scope of FHIS to include Food Standards and wider Food Law may be a further option worth considering to encourage compliance without the need for enforcement action.	Noted. FSS is currently reviewing FHIS and will consider expansion of scope to include food standards in the development of any future scheme.
Other	No	Noted
Other	No	Noted

9. Do you have any other concerns or queries about the introduction of the proposed Compliance Notice? - Please provide detail		
Respondent	Comment	FSS Response
Local Authority	No.	Noted
Local Authority	No.	Noted
Local Authority	No.	Noted
Local Authority	No. It would have been good to have been ready for the 1st Oct with Natasha's law so all changes were at one time	Noted. PPDS changes are a specific aspect of food standards requirements and the broader nature of the

		notice provisions needed more time to develop.
Local Authority	Yes.	Noted
Other	No	Noted
Other	No	Noted
Local Authority	Yes. We would like to see examples of the benefits of using a Compliance Notice for Food Hygiene contraventions.	Noted. Benefits of any proposed approach will be highlighted prior to public consultation.
Other	No	Noted
Local Authority	No.	Noted
Local Authority	No.	Noted
Local Authority	No. Timeous training on enforcement will be welcome.	Noted
Local Authority	No.	Noted
Local Authority	Yes. As drafted the proposals suggest that offences would be pursued by issuing a compliance notice or a report to the Fiscal. It is possible to envisage circumstances where the discovery of a serious food standards offence requires a CN to remedy the contravention quickly but also a report to PF either due to the gravity of offence or its association with other offences being reported together. The legislation and guidance should not preclude the service of a compliance notice and a report to the Fiscal.	Noted. There remains the option of serving a seizure and detention notice for imminent action. The Food Scotland Act 2015 which enables the introduction of the Compliance Notice, is written in a way that only

		allows serving a Compliance Notice or reporting to the PF. Unfortunately, not both.
Local Authority	Yes. Officers are experienced in the issue of HINs/RANs/HEPNs etc. in relation to Food Hygiene and have the Food Law Code of Practice to guide when considering where each would be appropriate. Guidance on the use of Compliance Notices will be critical to ensure consistency. Any publicity around the introduction of the notices will also need to be considered to ensure that it doesn't necessarily give the public unrealistic expectations about when Local Authorities may use Compliance Notices.	Noted. Guidance and training will be provided to all LAs so that authorised officers will have a better understanding of the use of compliance notices. A stakeholder communication will be issued nearer the time of the compliance notice coming into force explaining what the compliance notice is and how it will be used.
Other	No	Noted
Other	No	Noted

10. What are the foreseen impacts to your business with the introduction of the proposed Compliance Notice? - Please provide details		
Respondent	Comment	FSS Response

11. What are the foreseen impacts to your specific food industry sector with the introduction of the proposed Compliance Notice? - Please provide detail		
Respondent	Comment	FSS Response

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12. Are the estimated costs for your business regarding the familiarisation and dissemination of the changes in the partial BRIA accurate and reasonable? - Please provide your reasons		
Respondent	Comment	FSS Response

13. Do you consider that the introduction of the proposed Compliance Notice will have a resourcing impact for your local authority? - Please expand on any concerns you may have		
Respondent	Comment	FSS Response
Local Authority	No	Noted
Local Authority	Yes. Once notices are available they will be used. Issues that have never been properly addressed will no longer be ignored.	Noted
Local Authority	Yes. If the consultation training time was taken into account however it will initially take longer for officer to complete the notices and get them checked so there will be more time that just training. Obviously having the option of this notice now will mean that action may be taken at businesses that were non-compliant in ways that a report to the PF was not proportional so more notices may be served.	Noted

Local Authority	Yes. Hard enough to recruit competent officers as so few people doing EHO degree, the HND courses having been stopped and REHIS not actively promoting the new FLO qualification. Doesn't even come up when you google. Average age of officers in the profession is I believe 53 with large numbers leaving the profession to change careers later in life and large numbers retiring. A proactive approach needs to be taken to ensure the future of the profession on a National level.	Noted. FSS are aware of these issues and are working to support this where we can.
Local Authority	Yes. There will be increased admin in the issuing of Compliance Notices, potential appeals and additional revisits to ensure compliance.	Noted
Local Authority	No	Noted
Local Authority	<p>Yes. However, this will be one off impact caused by familiarisation of any new regulations, guidance or Code of Practice updates or attendance at any training event designed to introduce any new sanctions.</p> <p>Beyond this necessary training resource, the use, administration and follow up of notices in day to day duties is likely to be more resource intensive than issuing warning letters, however, the threat of a notice may be sufficient to result in improvements in legal compliance without resorting to service of the notice.</p> <p>Both resource impacts are negligible and far outweighed by the benefits of improved compliance (shorter inspection time, reduced inspection admin and less frequent inspections).</p>	Noted
Local Authority	Yes. There will be resources required initially to set up and prepare. If non-compliance with the notice, what will the route after this be, this may impact significantly on resources if it's straight to prosecution.	Noted. Failure to comply will be an offence and may require a report to the PF. The resource required to support

		this move to increased formal enforcement will be included in the final BRIA
Local Authority	No. In the long run no, obviously initially officers will require training in understanding the purpose of Compliance notices, becoming familiar with them and how best to use them effectively in the course of their jobs, routine work.	Noted
Local Authority	No	Noted
Local Authority	<p>Yes. It is likely that this will have an impact.</p> <p>Minor non-compliances are often found during routine inspections. In such instances, officers will endeavour to work with a business to achieve compliance however, in the absence of a notice and when considering food law requirements these are often not high priority. The introduction of Compliance Notices will increase the length of inspection and administrative work associated with interventions. In addition, it is likely that additional study will require to be carried out to ensure officers are sufficiently informed to make a decision on compliance.</p> <p>The introduction of new notices will require time for training which will detract from other duties. Similarly, there will need to be an audit process introduced to monitor use of Compliance Notices. Consideration also to be given to time spent in the event of non-compliance with Compliance Notices and the action that would need to be taken.</p> <p>We would emphasise, however, that we do support the introduction of the Compliance Notice.</p>	<p>Noted.</p> <p>We will make the necessary upgrades to SND to capture the number of compliance notices that have been issued. Additionally, we will follow up after the Compliance Notices have been in use by all local authorities for a significant period of time to gather feedback on their use and effectiveness.</p>

14. Do you agree that the proposed Compliance Notice will be a useful enforcement tool for authorised officers to ensure compliance with food information, composition standards, novel foods and foods for specific groups? - If you answered no, please confirm why you think this would not be a useful tool		
Respondent	Comment	FSS Response
Local Authority	Yes	Noted
Local Authority	Yes	Noted
Local Authority	Yes	Noted
Local Authority	Yes	Noted
Local Authority	Yes	Noted
Local Authority	Yes	Noted
Local Authority	Yes	Noted
Local Authority	Yes	Noted
Local Authority	Yes	Noted
Local Authority	Yes	Noted
Local Authority	Yes, provided that guidance is readily available	Noted

15. Do you agree that the proposed Compliance Notice will be a useful enforcement tool for authorised officers to ensure compliance with Food Hygiene legislation? - If you answered no, please confirm why you think this would not be useful		
Respondent	Comment	FSS Response
Local Authority	Yes	Noted
Local Authority	No. Already a range of enforcement notices available	Noted
Local Authority	Yes. But as mentioned - it does read like a HIN. if there is immediate concern can immediate action be taken similar to a RAN?	Noted. Seizure and detention powers already exist to deal with food items that are misleading or lacking in information (allergens) to consumers and would be the recommended enforcement action for food standards issues of immediate concern.
Local Authority	Yes	Noted
Local Authority	No. Further discussion on this element is required.	Noted
Local Authority	No. Would need to see the detail but already have a range of enforcement options for hygiene.	Noted
Local Authority	Yes. There are adequate tools in place for stand-alone breaches of food hygiene law, however, for a group of offences that include both hygiene and standards matters, it would be useful to have one notice covering both, particularly if the issues/solutions are linked.	Noted
Local Authority	Yes	Noted

Local Authority	Yes	Noted
Local Authority	Yes. Possibly. Existing tools do that well enough	Noted
Local Authority	It would depend upon how Compliance Notices would be used and where they would sit within the existing regulatory framework i.e. If HINs, RANs etc. were to remain in use – when would it be appropriate to use a Compliance Notice? If HINs and RANs etc. were removed as part of the process, the Compliance Notice would only be an effective tool if it retains all the powers which were available to officers through HINs/RANs etc.	Noted. The introduction of Compliance Notices is to bridge the current gap in food standards enforcement. All the current hygiene sanctions will remain in place. We will review the requirements and options for a dual (food law) notice at a later stage.

<p>16. Option 3 (the preferred option) proposes that in the future the scope of the Compliance Notice covers both Food Standards and Food Hygiene Law, in line with FLRS. In light of this, do you foresee any potential conflict between a new CN (covering both Food Standards and Food Hygiene) and existing enforcement notices, such as the Hygiene Improvement Notice (HIN)? - If you foresee an issue, please include any suggested solutions or actions FSS would need to take as a regulator to ensure understanding of when each notice would be appropriate</p>		
Respondent	Comment	FSS Response
Local Authority	No	Noted
Local Authority	Yes. Just extend existing notices to food standards legislation.	Noted. For existing notices to apply to food standards as well as hygiene, this would require new primary legislation (i.e. a much larger

		<p>task than what is required to implement the new Compliance Notice). This is because the Food Safety Act 1990 provides the legal basis for the current food hygiene notices and food standards are not included in the scope of these regulations. It would require amendment via an Act of Parliament to extend those notice provisions to include food standards matters. However, there are already powers in the Food (Scotland) Act 2015 that enable compliance notices and fixed penalty notices to be introduced and these could be applied to food hygiene and wider food law, including food standards.</p>
Local Authority	No	Noted
Local Authority	Yes. Needs to be a single notice covering all aspects of food intervention contraventions. Confusion as to consequences of non-compliance for businesses.	Noted

Local Authority	Yes. No need for 2 notices in the enforcement toolkit that have the same outcome so if Compliance Notice used for Food Law then the Hygiene Improvement Notice becomes redundant.	Noted
Local Authority	Yes. Seems to be the food standards equivalent of a HIN so could be confusing as to which to use for hygiene	Noted
Local Authority	No. We currently have more than one notice type for food hygiene which can be used in similar circumstances. Guidance is key to setting out the type of notice to use in each situation with the use of examples/scenarios to support this and facilitate consistency.	Noted
Local Authority	Yes. It depends how all the notices are going to work and if the compliance notice is going to replace the HIN or be in addition to it. Clear guidance and training on the use of each notice will be required.	Noted
Local Authority	NO	Noted
Local Authority	No. Existing tools permit a range of proportionate responses. A CN would not be a useful substitute for a RAN for instance	Noted
Local Authority	Yes. At this stage it is not clear what the purpose of a Compliance Notice would be if used in conjunction with existing notices/regulatory regime. Is there a need to retain HINs if Compliance Notices can serve the same purpose? This would need further clarification and consideration and would need to be included within the FLCoP.	Noted. We will deliver training to set out the powers and scope of the compliance notice. At this point the compliance notice will be used to deal with breaches in food standards only. Hygiene sanctions will remain in

		place. Authorised officers will have the option to apply both notices if there are both aspects to the offence.
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17. Training and an associated Food Law Code of Practice (FLCoP) will be provided to ensure consistent application of the proposed Compliance Notice across all LAs. Are there any other factors that need to be considered in relation to consistent application of the Compliance Notice across Scotland? - Please provide detail		
Respondent	Comment	FSS Response
Local Authority	No	Noted
Local Authority	No	Noted
Local Authority	No	Noted
Local Authority	Yes. There is, and always has been, a lack of consistency regarding individual's perception of seriousness of contraventions. I believe there should be prescriptive instances as to this is when you serve a CN provided	Noted. Scenario based training will be delivered to all local authorities to encourage consistency of approach.
Local Authority	No	Noted
Local Authority	Yes. Q&A type document with input from all 32 LAs would be useful	Noted. Great suggestion and will be taken on board.
Local Authority	No. There are well established liaison arrangements between LAs and FSS which can be utilised to promote consistency in the use of Compliance Notices.	Noted
Local Authority	No	Noted
Local Authority	No	Noted
Local Authority	No	Noted

Local Authority	Yes. Accessibility of information and support from FSS – researching novel foods etc. can be extremely time consuming and support would be required. Introduction of consistency/refresher training and regular discussion at liaison groups.	Noted. FSS will explore the potential to deliver food standard training for local authorities.
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18. Are the estimated costs for Local Authorities regarding the familiarisation and dissemination of the changes in the partial Business and Regulatory Impact Assessment (BRIA) accurate and reasonable? - Please provide detail		
Respondent	Comment	FSS Response
Local Authority	Yes	Noted
Local Authority	Yes	Noted
Local Authority	No. There will be an increase on time spent ensuring the notices are completed accurately. this is not reflected in the training costs allocated.	Noted. This will be taking into consideration in the final BRIA.
Local Authority	No. There will be more of an impact in that, I am assuming that theses notices will require corroboration of offences and witness of service, lack of ability to recruit suitably qualified staff as it is, will put yet another strain on the existing resources. So more suitably qualified staff needed.	Noted. This will be taking into consideration in the final BRIA.
Local Authority	Yes	Noted
Local Authority	Yes	Noted
Local Authority	No. The number of Authorised Officers may require to be increased from two per Authority to give a more accurate familiarisation cost. We are not a large authority but would wish all officers undertaking food law enforcement to be trained in the use of Compliance Notices (currently 8 officers).	Noted. This will be taking into consideration in the final BRIA.

Local Authority	Yes	Noted
Local Authority	Yes	Noted
Local Authority	Yes	Noted
Local Authority	<p>No. It is our view that 2 hours is underestimating the time required for training. It may take 2 hours to disseminate the initial information, however, there will be a need for time to be spent with AOs to ensure understanding has been achieved and that the notices are being used correctly through audit etc.</p> <p>Clarity required as to why the assumptions are based on 2 officers per LA when compared to 120 FSS AOs – this is not reflective of local authority resources. If the intention is for cascade training to be carried out this further confirms the need for longer training – any AO carrying out cascade training must fully understand the system and able to answer questions.</p>	<p>Noted.</p> <p>We will look at providing more training spaces per LA when we deliver the training in order to provide LAs with more trained officers. We will review the training hours in the final BRIA.</p>

19. Are there additional risks and unintended consequences from the food law enforcement interest that should be considered and if so, how should these be mitigated? - Please provide detail		
Respondent	Comment	FSS Response
Local Authority	Yes. Don't know.	Noted
Local Authority	Yes. Potential pressure from consumers to serve notice regarding perceived issues or as a response to a complaint.	Noted. The LA AO must exercise their judgement and be clear in their mind that a contravention does exist

		before serving a notice. The training we will deliver will give the AO clarity on this issue.
Local Authority	Yes. In businesses where there may be a lack of understanding due to language barriers, there may be perceived "picking on me" issues	Noted
Local Authority	No	Noted
Local Authority	Yes. Potential for more re-visits, additional admin	Noted
Local Authority	No	Noted
Local Authority	No. We don't feel we have enough information to provide an informed response.	Noted
Local Authority	No	Noted
Local Authority	No	Noted
Local Authority	No	Noted

20. Will the introduction of this proposed Compliance Notice increase your confidence in food business compliance with legal requirements? - Please provide your reasons		
Respondent	Comment	FSS Response
	No Comment	No Response

21. Will the introduction of this proposed Compliance Notice increase your confidence in the regulatory strategy of FSS? - Please provide your reasons		
Respondent	Comment	FSS Response
	No Comment	No Response

List of Respondents:

1. **American Samoa Department of Health**
2. **Highland Council EH**
3. **Scottish Association of Meat Wholesalers**
4. **City of Edinburgh Council**
5. **Scottish Craft Butchers**
6. **Inverclyde Council**
7. **North Ayrshire Council**
8. **Glasgow City Council**
9. **Food Standards Scotland**